PUBLIC PETITIONS COMMITTEE
15th Meeting, 2006 (Session 2)
Wednesday 27 September 2006

The Committee will consider the following current petitions—

**PE914** Petition by Peter Fallon calling on the Scottish Parliament to urge the Scottish Executive to amend criminal justice legislation to require criminals to make financial reparation to the victim(s) of their crime.

**PE935** Petition by Ian Longworth calling for the Scottish Parliament to urge the Scottish Executive to amend criminal procedures to ensure that when a Procurator Fiscal does not consider it in the public interest to pursue criminal proceedings, a full written explanation is provided to the alleged victim of the crime.

**PE923** Petition by Ben Conway calling for the Scottish Parliament to urge the Scottish Executive to promote pastoral and spiritual care in hospitals to ensure that the physical, psychological, social and spiritual needs of patients are properly addressed.

**PE783** Petition by James Reynolds on behalf of the Scotsman newspaper, calling for the Scottish Parliament to support the establishment of the golden eagle as the national bird of Scotland.

**PE942** Petition by Bill Cantley, on behalf of the ForthRight Alliance, calling on the Scottish Parliament to urge the Scottish Executive to desist from spending taxpayers’ money on preparing for the construction of a Second Forth Road Bridge before having at its disposal all the facts regarding the condition of the existing Forth Road Bridge on the grounds that any such expenditure would be both environmentally irresponsible and fiscally imprudent.

**PE943** Petition by Mark Hood calling for the Scottish Parliament to urge the Scottish Executive to consider the need for a new Forth road bridge.

**PE921** Petition by Rev. Ross Brown calling for the Scottish parliament to urge the Scottish Executive not to increase the tolls on the Forth Road Bridge.
PE925 Petition by George Campbell, on behalf of the National Alliance Against Tolls Scotland, calling for the Scottish Parliament to urge the Scottish Executive not to extend the tolling regimes on the remaining toll bridges (Erskine, Forth and Tay), but instead to take over the bridges and their approaches as part of the national road system and to remove the tolls forthwith.

PE580 Petition calling for the Scottish Parliament to recognise the serious problems with solvent abuse in Scotland and introduce preventative safety measures to help combat solvent abuse.

PE878 Petition by James A Mackie calling for the Scottish Parliament to urge the Scottish Executive to consider the need for a national strategy to address the impact of coastal and river erosion within Scotland.

PE880 Petition by Iain D Skene, on behalf of Renfrewshire and Inverclyde Association of Burns Clubs, calling for the Scottish Parliament to consider and debate the issue of local authority democratic accountability and in particular the accessibility of local elected representatives.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Mr Peter Fallon

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Peter Fallon calling on the Scottish Parliament to urge the Scottish Executive to amend criminal justice legislation to require criminals to make financial reparations to the victim(s) of their crime.

Additional information:
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Action taken to resolve issues of concern before submitting the petition:
Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Petitioners appearing before the Committee
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Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee □

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature .

Date 12 December 2005

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:
The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
Dear Dr Johnston

CONSIDERATION OF PETITION PE914

Thank you for your letter of 7 March 2006 asking for comments on Petition PE914 which calls upon the Scottish Parliament to urge the Scottish Executive to amend criminal justice legislation to require criminals to make financial reparation to the victim(s) of their crime.

In his submission the petitioner suggests that 'the criminal is under no obligation to make reparation to the victim of the crime'. From the example used in his petition the petitioner would appear to be concerned principally with compensation for the loss or damage of property, namely a car, that has resulted from a criminal act (which, in the case referred to by the petitioner, was the stealing of a car). Although I cannot comment on the details of individual cases, it is important to note that Scottish courts do have the discretionary power under section 249 of the Criminal Procedure (Scotland) Act 1995 to impose a compensation order on a convicted person. The relevant part of section of the Act is reproduced below:

249.—(1) Subject to subsections (2) and (4) below, where a person is convicted of an offence the court, instead of or in addition to dealing with him in any other way, may make an order (in this Part of this Act referred to as "a compensation order") requiring him to pay compensation for any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence.

(2) It shall not be competent for a court to make a compensation order—

(a) Where, under section 246(2) of this Act, it makes an order discharging him absolutely;
(b) Where, under section 228 of this Act, it makes a probation order; or
(c) At the same time as, under section 202 of this Act, it defers sentence.

(3) Where, in the case of an offence involving dishonest appropriation, or the unlawful taking and using of property or a contravention of section 178(1) of the Road Traffic Act
1988 (taking motor vehicle without authority etc.) the property is recovered, but has been damaged while out of the owner's possession, that damage, however and by whomsoever it was in fact caused, shall be treated for the purposes of subsection (1) above as having been caused by the acts which constituted the offence.

