JUSTICE 1 COMMITTEE

AGENDA

24th Meeting, 2004 (Session 2)

Wednesday 16 June 2004

The Committee will meet at 10.00 am in Committee Room 3.

1. **Subordinate legislation:** The Committee will consider the following negative instruments—

   The Community Right to Buy (Forms) (Scotland) Regulations 2004 (SSI 2004/233);

   The Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/228);

   The Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004 (SSI 2004/231);

   The Community Right to Buy (Compensation) (Scotland) Regulations 2004 (SSI 2004/229);

   The Community Right to Buy (Register of Community Interests in Land Charges) (Scotland) Regulations 2004 (SSI 2004/230);

   The Crofting Community Body Form of Application for Consent to Buy Croft Land etc. and Notice of Minister's Decision (Scotland) Regulations 2004 (SSI 2004/224);

   The Crofting Community Right to Buy (Compensation) (Scotland) Order 2004 (SSI 2004/226);

   The Crofting Community Right to Buy (Grants Towards Compensation Liability) (Scotland) Regulations 2004 (SSI 2004/225);

   The Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/227).

2. **Petition PE667:** The Committee will consider petition PE667 by Mr R Carruthers calling for the Scottish Parliament to investigate alleged discrimination against convicted sex offenders held in HM Prison Peterhead.

3. **Petition PE477:** The Committee will give further consideration to petition PE477 by Mr John McManus on behalf of the Miscarriages Of Justice Organisation, calling for the
Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a half-way home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court.

4. **Dangerous driving and the law petitions:** The Committee will give further consideration to the following petitions –

   - **PE29** by Alex and Margaret Dekker calling for action to be taken in relation to the Crown Office’s decisions and considerations in prosecuting road traffic deaths;
   - **PE55** by Ms Tricia Donegan calling for the Parliament to conduct an investigation to establish why the full powers of the law are not enforced in all cases that involve death by dangerous driving;
   - **PE299** by Ms Tricia Donegan calling for the Parliament to investigate whether the additional driving offences of failure to possess the correct licence, MOT or insurance documentation should be taken into consideration at court hearings concerning a fatality caused by dangerous driving;
   - **PE331** by Ms Tricia Donegan calling for the Parliament to investigate why drivers who have made deliberate decisions when driving that cause risk to the lives of others are classed as careless drivers when prosecuted, even in the event of a fatality.

5. **Media working practices:** The Committee will consider a paper on media working practices.

6. **Emergency Workers (Scotland) Bill (in private):** The Committee will consider a draft stage 1 report.

   Alison Walker
   Clerk to the Committee
   Tel: 0131 348 5195
Papers for the meeting—

Agenda item 1
Note by the Clerk J1/S2/04/24/1

Agenda item 2
Note by the Clerk J1/S2/04/24/2

Agenda item 3
Note by the Clerk J1/S2/04/24/3

Agenda item 4
Note by the Clerk J1/S2/04/24/4

Agenda item 5
Note by the Clerk J1/S2/04/24/5

Agenda item 6
Note by the Clerk (PRIVATE PAPER) J1/S2/04/24/6

Document not circulated—
A copy of the following has been provided to the Clerk:


A copy of this document is available for consultation in room 3.11 CC. Additional copies may also be obtainable on request from the Document Supply Centre.

Forthcoming business—
Wednesday 23 June – Justice 1 Committee meeting, Committee Room 1;
Wednesday 30 June – Justice 1 Committee meeting, Committee Room 2.
JUSTICE 1 COMMITTEE

24th Meeting 2004 (Session 2)

The Community Right to Buy (Forms) (Scotland) Regulations 2004 (SSI 2004/233)

The Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/228)

The Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004 (SSI 2004/231)

The Community Right to Buy (Compensation) (Scotland) Regulations 2004 (SSI 2004/229)

The Community Right to Buy (Register of Community Interests in Land Charges) (Scotland) Regulations 2004 (SSI 2004/230)

The Crofting Community Body Form of Application for Consent to Buy Croft Land etc. and Notice of Minister’s Decision (Scotland) Regulations 2004 (SSI 2004/224)

The Crofting Community Right to Buy (Compensation) (Scotland) Order 2004 (SSI 2004/226)

The Crofting Community Right to Buy (Grants Towards Compensation Liability) (Scotland) Regulations 2004 (SSI 2004/225)

The Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/227)

Note by the Clerk

Purpose of the instruments

1. These negative instruments set out procedures relating to the crofting community right to buy and the community right to buy under the Land Reform (Scotland) Act 2003 (“the Act”).

Part 2 of the Land Reform (Scotland) Act 2003 – Community Right to Buy

The Community Right to Buy (Forms) (Scotland) Regulations 2004 (SSI 2004/233)

2. Under part 2 of the Act, a community body may apply to register an interest in registrable land⁠¹. The purpose of this instrument is to specify the forms to be used and the information to be provided by community bodies, landowners and, where appropriate, heritable creditors at various stages in the registration process.

3. Schedule 1 of the instrument sets out the form of application to be used by a community body seeking to register a community interest in land. The information provided in the application will be used by the Scottish Ministers in reaching a decision on whether to approve the application.

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⁠¹ “registrable land” is any land other than excluded land under the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2004, considered under affirmative procedures by the Committee at its meeting on 21 April 2004.
4. Where the owner or heritable creditor of the land cannot be found, a conspicuous notice must be affixed to the land advertising the community body’s application to register an interest in it. Schedule 2 specifies the form that such a notice must take.

5. Schedule 3 gives the form of notice by which the Scottish Ministers will inform a community body of whether its application to register an interest has been approved and includes provision for an explanation of the decision.

6. Under section 44 of the Act, a registered community interest has effect for a period of five years; under section 48, where an owner or heritable creditor of land in respect of which such an interest has been registered wishes to dispose of the land, the owner or creditor must notify the interested community body or bodies and the Scottish Ministers. Schedule 4 prescribes the form of notification. Issue of such a notice commences the community right to buy process.

7. Schedule 5 specifies the notice to be used by Scottish Ministers to seek confirmation from the community body that it wishes to exercise its right to buy. The notice indicates the date by which intention to exercise the right must be confirmed and notifies that, if the intention is not confirmed, the registered interest will be extinguished. This would not preclude the body from subsequently re-registering an interest in the same land.

8. Schedule 6 stipulates the notice to be used to convey to the relevant landowner or heritable creditor that the community body has been contacted, indicating the date by which the body must confirm whether it will exercise its right to buy and therefore the date by which the owner or creditor should know whether the land will be subject to the right-to-buy procedure or may be advertised for sale on the open market.

9. According to the Scottish Executive note on the instrument, there will be no financial effects arising from the instrument on the Executive, local government or on business.

The Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/228)

10. Under section 51 of the Act, a community body may only exercise its right to buy land if the Scottish Ministers are satisfied that the community to which the body relates has approved the proposal to exercise the right to buy. Under section 52, approval of such a proposal must be obtained by means of a ballot of the members of the community.

11. The instrument sets out the requirements on a community body holding such a ballot. The ballot will take place either following intimation by the Government-appointed valuer of the price the community body would have to pay for the land in exercise of its right to buy or following a decision on an appealed valuation. The community body will be required to demonstrate to Ministers that the ballot has been conducted fairly and reasonably.

12. According to the Scottish Executive note on the instrument, there are no financial effects on the Executive or on local government arising from the instrument and the effects on business will be limited to costs incurred by a community body in respect of holding the ballot.
The Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004 (SSI 2004/231)

13. A community interest in land may be registered only upon an application made by a community body to Ministers in the prescribed form and accompanied by information of the prescribed kind, including information (provided, where appropriate, by or by reference to maps or drawings) about the location and boundaries of the land.

14. The purpose of this instrument is to specify the requirements of any map, plan or drawing required to accompany an application. The schedule to the instrument sets out the required level of detail, intended to ensure that the land that is the subject of the application may be accurately identified by the landowner, the general public and by the Keeper of the Register of Community Interests in Land.

15. According to the Scottish Executive note on the instrument, there are no financial effects arising from the instrument on the Executive, on local government or on business.

The Community Right to Buy (Compensation) (Scotland) Regulations 2004 (SSI 2004/229)

16. Under section 63 of the Act, any person (other than a community body) that has incurred loss or expense as a result of the operation of part 2 of the Act is entitled to compensation from Ministers of such amount as they may determine.

17. This instrument sets out the process by which compensation may be claimed and limits the compensation available to costs incurred as a direct result of the right-to-buy process, i.e. over and above costs normally incurred in the course of a land transaction. The instrument also sets a time limit of 90 days in respect of the various circumstances in which a claim may be made.

18. Under section 56(3) of the Act, date of entry and of payment of the price will normally be a date not later than six months from the date when the community body sent the confirmation sought by Ministers of its intention to exercise its right to buy. Under section 63(3), compensation shall be limited to costs incurred during that six-month period; where settlement is delayed under section 56(3), compensation will not be paid in respect of costs incurred after the six-month period.

19. The level of compensation to be paid will be determined by the Scottish Ministers. Section 64 of the Act provides that an appeal against a decision of Ministers on compensation may be made to the Lands Tribunal, within 21 days of the decision in question.

20. According to the Executive note on the instrument, there are no financial effects arising from the instrument for local government or for business. The note explains that any financial implications for the Executive itself will arise from claims for compensation being determined either by Scottish Ministers or, in the case of an appeal, by the Lands Tribunal.

Consultation

21. The above instruments discussed above were all subject to a twelve-week consultation period from 19 August to 14 November 2003; consultees included all...
those that commented on Part 2 during the Executive’s consultation that led to the Land Reform (Scotland) Bill and MSPs, MPs, MEPs and equality groups.

22. In relation to the Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/228), some respondents felt that a minimum of seven days between notice of the ballot and the date of the ballot would be too short. The regulations as laid provide for a 10-day minimum period and a similar timescale has been applied to the return of papers for a postal ballot.

23. In relation to the Community Right to Buy (Compensation) (Scotland) Regulations 2004 (SSI 2004/229), the main concern expressed was that a deadline of 28 days for claiming compensation would be too short. The regulations as laid provide for a deadline of 90 days.

The Community Right to Buy (Register of Community Interests in Land Charges) (Scotland) Regulations 2004 (SSI 2004/230)

24. Section 36(7) of the Act provides that the Keeper of the Register of Community Interests in Land (“the Keeper”) shall ensure that the register is available for public inspection free of charge and that members of the public are given facilities for getting copies of entries in the register on payment of such charges as may be prescribed.

25. This instrument prescribes the charges to be made by the Keeper for the supply of copies of or extracts from the register. As the office of Keeper is held by the Keeper of the Registers of Scotland, the charges contained in the schedule to the instrument reflect the charges applied for copies of or extracts from the Land Register.

26. The Executive note states that there are no financial effects arising from the instrument for the Executive nor for local government. Individuals or businesses requesting copies or extracts will be required to meet the costs as detailed in the schedule.

Consultation

27. According to the Executive note on the instrument, this instrument was not subject to consultation as the fact that charges may be made was accepted when the Land Reform (Scotland) Bill was passed and the level of charges set by the instrument reflect charges currently applied for comparable services by the Keeper of the Registers of Scotland.

Part 3 of the Land Reform (Scotland) Act 2003 – Crofting Community Right to Buy

The Crofting Community Body Form of Application for Consent to Buy Croft Land etc. and Notice of Minister’s Decision (Scotland) Regulations 2004 (SSI 2004/224)

28. Under part 3 of the Act, a crofting community body may apply for consent to buy eligible croft land, eligible additional land and eligible sporting interests.

29. This instrument specifies the form that (a) crofting community bodies will use to apply to the Scottish Ministers for consent to buy such land or sporting interests and (b) the Scottish Ministers will use to give written notice of their decisions in respect of such applications.

30. According to the Scottish Executive note on the instrument, there are no financial consequences on the Executive, local government or business.
31. Under section 89 of the Act, any person, including an owner or former owner of land or person entitled to sporting interests, who has incurred loss or expense through the operation of the crofting community right to buy legislation may recover the amount of that loss or expense from the crofting community body or, where an application for a crofting community right to buy is rejected, from the Scottish Ministers.

32. The purpose of the instrument is to specify the procedures by which a claim for compensation in respect of such losses of expenses may be made.

33. The Scottish Executive has estimated that the annual cost to it of grants towards compensation liability will be £5,000 on the basis of one crofting community purchase in each year and that there will be no financial effects on local government or business.

34. Under section 90 of the Act, the Scottish Ministers may pay grants towards crofting community bodies’ liabilities to pay compensation.

35. The purpose of the instrument is to set out the form and procedure for completion of an application by a crofting community body for such a grant.

36. The Scottish Executive has estimated that the annual cost to it of grants towards compensation liability will be £10,000 on the basis of one crofting community purchase in each year and that there will be no financial effects on local government or business.

37. Under section 74 of the Act, a crofting community body’s application to buy eligible croft land, eligible additional land and eligible sporting interests may only be consented to if the Scottish Ministers are satisfied that the crofting community to which the body relates has approved the proposal to exercise the right to buy. Under section 75, approval of such a proposal must be obtained by means of a ballot of the members of the crofting community within the six months immediately preceding the date of the application.

38. The instrument specifies the (a) requirements for conducting such a ballot and (b) form of return to the Executive notifying the result of the ballot. According to the Executive note, there are no financial effects on the Executive, local government or business.

Consultation

39. Drafts of the instruments relating to Part 3 of the Act were made available to the public during a twelve-week period of consultation from 16 December 2003 to 9 March 2004; copies were also sent to all those that commented on Part 3 during the Executive’s consultation that led to the Land Reform (Scotland) Bill and to MSPs, MPs, MEPs and equality groups.
Subordinate Legislation Committee

40. The Subordinate Legislation Committee considered these instruments at its meetings on 1 and 8 June 2004 and agreed to draw the attention of the Parliament to them. The Committee identified a number of drafting errors in the instruments, a lack of clarity of meaning in several aspects of the instruments and raised several questions concerning the *vires* of a number of the provisions in the instruments (Subordinate Legislation Committee, 25th Report, 2004 (Session 2)). An extract of the Subordinate Legislation Committee’s report is attached for information.

Procedure

41. These instruments are subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that each instrument comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

42. The instruments were laid on 21 May 2004 and are subject to annulment under the Parliament’s Standing Orders until 29 June 2004.

43. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instruments will come into force on 15 June 2004.
Introduction
1. The Committee raised twelve points on these Regulations with the Executive. The Committee was mindful that the purpose of the Regulations was in part to prescribe forms for the use of crofting community bodies and therefore looked with particular care at the drafting of the forms. It seemed to the Committee that, as indicated below, the forms were in some ways less than user-friendly and that, in designing the forms, the Executive had not fully considered the user’s point of view. In the Committee’s view, it is important that a form that is to be completed by a member of the public should be clear and easy to understand and to complete. The Committee is not convinced that the form in Schedule 1 to these Regulations meets those criteria as indicated below.

Question 1
2. The Committee observed that, in all the instruments in this series, the way in which the instruments have been drafted appears to have the effect of rendering many of the provisions technically of doubtful vires, Regulation 2 of this instrument is one such example.

3. Regulation 2 as drafted states that an application under section 73(2) of the Act must be made in the form prescribed in the Regulations. This requirement is, however, set out in the Act itself in section 73(5). The power conferred on Ministers is to prescribe the form and the information that must be supplied, not to require applications to be submitted in that form. The Committee suggested that the regulation should have been drafted along the following lines “the form prescribed for the purposes of an application by a crofting community body under section 73(2) of the Act shall be in the form set out in Schedule 1 to these Regulations …” or words to that effect. A similar observation was made to the drafting of regulation 3.

4. The Executive accepts the Committee’s observations but takes the view that the effect of regulation 2 is to prescribe the form of the application, by reference to Schedule 1. The Executive takes a similar view in relation to regulation 3. The Executive’s response is reproduced at Appendix 2.

Report 1
5. The Committee agrees with the Executive that, in practice, the regulations will probably have the desired effect notwithstanding that, as the Executive agrees, the drafting is defective. The Committee nevertheless reports the instrument on the grounds of defective drafting as acknowledged by the Executive and that, as drafted, there appears to be a doubt as to whether the regulations are technically intra vires.

Question 2
6. In regulation 1(2) on page 1, the Committee asked the Executive why it has been thought necessary to define “crofting community body” in the Regulations given the extensive provision in the parent Act.
7. The Executive agrees that the definition is not necessary and will rectify the error at the next suitable opportunity.

Report 2
8. The Committee therefore reports the instrument on the grounds of failure to follow proper legislative practice by reason of the inclusion of unnecessary provisions, acknowledged by the Executive.

Question 3
9. In regulation 3 on page 2 on the last line, the use of the phrase “form of Schedule 2” seemed odd and is also inconsistent with regulation 2, which uses the word “in”. The Committee suggested that it may have been better drafted if the phrase “set out in” had been used, particularly as “in” could be considered acceptable but “of” appears very strange.

10. Again, the Executive agrees with the Committee’s observations but considers that the meaning is clear.

Report 3
11. The Committee agrees that no difficulties are likely to arise in practice but nevertheless reports the instrument on the grounds of defective drafting.

Question 4
12. Schedule 1, paragraph 3(b) contains the first reference to the ballot, whilst other subsequent references refer to specific provisions in the Act, paragraph 3(e) for example. The Executive was asked to explain this discrepancy in drafting.

13. The Executive accepts that there is a discrepancy in drafting here, but considers that there is no ambiguity caused as a result.