(4) No compensation order shall be made in respect of—

(a) loss suffered in consequence of the death of any person; or
(b) injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated, by virtue of subsection (3) above, as having been caused by the convicted person's acts

Of course, the imposition of such an order is at the discretion of the court, but the power exists, if the court wishes to exercise it, to require the convicted person to compensate the owner of property lost or damaged as a consequence of the convicted person stealing a vehicle. The court also has enforcement powers to ensure that the compensation is paid.

Ministers have decided to broaden the circumstances in which a court may impose a compensation order to include where the victim of a criminal act has been caused alarm or distress. These provisions were included in section 38 of the Criminal Proceedings etc. (Reform) Bill which was introduced to Parliament on 27 February.

Also included in section 39 of the Bill are provisions for a new alternative to prosecution to be known as the compensation offer. This can be offered by procurators fiscal as an alternative to prosecuting a case where the prosecutor considers it appropriate to do so (much in the same way as a “fiscal fine” can currently be offered). The offers will have a maximum value of £5,000 and the prosecutor will be able to make such an offer where there has been injury, loss, damage, alarm or distress caused to the victim. If accepted by the accused it will be enforceable as if it had been imposed by the court. If rejected the prosecutor would proceed with the case as usual, involving a hearing before the court and the possibility of a court-imposed compensation order as the disposal in the case.

Both the broadening of the criteria for imposing a compensation order and the introduction of the compensation offer were recommendations made in the report of the Summary Justice Review Committee, chaired by Sheriff Principal McInnes, and accepted by Ministers in 2004.

As the petitioner points out, victims already have a right to compensation for physical or mental injuries caused by a crime of violence through the Criminal Injuries Compensation Scheme (CICS) operated by the Criminal Injuries Compensation Authority (CICA). It should also be noted that the Scottish Executive has introduced measures, through section 20 of the Management of Offenders (Scotland) Act 2005, extending to Scotland the power of the CICA to recover from offenders sums paid out by it to victims of crime under the CICS. These provisions will not affect the eligibility of victims of violent crime to claim compensation from CICA.

The petitioner also highlights that a victim can raise an action for damages against offenders in the civil courts. The current law of delict allows victims of crime to take civil proceedings against the offender for compensation and they may be eligible for legal aid to help them to do so. The victim (as pursuer in the civil action) has to establish liability by showing they were owed a duty of care by the offender, the offender was in breach of that duty and the damage to the victim was reasonably foreseeable. If that can be shown, the court can award damages to the victim.
I hope the information provided here is of assistance to the Committee in its consideration of this petition. Ministers are committed to ensuring that the rights, interests and needs of victims are promoted as integral to the justice reform programme, and that the courts and prosecutors have the appropriate powers to enable them to compel offenders to recompense loss or damage caused by their criminal actions in appropriate circumstances.

Yours sincerely,

Craig Smith
Private Secretary
Dear Dr Johnston

CONSIDERATION OF PETITION PE914

1. Thank you for your letter of 7 March 2006 about the consideration being given by the Public Petitions Committee to petition PE914 by Peter Fallon, which urges the Scottish Executive to amend current criminal justice legislation to require criminals to make financial reparation to the victim(s) of crime. You have asked for my comments on this proposal.

2. It may be helpful to outline how currently a person convicted of a crime can be required to pay compensation to a victim of crime.

Compensation Orders

3. In Scotland, the main facility by which an offender can currently be required to pay compensation to a victim of crime is by the court making a compensation order.

4. Under section 249 of the Criminal Procedure (Scotland) Act 1995, where a person is convicted of an offence, the court, instead of or in addition to any other disposal, subject to certain limited exceptions, can make an order requiring that person to pay compensation for any personal injury, loss or damage caused, whether directly or indirectly, by the acts which constituted the offence. There is no limit on the award of compensation in solemn proceedings, and at summary level, compensation can be awarded up to a maximum of £5000.

5. In practice, at the point of conviction, the prosecutor will advise the court of any known loss suffered by the victim, to enable it to consider making a compensation order where that would be appropriate in light of the offence(s) and the loss or injury suffered. However the decision to make a compensation order is solely a matter for the court and is not entirely dependant on the prosecutor making known available and relevant information.

6. It is significant that in our current system, the court retains a discretion as to when a victim should be awarded compensation and the appropriate amount. It recognises that an award will not be appropriate in every case.
Criminal Injuries Compensation Scheme (CICS)

7. Significantly, even where the court does not consider it appropriate to make a compensation order, the Criminal Injuries Compensation Scheme provides another means by which victims of violent crime can receive compensation. A key difference with the CICS is that it is funded by the Home Office and the Scottish Executive and is more limited in its scope: it would not include, for example, victims of vandalism.