Report 4
14. Although this is a relatively minor point it suggests to the Committee a certain lack of care in drafting the form. While in practice the inconsistency in the drafting may not cause any difficulties, it is undoubtedly undesirable and the Committee therefore reports the instrument on the ground of failure to follow proper legislative practice in this respect.

Question 5
15. Schedule 1, paragraph 3(c) contains a reference to “crofters” which is not defined either in the Act or in the Regulations. The term used both in the Act and indeed in other related instruments is “tenant of a croft”. The Committee asked why a different term has been used in these Regulations and whether a different interpretation is intended.

16. The Executive refers to section 68(2) of the Act which refers the reader to the definition of “crofter” in the Crofters (Scotland) Act 1993. “Crofter” is there defined as the tenant of a croft and the Executive confirms that no different interpretation is intended here.

Report 5
17. Contrary to the Executive’s contention, it does not appear to the Committee that section 68(2) refers the reader directly to the definition of “crofter” in the Crofters
(Scotland) Act 1993. It refers to the definition of “croft” in the 1993 Act and the word “crofter” only appears in the text purely as a description of section 3 of that Act rather than with any other more substantive effect. **Again, while the discrepancy in the use of terminology may not cause any difficulties in practice it again amounts to a failure to follow proper drafting practice and the Committee reports the instrument on that ground in this respect also.**

**Question 6**

18. The Executive was asked to explain the meaning of the word “description” in Schedule 1, paragraph 4(b).

19. The Executive’s view is that “description” in this context means an explanation of what is shown on the map or drawing.

**Report 6**

20. This seems to the Committee to be just the type of question that could cause difficulty to the person completing the form. A reader might reasonably construe the terms as meaning the type of map, Ordnance Survey for example, that is a physical description of the map rather than of its contents. **In the Committee’s view, the meaning of this question could be clearer and it therefore reports Schedule 1, paragraph 4(b) to the lead committee and the Parliament on that ground.**

**Question 7**

21. In Schedule 1, paragraph 4(g) the wording of the question does not match the wording of the enabling power. The Committee asked the Executive to explain if the words “in inland waters” should precede the word “on”.

22. The Executive recognises that paragraph 4(g) in Schedule 1 does not reflect exactly the wording of section 68(2)(d), but does not consider that the addition of the words “in inland waters” is necessary for the meaning to be clear.

**Report 7**

23. Again, the Committee does not share the Executive’s confidence. The form should be clear as to exactly what information is requested and should reflect the wording of the parent Act. **The Committee therefore reports Schedule 1, paragraph 4(g) on the ground that it fails to follow proper legislative practice in this respect.**

**Question 8**

24. Schedule 1, paragraph 6 assumes that there is only one landowner. It was not clear to the Committee whether this item applies only to the owner of the eligible land or also to the owner of eligible additional land. The Executive was asked for clarification.

25. The Executive explained that paragraph 6 of Schedule 1 assumes that there is only one landowner because section 73(3) of the Act makes it clear that land owned by separate owners requires being the subject of separate applications. In addition, section 70(4)(b), which defines “eligible additional land”, makes it clear that this land must be owned by the owner of eligible croft land.

**Report 8**

26. Again, although the Executive has provided the explanation requested it appears to the Committee that the form is not clear in this respect. Indeed, the wording of the questions such as 4 and the reference to “all rights and interests” in note 2 might lead...
the person completing the form to believe that it must be completed in respect of all of
the land that the crofting community body wishes to purchase. It seems to the
Committee that there should perhaps be a note on the form to assist the person
completing the form who may not have the Act to hand. **Again, therefore, the Committee reports the instrument on the ground that its meaning could be clearer in this respect.**

**Question 9**

27. The Committee assumed that the provision in Schedule 1 paragraph 9(a) on
page 5 is intended to mirror the requirement set out in section 73(5)(f) of the Act.
However, that paragraph does not mention “contiguous” land but refers simply to “other
land” which therefore could, but need not be, contiguous. As this provision appeared,
therefore, to be of doubtful *vires* the Committee asked for an explanation.

28. The Executive agreed that section 73(5)(f) does not mention the word
“contiguous”. However, it is the Executive’s view that in the circumstances the
boundaries and services will inevitably be shared with contiguous land. The Executive
therefore considers that the use of the word “contiguous” is merely explanatory. In the
Executive’s view, the regulation does not have the effect of creating an additional
condition for which there is no *vires*.

**Report 9**

29. The Committee agrees that boundaries will inevitably be shared only with
contiguous land and to that extent the use of the word “contiguous” causes no
problems. As regards services such as sewers, pipes and watercourses referred to in
section 73(5)(b)(ii), these may be shared with contiguous land but it does not follow that
those services are shared only with contiguous land. Section 73(5)(f) of the Act is not
limited to services shared only with contiguous land but appears to extend to services
shared with any other land. When applying for consent to buy land under section 73,
subsection (5)(f) of that section obliges a crofting community body to state in its
application how its proposed use, development and management of the subjects of the
application would affect any of the facilities listed in paragraph (b)(ii) in so far as those
facilities connect with similar facilities on other land “*or also serve* other land”.

30. It therefore seems to the Committee that, in requiring information only in respect
of contiguous land, the form does not comply with the terms of the enabling power and
is therefore of doubtful *vires*. **At the very least, it represents an unusually limited use of the power and the Committee reports it to the lead committee and the Parliament on that ground.**

**Question 10**

31. In Schedule I, the Committee observed that Note 2 on page 7 states (reflecting
the terms of the Act) that the description of the property should include all rights and
interests in the property. The form then sets out questions under a number of heads.
There is, however, no specific head for interests (for example, heritable creditors) which
are not specifically mentioned in the form. The Executive was asked whether the items
in the form are intended to be definitive of all the matters mentioned in Note 2 and, if
not, why there is no specific head in the form to allow for additional information to be
provided in this respect.

32. The Executive considers that if there are interests in the land, such as those of
heritable creditors, these should be mentioned in paragraph 4(d). The detailed
Guidance under preparation and to be issued to crofting community bodies will clarify this.

Report 10

33. It seems to the Committee by no means clear that a person completing the form would deduce that information on heritable creditors was required under question 4(d). Question 4(d) states-

“Please provide a written description of eligible croft land, eligible additional land or sporting interests”.

34. A reference to heritable creditors does not seem relevant to this question. There does not seem to be any other relevant question or any allowance on the form for the provision by the body of this type of information.

35. It therefore appears to the Committee that the form is defectively drafted in this respect and the Committee so reports to the lead committee and the Parliament.

Question 11

36. The Committee found Schedule 2, Note 1 on page 9 very misleading. It is not the transfer that must be completed within 6 months but the payment of the consideration. If it is not possible to complete the transfer (which could well be caused by title difficulties) the Act appears to provide that the consideration is consigned to the Land Court until title is completed. The Executive was asked to explain the discrepancy. The Committee also observed that the Note does not mention when the 6-month period commences.

37. The Executive explains that the phrase “transfer is not completed” in note 1 to Schedule 2 is intended to include the case where the price had not been paid.

Report 11

38. Again, it is not clear to the Committee how the layman would be expected to discern the meaning of note 1. It therefore appears to the Committee that the note is defectively drafted for the foregoing reasons and the Committee reports it as such to the Parliament and lead committee.

Question 12

39. The Committee made a number of comments on Schedule 2 and the Notes. The Act states that the notice must include an explanation of its consequences. It is obviously a matter of judgement how much information should be included in the form short of a full repetition of the terms of the Act. The Committee noted, for example, that while the Notes cover the effect on rights of pre-emption, they do not mention that the operation of any diligence in relation to the land (such as an inhibition) is not affected. Also, although the obligation on an owner to make title deeds available is mentioned, the obligation to transfer title is not, nor the right of the Land Court to grant title if the owner refuses. Another point that might be mentioned is the effect of the decision on the rights of an owner to claim compensation from Ministers under section 83(3) (an owner must do so within 90 days of the decision by virtue of SSI 2004/226 below).

40. The Committee did not suggest that the absence of such information from the Form would necessarily cast doubt on its vires but indicated that nevertheless it would
welcome an explanation from the Executive for the selection of material to be included in the Notes in order to further consider this point.

41. The Executive has not directly answered the Committee’s point but states that it considered that the main points to be made should be the rights of appeal available to landowners and the crofting community body and also the main consequences for the landowner if the decision is to consent. A much larger amount of information will be available to both landowners and crofting community bodies in the Guidance presently under preparation and to be issued by the Department.

Report 12

42. The Committee was pleased to learn that Guidance is currently under preparation that will no doubt assist crofting community bodies and others to exercise their rights and fulfil their duties under the Act. The Committee nevertheless observes that Guidance is not a substitute for well drafted forms and notices which set out clearly the information required or the effect of the notice, as the case may be. It appears to the Committee that the forms and notes prescribed in this instrument are lacking in this respect.

43. As regards the notes on the form of notice in Schedule 2, as the Committee recognised, the material to be included is partly a matter of judgement and policy. However, in this instance it is also a statutory requirement under section 82(2) (and thus a matter of vires) that the notice prescribed by the Regulations should contain information about the consequences of the decision notified. For that reason, in the Committee’s view, there appears to be a doubt as to whether the notice as prescribed by these regulations meets this test. The Committee therefore reports the regulations to the lead committee and the Parliament on that ground also.

The Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004 (SSI 2004/225)

Introduction

44. The Committee raised three points on this instrument.

Question 1

45. The Executive was asked to explain the description of regulation 2 contained in the Explanatory Note since, if the intended effect of the regulation is to specify the person who must make the application, there would appear to be some doubt as to whether it is intra vires standing section 90(5) of the parent Act.

46. The Executive agreed that the drafting of the Explanatory Note is misleading as suggested by the Committee and is taking steps to correct the error. The Executive’s reply is reproduced at Appendix 3.

Report 1

47. The Committee therefore reports the instrument on the ground of defective drafting of the Explanatory Note, acknowledged by the Executive. It is important that Explanatory Notes are accurate as, although they are not part of an instrument, they may be used as an aid to the interpretation of the instrument in case, for example, of ambiguity of a substantive provision. The Committee therefore welcomes the Executive’s assurances that steps have been taken to correct the error.
Question 2
48. The Committee also asked the purpose of the words “whichever date is earlier” in regulation 3, given that the question will only be referred to the Land Court where parties have failed to agree.

49. Again, the Executive has accepted that the words have no purpose and will be removed when the opportunity allows.

Report 2
50. The Committee therefore reports the instrument to the lead committee and the Parliament on the ground of defective drafting acknowledged by the Executive.

Question 3
51. The Committee asked what power authorises regulation 4 which obliges Ministers to issue their decision on an application within 21 days. The Executive’s reply, however, does not respond on the point.

Report 3
52. The Committee was disappointing that the Executive has not chosen to offer any comments. It seems to the Committee that there is nothing in the parent Act that would authorise this regulation. The power under section 90(6) is to prescribe the form and procedure for the making of an application. Subsection (7) of section 90 of the Act itself makes provision for the issuing by Ministers of their decision on an application. There appears to be no power to modify this provision in any way. Accordingly, in the Committee’s view, there appears to be a very strong doubt as to whether regulation 4 is intra vires and the Committee reports it to the lead committee and the Parliament on that ground.

The Crofting Community Right to Buy (Compensation) (Scotland) Order 2004 (SSI 2004/226)

Introduction
53. As with other instruments in this series, the Committee had a number of serious questions on this Order.

Question 1
54. The Committee asked why article 3 does not appear to deal specifically with all the situations referred to in section 89(1). Given that failure to include all such relevant situations means that there will be no time limit within which claims for compensation must be made, the Committee asked whether this is the intention.

55. The Executive considers that article 3 deals specifically with all the situations referred to in section 89(1) by reference to article 2 which refers to section 89(1)(a), (b) or (c). The Executive’s reply is reproduced at Appendix 1.

Report 1
56. The Committee remains unconvinced that, as the Executive claims, article 3 deals specifically with all the situations encompassed by section 89(1). Article 2 does indeed refer to section 89(1)(a), (b) and (c) but provides only that claims under these
heads must be submitted to the registered office of the relevant crofting community body. It does no more than this.

57. Article 3 sets out the time limits within which certain specified claims must be made but these do not relate back to article 2 nor do the heads listed in article 3 appear to cover every situation under which claims may arise under section 89(1).

58. In particular, it does not appear to cover, for example, the decision of a body not to proceed with the transaction under section 87(4). Article 3(a) only deals with payment of the price under that subsection and article 3(c) refers only to the situation where a body fails to pay the price and the application is treated as withdrawn under section 87(5).

59. The consequences of a failure to comply with obligations under section 86(2) do not appear to the Committee to be covered nor the withdrawal of an application under section 85(2)(a). As regards this last section, article 3(b) refers only to the date of withdrawal of confirmation of a body’s intention to proceed with the purchase (which is dealt with under section 85(2)(b)). Thus, despite the wording of sub-section (1)(b) and(c) of section 89 which clearly envisage such situations giving rise to claims for compensation the Order does not seem to impose any time limits for the submission of claims in respect of any of them. There may be other omissions.

60. The difficulty, in the Committee’s view, is that if no time limit for claims is imposed, they can be lodged at any time, which does not seem to be the intention. As none of the heads presently included in article 3 appear to cover any of the above points the Committee reports the order on the grounds of defective drafting or possibly unexpectedly limited use of the power or, it may be, both.

**Question 2**

61. The Committee asked for an explanation of the purpose and meaning of the words “whichever is the earlier” in regulation 3.

62. The Executive claims that it is conceivable that a claim for compensation could be made under more than one of the heads of claim specified in section 89(1), and if that situation arises the words “whichever is the earlier” are intended to convey that the time limit of 90 days runs from the date of the first claim arising.

**Report 2**

63. The Executive has explained the policy behind the wording in question. However, the drafting of the provision does not seem to the Committee to achieve this policy objective. In the context of article 3, the words appear to be without meaning. The date in paragraphs (a) and (c) will always be effectively the same as the date on which the application is treated as being withdrawn under section 87(5) which is the final settlement date in section 87(2) or a later agreed date under section 87(3) or (4). An application is treated as withdrawn under section 87(5) if the price is not paid on that date.

64. If an application is withdrawn within the meaning of paragraph (b) of article 3, the situations referred to in paragraphs (a) and (c) should not arise.

65. Accordingly, article 3 appears to be defectively drafted on this ground also and the Committee so reports to the lead committee and the Parliament.
Question 3

66. The Executive was asked whether it is the intention that article 5 should extend to all claims for compensation including claims under article 4.

67. The Executive confirms that article 5 is indeed intended to extend to all claims for compensation, including claims under article 4, even though a claim submitted under the latter article will always arise under section 89(1)(a).

Report 3

68. Although the Executive has confirmed the policy intention behind article 5 it is drafted in terms that appear to the Committee very confusing. Article 5 begins “a claim for compensation” which obviously could cover claims under section 89(3) as well as claims under 89(1) but then goes on “shall include a statement detailing whether the loss or expense falls within paragraph (a), (b) or (c) of section 89(1)”. This seems to indicate that only claims under article 2 are relevant for the purposes of article 5 since only claims under paragraph (a) of section 89(1) appear to overlap with claims under section 89(3).

69. It therefore appears to the Committee that the meaning of article 5 could be clearer. Indeed, the degree of uncertainty about its meaning amounts, in the Committee’s view, to defective drafting. The Committee therefore draws the attention of the lead committee and the Parliament to article 5 on that ground.

Question 4

70. The Committee asked why article 6 appears to confer a right of appeal rather than prescribing the period within which an appeal may be brought given that the right of appeal is contained in section 89(5) of the Act.

71. The Executive considers that article 6 clearly prescribes a time limit for appeal to the Land Court. It does not seek to confer a right given that specific reference is made to section 89(5) of the Act.

Report 4

72. The Executive may not have sought to confer a right of appeal in article 6 but it appears to the Committee that this is the effect of article 6 as drafted. As the Executive acknowledges, this is not permitted by the parent Act and article 6 is therefore technically of doubtful vires. This is seems a further example of the drafting error that is replicated throughout this series of instruments. The article should have followed the terms of the enabling power and prescribed a time limit.

73. In practice, the drafting error may not give rise to any problems. However, as drafted, there is therefore a doubt as to whether article 6 is intra vires and the Committee reports it on that ground.

Question 5

74. The Executive was also asked to explain why the Explanatory Note appears to give a misleading explanation of the effect of the Order which, contrary to what the Note states, is not to prescribe who is to pay the compensation in any given case (this is provided for in the Act) but to set out the procedures etc for applying for compensation.
75. The Executive does not agree that the Explanatory Note gives a misleading explanation of the effect of the Order and refers to the first sentence of the Explanatory Note which commences with the words “This Order provides for the procedure by and manner in which compensation for loss or expense may be claimed by any person ... under section 89 of the Land Reform (Scotland) Act.”

Report 5

76. The Committee agrees that the Explanatory Note begins as stated by the Executive but the final sentence of the first paragraph states “In these cases, the compensation is payable by the crofting body (regulation [sic]2)”. This gives the impression that article 2 prescribes the person who is to pay the compensation which is incorrect. Article 2 prescribes how claims are to be made, not the person who is to pay them.

77. The second paragraph of the Note simply describes the effect of the parent Act. Article 4, as in the case with article 2, prescribes how claims are to be made not the person to whom they are to be made. The final sentence of the Note is therefore incorrect in the Committee’s view for the reasons given above. Article 6 does not, and should not for the reasons given above, confer a right of appeal. It prescribes the period within which an appeal under section 89(5) may be made.