8. The CICS is not restricted to incidents in respect of which there has been a prosecution resulting in a criminal conviction.

9. As you will be aware, the CICS may be subject to change in the near future following the recent Home Office consultation "Rebuilding Lives – supporting victims of crime" which proposed radical simplification of the CICS and provision of better emotional and practical support to victims of crime.

Diversion Scheme

10. There is currently a range of options open to prosecutors which provide an alternative means by which to deal with reports of crime other than by bringing a prosecution. (Full details about the options open to prosecutors are available on our website at www.copfs.gov.uk.) Where a suitable local diversion scheme exists, it is possible for procurators fiscal to divert an accused, in appropriate cases, to the supervision of a social worker, psychiatrist, psychologist or mediator for the purposes of support, treatment or other action as an alternative to prosecution.

11. In particular, where the option of a diversion scheme involving mediation and reparation between the accused person and the victim is available, this can provide a very effective form of diversion in respect of less serious offences where the background to an offence involves a conflict between these parties, or where it appears that some kind of amends could be made by the accused. This may, on occasion, involve the accused agreeing to pay some form of compensation to the victim, e.g. payment of the cost of repairing a broken window.

Criminal Proceedings etc. (Reform) (Scotland) Bill

12. As you may be aware, the Criminal Proceedings etc. (Reform) (Scotland) Bill, recently introduced to the Scottish Parliament, expands the circumstances in which the court can consider making a compensation order, to include any alarm or distress caused directly to the victim.

13. In addition, the Bill provides for a new alternative option to prosecution, namely compensation offers. This means that prosecutors would be able to offer an accused person the opportunity to pay compensation to the victim of an offence, as an alternative to proceeding with a prosecution. This has the benefit of providing effective and speedy resolution of the matter for the victim and the accused, and provides a means for the victim, where appropriate, to receive compensation without the need to attend court as a witness in a prosecution.

14. A further intended benefit of the proposals in the Bill, in addition to increasing the scope for payment of compensation to victims of crime, is improved enforcement and collection of fines in general, with courts being able to impose enforcement orders and the introduction of fines enforcement officers. This, in turn, would positively impact on ensuring that victims receive payment of compensation ordered by the court from the offender.
15. As I have highlighted, there are various means by which financial reparation can be made to victims of crime, in appropriate cases, and this principle is already an important feature of our criminal justice system. The proposed changes in the Criminal Proceedings etc. (Reform) (Scotland) Bill will expand the range of options by which victims of crime can receive compensation.

16. I hope these comments are of assistance.

Yours sincerely

Norman McFadyen
Crown Agent

A Department of the Scottish Executive
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<td>Mr Ian Longworth</td>
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**Petition by Ian Longworth calling for the Scottish Parliament to urge the Scottish Executive to amend criminal procedures to ensure that when a Procurator Fiscal does not consider it in the public interest to pursue criminal proceedings, a full written explanation is provided to the alleged victim of the crime.**

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I enclose 10 examples from a total of 124 pages of examples:-

<table>
<thead>
<tr>
<th>Example</th>
<th>FROM</th>
<th>DATED</th>
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<tbody>
<tr>
<td>01</td>
<td>J B Kelman, Procurator Fiscal Ayr</td>
<td>28/02/2001</td>
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<td>02</td>
<td>J B Kelman, Procurator Fiscal Ayr</td>
<td>04/04/2001</td>
</tr>
<tr>
<td>03</td>
<td>Anne Marie Cuddihy, Law Officers' Secretariat</td>
<td>15/05/2001</td>
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<td>04</td>
<td>Neil F Davidson, Crown Office</td>
<td>17/05/2001</td>
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<td>05</td>
<td>Phil Gallie MSP</td>
<td>25/05/2001</td>
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<td>06</td>
<td>Ian L Murray, Procurator Fiscal Ayr</td>
<td>15/05/2003</td>
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<td>07</td>
<td>Cathy Jamieson MSP, Minister for Justice</td>
<td>08/07/2004</td>
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<td>08</td>
<td>Caitlin Dalglish, Freedom of Information Officer</td>
<td>19/10/2004</td>
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<td>09</td>
<td>Elish Angiolini response to John Purvis CBE MEP</td>
<td>19/07/2005</td>
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<td>10</td>
<td>Brian H Donohoe MP</td>
<td>31/10/2005</td>
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Signature

Date........27th January 2006

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186       Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
I respectfully request an oral hearing.