78. The Explanatory Note is therefore defectively drafted and the Committee reports it to the lead Committee and the Parliament on that ground.

The Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/227)

The Community Right to Buy (Ballot) (Scotland) Regulations 2004 (SSI 2004/228)

Introduction

79. The Committee asked the Executive a number of questions on these two instruments. As the instruments, and therefore the points raised, were similar the Executive has issued one response for both instruments subject to appropriate adjustments. The Executive’s response is reproduced at Appendix 5.

Question 1

80. The Committee ask why regulation 1(2) of SSI 2004/227 and 228 contain definitions of “crofting community body” and “community body” respectively.

Report 1

81. As the Executive agrees that the definitions are unnecessary the Committee reports the instrument on the grounds of failure to follow proper legislative practice.

Question 2

82. The Committee asked the purpose of the reference to section 71(1)(a) in regulation 3(a) of SSI 2004/227.

83. The Executive recognises that a reference to section 71(5) might have been more helpful and is grateful to the Committee for drawing this matter to its attention.
Report 2
84. The Committee reports SSI 2004/227 on the grounds that its meaning could be clearer as acknowledged by the Executive.

Question 3
85. The Committee asked the Executive to explain why there is no definition in either instrument of “eligible voter”, a term not used in the parent Act.

86. It seems to the Committee that the Executive has given no clear reason for preferring the term “eligible voter” to the phrase “persons eligible to vote” which is used in the parent Act. It does explain that it did not consider that there was a requirement for a definition given the parent Act.

Report 3
87. The Committee agrees that there is no need for regulations to define terms used in the parent Act. However, as the Committee has remarked on previous occasions, it is regarded as good legislative practice to follow the wording of the parent Act if only to ensure that such definitions are attracted to subordinate legislation made under it and to avoid problems arising on questions of vires. To the extent that the Regulations do not follow this rule they do not comply with proper legislative practice and the Committee reports them on that ground.

Question 4
88. The Committee asked whether the reference in regulation 4 of each instrument to 10 days means 10 clear days. The Executive has confirmed that it does.

Report 4
89. The Committee reports the instruments to the lead committee and the Parliament on the ground that their meaning required clarification supplied by the Executive.

Question 5
90. The Committee asked the Executive to explain why regulation 7(2) of each instrument imposes an obligation on the crofting community or community as the case may be to make a return to Ministers rather than simply (as per the enabling power) prescribing the form in which the return is to be made.

91. The Executive agrees that the obligation imposed on the crofting community to make a return to Ministers in regulation 7(2) is unnecessary as this is prescribed in section 75(4) of the Act. The Executive considers that this provision is unnecessary.

Report 5
92. As with many of the other instruments under the Land Reform (Scotland) Act 2003 mentioned in this report, the Committee had difficulties with the way in which the regulations were drafted.

93. Contrary to the Executive’s understanding, it seems to the Committee that a provision is indeed necessary to prescribe the form in which returns are to be made to Ministers. As drafted, however, the regulations place an obligation on the relevant bodies to make returns to Ministers rather than simply prescribe the form in which such returns are to be made and to that extent the regulations appear to be of doubtful vires
for the reasons given elsewhere in this report. The Committee therefore reports them on that ground.

Question 6
94. The Committee asks for an explanation of the *vires* for regulation 7(3) and for regulation 8 of each instrument.

95. The Executive considers it is of great importance that the ballot is conducted in a fair and reasonable manner as prescribed in regulation 2. To that end, it is considered that the provisions made in regulation 7(3) and regulation 8 are supplementary to having a fair and reasonable ballot, and thus fall within the ambit of section 98(3) of the Act.

Report 6
96. The Committee would not quarrel with the Executive that the ballot should be conducted in a fair and reasonable manner as provided in regulation 2 of each instrument. However the test in regulation 2 is an objective test which it will fall to the courts not Ministers to interpret. This is quite proper as to do otherwise for example by conferring discretion on Ministers to adjudicate on the fairness of a ballot would be of doubtful *vires* given the enabling power.

97. The information in respect of which a return must be made too Ministers is set out in the Act and there does not seem to be any authority for regulations to confer discretion on the Ministers to call for additional information especially since, as mentioned above they have no role in policing a ballot. The Executive suggests that section 98(3), which provides that powers under the Act to make regulations include power to make incidental and supplemental provision, would provide sufficient *vires* but the Committee doubts this proposition. Section 98(3) has not been cited as an enabling power but even so it is settled law that powers such as this are very limited in extent. Given the express provisions of the parent Act the Committee remains of the opinion that regulation 7(3) in each set of regulations is of doubtful *vires*.

98. As regards regulation 8, however, the Committee is persuaded that the Executive’s arguments have merit and draws the response to the attention of the lead Committee and the Parliament as providing the explanation requested. The omission of a reference to section 98(3) from the preamble is however an error which the Committee reports on the grounds of defective drafting.

The Community Right to Buy (Compensation) (Scotland) Order 2004 (SSI 2004/229)

Introduction
99. The Committee asked the Executive three questions on this instrument, two of them related.

Question 1
100. The Executive was asked to explain the purpose of the definition of the term “Ministers” in regulation 1(2) when a definition has not been considered necessary in any of the other instruments in this series and the term is defined in the parent Act.
101. The Executive drew the Committee’s attention to footnote (a) which explains that section 98(1) of the Act contains *inter alia* a definition of “Ministers” (and more importantly “prescribed”). The definition of “Ministers” in regulation 1(2) was included in error.

**Report 1**

102. The Executive accepts that regulation 1(2) fails to comply with proper legislative practice and the Committee reports it to the lead committee and the Parliament ion that ground.

**Questions 2 and 3**

103. The Committee asked for an explanation of the meaning of and *vires* for regulation 3(2)(a), given that the Lands Tribunal does not appear to have any power under section 57 of the Act to order a community body to give notice under section 54, and section 63(1) of the Act does not prescribe the giving of a Notice under section 54 as one of the bases for claiming compensation under the Act.

104. The Executive is also asked to explain the purpose and effect of the words “whichever is the later” in regulation 3.

105. In reply the Executive explains that regulation 3(2)(a) sets out the starting date for the time limit of 90 days within which a claim may be made under section 63(1)(b) of the Act. It does not purport to be other than a mechanism for setting the time limit. The Executive does not therefore consider that there is any difficulty as to *vires*. The Executive recognises that the paragraph might have been more happily worded but considers that its meaning is clear.

106. The Executive considers that it is quite possible for a community body to have given notice under section 54 as a result of an order under section 57 and the date of such notice would be different from the date on which the Lands Tribunal makes an order extinguishing the right to buy. The later date is then taken as the date from which the time commences running.

**Reports 2 and 3**

107. The purpose of regulation 3(2) is not in doubt. It is clear from the first line of the paragraph that its purpose is to prescribe the time limit within which claims for compensation must be made under section 63(1)(b) of the Act. Section 63(1)(b) states as a head of claim that a person has incurred loss or damage-

“as a result of failure by a community body to comply with an order of the lands Tribunal under section 57 above”.

108. Where, after an offer has been made, a community body delays progress in transferring title to the land, section 57 allows an owner to make application to the Lands Tribunal to order the community body “to take such remedial action as is specified in the order and to do so within such time as is so specified”.

109. Section 57(2) provides that if a community body fails to comply with an order or has not, within the time specified, in the order given notice to the Ministers that it no longer wishes to exercise the right to buy, the Lands Tribunal may make an order extinguishing the right to buy.
110. Section 54 (which is independent of section 57) confers a right on a community body at any time to decide not to exercise its right to buy and to serve notice to that effect on the Ministers. The giving of such notice extinguishes the right to buy.

111. It will be seen from the above provisions firstly that, even if the Executive is correct and the Lands Tribunal can make an order requiring the community body to give notice under section 54, which the Committee doubts (see below), regulation 3(2)(a) is of very doubtful *vires* since section 63(1)(a) refers to *failure* of a community body to comply with an order of the Lands Tribunal and regulation 3(2)(a) relates to *compliance* with such an order.

112. The Committee observes in passing it doubts whether it would be competent for the Lands Tribunal to make an order requiring a community body to give notice under section 54. Although not specifically excluded this does not seem to be within the contemplation of the Act which in section 57 provides for the giving of such notice as an alternative to complying with a remedial order. “Remedial order” suggests to the Committee the taking of such action as paying the price or taking entry within a specified time.

113. On any reading of the provision the words “whichever is the later” appear to the Committee ill-chosen as there could only ever be one date. Even assuming that regulation 3(2) was *intra vires*, if a body had given notice under section 57 in compliance with an order (a) the right to buy would be extinguished so there would be no need for an order of the Lands Tribunal in respect of any other breaches of the order and (b) if notice were not so given the only relevant date would be the date on which as a remedy for the breach the Lands Tribunal made an order extinguishing the right to buy.

114. The Committee therefore draws the attention of the lead committee and the Parliament to regulation 3(2) on the ground that there is a doubt as to whether it is *intra vires*.

The Community Right to Buy (Register of Community Interests in Land Charges) (Scotland) Regulations 2004 (SSI 2004/230)

*Introduction*

115. The Committee asked the Executive for an explanation of what is comprised in Item 4 of the Schedule to the Regulations. The use of the term “handling” was confusing.

*Report*

116. The Executive has given a helpful explanation which the Committee draws to the attention of the lead Committee and the Parliament as providing the explanation requested. The Executive’s reply is reproduced at Appendix 7.

The Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004 (SSI 2004/231)

*Introduction*
117. The Committee asked the Executive to explain the purpose of and *vires* for regulation 3 of the above Regulations.

118. The Executive accepts that regulation 3 is merely a restatement of what is contained in section 36(2) of the Act and that it does not constitute a specification of a map, plan or drawing. The Executive accepts that the regulation is unnecessary. The Executive's reply is reproduced at Appendix 8.

**Report**

119. The Committee is not entirely convinced by the Executive's argument that regulation 3 is unnecessary. Section 36(2)(f) appears on one reading to require regulations to lay down the specifications for the plans which are to be held in the Register. Regulation 3 is, however, technically of doubtful *vires* in that it purports to require plans etc. to be held in the Register. As the Executive agrees, provision to this effect is already contained in the Act itself. There is thus no power for regulations to make provision to this effect. What may be required however is an amendment to the effect that the specifications set out in the Schedule are prescribed for the purposes of section 36(2)(f).

120. It therefore seems to the Committee that not only are these Regulations of doubtful *vires* but they are also defectively drafted in that they do not appear to fulfil the stated policy. The Committee therefore reports the Regulations to the lead committee and the Parliament on both the above grounds.

The Community Right to Buy (Forms) (Scotland) Regulations 2004 (SSI 2004/233)

**Introduction**

121. The Committee suggested that it might be helpful to the reader if the headings of the forms in Schedules 2 to 6 gave some indication of the purpose of the form (as with the form in Schedule 1), and asked for the Executive's views.

122. The Executive agrees that it might have been of additional aid to the reader if the headings of the forms in Schedules 2 to 6 gave a further indication of the purpose of the forms. However, the Executive considers that the purpose for which each form is intended is clear from a quick scrutiny of it, and observes that the Explanatory Note details the purpose of each form.

123. In addition, a detailed guidance pack on Part 2 of the Act is being prepared and this will explain the stages in the community right to buy process to which each form relates. In these circumstances the Executive considers that the purpose of the forms in question will be sufficiently clear to readers of the instrument. The Executive's reply is reproduced at Appendix 9.

**Report**

124. The Committee does not share the Executive's confidence that the forms will be easily understood by users.

125. While the Explanatory Note describes each form, the user of a form will not necessarily have the statutory instrument itself to hand. It is usual for forms to be separately printed and it seems less than helpful to the user for a form to be identified
solely by reference to a statutory provision without any indication in a heading of its content.

126. The Committee has always placed great importance on the accessibility of legislation, particularly where it may affect individuals directly. It seems to the Committee that, in the case of these Regulations, the Executive has not properly taken the user’s point of view into account and that the forms could be clearer.
JUSTICE 1 COMMITTEE

Petition PE667 by Mr R Carruthers

Note by the Clerk

Background

Petition
1. Petition PE667 by Mr R Carruthers was lodged on 18 September 2003 and calls for the Scottish Parliament to investigate alleged discrimination against convicted sex offenders held in HMP Peterhead. The petition has been referred by the Public Petitions Committee\(^1\) to the Justice 1 Committee for further consideration as part of the Committee's inquiry into the rehabilitation of prisoners. The original petition is attached at Annex A.

Consideration by the Public Petitions Committee
2. The petition was considered by the Public Petitions Committee on 26 November 2003 and 31 March 2004. The relevant extract of the official report of the meeting on 31 March 2004 is attached for information at Annex B.

Scottish Prison Service
3. A response from the Scottish Prison Service (SPS) was considered at the Public Petitions Committee meeting on 31 March 2004. The response is attached at Annex C. The response was made following a request from the Public Petitions Committee for comments on the issues raised in the petition. Members are asked to note that another petition, PE675, which is also referred to in the Scottish Prison Service letter has been passed to the Justice 1 Committee by the Public Petitions Committee for information only.

4. In response to the alleged discrimination against prisoners who refuse to undertake treatment programmes being punished by not being transferred to open or top-end conditions, the SPS state that—

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"In principle all prisoners who have completed two-thirds of their sentence and have achieved “low supervision” status can be considered for such transfer. However it is true that in practice prisoners who have not undertaken programmes are unlikely to receive such transfers. That is because the purpose of open and top-end penal accommodation is to prepare prisoners for release on the basis that they have a reduced risk of reoffending. Prisoners who have not addressed their offending behaviour by undertaking appropriate programmes (including, but not limited to STOP) will thereby not have demonstrated such reduced risk and so are far less likely to be accepted for such accommodation."
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5. In relation to conditions in HMP Peterhead, the SPS state that work has begun on the introduction of electric power in cells and that this is due for completion in August 2004. However, there are no plans for in-cell sanitation due to the size of the cells and other physical constraints.

\(^1\) Public Petitions Committee, 6th Meeting 2004 (Session 2), 31 March 2004.
The petitioner
6. Mr Carruthers wrote twice to the Justice 2 Committee in August 2003. The first is a copy of the petition (PE667), while the second complains about the conditions for prisoners in HMP Peterhead. The second letter is included in Annex D.

7. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.\(^2\)

Proposed action
8. The Committee is invited to consider and agree one of the following options in respect of the referral of petition PE667—

a) to agree to accept the referral and carry out further consideration of the issues raised in the petition. In doing so, the Committee could consider the issues raised by the petitioner in the context of its inquiry into rehabilitation in prisons. The Committee will further consider its approach to this inquiry at its meeting on 30 June; or

b) to agree that the petition does not merit further consideration and respond to the petitioner, explaining the rationale for the decision.

\(^2\) The Scottish Parliament, *Standing Orders*, Rule 15.6.2(a)
DEAR Sir/Madam

THERE IS GROWING UNEASE HERE AMONG THE PRISONERS BECAUSE OF THE WAY OUR HUMAN RIGHTS ARE BEING IGNORED AND BY THE TREATMENT WE ARE RECEIVING HERE IN PETERHEAD WHICH DISCRIMINATES AGAINST US SOLELY ON THE GROUNDS THAT WE ARE SEX-OFFENDER'S.

WE ARE TOLD THAT PETERHEAD IS OUR PRISON OF LAST REDUCTION, YET WE CANNOT BE RELEASED FROM HERE BECAUSE OF AN AGREEMENT BETWEEN THE S.P.S. AND ALEX SALMOND THE LOCAL M.S.P FOR THE AREA SOME YEARS AGO. IS SUCH AN AGREEMENT LEGAL? DOES IT NOT INFRINGE OUR HUMAN RIGHT'S? WE ARE PROTECTION PRISONER'S YET WE ARE MOVED TO MAIN STREAM PRISONER'S SOME WEEKS BEFORE RELEASE, THEREBY OUR SAFETY IS BEING DELIBERATELY BEING PUT AT RISK BY THE S.P.S. AGAINST THEIR OWN DUTY OF CARE RULES AND OUR HUMAN RIGHT'S.

NO MATTER HOW LONG A SEX OFFENDER HAS BEEN IN PRISON THERE IS NO T.I.P. OR HOME LEAVE PRIOR TO RELEASE. IT'S JUST ONE WEEK'S BENEFIT AWAY AND OUT YOU GO. NO EQUIL. RIGHTS OR HUMAN RIGHT'S FOR U.S.

NO DOWNWARD MOVEMENT NO SEMI-OPEN OR OPEN PRISON FOR U.S. UNLESS YOU HAVE DONE THERE STOP PROGRAMME. COHESION! BLACKMAIL! DISCRIMINATION! AS THESE PROGRAMMES ARE STRICKLY VOLUNTARY, OR ARE THEY!

HUMAN RIGHTS COMMITTEE STRASSBOURG SAY'S YES! AND THAT NO PRISONER CAN BE FORCED TO DO A VOLUNTARY PROGRAMME, NOR CAN HE BE PUNISHED FOR NOT DOING A VOLUNTARY PROGRAMME YET THAT HAPPENS HERE ALL THE TIME I WAS SENT DOWN TO GLENOCHLE PRIISON IN MAY 2002 BECAUSE I WOULD NOT DO THIS MIS-MANAGED, UNDERFUNDED, PSYCHOLOGICALLY FLAWED PROGRAMME DIVE MY HEALTH PROBLEM'S (LEUKAEMIA-OSTE-ARTHRITIS-ANGINA- SEVERE PAIN IN LOWER SPINE) I WAS SENT BACK TO PETERHEAD IN SEPTEMBER BY GLENOCHLE BECAUSE IT WAS ALL STAIRS THERE AND THEY SAID I SHOULD NEVER HAVE BEEN SENT THERE ON MEDICAL GROUND'S, I NOW HAVE TO USE ELBOW CROUCHES TO GET ABOUT AS A RESULT OF THIS. I CAN'T EVEN GET A TRANSFER TO A PRISON NEARER HOME BECAUSE MY DUNCAN HERE SAY'S I HAVE NOT DONE THE STOP PROGRAMME SO
I have failed to address my offending behaviour. I am 64 years old. In November, 1998, I moved the police to confess my crime which happened in 1977-1978 sometime and got an appointment to see them the next day as there was no one available to see me that day. I made a full confession and was told 3 times to shut up and go home as no one had reported me. I said no. I wanted to break the cycle of abuse and end 20 years of moral blackmail and to clear my conscience. I have no previous convictions of any kind. I pled guilty and pushed for early sentencing. I got 10 years. I did a breaking the cycle course in Saughton and was recommended for one to one programme because of my own childhood abuse, but was taken to Peterhead before this could commence. Peterhead does not do one to one. So I did anger management, GCE skills and a sex offenders awareness programme (SOAP) which I was instrumental in introducing to Peterhead. I did not finish the last two weeks of this programme because I was diagnosed with leukemia on 21st Feb 2001, and the specialist told me I could have 6 or 7 years before it turned critical then I would have 6 months. Yet Mr. Duncan says “I have not addressed my offending behaviour.”

So despite being a low CATT prisoner with only 20 months left of my sentence no onward movement, no semi-open or open prison. No tie. Not even a transfer on compassionate and medical grounds, I came from West Lothian and am alienated from relatives by distance of more than the required 140 miles, Scottish Justice where is it? Perhaps if my name was Lord Archer or if the Scottish Parliament stood by the Bill of Human Rights they signed and dragged themselves into the 21st century I would get it?

Meanwhile I have to drag myself to work everyday because 10 minutes how old or sick you are if you don’t work you only get £1.80 a week and you can’t live on that. There’s no retirement pension in prison even the full time work is only £1 a week here in Peterhead. Still slopping out, no power or tv in cells up here only promises that are never kept because we are sex offenders and have no rights human or otherwise?
IF ALL THAT IS NOT ENOUGH INJUSTICE FOR YOU TO QUESTION THEN LET ME TELL YOU TO THE FINAL GRACE IN INJUSTICE AND MIS-USE OF POWER AND POSSESSION, THAT OF THE SOCIAL WORKER'S WHEN DEALING WITH SEX OFFENDERS THEY ARE NOT TRAINED MASTER'S DEGREE PSYCHOLOGIST BUT IT IS THEY WHO ARE RESPONSIBLE FOR YOUR "RISK ASSESSMENT". I HAVE BEEN IN AYERDEW VIKIS MAY 1999 AND HAD NO CONTACT WITH A SOCIAL WORKER TILL FEBRUARY 2003 THIS YEAR THEN I SAW ONE FOR THE FIRST TIME FOR 1 HOUR AND TWICE MORE FOR 1 HOUR AFTER WHICH SHE DID A REPORT AND WAS ASSIGNED TO ME. FROM THE LITTLE I SAID PLUS MY COURT PAPER'S (WHICH INCORRECTLY INCULCATED THE CHARGES THAT THE COURT ACCEPTED MY NOT GUILTY PLEA TOO) I WAS CLASSED AS A FIRST OFFENDER WITH MY HEALTH PROBLEMS AS HIGH RISK, OF COURSE THIS WAS NO SURPRISE AS ALL SEX-OFFENDERS ARE CLASSED THE SAME HERE WHO HAVE NOT DONE THE STOP (SO MUCH FOR IT BEING A VOLUNTARY PROGRAMME)

Then up come's the outside Social Worker who sees me for 1 hour (WEST LOTHIAN NON-WEAR) does a scathing report full of gross inaccuracy's, does not read the parole's report altered to read of my acts occurred sometime between 1997-1979 instead of 1977-1979 and recommends if I get parole I must do STOP on release (voluntary programme?)

Parole Board refuse's parole. 'Surprise surprise the grounds for refusal did not do STOP programme (voluntary?) High Risk, no support in community, no support to go to.' Yet the Parole Board knows that WEST LOTHIAN MUST HOUSE ME BY LAW AS I AM THERE RESPONSIBILITY AND WEST LOTHIAN HAD TOLD THEM THAT THEY WOULD GIVE ME SUPPORTED HOUSING ON RELEASE I WOULD HAVE HAD SUPPORT FROM CARETAKER, HOME HELP, SOCIAL WORKER, POLICE LIASON OFFICER AND RELATIVE. JUSTICE NOT IN SCOTLAND!

If this where the full extent of the social workers abuse of power it would be bad enough but it is not for they also have given themselves power's that they do not have and which the Scottish Parliament seems to condone, or at least turn a blind eye too.
Social workers say "You must return to the area you come from on release! Lies! The Law Stringsburg—Even the Parole Board State That You can live anywhere you live in the UK provided you fulfill your licensing conditions (Parole or Non-Parole).

The greatest injustice and misuse of power however is recall from licence. A social worker doesn't have to prove that an offender has breached his conditions to get him recalled! All they have to do is tell the parole board you have and the police put you back in prison and it could be weeks before you can get to state your own case! Meanwhile you've lost your job, your house, everything and have to start all over again.

A Court gives you a sentence, yet here we have a social worker doing risk assessment, ordering voluntary programs, telling you where to live, having you recalled without any redress in law, laying down parole conditions on release, where is the law? Where is justice and human rights? Where is rehabilitation in all this frustration and stress?

I ask you please ask questions in Parliament, investigate these breaches of the law, the abuse of power, these breaches of human rights.

In Peterhead the conditions are Victorian, stuffy, out, no power in bell, no TV, slave wages, continual cuts to our food budget, no wages or pension for the elderly or disabled, no T.I.C., no semi-open or open prisons, lies, Johnson, blackmail, illegal punishment, worse. Refuse, abuse of power, the release from Peterhead must return to main stream prison.

Peterhead is still poulting ed prisons in small cells with tiny windows. But the floor is a disgrace to the Prison Service and should have been closed years ago!

Yours sincerely, disgusted

L. Conacher
Scottish Parliament
Public Petitions Committee

Wednesday 31 March 2004
(Morning)

[THE CONVENER opened the meeting at 10:02]

HMP Peterhead (PE667 and PE675)

The Convener: The next two petitions are linked. PE667 calls for the Scottish Parliament to investigate the alleged discrimination against convicted sex offenders held at Peterhead; PE675 calls for the Scottish Parliament to investigate the suitability of Peterhead prison for the long-term imprisonment of convicted sex offenders.

At its meeting of 26 November 2003, the committee agreed to link the two petitions and to write to the Scottish Executive, requesting its comments on the issues raised in both petitions. The committee has received a response from the Scottish Prison Service, stating that work has begun on the installation of electric power in cells in HMP Peterhead, and that the work is due for completion in August 2004. However, there are no plans for in-cell sanitation.

On the STOP 2000 programme, the SPS states:

"In the current year, particular problems have been caused by a number of staffing difficulties"

but that

"This situation is being addressed by the Governor and a multi-disciplinary 'Succession Planning' group, whose work has resulted in an increase in the target for STOP completions from 24 in 2003-04 to 50"

in 2004-05. Further correspondence has also been received from one of the petitioners questioning the apparent success of the STOP programme.

Do members have any comments on petitions PE667 and PE675?

Ms White: As far as the delivery of rehabilitation programmes is concerned, we should perhaps refer these petitions to the Justice 1 Committee, which is examining the matter. However, I do not think that the committee will touch on in-cell sanitation. The SPS letter says that there are no plans to introduce such a measure; however, when I checked with HMP Peterhead as to
whether at-risk prisoners were a factor in its decision, I discovered that centralised research and a risk assessment had concluded that there was no danger that the prisoners would do something when they got out of their cells. As a result, the SPS felt that it was not in-cell sanitation that prisoners needed, but access to sanitation. Can we refer that aspect of the petitions to another committee or will everything go en masse to the Justice 1 Committee? It is terrible that people do not have sanitation in their cells.

The Convener: There is no reason why that aspect cannot be referred to the Justice 1 Committee.

Mike Watson: I agree that the petition on the treatment of prisoners at Peterhead should go to the Justice 1 Committee. On Sandra White’s point, I am surprised that the SPS’s response does not refer to any risk to prisoners. Instead, it mentions that “the safety of staff and security of the establishment” will be placed at risk.

Members will recall that proposals to close Peterhead prison were subsequently reversed by the Executive. However, I thought that part of that decision included the requirement that cells had to be brought up to what might be called modern standards. As a result, I am also surprised that the SPS’s response states that there are no plans to install in-cell sanitation. I do not know whether it is the Minister for Justice’s responsibility, but the Executive should be required to clarify what happened at Peterhead prison after its rethink and decision to retain the facility. The SPS’s response is out of line with my own recollections, although other members might remember differently.

The Convener: Shall we write to the Executive and ask for clarification on that matter?

Members indicated agreement.

Carolyn Leckie: We should also write to those in charge at Peterhead prison and ask for their views. I am extremely concerned that, although the idea was to install in-cell sanitation, the SPS has subsequently evaluated the costs and decided not to go ahead with it. I understood that the policy was to end slopping out, even though it was probably not being implemented as quickly as some of us would have liked. In that light, I would be concerned if the SPS did not have any plans to end the practice.

The Convener: That is a valid question. We could specifically ask the Executive, either directly or through the SPS, about its plans in this respect. After all, when the issue was debated at length in the previous parliamentary
session, decisions were made and commitments were given. I imagine that we are entitled to ask what has happened to those decisions and the plans to implement them. Obviously, we will refer the petitions to the Justice 1 Committee for its consideration. We could ask a specific question about the future of slopping out at Peterhead, because I do not think that that would form part of any investigation that the Justice 1 Committee might carry out on the general issues raised in the petitions. Are members agreed?

Members indicated agreement.
Dear Mr Johnston,

I refer to the letter of 27 November 2003 from your predecessor, Mr Farrell, to Scott Rogerson of the Scottish Executive Justice Department, which asked for the Executive’s comments on the issues raised in petitions PE667 and PE675 by Mr Reginald Carruthers and Mr Robert Moffat respectively. That letter has been passed to me for reply as it deals with operational issues that fall within the remit of the Scottish Prison Service as an Executive Agency. Our comments on the issues raised in the petitions are set out below.

**Introduction of electric power and sanitation in-cell at Peterhead**

Work to install electric power in cell (EPIC) at HM Prison Peterhead began on 27 October 2003 and is due for completion in August 2004. Progress so far has been good: so far installation has been carried out in E Hall, the Health Centre and the top gallery of B Hall. The work is being done a gallery at a time, with the prisoners from each gallery in turn (up to 30 prisoners at a time) being accommodated by doubling-up in E Hall while the work is carried out. This ensures that the duration of doubling-up for each prisoner is as short as possible. Once the work is complete all of the cells at Peterhead will have EPIC.

There are no plans for installation of in-cell sanitation at Peterhead due to the size of the cells and other physical constraints. An initial proposal for providing access to night sanitation using extra staff at night would be both costly and place the safety of staff and security of the establishment at risk. This course of action has not therefore been followed but SPS is keeping this matter under review.

**Alleged discrimination against prisoners who refuse to undertake programmes**

Mr Carruthers’ petition alleges that prisoners who do not undertake the Sex Offenders Treatment Programme (STOP) are punished by not being transferred to open or top-end conditions. In fact there is no such policy: in principle all prisoners who have completed two-thirds of their sentence and have achieved “low supervision” status can be considered for

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reply petitions committee carruthers@moffat

An Agency of the Scottish Executive Justice Department
such transfer. However, it is true that in practice prisoners who have not undertaken programmes are unlikely to receive such transfers. That is because the purpose of open and top-end penal accommodation is to prepare prisoners for release on the basis that they have a reduced risk of reoffending. Prisoners who have not addressed their offending behaviour by undertaking appropriate programmes (including, but not limited to, STOP) will thereby not have demonstrated such reduced risk and so are far less likely to be accepted for such accommodation.

Both Mr Carruthers’ and Mr Moffat’s petitions also allege that such prisoners are refused parole. While that is properly a question for the Parole Board to answer, it would seem to us entirely reasonable (and indeed essential) that the Parole Board should take non-participation in programmes into consideration in deciding whether it was safe to direct a prisoner’s release, since that is of direct relevance in determining whether a prisoner has taken steps to address his offending behaviour and so whether he is likely to re-offend.

Limited availability of the STOP programme

It is correct that HM Chief Inspector of Prisons has expressed concern that the number of places on the STOP programme was insufficient to meet demand. A major constraint in delivery of the programme is the fact that it requires highly skilled staff. In the current year, particular problems have been caused by a number of staffing difficulties; including the loss of two experienced STOP facilitators at short notice, the non availability of training for new facilitators, recruitment problems with psychologists and the lack of availability of social work support. This situation is being addressed by the Governor and a multi-disciplinary ‘Succession Planning’ group, whose work has resulted in an increase in the target for STOP completions from 24 in 2003-04 to 50 2004-05.

Alleged discouragement of prisoners petitioning the Parliament

Mr Moffat’s petition claims that he was threatened with punishment if he asked any other prisoners to sign the petition. There is in fact no policy of discouraging prisoners from petitioning the Parliament: the SPS recognises the right of all prisoners to submit or sign petitions, and has issued guidance to staff on how petitions should be dealt with (including advising that any prisoner who enquires about submitting a petition should be provided with a copy of the Parliament’s Guidance on the subject). However, it is true that prison staff may intervene to protect prisoners where there is reason to believe that inappropriate pressure is being placed on prisoners to take certain action, which may include the signing of petitions. For instance, in 2002 staff in Peterhead expressed concern that some prisoners were being pressurised into signing petitions either for or against the retention of Peterhead in the context of the Executive’s Prison Estates Review. Given the nature of the prison environment we believe that such action can be appropriate in order to protect vulnerable prisoners from being bullied; but this in no way restricts the ability of individual prisoners to petition the Parliament as and when they think fit.

Geographical origin of prisoners

Although not mentioned in your letter, during the Committee’s consideration of the petitions on 26 November the question was raised of where the prisoners in Peterhead came from and

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Stewart Stevenson MSP said that he would pass information on this to the Committee. I do not know if that has been done, but I thought that it might be helpful if we provided what information we have on the subject.

As at 24 December 2003, the latest date for which we have figures, 213 out of 305 prisoners at Peterhead (70%) had a home address that appeared to be in the Central Belt. This figure is based on data held in our Prisoner Records system and is based on postcode information. That number may in fact be somewhat smaller, since some postcodes cover both Central Belt and non-Central Belt addresses (for instance, some “EH” postcodes cover places in the Borders). Also, we are not aware of there being any detailed definition of precisely what constitutes the “Central Belt” and so a definitive and exact number cannot be provided. What I can say is that our information does support the statement made in the Committee that a majority of prisoners held in Peterhead come from the Central Belt but that the figure is substantially lower than the 95% stated in Mr Moffat’s petition.

I have sent a copy of this letter to Scott Rogerson.

Yours sincerely,

B K PEDDIE
Head of Legal Policy

reply petitions committee carruthers&moffat
DEAR SIR/MADAM,

THERE IS GROWING URGENT HERE AMONG THE PRISONERS BECAUSE OF THE WAY OUR HUMAN RIGHTS ARE BEING IGNORED AND BY THE TREATMENT WE ARE RECEIVING HERE IN PETERHEAD WHICH DISCRIMINATES AGAINST US SOLESLY ON THE GROUNDS THAT WE ARE SEX OFFENDERS.

WE ARE TOLD THAT PETERHEAD IS OUR PRISON OF ADMINISTRATION. YET WE CANNOT BE RELEASED FROM HERE BECAUSE OF AN AGREEMENT BETWEEN THE S.P.S. AND ALIY SAILING THE LOCAL M.P. FOR THE AREA SOME YEARS AGO. IS SUCH AN AGREEMENT LEGAL? DOES IT NOT INFRINGE OUR HUMAN RIGHTS? WE ARE PROTECTION PRISONERS YET WE ARE MOVED TO MAIN STREAM PRISON SOME WEEKS BEFORE RELEASE, THEREBY OUR SAFETY IS BEING DELIBERATELY BEING PUT AT RISK BY THE S.P.S. AGAINST THERE OWN DUTY OF CARE RULES AND OUR HUMAN RIGHT'S.

NO MATTER HOW LONG A SEX OFFENDER HAS BEEN IN PRISON, THERE IS NO T.E.F. OR HOME LEAVE PRIOR TO RELEASE. IT'S JUST ONE WEEK'S BENEFIT AND OUT YOU GO: NO EQUAL RIGHTS OR HUMAN RIGHTS FOR US.

NO OCCUPATION MOVEMENT NO COMMUNITY OPEN OR OPEN PRISON FOR US UNLESS YOU HAVE DONE THE STOP PROGRAMME: PONZISSION WILL STEAL THE BLACK MAN'S DISCRIMINATION AS THESE PROGRAMMES ARE STRICTLY VOLUNTARY, OR ARE THEY?

HUMAN RIGHTS COMMITTEE STRASBOURG SAYS YES AND THAT NO PRISONER CAN BE FORCED TO DO A VOLUNTARY PROGRAMME, NOR CAN HE BE PUNISHED FOR NOT DOING A VOLUNTARY PROGRAMME: YES THAT HAPPENS HERE ALL THE TIME.

I WAS SENT DOWN TO GLENCOLM PRISON IN MAY 2002 BECAUSE I WOULD NOT DO THIS MIS-MANAGED UNDERPERFORMED PSYCHOLOGICALLY FLAWED PROGRAMME DESPITE MY HEALTH PROBLEMS (ACID-HAEMIA-DIAZI-ACTINIS-AEGNIA AND SEVERE SHIN IN LOWER SPINE). I WAS SENT BACK TO PETERHEAD IN SEPTEMBER BY GLENCOLM BECAUSE IT WAS ALL STAIRS THERE AND THEY SAID I SHOULD NEVER HAVE BEEN SENT THERE ON MEDICAL GROUP'S I NOW HAVE TO USE ELBOW CRUTCHES TO GET ABOUT AS A RESULT OF THIS. I CAN'T EVEN GET A TRANSFER TO A PRISON NEARER HOME BECAUSE DUNCAAL HERE SAYS I HAVE NOT DONE THE STOP PROGRAMME SO
I HAVE FAILED TO ADDRESS MY OFFENDING BEHAVIOUR! I AM 64 YEARS OLD. IN
NOVEMBER 1998 I FELT THE POLICE TO CONFESS MY CRIME WHICH HAPPENED
IN 1977-1978 WHEN I WENT TO BE TREATED TO SEE THEM THE NEXT DAY
AS THERE WAS NO ONE AVAILABLE TO SEE ME THAT DAY, I MADE A FULL
CONFESS THAT MY MINDS TO SHUT UP AND GO HOME AS NO ONE
HAD REPORTED ME. I SAID NO I WANTED TO BREAK THE CYCLE OF
ABUSE AND END 20 YEARS OF HUMAN ABUSAL AND TO CLEAR MY CONSCIENCE.
I HAVE NO PREVIOUS CRIMINAL RECORDS FREE OF MIND AND PUSHERED FOR EARLY SENTENCING. I FELT+ 10 YEARS) I DID A BREAKING THE
CYCLE COURSE IN SOUTHERN AND WAS RECOMMENDED FOR ONE TO ONE
PROGRAMME BECAUSE OF MY OWN CHILDHOOD ABUSE, BUT WAS TOLD TO
BEFORE THIS COULD HAPPEN, BEFORE HEAD DOES NOT DO ONE
TO ONE SO I DID ANGER MANAGEMENT- G.O.D SKILLS AND A SEX
OFFENDERS AWARENESS PROGRAMME (SOAP) WHICH I WAS INSTRUMENTAL
IN INTRODUCING TO PETERHEAD, I DID NOT FINISH THE LAST TWO
WEEKS OF THIS PROGRAMME BECAUSE I WAS DIAGNOSED WITH LEBASMA
IN 2001, AND THE SPECIALIST TOLD ME I COULD HAVE FOR 7
YEARS BEFORE IT TURNED CRITICAL THEN I WOULD HAVE 6 MONTHS, YET
MR DUNCAN SAID "I HAVE NOT ADDRESSED MY OFFENDING BEHAVIOUR?"
SO DESPITE BEING A LOW CAT RISK, WITH ONLY 20 MONTHS LEFT OF MY
SENTENCE NO COMPELLING MOVEMENT, NO POST-OPEN OR OPEN PRISON NO ETC.
NOT EVEN A TRANSFER ON COMPASSIONATE AND MEDICAL GROUND'S, I CAME
FROM WEST LOTHIAN AND AM ALIENATED FROM RELATIVES BY DISTANCE OF
MORE THAN THE REQUIRED 140 MILES, SCOTTISH JUSTICE WHERE IS IT?
PERHAPS IF MY NAME WAS LORD ARCHER OR IF THE SCOTTISH PARLIAMENT
STOOD BY THE BILL OF HUMAN RIGHTS THEY SIGNED AND DRAGGED THEMSELVES INTO THE 21ST CENTURY I WOULD GET IT.
MEANWHILE, I HAVE TO DRAG MYSELF TO WORK EVERYDAY BECAUSE
NO MATER HOW OLD OR SICK YOU ARE IF YOU DON'T WORK YOU ONLY
GET £7.00 A WEEK AND YOU CAN'T LIVE ON THAT, THERE'S NO RETIREMENT
PENSION IN PRISON EVEN THE FULL TIME WAGE IS ONLY £8 A WEEK
HERE IN PETERHEAD, STILL SWAPPING OUT, NO POWER OR TV IN CELL'S
UP HERE, ONLY PROMISES THAT ARE NEVER KEPT BECAUSE WE ARE SEX OFFENDERS AND HAVE NO RIGHTS, HUMAN OR OTHER WISE!
If all that is not enough injustice for you to question then let me bring you to the final gross injustice and misuse of power and position that of the social workers when dealing with sex offenders. They are not trained Master's Degree Psychologists but it is they who are responsible for your risk assessment! I have been in aftercare since May 1999 and had no contact with a Social Worker till February 2003. This year then I saw one for the first time for 1 hour and twice more for 1 hour after which she did a report. Risk assessment on me, from the little I said plus my Court papers (which incidentally included the charge that the Court accepted my not guilty plea also) I was classed a first offender with my health problems as high risk, of course this was no surprise as all sex offenders are classed the same here. Who have not done this 50% of them. [So much for it being a voluntary programme]

Then up comes the outside Social Worker who sees me for 1 hour. West Lothian must have made a scathing report full of gross inaccuracy. Does not recommend parole — Judge’s report altered to read offences occurred sometime between 1997-1979 instead of 1977-1979 and recommends if I get parole I must do 50% on release. Voluntary Programme?

Parole Board refuses parole. ‘Surprise Surprise. The grounds for refusal did not do stop programme’ (Voluntary?) High risk, no support in Community, no address to go to. Yet the parole board knows that West Lothian must house me by Law as I am there. Responsibility and West Lothian had told them that they would give me supported housing on release. I would have had support from Caretaker, Home Help, Social Worker, Police liaison officer and relative! Justice not in Scotland!

If this where the full extent of the Social Workers abuse of power it would be bad enough but it is not for they also have given themselves powers that they do not have and which the Scottish Parliament seems to condone for at least turn a blind eye to.
Social workers say "you must return to the area you come from on release" lies! The law stands—e'en the parole board state that you can live anywhere you like in the UAE provided you fulfill your licensing conditions (Marl or women's)

The greatest injustice and misuse of power however is RECALL from licence. A social worker does not have to prove that an offender has breached his conditions to get him recalled. All they have to do is tell the parole board you have and the parole put you back in prison and it could be weeks before you can get to State your own case? Meanwhile you've lost your job, your house, everything and have to start all over again.

A court gives you a sentence, yet here we have a social worker doing risk assessment, ordering voluntary program, telling you where to live, having you recalled without any redress in law, laying down parole conditions on release. Where is the law? Where is Justice and Human Rights?

Where is rehabilitation in all this frustration and stress?

I ask you please ask Questions in Parliament. Investigate these branches of the law that abuse of power, these breaches of Human Rights.

In Petroland the condition are Victorian, shabby, out of power in cell, no TV, blared music, continual cuts to even food budget, no way to pension for the elderly or disabled, no T.S.P. for Seniors or 65 plus persons, etc. Robbery, Blackmail, Legal Punishment, wage kept low, abuse of power. No release from Petroland must return to their Strike Prison.

Petroland is still doubling up prisoners in small cells with tiny windows 8' x 4'. From the floor it is a disgrace to the prison service and should have been closed years ago!
Dear Sir/Madam,

I am writing this letter to you in an effort to get some truthfull answers in regards to your intentions for the future of Peterhead Prison and as to why the S.P.S. Management have in Peterhead seem to be doing all they can to provoke a riot situation. 

Doubling up in cell in force, We are still having to sleep out, our food is being cut and the quality of the food is greatly reduced since they bring to the S.P.S. Executive cutting the budget, our work parties have been reduced and our wages kept very low in some jobs while other parties get more, the causes pardonment cannot do. Some men are faced with with no job's.

This week THURSDAY 21-3-03 the contract provider put up the price of those very high in some hours by so much as £1 a half some where called about this the answer was that they where having trouble with those suppliers. Now they are threatening to quit again if the price is not put up in T.V.C. or giving see T.V.C on promised by the Christmas they gave there explanation for this one the price is needed for the fine change on thursday 21-3-03 the contract have raised the price and one to keep the hours.

Do we need it for the fine change on thursday 21-3-03 the contract have raised the price and one to keep the hours.

We feel however that the S.P.S. want a riot or an excuse to close Peterhead. 

This I know will be the last straw both for the men and for the of the S.P.S. This is well overdue and much needed. Management be cancelled get again, what is the truth here, Sir Michael and please sent copy also the Governor so we all know in Wake, an S.P.S. once do without one original thought in the head and who even only sent twice to get Peterhead closed.
No prisoner can be released from Peterhead because of an agreement between the S.P.S. and Alex Salmon. All prisoners are returned to main stream prison's and there safety put at risk before release!

No T.P.F. No enhanced regime no semi-open or open prison for sex-offender prisoners. No home leave or sea! Prior to release for sex-offender prisoners. Unless they have done Mr. Duncan's S.T.R.P. Programme - cohesion - blackmail - illegal punishment for if you don't do the strictly voluntary stop you are shipped out to main stream prison's "operational needs" they say!!?

Or doubled up in a small cell where ventilation is a small wooden block 3ft from the floor. Voluntary program's?

Slopping out- No EPIC. No TV. Allocated from relatives.

Low wages - extortionate canteen price's - the elderly sick and disabled either work or try to exist on £6 a week sick pay and even if they had TV here they could not afford one at a £1 a week. Quality x quantity of food dropping drastically due to management cut back's. They really must want a riot this is the 21st Century isn't it?!

Scotland did sign a Human Right's Charter. Yes?

Mr. Duncan's cohesion. Blackmail + illegal punishment.

Are offences in law + against human rights aren't they? The S.T.R.P. is voluntary isn't it?!

Pity of care - Family contact - human dignity preparation for release for long term prisoners. Local area medical secure unit's. For the elderly sick + disabled - honest wage's for honest work - the right to enjoy the fruit's of our labour therefore why is P.P.C. limited to £6 a week is this really the 21st Century? Does it taste a riot? Justice now! Mr. Gunn out now!

Mr. Duncan out now! EPIC now! Sanitation now!

Wage's up now! Human Right's now! Common sense now! Or close Peterhead now! From Sincere, R. Gunn.
JUSTICE 1 COMMITTEE

Petition PE477 by the Miscarriages of Justice Organisation

Note by the Clerk

Background

Petition
1. Petition PE477 by the Miscarriages of Justice Organisation (MOJO) was lodged on 8 March 2002 and calls for the Scottish Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a halfway home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court. The petition was referred by the Public Petitions Committee¹ to the Justice 1 Committee for further consideration.

Previous consideration by the Justice 1 Committee
2. The Committee considered the petition at its meeting on 25 February 2004² and the paper circulated for that meeting, J1/S2/04/8/3, is attached at annex A for information.

3. At that meeting, the Committee agreed to accept the referral and carry out further consideration of the issues raised in the petition. The Committee also agreed to write to the Minister for Justice, asking that the Scottish Executive reconsider its position in relation to the petition, and to Safeguarding Communities–Reducing Offending (SACRO) and HOPE (Helping Offenders’ Prisoners Families), seeking their views on the issues raised by the petition.

The Scottish Executive
4. The Scottish Executive responded on 24 March 2004 and a copy of the response is attached at annex B. In it, the Minister for Justice agrees that “there is a need to establish a new service, separate and distinct from that available to ordinary ex-prisoners”. The minister goes on to say that she has instructed officials to consider what practical steps might be taken to provide such a service and will report back to the Committee as work progresses.

HOPE
5. HOPE responded on 22 April 2004 and a copy of the response is attached at annex C. Firstly, Hope recognises that “there can be little argument that those who have been the victim of miscarriage of justice have needs that are specific to them, especially on their release after a long period of imprisonment” and that, having been wrongfully convicted and consequently having entered a system that believes that convicted persons are guilty, only after a long period of time would they be able to receive credibility or advocacy in respect of their claim to be innocent.

6. HOPE supports MOJO’s position that there is a “real need...that should be the responsibility of the Scottish Executive, and that is not discharged by indicating that

¹ Public Petitions Committee, 7th Meeting 2003 (Session 2), 12 November 2003.
² Justice 1 Committee, 8th Meeting, 2004 (Session 2), 25 February 2004.
a compensation scheme exists”. HOPE’s view is that (a) victims of miscarriages of justice have specific needs that should be addressed as early as possibly in the process and certainly on release and (b) such victims need not only to be declared as such but also to be treated as such.

7. HOPE believes that throughcare provision currently being rolled out would not have the range or depth of services to handle adequately victims of miscarriages of justice and that services for such victims should include an “in-depth assessment of need, emotional and personal counselling, help with family and relationships, accommodation, living skills and employment support if necessary”. The response does not go as far as supporting MOJO’s proposal to establish a halfway home but does state that a voluntary organisation should be involved, in liaison with statutory services.

8. The response goes on to highlight the position of families when a family member is imprisoned. HOPE sees such families as innocent victims of crime in need of support and services to address, for example, the damage to children in terms of development within the neighbourhood and at school and all the more so when the imprisoned family member is a victim of a miscarriage of justice.

9. Finally, HOPE comments on difficulties with obtaining funding from the Scottish Executive for a need that is unfulfilled by current provision, particularly in the case of applications for a grant under section 10(1) of the Social Work (Scotland) Act 1968, and sympathises with MOJO in this respect.

10. SACRO’s response of 28 April 2004 is attached at annex D. SACRO stresses that it claims no special expertise in providing services to wrongly convicted prisoners but, as a major throughcare provider, has a long history of helping ex-prisoners resettle successfully in the community and is therefore very familiar with the needs of discharged prisoners, legislation and guidance in this area and the Scottish Executive’s current policy initiatives in throughcare.

11. SACRO makes a number of points about voluntary assistance for discharged prisoners who are not offenders. Whilst acknowledging that such prisoners are entitled to seek advice, guidance and assistance from local authorities, SACRO believes that national throughcare standards and current Executive throughcare policy initiatives are, whilst welcome, aimed clearly at offenders rather than non-offenders. In support of this view, SACRO notes that the objectives contained within the national throughcare standards refer to “offenders” and reducing the risk of “reoffending” and that the standards and guidance do not address working with or any special needs of wrongfully convicted persons; SACRO also notes that the Executive’s throughcare policy sets out clear categories of people to whom priority should be given, namely high risk offenders, young offenders and those who show a commitment to addressing their offending behaviour or who take up assistance under the Scottish Prison Service’s transitional care scheme for drugs.

12. SACRO also states that resources allocated to voluntary assistance are likely to be “thinly spread” and therefore even many of those in the priority categories may not receive any assistance. In light of these observations, SACRO doubts that
wrongly convicted, discharged prisoners would be likely to receive a service appropriate to their needs under voluntary assistance.

13. SACRO goes on to comment on the petitioner’s proposal that an aftercare programme for those who have suffered a miscarriage of justice should be set up in the form of a halfway home. SACRO does not believe that planning services around a “bricks and mortar” resource to be the best approach as it can lead to the type of service that may be offered being determined by the nature of the establishment rather than by the needs of the service user. The response goes on to conjecture that such an approach may be particularly inappropriate for people that have been wrongly incarcerated for a long time, believing that such people are likely to need a person-centred package rather than placement in an establishment. SACRO also points out that a resource in such a form would, in terms of being a national resource, be limited by the location of the halfway home.

14. SACRO goes on to recognise that there would be some merit in such a service being provided by an agency with no direct links with the criminal justice system. SACRO also notes that there would need to be expertise in understanding the effects of institutionalisation in addition to the impact of being seriously wronged by powerful state institutions.

15. SACRO also refers the Committee to the Home Office and Citizens Advice Bureau Miscarriages of Justice Project in England and Wales, currently being piloted by the Royal Courts of Justice Advice Bureau. This project is discussed further below.

Other evidence - Miscarriages of Justice Project in England and Wales

16. On hearing from SACRO of the Committee’s consideration of the petition, the Royal Courts of Justice Advice Bureau (RCJ), which is piloting the Home Office and Citizens Advice Bureau Miscarriages of Justice Project, contacted the clerks and offered to provide the Committee with an account of the project. A copy of the RCJ’s progress report is attached at annex E.

17. In 2000, the Home Office National Probation Directorate convened a working group to consider how a service might be provided to assist prisoners released after successfully appealing against conviction. On the basis of a scoping study conducted by an independent consultant, the working group recommended that such a service should be established; that the service should initially be run as a pilot for a period of 12 months with an option to extend in the light of monitoring and evaluation, and that the pilot should be delivered by the National Association of Citizens Advice Bureau with funding from the Home Office. The project became operational in January 2003.

18. The RCJ progress report highlights issues encountered in relation to access to housing; access to appropriate, specialist mental health treatment; the length of time take by victims to recognise that they need help, particularly in relation to mental health, and access to benefits, which are reserved.
Procedure

19. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.\(^3\)

Proposed action

20. Courses of action that the Committee could take include—

(a) forwarding the responses received from SACRO and HOPE and the RCJ progress report to the Scottish Executive, inviting it to take them into account in the context of considering what steps to take in relation to providing a service for victims of a miscarriage of justice and asking it to provide the Committee with a timescale for this work; and/or

(b) deferring further consideration of the petition until the Executive reports to the Committee what action it will take in relation to establishing such a service.

\(^3\) The Scottish Parliament, *Standing Orders*, Rule 15.6.2(a)
JUSTICE 1 COMMITTEE

Petition PE477 by the Miscarriages of Justice Organisation

Note by the Clerk

Background

Petition
1. Petition PE477 by the Miscarriages of Justice Organisation (MOJO) was lodged on 8 March 2002 and calls for the Scottish Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a half way home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court. The petition has been referred by the Public Petitions Committee\(^1\) to the Justice 1 Committee for further consideration. The original petition and accompanying documents are attached at Annex A.

Consideration by the Public Petitions Committee
2. The petition was considered by the Public Petitions Committee on 3 September and 12 November 2003 and by the former Public Petitions Committee on 26 March, 21 May and 10 September 2002. The relevant extract of the official report of the meeting on 12 November 2003 is attached for information at Annex B.

The Scottish Executive
3. A response from the Scottish Executive was considered at the meeting on 21 May 2002 and a further response was considered on 12 November 2003; these responses are attached at Annex C. The most recent response was made following a request from the Public Petitions Committee for clarification in respect of the level of support provided following release specifically to those suffering a miscarriage of justice.

4. The Executive’s position in each of these responses has been that, aside from the statutory supervision required for long-term prisoners after their release, there is, in practice, no distinction made between the aftercare provided for prisoners released on completion of their sentence and that provided for those released after being wrongly incarcerated. The Executive refers to aftercare services provided by local authorities to any ex-prisoner requesting them within 12 months of release; such services are funded wholly by the Executive.

5. In its most recent response, the Executive also gave details of an enhanced throughcare service that is being developed for prisoners, the aim of which is to provide more effective transitional arrangements for prisoners moving from prison back into the community. As this service will be available to those suffering a miscarriage of justice, the Executive does not consider that they require specific and targeted support.

\(^1\) Public Petitions Committee, 7th Meeting 2003 (Session 2), 12 November 2003.
6. The Executive also refers to a Home Office/Citizens Advice pilot project to assist ex-prisoners released on successful appeal against conviction, which has been running for over a year.

The petitioner

7. The former Public Petitions Committee took evidence from John McManus of MOJO on 26 March 2002 and considered a written response from Mr McManus on 10 September 2002; the new Public Petitions Committee considered further responses from the petitioner on 3 September and 12 November 2003. These written submissions are included in Annex D.

8. In its most recent submission to the Public Petitions Committee, MOJO expressed concern that the Committee had sought clarification of the level of service provided, arguing that it had already been made clear that there was a complete lack of services, help or support available. MOJO also claimed that prisoners released on appeal do not have access to pre-release counselling as, in the light of a finding of guilt, their claims of innocence are viewed as being denial of the crime and they are therefore not included in probation programmes.

9. The petitioner is also concerned that sufferers of a miscarriage of justice appear to be classified as ex-offenders and recalls that a member of the former Public Petitions Committee had expressed concern in relation to aftercare for such individuals being provided by the justice system, which had already failed them. MOJO also questions the quality of counselling available as part of the Home Office/Citizens Advice pilot project, believing it to be inadequate.

10. MOJO applied to the Scottish Executive for grant funding under section 10(1) of the Social Work (Scotland) Act 1968, with the aim of establishing its own aftercare programme. In March 2003, this application was rejected, on the basis of value for money and in the context of a number of competing bids and a tight funding application. The letter from the Scottish Executive setting out this position is attached at Annex E.

Other evidence

11. The petitioner has requested that a psychiatric report on an individual released following a successful appeal and after 17 years’ incarceration be circulated to Committee members (Annex F).

Procedure

12. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.

Proposed action

13. The Committee is invited to consider and agree one of the following options in respect of the referral of petition PE477—

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2 Circulated as a private paper, J1/S2/04/8/??
3 The Scottish Parliament, Standing Orders, Rule 15.6.2(a)
• to agree to accept the referral and carry out further consideration of the issues raised in the petition;

or

• to refer the petition back to the Public Petitions Committee for further consideration, on the basis that the issues raised merit further action but that the Committee has insufficient capacity to allow it to undertake the work itself;

or

• to agree that the petition does not merit further consideration and refer it back to the Public Petitions Committee, explaining the rationale for the decision.
The Convener: The next current petition is PE477, which concerns aftercare programmes for those who suffer miscarriages of justice. Additional information on the petition has been passed to members.

The petition is in the name of John McManus, on behalf of the Miscarriages of Justice Organisation. The petitioners call on the Parliament

"to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a half way home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court".

They are concerned about the long-term effects of

periods of incarceration in prison on people who have been wrongly convicted of crimes, and about the absence of aftercare provision when such people’s convictions are quashed by appeal.

We considered the response from the petitioners on 3 September, when we noted that their application for funding for the development of MOJO Scotland had been turned down by the Executive. We agreed to write to the Executive to seek clarification of the level of support that is provided on release, specifically to those who have suffered a miscarriage of justice. A response has now been received, together with further letters from the petitioners.

It is clear that the petitioners and the Executive are at cross-purposes on the issue. The Executive considers that the services that are available to ex-prisoners, which include the enhanced throughcare system that is about to come on stream, are also available to those who have suffered a miscarriage of justice and that, therefore, those people do not require targeted support. That argument hinges on the fact that those services are designed to address a wide range of difficulties that ex-prisoners and their families may experience, regardless of the circumstances of their release.

The Executive states that a report on the joint Home Office and Citizens Advice pilot to assist ex-prisoners who are released on successful appeal against conviction in England and Wales will be published by the end of the year. A copy of that report will be passed to the committee as soon as it is available.

The petitioners are concerned that the committee agreed to ask the Executive for clarification of the level of service that is provided; they argue that they have made it clear that no services, help and support are available. They claim that prisoners who are released on appeal are not given counselling before release, because they have not been on probation programmes. They state that the type of counselling that they propose would be specialised and tailored to the needs of those who have suffered wrongful incarceration.

The petitioners are concerned that those who suffer a miscarriage of justice appear to be classified as ex-offenders. They remind members that a member of the committee in the previous session expressed concern about the justice system and
prisons providing aftercare for individuals whom that system had failed. The petitioners also question the adequacy of the counselling that is available as part of the Home Office and Citizens Advice pilot project.

Do members have comments?

Linda Fabiani: The Executive’s response

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disappointed me. It gave only the facts, so I am disappointed that no services are provided specifically for people who suffer miscarriages of justice and that such people are dealt with in the same way as ex-offenders are. That is sad.

I would like to see the results of the pilot and to go a wee bit further. I would be happy for us to pass the petition to one of the justice committees, along with the report of the pilot when it is issued, and to ask a committee to investigate the matter.

The Convener: I will take that as a recommendation.

Mike Watson: I endorse the recommendation. I, too, am disappointed with the Executive’s response. I would not say that it is flippant, because it runs to two and a half pages, but the Executive has failed to grasp the seriousness of the issue.

Sharon Grant’s letter says:

"As the enhanced throughcare service being developed in Scotland will be available to those suffering from a miscarriage of justice we do not consider that they require specific and targeted support."

I am astonished by that.

A few minutes ago, we were handed a revealing article from the Toronto Star that contains comments from Dr Adrian Grounds, who is a forensic psychiatrist from the University of Cambridge. He makes a couple of points that are obvious when they are read, but perhaps we did not think of them.

Most prisoners probably proclaim their innocence, but those who were wrongly convicted are telling the truth. They carry that burden all the time that they are in jail, which puts them in a different frame of mind from people who say, "Okay, I did it, although I may claim that I didn’t because it might make me or my family feel better." Those who know that they are innocent carry that burden.

Let us say, for the sake of argument, that two people are each given sentences of 10 years. The person who committed the crime knows that he will stay in prison for that period and will gradually prepare for release. He may or may not have remission, but he will know well in advance when he will leave prison. However, a campaign could be conducted for the individual who was wrongly convicted and is also in prison for 10 years, and he might be told with just days’ notice that he is free to go. That individual would have had no means of preparing for release and his situation could not be compared, even broadly, with that of someone who was put in prison for a crime that they had committed.

I am concerned that that has not been taken into account. The comments from Adrian Grounds highlight the issue. He says that, sometimes,
"the wrongly convicted suffer the kind of trauma experienced by victims of war crimes."

We should not forget that such people are victims. The Executive’s response fails to comprehend that we are dealing with different situations.

The letter by Kirsten Davidson of the Executive, which dates from April, talks about reducing the risk of reoffending. How can people reoffend when they did not offend in the first place? That shows the level of misunderstanding that exists in the Executive. We should refer the petition to one of the justice committees and highlight in the strongest terms those points and others that members may want to raise.

**The Convener:** I apologise for not mentioning at the outset that Tommy Sheridan is here to speak about the petition.

**Carolyn Leckie:** I concur with what Mike Watson and Linda Fabiani have said. Petition PE477 was submitted some time ago and there is no need for further delay. The petition should be referred to one of the justice committees. When one of those committees considers the petition, it might want to take account of the Home Office investigation in England and Wales.

The Executive has failed miserably to acknowledge the specific situation that is the subject of the petition. An assessment needs to be made of what support is necessary in cases that involve a miscarriage of justice. Because the people in such cases do not admit guilt—they are innocent, so why should they admit guilt—they do not get the rehabilitation and support services prior to release that would allow them to plan for their release. It is a complete and utter insult to suggest that those services should form part of the same strategy as the one that applies to offenders.

I am really quite upset on the petitioners' behalf. I imagine that the Executive's response to petition PE477 has compounded their suffering. It is a disgrace. Like other members, I argue strongly that we should move forward on the petition. We need to find a solution. A disservice has been done to these people in the past and that needs to be corrected.

**John Scott:** I have nothing to add to what has been said so eloquently by other members, other than to say that I, too, am dismayed by the surprisingly unsympathetic response from the Executive—it is almost bizarre. I endorse totally what other members have said. We should refer petition PE477 to one of the justice committees.

**Tommy Sheridan (Glasgow) (SSP):** The disappointment in the Executive's response can be contrasted with the positive comments from the committee. It is definitely helpful to hear those comments. In a previous life, I had occasion to spend four months in a training-for-freedom unit in a prison not far from this committee room. It is interesting to note that the training was called "training for
freedom". It was aimed at prisoners who had been convicted, had accepted their
guilt and were being trained to be reintegrated into society.

What about the people who are innocent? What happens when they are released as
the result of an appeal decision or a campaign? The term "training for freedom" does
not apply. People including Robert Brown, Joe Steele, Tommy Campbell and Stuart
Gair were detained for crimes that they did not commit. Mike Watson highlighted the
most important paragraph in the Executive letter. The Executive says there is no
need for "specific and targeted support". It is incredible that it can say that.

If a miscarriage of justice takes place—unfortunately it is a fact of life that that
happens—surely we must have a package of aftercare to target those who have
been the victims of miscarriage of justice. I am pleased by the response of
committee members, but saddened by the Executive's response.

The Convener: I think that there is unanimity around the table with regard to our
disappointment at the Scottish Executive's position. We have to convey that to the
justice committees when we ask them to look into the issue quickly and forcibly. It is
certainly an issue that needs to be addressed.

John Scott: Our recommendation should include the suggestion that we should
write to the Executive again saying that we note its response but that we are not
content with it.

Linda Fabiani: There may well be an issue about that but, if we write back to the
Executive, we should split what we say into two parts. We asked for the facts about
what was in place and the Executive gave us the facts. However, from the way in
which the Executive responded, the language that it used and the suppositions that it
made it appears that it completely misunderstood the point. The Executive has to
take that on board.

Jackie Baillie: I support what Linda Fabiani said. The Executive's response was
unhelpful; it missed the point substantially. We have therefore not been able to
progress our consideration of PE477. The recommendation that we should send the
petition to one of the justice committees, along with a copy of the report from the pilot
project that the Home Office is conducting, is sensible. There would be no harm in
writing to the Executive in the terms that have been outlined.

Mike Watson: When our clerk writes to the justice committees and the Executive, I
ask that he

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specifies the comments that members have made.

The Convener: It is standard procedure for the clerks to write back to the Executive
to say what the committee has done with a petition. It would be worth pointing out to
the Executive not only that it missed the point, but that that was the second time that
it had missed it—the matter has been before the committee and been pursued
previously. All the comments that members have made and members' strength of
feeling will be conveyed in the letter to the Scottish Executive, which will emphasise
the points that have been made about the extent of the correspondence and
members' disappointment with the responses that have been received.
PETITION PE477 BY THE MISCARRIAGES OF JUSTICE ORGANISATION

Thank you for your letter of 11 March in which you set out the concern of Justice 1 Committee that there is a gap in service provision for ex-prisoners who have suffered a miscarriage of justice.

I agree that there is a need to establish a new service, separate and distinct from that available to ordinary ex-prisoners. I have therefore asked my officials to consider what practical steps we might take to provide such a service.

I will of course report back to the Committee as work on this project progresses.

CATHY JAMIESON
Pauline McNeill MSP
The Justice Committee Clerks
3.11 CC
The Scottish Parliament
Edinburgh
EH99 1SP
22 Apr. 04

Dear Ms McNeill

Thank you for your letter of 11 March 2004 inviting me to comment on behalf of HOPE on PE477 by The Miscarriages of Justice Organisation.

I enclose our reflections and comments.

With every best wish

Yours sincerely

[Signature]

Frank Gallagher
(Director)

Helping Offenders Prisoners Families
Charity No. SCO 11641
HOPE

SUBMISSION TO JUSTICE 1 COMMITTEE
MISCARRIAGES OF JUSTICE

I have read the proposal, papers and annexes which you sent when consulting with HOPE about Petition PE477 submitted by the Miscarriages of Justice Organisation, MOJO, and have discussed the issues with my colleagues. I do not know much about the work of MOJO and have not had any contact either before or since receiving your request. The comments I would offer are informed both by my experience of offenders, prisoners and their families through my work with HOPE and through my experience as National Chaplain to the Scottish Prison Service over ten years, based at H.M. Prison Barlinnie. There can be little argument that those who have been the victim of miscarriage of justice have needs that are specific to them, especially on their release after a long period of imprisonment. After the anguish and frustration of a period of remand, and wrongful conviction, and all the emotions and rage which that brings, they enter a system and a culture that believes those who are convicted are guilty. At the very best they can expect to be treated in a humane and non-judgemental way, with respect for their needs at every level, regardless of guilt and innocence, but rarely, and only after a long period of time would they manage to receive credibility or advocacy about their claim to be innocent, even from the Chaplain. Prison and people in prison work on probabilities, and even though everyone knows that there are people in prison who are innocent, it is very difficult to be heard or believed.

MOJO in this matter has highlighted a real need, and one that should be the responsibility of the Scottish Executive, and that is not discharged by indicating that a compensation scheme exists. A basic first principle should be that victims of miscarriages of justice have specific needs and that these should be addressed as early as possible during the course of the sentence, if circumstances allow, and certainly at the time of release. A second principle should be that one of these needs is not only to be declared as a victim of a miscarriage of justice but to be treated as such. The services they receive should be clearly separate from the services that are available in the Throughcare and Aftercare arrangements for those leaving prison for other
reasons, so that the former be clearly seen as people who have been abused by a system that has failed them.

In fact my experience of the Throughcare provision at present rolling out throughout Scotland is that it is very much in a developmental stage and would not have the range or depth of services to deal with the deep and aggravated hurt and trauma, isolation, and emotional damage which one would expect to be present in those trying to resettle after a period of unjust imprisonment. These would be expected to include an in-depth assessment of need, emotional and personal counselling, help with family and relationships, accommodation, living skills and employment support if necessary. I would not like to say whether a half-way house as proposed by MOJO is the appropriate way forward, but I am convinced that a voluntary organisation, in liaison with statutory services, should be involved. I am also attracted by the need to fill the gap not only in providing support and services but also to have an advocacy role and to liaise with the Scottish Criminal Cases Review Commission and other relevant organisations to help identify victims and to begin to support them and their families as the judicial process takes place.

HOPE has a particular and growing engagement with the families of those in prison. It is worth noting that HOPE, along with many other agencies, begins from the stance that generally the families are also innocent victims of crime. There is no need to rehearse the evidence now becoming increasingly accepted, of the damage to the family caused by the imprisonment of one of its members and in particular, the damage caused to children in their development both in their own neighbourhoods and at school. The statistics are well documented. In the case of the families of those who have suffered from a long period of imprisonment where there has been a miscarriage of justice, all the normal problems and needs exist but also the additional stress and hurt caused by the knowledge of the innocence of the family member. We would argue that, a fortiori, they should also be the recipients of special support and services to compensate for the burden they have had to endure.

Finally, I understand the frustration of an organisation which is seeking funding from the Scottish Executive for a need that is unfulfilled by the current provision. This is especially true of an application for a grant under Section 10 (1) of the Social Work (SCOTLAND) Act 1968 which provides funding to “various” organisations that provide specific services to the Criminal Justice Social Work. This is expressed in other parts of the Scottish
Executive information as being restricted to three organisations, which makes it difficult for any organisation which wishes to develop a particular interest or provide a service which is currently perceived to be lacking.

I hope these comments are of some assistance.

[Signature]
22.4.04
Pauline McNeill, MSP
Convener, Justice 1 Committee
C/o Justice 1 Committee Clerks
3.11 CC
The Scottish Parliament
Edinburgh
EH99 1SP

28 April 2004

Dear [Name],

Petition PE477 by the Miscarriages of Justice Organisation

Thank you for your invitation to give our views in relation to the issues raised by this petition. SACRO can make some contribution to the Committee’s deliberations although I should stress we claim no special expertise in providing services to wrongly convicted released prisoners. I think this is an important point to stress in the context of what is perhaps the key issue, namely whether or not services designed for offenders leaving prison can be appropriate for people who are clearly not offenders.

As I am sure you know, SACRO is a major Throughcare service provider and has a long history of helping ex-prisoners resettle successfully in the community. We are therefore very familiar with both the needs of discharged prisoners and the legislation and National Objectives and Standards for Social Work Services in the Criminal Justice System as well as current Scottish Executive policy initiatives in Throughcare.

The first point we can make is about the relevance or otherwise of Voluntary Assistance for discharged prisoners who are not offenders. We believe the Scottish Executive position, as outlined in their correspondence with your Committee, is correct in law that in wrongly convicted prisoners are as entitled to ask local authorities for advice, guidance and assistance as are offenders. Paragraph 26 of the Throughcare National Standards (1999) advises social workers that people entitled to Voluntary Assistance include "those released following an appeal against conviction and/or sentence".

However, our interpretation is that most of these Throughcare National Standards and the current (welcome) Scottish Executive Throughcare policy initiatives are clearly aimed at offenders rather than non-offenders. In support of this view we cite the following:

1. Para. 163 of the Standards outlines seven objectives of Voluntary Assistance and introduces them by saying "the objectives of voluntary assistance are similar to those of statutory supervision, except that no element of compulsion can be brought to bear on the offender".
2. The second objective is "to assist prisoners and ex-prisoners to reduce the risk of re-offending through the provision of a range of services to meet identified needs."

3. None of the 505 paragraphs in the Standards sets down any standards or guidance for working with wrongfully convicted persons and any special needs they may have.

4. The Executive's Thoroughfare policy that is now being implemented is based on their acceptance of their own publication, the Tripartite Report (December 2002). That report sets out standards and recommendations for both statutory supervision and Voluntary Assistance. It acknowledges that a huge number of ex-prisoners would be eligible to apply for Voluntary Assistance – all who are not subject to statutory supervision – which means all released from remand and the vast majority of prisoners sentenced to less than four years. Accordingly it sets out clear categories of people to whom priority should be given:
   - High risk offenders
   - Young offenders
   - Those who show a commitment to address their offending behaviour or take up and continue with the offer of assistance under the SPS transitional care scheme (drugs).

   There is no mention of non-offenders.

From what we know of the resources to be allocated to Voluntary Assistance, they will be thinly spread and many in the above priority categories may not receive a service.

In the light of the above it is difficult to argue that wrongfully convicted discharged prisoners would be likely to receive a service appropriate to their needs. Even if wrongfully convicted persons sought and were offered Voluntary Assistance (one can understand their reluctance to seek it from a system which has done them wrong), the services as presently planned and resourced would be unlikely to meet their special needs.

We in SACRO would agree with the proposition, argued in detail in papers from others already considered by the Committee, that the needs of people wrongly convicted will differ substantially from people who acknowledge that they have offended. They may well share basic needs in relation to housing, benefits, employment and family relationships but they will also have been subject to specific traumatic experiences related to the particular miscarriage of justice, sometimes over a long period of time.

It is true that some convicted offenders protest their innocence throughout their sentence and thereafter but where no miscarriage has been identified we have to assume that they are guilty and work with them accordingly.

We have no specific proposals to make regarding what alternative agency might best fill this gap. Although we do know a little about the Home Office – Citizens' Advice Bureau Miscarriage of Justice Project in England and Wales, there is as yet no published report on its work.

The Miscarriage Of Justice Organisation (MOJO) proposal refers to "setting up an after programme in the form of a halfway home...". While we do not know the detail of the proposals, our own experience of providing a variety of services to people with a variety of needs suggests that planning services round a "bricks and mortar" resource is not the best way to go about it. The nature of the establishment can tend to determine the type of service that can be offered rather than the needs of the service user. One might think that this would be particularly true for people who have been incarcerated for a long time. They are likely to need a person–centred package rather than placement in an establishment, however homely that might be. The location of the home, too, would be a limiting factor for a national service.
There is some merit in the argument that such a service should be provided by an agency with no direct links with the criminal justice system. There would need to be expertise in understanding the effects of institutionalisation as well as of the specific impact of being seriously wronged by powerful state institutions. Mental health is likely to feature as a major issue, so any provision would have to cater for associated needs.

Two further points:

1. We understand that there are likely to be only a very small number of such cases each year and while this should in no way be seen to diminish the need for services, the volume might well be a factor in planning provision. The Division of the Justice Department that deals with miscarriages of justice should be in a position to give a reasonable estimate.

2. The Committee might wish to hear directly from the Home Office – CAB Project staff in the absence of a report. The contact is Amajit Kaur; 0207 947 7645.

I hope the Committee finds this submission helpful.

Yours sincerely,

Susan Matheson
Chief Executive
The RCJ Advice Bureau - Miscarriages of Justice Project

Progress Report

Executive Summary

The Project has had a total of 40 clients. This is in line with the number predicted by the Home Office Scoping Study.

Main findings of the pilot year

Housing
People who are vulnerable as a result of having served a custodial sentence are entitled to be treated as a priority group for Local Authority Housing. It is clear however that it is only with the assistance of specialist housing advocates that clients are able to avail themselves of this right. The Project has been able to provide this assistance through its liaison with Shelter. We feel that there is a need for local authority housing officers to be more aware of the vulnerability of victims of miscarriages of justice, in order that they are housed appropriately.

Job Seekers Allowance
Victims of miscarriages of justice who have been released from prison, often after very long periods, usually have to apply for Job Seekers Allowance, as normally they will not have any medical evidence to support a claim for Incapacity Benefit. However, the requirement that clients ‘actively seek work’ is usually beyond their capability. The Project staff have been able to negotiate with Job Centre Staff to allow clients a ‘breathing space’, during which, if they are incapable of work, they are able to register with a G.P. and get medical evidence. However, this has been dependent on individual Job centre staff. Our findings reveal a need for special provision for the vulnerable who have been released from prison.

Incapacity Benefit
Since March 2001 people who have been wrongfully imprisoned are entitled to have their National Insurance contributions credited for the period of their incarceration. These credited contributions allow clients to be eligible to claim Incapacity Benefit.
Our findings are that many staff of the Department of Works and Pensions are not aware of this provision, and have therefore wrongly advised clients they are not entitled to Incapacity Benefit, when they are. There is clear need for D.W.P. staff to be trained in this provision, which also effects clients’ pension entitlement.

**Mental Health**

Victims of miscarriages of justice often suffer severe mental trauma. They have great difficulties in accessing appropriate specialist treatment. The Project held a seminar, the first of its kind, looking at the needs and available treatment for victims of miscarriages of justice. The main finding was that there appears to be a need for prompt assessment of clients’ mental health and for the person making the assessment to recommend a course of treatment. Before such a service could be established, there is a need for further research. This research would benefit from access to previous psychiatric assessments of victims of miscarriages of justice.

**Time taken for needs to emerge**

It has become clear that a substantial proportion of victims of miscarriages of justice take time to recognise their need for help. Their mental health needs particularly take time to emerge. The Project is therefore extending its remit to include all victims of miscarriages of justice where their case has been referred to the CCRC. We intend to offer these potential clients the Bureau’s service by the following means:

- A targeted publicity campaign
- Using information from the CCRC
- Taking referrals from organisations and individuals working in the field

We are also setting in place a system to re-contact clients who may initially not have taken up our offer of assistance and to remind them of the service available.
Conclusion

- The key objectives of the Project have been addressed during the pilot year.

- It is clear that interventions by Project Staff have been crucial in ensuring clients access to services as is evidenced in our case studies.

- We believe that the following report demonstrates the success of the Project so far, and the clear need for it to be extended beyond its pilot year.

Amarjit Kaur, Bureau Director, April 2004
The RCJ Advice Bureau

Miscarriages of Justice Project

Progress Report

April 2004
The RCJ Advice Bureau - Miscarriages of Justice Project
Progress Report

I. Background

The Home Office first considered the issue of whether and what assistance should be given to prisoners who are released after successfully appealing against conviction in 1998.

In 2000 the National Probation Directorate convened a working group to consider how such a service might be provided. An independent consultant, Peter Shore, was commissioned to undertake a scoping study.

The study looked at the two primary sources of clients in need of an advice service: Referrals by the Criminal Cases Review Commission (CCRC) to the Court of Appeal and Out-of-time appeals.

Summary of scoping study findings

- In total the annual case load for an advice service is likely to be in the region of 70 cases per year (new referrals prior to release, existing cases; immediately after release, plus cases requiring support beyond the immediate post-release period).

- First contact should be made prior to release and that contact should continue throughout the appeal and be available on a tapered basis after release.

- There was a need for a representative of the service to attend the RCJ for each individual’s discharge and to ensure that immediate needs are met on the day.

- The study found that the problems faced by successful appellants on release are many and varied and include obtaining sufficient documentation relating to identity, gaining access to accommodation, social security benefits, local healthcare services and other mainstream provision. They also need help with
practical day-to-day matters, such as opening bank accounts. They have to cope with these problems whilst dealing with effects of a release from long periods of imprisonment into a changed world. The study suggested that preparatory work could take place prior to release to alleviate the worst effects of these problems. Prisoners could be helped to secure any necessary documentation, provided with general information and advice and could be put in touch with appropriate contacts which would enable them to cope more easily with the challenges they face. A service could provide general advice and assistance with these matters on a one-to-one basis to help clients establish the normal entitlements of citizenship and to avoid social exclusion.

- The study also found significant evidence that many individuals suffer serious psychological or psychiatric problems as a result of their wrongful imprisonment and that these problems are often not apparent until after release. The study found that expert facilities do exist for addressing these problems but they need to be accessed immediately on release and some are available only on a private basis. It suggested that the service needed to be aware of the likelihood of these problems and needed to have a mechanism in place for referral of clients to appropriate services at the right time.

- The service could seek to put individuals in touch with solicitors qualified to assist in claiming compensation payments. The speed at which an interim payment could be made significantly affected the experience of the successful appellant in the period immediately after release. The service could also direct clients to specialist help and advice on money management where required.

- The service should be provided by a voluntary organisation that is not perceived as being for or concerned with ex-offenders. The service should be overseen by a Steering Committee of those expert and concerned in the field.

On the basis of Mr Shore’s finding the working group recommended:

- An advice and support service should be established to assist individuals who are released after successful appeal against conviction;
- The service should be run as a pilot project, initially for a period of twelve months but with an option to extend for a further period in the light of results from the monitoring and evaluation reports;

- The National Association of Citizens Advice Bureaux (Citizens Advice) should be invited to deliver the advice service during the pilot phase in line with the project proposals submitted during the scoping study and that the Home Office should provide project funding for this purpose; and

- Further consideration should be given to
  - The mechanisms through which individuals and organisations with an interest in this area might provide input to the future development of services in this area and
  - Such other matters as appear to the group to contribute to effective service delivery for this group.

The RCJ Advice Bureau received funding for a one-year pilot in August 2002. The Bureau’s Miscarriages of justice Project became operational, and was officially launched by the Prisons Minister, Hilary Benn, in January 2003.
II. Setting Up the Project

The Project is unique and much thought and time was spent in the early months ensuring that the procedures and client care methods that were put into place, were informed by experts in the field, and that they were robust.

The following activities also occurred in the first months of the Project.

- Meetings with members of the Advisory Group.
- Meetings with potential members of the Steering Group.
- Making presentations to CAB workers in prisons on the role of the Project.
- Setting up a referral procedure with Shelter.
- Making links with other organisations working with victims of Miscarriages of justice, such as MOJO whose AGM all of the Project staff attended.
- Meeting with victims of miscarriages of justice including John Kamara and Peter Fell.
- Organising a seminar on the psychiatric needs of victims of miscarriages of justice. This was attended by specialists from around the country. This was an enormously useful exercise, and was the first seminar of its kind.
III. How the Project works

- The Project has one full time adviser, one part time adviser and a full time administrator. The Project Manager is Amarjit Kaur.

- The Project has a Steering Group made up of individuals with expertise in areas relevant to the Project. The Steering Group meets quarterly, and receives reports from the Project Manager. The members of the group are:

  Ms Marolyn Burgess - Citizens Advice  
  Ms Kulvinder Gill, Hodge - Jones and Allen, Solicitors  
  Dr Adrian Grounds - Cambridge University  
  Mr John Hine - RCJ Advice Bureau Trustee Board  
  Dr James MacKeith - Bethlem Royal and Maudsley Hospitals  
  Cllr Sally Mulready – London Borough of Hackney Council  
  Dame Ruth Runciman - Central and NW London Mental Health NHS Trust

- In structuring the operational aspects of the Project, the findings of the scoping study formed the blueprint.

- In January the CCRC provided the Project with a list of all the people whom it had referred back to the Court of Appeal, who were still in custody of whom there were 51. All of these potential clients were supplied with details of the Project. Those who wanted assistance were asked to return a visit consent form. The CCRC now send out the Project leaflet with the pack that they send to all applicants for its assistance.

- In addition, the Project Administrator checks the CCRC website daily and contacts new referrals from the CCRC to the Court of Appeal (if not already known to the Project).

- Once the client returns a visit consent form, the administrator arranges a visit to them in prison wherever in the country they are. The initial interview is very wide ranging. The idea is to establish what needs the client will have in relation
to issues such as housing, benefits, and family should their appeal be successful. A confirmation letter is sent to the client within one week setting out the areas they require assistance on and what work will be done by the adviser. The letter advises the client they will not be contacted again until they have an appeal date. This is to ensure that the client does not become dependent on the adviser or have their hopes raised when there is a chance their appeal may fail.

- The adviser stays in regular contact with the client’s solicitor to ensure they know when the appeal is to be heard. When they are advised of the date they write to the client to confirm any arrangements regarding housing benefit, ID, etc., and to remind the client that the adviser will be at court to assist in the event of release.

- The adviser then attends the court hearing and if requested assists the client through the discharge procedure.

- The Project also takes self-referral from victims of miscarriages of justice who were released before the project commenced. In order to ensure that such potential clients are made aware of our service we have contacted organisations, solicitors and individuals who work in this field.

- In the first six months the adviser will work with the client to ensure the following outcomes: -

The client should:

- Be in receipt of income

- Have adequate housing

- Have a solicitor dealing with compensation claim

- Understood principles of money management
• Have access to initial psychiatric/psychological assessment for psychiatric treatment

• Understood options for management/investment of compensation

The Bureau does not limit itself to these objectives; any practical assistance the client needs is provided.

The aim is to enable the client to gain the skills required to adjust to life outside prison. The intention is that the client should become independent. The client’s case is reviewed at six months. If this process takes longer than six months the support will continue to be provided.

The time frame the adviser works to is set out overleaf.
<table>
<thead>
<tr>
<th>Initial Interview</th>
</tr>
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<tbody>
<tr>
<td>+ 1 week</td>
</tr>
<tr>
<td>- Client to receive Confirmation Letter*</td>
</tr>
</tbody>
</table>

*Confirmation Letter to say client will hear from us again only after we are informed of Appeal Date

<table>
<thead>
<tr>
<th>- 4 weeks</th>
<th></th>
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<tbody>
<tr>
<td>Make Homelessness application</td>
<td>Identify emergency hostel accommodation</td>
</tr>
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<table>
<thead>
<tr>
<th>- 1 week</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Arrange appointment at Benefits Agency</td>
<td>If possible claim Community Care Grant</td>
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</table>

| Appeal Date                                                                         |
|-------------------------------------------------------------------------------------|---------------------------------|

<table>
<thead>
<tr>
<th>Week 1</th>
<th></th>
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<tbody>
<tr>
<td>Attend appeal</td>
<td></td>
</tr>
<tr>
<td>Assist with discharge</td>
<td></td>
</tr>
<tr>
<td>Accompany to accommodation</td>
<td></td>
</tr>
<tr>
<td>Arrange date for interview</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Week 1 or 2</th>
<th></th>
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<tbody>
<tr>
<td>Client interview</td>
<td></td>
</tr>
<tr>
<td>Attend Benefits Agency appointment</td>
<td></td>
</tr>
<tr>
<td>Claim Community Care Grant, Crisis Loan</td>
<td></td>
</tr>
<tr>
<td>Arrange appointment with compensation solicitor</td>
<td></td>
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<tr>
<td>Discuss re-orientation, psychiatric needs</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Week 3</th>
<th></th>
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<tbody>
<tr>
<td>Start tracking benefit claim</td>
<td></td>
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<table>
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<tr>
<th>Week 4 or 5</th>
<th></th>
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<tbody>
<tr>
<td>Client interview</td>
<td></td>
</tr>
<tr>
<td>Arrange psychiatric assessment</td>
<td></td>
</tr>
<tr>
<td>Money Advice Appointment</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Month 2</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>All relevant benefits to be in payment</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month 3</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Client to be in adequate housing</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month 4</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Client to be receiving ongoing treatment for mental health issues if required</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Months 5 &amp; 6</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Continue to deal with any ongoing client needs</td>
<td></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Month 6</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Client interview to review case with view to referral to generalist service at RCJ or to local Bureau if further assistance is required</td>
<td></td>
</tr>
</tbody>
</table>
IV. Social Policy

The Citizens Advice Bureau Service nationally has two aims. The first is:

“To ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities or of the service available to them, or through an inability to express their needs effectively.”

The Project fulfils this aim through its provision of advice to individual clients as previously detailed.

The second aim of the service is to:

“To exercise a responsible influence on the development of social policies and services, both locally and nationally.”

This is done through the collection of evidence from clients to highlight issues with the aim of influencing policy makers.

The Project staff have begun to collect evidence on issues effecting clients. Clearly these are early days, but it is possible even at this stage to make some social policy observations:

- **Housing**
  The Project staff are based in London, but clients may wish to return to any part of the country. It is essential therefore that they have access to local information for all parts of England and Wales.

  The Project has negotiated an enhancement of this scheme to assist our clients. Instead of just providing legal advice, the housing advisers, based in Shelter Housing Advice Centres across England and Wales will provide the Project adviser with local housing information and assist our clients in securing accommodation.
Case Study
Two of our clients were freed after their conviction for murder was quashed. They returned to their home town. The Project advisers accompanied them to an appointment at the local Shelter HAC. It was decided to ask the local M.P. to assist the clients in view of their exceptional circumstances. The M.P. contacted the Local Authority Housing Manager. The Housing Manager agreed to treat the clients as if they had been on the housing list for 14 years. As a result they were both allocated flats. One client took up his tenancy, the other turned down the flat he was offered but was been told he would be offered another. Without advice and assistance the most these clients could have expected was to have been allocated temporary bed and breakfast accommodation.

Job Seekers Allowance
When clients are released from prison they often do not have a G.P. Also any symptoms of mental illness such as Post Traumatic Stress Disorder (P.T.S.D.) often take time to emerge. In these circumstances, immediately following release the benefit most will be entitled to is Job Seekers Allowance. However clients are unlikely to be able to cope with the requirement that they ‘actively seek work’.

The approach the Project has taken is as follows. Clients are accompanied to their appointment to claim Job Seekers Allowance and certain concessions are requested from the Benefits Agency.

Case Study
The adviser accompanied the client to his JSA application interview. Clients can restrict their availability for work for a ‘permitted period’ of between 1-13 weeks. During this period they only have to look for work in their normal line of work. Usually the Job Centre staff will want to see evidence they have been seeking work e.g. applying for jobs in person or by phone preparing a CV etc. The adviser was able to negotiate with the Job Centre adviser that the client would have the maximum 13 week ‘permitted period’; during that period the Job Centre adviser, exceptionally, would not pursue the issue of the client needing to show evidence of seeking work.

The rules state that if someone has to do overran 8 hour round trip to sign on they are eligible to do a postal signing. The Job Centre adviser agreed to allow the client to sign on by post even though he did not fit the criteria.

It is extremely unlikely that such concessions could have been won if the Bureau adviser had not been involved in the client’s case.
This has been used as a precedent for our other clients.

The intention is that this gives the client a 13 week ‘breathing space’. During this time they can be registered with a G.P. and if necessary a psychiatric assessment organised. If the client is incapable of work at the end of the 13 week period, his medical advisers will have had time to assess whether they can support an application for Incapacity Benefit. However, this approach has been dependent on the Project staff persuading Job Centre staff to treat our clients as special cases.

- **Incapacity Benefit**

  Since 26 March 2001 clients who have been wrongfully imprisoned can claim back their National Insurance contributions for the period they were incarcerated. This entitles them to claim Incapacity Benefit which is a contributory benefit. However it appears that most Department of Work and Pensions staff are unaware of this provision.

<table>
<thead>
<tr>
<th>Case Study</th>
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<tbody>
<tr>
<td>Client was released on 1st October 2001. He claimed JSA on release but was then diagnosed with PTSD. Meanwhile he had received an interim payment of his compensation. He asked the Benefits Agency if he was entitled to any benefit and was told that his capital was too high. In actual fact he would have been entitled to Incapacity Benefit which is not affected by the client’s capital. The Bureau is assisting the client in claiming Incapacity Benefit. The Bureau is using the client’s case as the basis of Social Policy on this issue. The Bureau assisted the client in making an application which was denied. With our assistance he appealed this decision. The appeal decision was again unfavourable to the client, but on the grounds that the N.I. contributions with which he had been credited would not entitle him to Incapacity Benefit. This is an incorrect interpretation of the law. This was pointed out to them. The decision maker acknowledged she was wrong and the client has been awarded benefit backdated to when he was given the incorrect advice by Benefits Agency staff.</td>
</tr>
</tbody>
</table>

This issue has been raised with Paul Goggins the Prisons Minister who has agreed to work to ensure that staff at the DWP are made aware of this provision.
Mental Health

The scoping study highlighted the fact that many individuals suffer serious psychological or psychiatry problems as a result of their wrongful imprisonment. The only comprehensive study done into the psychological problems faced by victims of miscarriages of justice was carried out by Dr Adrian Grounds of the Institute of Criminology at Cambridge University (see Appendix 3).

On the 30 April 2003 the Bureau hosted a seminar to look at psychiatric needs of victims of miscarriages of justice and their treatment. Trauma specialists and others with an interest in the field were invited.

Case Study

The client had his sentence quashed in May 2003 after spending 7 years wrongfully imprisoned. This significantly traumatised the client. The client was referred by the Bureau to see a consultant psychiatrist who found the client to be suffering from post traumatic stress disorder and recommended specialist help in the form of a trauma stress clinic. A referral was made to his G.P. and a referral was made to a clinic specialising in trauma. After a month, the trauma clinic contacted the G.P. and they thought the client best to be seen as an outpatient in his local hospital as he had other issues not only post traumatic stress disorder. The Bureau contacted the consultant who was able to contact a fellow specialist the client’s local hospital who agreed to see him. However, this psychiatrist was only based in the secure unit within the hospital. The trauma clinic was asked to reconsider their decision but they declined to see him. Eventually a referral was made to the local hospital on 3rd March. The client now has his first appointment on 17th May. Without the Project’s intervention and the kind assistance by the consultant this client would have had no treatment for his psychological condition to date.

The main conclusion of the seminar was that there was a need for provision for clients to have their psychiatric needs assessed soon after their release from prison. It was envisaged that whoever undertook the assessment would make recommendations for treatment
V. Statistics

The client numbers are in line with those predicted by the scoping study, which envisaged about 25 new cases per annum. The Project has only been operational since January and has 20 current clients, five of whom have been released, and 3 cases which have been closed. It is recognised that each client requires very intensive assistance.
Client Matters Dec03 - Mar 04

- Legal Proceedings: 26%
- Benefits: 10%
- Housing: 7%
- Health: 1%
- Tax: 0%
- Miscellaneous: 1%
- Family: 0%
- Employment: 0%
- Utilities: 1%
- Financial: 0%

Potential clients contacted 22/04/04
(This includes all contacts via the CCRC but also self-referrals)

- Potential clients: Awaiting consent form: 68
- Potential clients: Contacts outside remit: 40
- Open cases: 37
- Closed cases: 3
Sentence reduced: 11
Out of English jurisdiction: 8
No custodial sentence: 4
Unsuccessful appeal: 7
Potential Client deceased: 8
Not appealing conviction: 1
Sought legal advice: 1

Amarjit Kaur, Deputy Director, April 2004
Justice 1 Committee

Dangerous Driving and the Law

Petitions PE29 by Alex and Margaret Dekker, PE55, PE299 and PE331 by Ms Tricia Donegan

Note by the Clerk

Background

Petitions

1. The Committee considered public petitions PE29 by Alex and Margaret Dekker and PE55, PE299 and PE331 by Ms Tricia Donegan concerning dangerous driving and the law at its meeting on 25 February 2004 and the paper circulated for that meeting, J1/S2/04/8/4, is attached at annex A for information.

2. At that meeting, the Committee agreed to write back to the Lord Advocate and the Scottish Executive, asking that it be forwarded all outstanding information as soon as possible, and to reconsider the petitions thereafter; to write to the Minister for Justice, seeking her views on the validity of the report by the former Department for Transport, Local Government and the Regions, Dangerous Driving and the Law, given the lack of involvement from Scottish agencies, and seeking an assurance that the steering group considering the report will adequately address the Scottish perspective, and to write to the petitioners seeking their views on the impact of recent changes. The Committee further agreed to forward comments received from Scotland’s Campaign against Irresponsible Drivers (SCID) about victim statements and fatal accident inquiries to the Scottish Executive and the Crown Office and Procurators Fiscal Service respectively.

Correspondence from the petitioners

3. SCID responded on 5 April 2004 and a copy of the response is attached at annex B. The response begins by providing some background to road traffic legislation and examining comparative trends in the number of drivers (a) recorded by the police, (b) proceeded against in court and (c) found guilty in respect of causing death by dangerous driving from 1987 to 2002. According to SCID, there was a significant downward trend in the number of offences recorded by the police and a marginal downward trend in those proceeded with in court. SCID considers that the drop in the number of offences recorded by the police, whilst arguably a result of better driving and safer cars etc, may be a consequence either of increased use of the lesser and easier to prove charge of careless driving, of limited resources for the

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1 Justice 1 Committee, 8th Meeting, 2004 (Session 2), 25 February 2004.
investigation of accidents or of a lack of thorough prosecution investigations leading to such offences not being assiduously prosecuted, resulting in them not being so seriously treated by the police.

4. SCID goes on to comment that, before January 2003, the offence of causing death by careless driving whilst under the influence of drink or drugs was generally prosecuted in the High Court of Justiciary whilst the charge of causing death by dangerous driving was generally prosecuted in sheriff courts, although the same maximum statutory penalty was available for each. SCID considers that this practice sent out the message that it was not a serious offence to kill an innocent victim by dangerous driving.

5. SCID welcomes the change in prosecution policy announced by the Lord Advocate in January 2003\(^2\), indicating that motorists whose dangerous driving results in a fatal road traffic accident are now likely to be prosecuted in the High Court, and highlights the Lord Advocate’s statements that “fatal road accidents cause terrible grief to the families and communities affected and this change reflects how seriously these offences are taken by Procurators Fiscal” and that “Prosecutions in the Sheriff Court will take place only where there are particular circumstances which appear to mitigate the offence”.

6. The response goes on to comment on the implementations of recommendations made in the review of the investigation of road deaths by the quality and practice review unit of the Crown Office and Procurator Fiscal Service. SCID raises concerns in relation to the training of police crash investigation officers and the management and quality of the investigation of road deaths by procurators fiscal and police forces.

7. Finally, SCID welcomed the opportunity to contribute its views to BrakeCare prior to the recent publication of an advice pack\(^3\), funded by the Scottish Executive\(^4\), but expresses continuing concerns that, following a road death in respect of which there is a possibility of criminal proceedings, bereaved families do not know what reports they can access nor how and when they may do so. SCID urges that a bereaved family’s views in relation to a fatal accident inquiry should be actively sought by procurators fiscal and that there should be procedures in place to process and monitor such views.

Correspondence from the Lord Advocate

8. A response of 19 April 2004 on behalf of the Lord Advocate is attached at annex C. The response indicates that the further appraisal of the recommendations outlined in the Review of the Investigation of Road

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\(^3\) Coping with grief when someone you love is killed on the road

Deaths in Scotland will be completed by mid-May 2004; further information is awaited.

9. The response also gives further information on offences under section 3A of the Road Traffic Act 1988. Since 13 January 2003, five indictments have been served containing a charge under section 3A, of which four were prosecuted in the High Court of Justiciary, resulting in sentences ranging from 18 months to 6 years. The remaining case was prosecuted under solemn proceedings in a sheriff court and, following a guilty plea, the accused was sentenced to nine months’ imprisonment, which, according to the Lord Advocate’s office, demonstrates that High Court proceedings would not have been justified in that particular case. Four further cases were initially investigated as contraventions of section 3A but were subsequently prosecuted in the High Court under section 1 or as culpably homicide, leading to sentences ranging from two to 10 years.

Correspondence from Scottish Executive
10. Two responses have been received from the Scottish Executive, dated 4 and 20 May 2004; these responses are at annex D and annex E respectively.

11. The first response, from the office of the Minister for Justice, indicates that the Home Office consultation paper on the review of bad driving is expected soon but that no date has yet been arranged. The response goes on to advise that a possible way of collection and recording statistical information on road accident injuries would be discussed with representatives of police forces at a meeting of the Liaison Group on Road Accident Statistics towards the end of May and that the Department of Transport hoped to be able to publish the report of the surveys of convicted dangerous and careless drivers and victims by the end of May also (the Committee has not yet been provided with further information on the outcome of the meeting of the Liaison Group or the report of the surveys).

12. Concerns about the level of Scottish participation in the research leading to the publication of the Transport Laboratory Report, Dangerous Driving and the Law, in January 2002 is acknowledged in the response, which, however, goes on to state that experience in Scotland, whilst not given specific prominence, was an important part of the study and reassures the Committee that the Executive is working closely with various Whitehall departments to ensure that any particular Scottish issues are addressed before decisions are take about whether to change the law or its administration.

13. In relation to the change in prosecution policy announced in January 2003, the Executive’s response advises that a review of the new policy is underway and that the policy will be reconsidered in the light of Lord Bonomy’s recommendations in respect of the High Court but that, currently, the policy continues to be that there will be a presumption in
favour of prosecuting contraventions under sections 1 and 3A of the Road Traffic Act 1988 in the High Court.

14. The Executive’s second response, from the Deputy Minister for Justice, deals with issues raised by SCID in its submission to the Committee of January 2004 in relation to victim statements. The annex to the response addresses each point raised by SCID in detail.

Procedure

15. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.5

Options

16. Members are reminded of the terms of the petitions being considered by the Committee:

Petition PE29 by Mr and Mrs Dekker: This petition called for action to be taken in relation to the Crown Office’s decisions and consideration in prosecuting road traffic deaths with particular regard to the prosecution of death by dangerous driving as a serious offence and not as careless driving and calling for the Scottish Parliament to monitor the situation in Scotland in dealing with road deaths;

Petition PE55 by Tricia Donegan: This petition called for the Parliament to conduct an investigation to establish why the full powers of the law are not enforced in all cases which involve death by dangerous driving. The petition called for the Crown Office to be required to retain vehicles which have caused deaths on the road; for fatal accident inquiries to be carried out if requested by the family of the victim and for previous offences to be taken into consideration when an offence involving death by dangerous driving is being considered;

Petition PE299 by Tricia Donegan: This petition called for the Parliament to investigate whether the additional driving offences of failure to possess the correct licence, MOT or insurance documentation should be taken into consideration at court hearings concerning a fatality caused by dangerous driving;

Petition PE331 by Tricia Donegan: This petition called for the Parliament to investigate why drivers who have made deliberate decisions when driving which cause risk to the lives of others are classed as careless drivers when prosecuted, even in the event of a fatality.

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5 The Scottish Parliament, Standing Orders, Rule 15.6.2(a)
17. On the basis of the information received the Committee may wish to pursue one or more of the options set out below.

(a) Members will note that issues highlighted in ongoing correspondence from SCID are wider than the terms of the original petitions. The Committee could write to the petitioners informing them of the forthcoming publication by the Home Office of the consultation paper on the review of dangerous driving and the law and encouraging them to respond directly to the consultation, forwarding all recent correspondence regarding the petitions to the petitioners and explaining that the petitions have been examined thoroughly and that consideration of the specific issues raised in the petitions is now concluded;

(b) In so doing, the Committee may also wish to agree to continue to monitor developments in the devolved aspects of dangerous driving and the law, to advise the petitioners of this course of action and to invite the petitioners to continue to correspond with the Committee on related developments;

(c) In monitoring developments in this area, the Committee could consider following up on information awaited from the Executive, the Crown Office and the Department for Transport.
Justice 1 Committee

Media working practices

Note by the Clerk

Background

1. Recent guidance from the Conveners’ Group suggested that it would be helpful for Committees to agree working practices covering the Committee’s relationship with the media.¹ This paper sets out proposed working practices for the Justice 1 Committee in dealing with the media. Members are invited to consider and agree the Committee’s media working practices.

News releases

2. The Committee will issue news releases on a case by case basis, but most likely on the following occasions:
   • when committee reports are published;
   • to publicise calls for evidence on particular important issues;
   • to publicise meetings outside of Edinburgh or fact finding visits to local news reporters;
   • to respond to important developments relating to ongoing committee work.

3. Unless the Committee agrees otherwise, the Clerks will draft the news release in conjunction with the media relations office. The final version of the news release will normally be signed off by the Convener. The Convener will endeavour to ensure that the content of the news release reflects the views of the Committee.

Media conferences

4. The Committee may decide to hold a media conference when the issue is particularly complex, or when the issue is of such prominence that it requires a media conference. Media conferences would generally be presented by selected members representing the political mix on the committee.

General media coverage

5. On the occasions where articles are requested, these will be drafted by the Clerks to reflect the views and actions of the Committee as a whole and wherever possible a draft would be circulated to members for

¹ Conveners’ Group, Guidance for Conveners, available on the Parliament’s website at the following web address:
http://www.scottish.parliament.uk/conveners/con_guidance.htm
comment. In most circumstances, the article would be released in the Convener's name.

6. Conveners will inevitably be asked to express views in the media relevant to the Committee's remit. If expressing a view, the Convener will endeavour to distinguish clearly between a view given in a personal capacity and one given on behalf of the committee. If speaking on behalf of the Committee, the view must reflect matters which have been agreed in the Committee.