Additional information:
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When victims of crime report an offence to the police and the police subsequently charge an offender(s) with any form of breach of law, the Crown Office and Procurator Fiscal Service have a duty of care to investigate the circumstances with a view to prosecuting the offender(s). If the Crown Office and Procurator Fiscal Service then refuse to pursue a case by considering it to be "not in the public interest", a full and coherent written explanation in plain English should be forwarded to the victims of crime within a prescribed period of time.

If the written reasons for refusal to pursue a case are received by the victims of crime they can then check that these reasons do not infringe their rights contrary to legislation pertaining to Racial or Sexual or Disability Discrimination or in any other unlawful way. At present the victims of crime are kept wholly ignorant of everything pertaining to their complaint if it is not to be pursued.

If the present system remains in force and no written reasons are given for a refusal to pursue a case, victims of crime find it almost impossible to take any further action against the offender and are therefore left in a frustrating quandary without remedy; this is inherently unjust.

This scenario effectively means that by adhering to the law, as is required of them by the law, a victim of crime will have done themselves a gross disservice, ultimately leading to a travesty of justice. They will also experience a denial of their inalienable right to remedy through the due judicial process, a right for which they pay a premium through the public purse.

Ian Longworth
Dear Mr Hough

CONSIDERATION OF PETITION PE935

Thank you for your letter of 09 May, reminding us that you have not received a direct reply to Dr James Johnston’s previous letter of 16 March.

I understand that you have received a letter from Norman McFadyen CBE, The Crown Agent & Chief Executive of the Crown Office and Procurator Fiscal Service (COPFS). Mr McFadyen was in fact responding on behalf of all parts of COPFS, including Victim Information and Advice and we have nothing further to add to his letter. I enclose a copy of Mr McFadyen’s letter, for your ease of reference.

If you have any further queries, please do not hesitate to contact me.

Yours sincerely

Sue Moody, Director
Victim Information and Advice

Enc
CONSIDERATION OF PETITION PE935 FROM IAN LONGWORTH – EXPLANATION OF REASONS NOT TO PROSECUTE

Thank you for your letter of 16 March regarding the petition by Ian Longworth (PE935) urging the Scottish Executive to amend criminal procedure to require that a full written explanation is provided to the victim when a Procurator Fiscal does not consider it in the public interest to pursue criminal proceedings.

It may be helpful to outline those matters which the Procurator Fiscal can take into account when considering whether to prosecute. In this context I would refer the Committee to the Crown Office and Procurator Fiscal Service (COPFS) Prosecution Code, as published on our website:


This document confirms that a key objective of COPFS is to ensure, in the public interest, that all crimes made known to the Procurator Fiscal are investigated and that effective and consistent use is made of the range of prosecution options and alternatives to prosecution. The prosecutor must take account of legal and public interest considerations.

Firstly, the Procurator Fiscal must decide whether the conduct complained of constitutes a crime known to the law of Scotland and whether there is any legal impediment to prosecution.

The Procurator Fiscal then requires to consider whether there is sufficient, admissible and reliable evidence to support a prosecution. The essential facts of the case must be corroborated – that is they must be supported by evidence from at least two separate sources.

The next issue to determine is whether prosecution would be in the public interest. Assessment of the public interest often includes consideration of competing interests, including the interests of the victim, the accused and the wider community. An assessment of the public interest involves a careful consideration of all the factors relevant to a particular case. Such factors could include the nature and gravity of the offence, the impact of the offence on the victim and other witnesses, the age, background and personal circumstances of the accused, the age and personal circumstances of the victim and other witnesses, the attitude of the victim, the motive for the crime, time elapsed since
the offence was committed, mitigating circumstances, the effect of prosecution on the accused, the risk of further offending, the availability of a more appropriate civil remedy and public concern.

At the time of publication, our Prosecution Code stated that the Prosecutor would not disclose publicly the detailed reasons for a decision in a particular case. There were a number of reasons for that policy; decisions are based upon the consideration of confidential information and also because any information disclosed could contain allegations against an accused person, where they do not have the opportunity to answer or defend themselves as they would in court.

However, on 10 February 2005 the Lord Advocate announced a change to that policy in a Parliamentary debate on COPFS (see link below). He confirmed that, wherever possible, victims and next of kin who request it will be provided with an explanation for any decision to mark a case "no proceedings" or, in cases in which proceedings have been commenced, a decision to discontinue proceedings or to accept a plea to reduce a charge.

http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-05/sor0210-02.htm - Col14440

It was recognised in the Lord Advocate’s announcement that disclosure of reasons might not be possible in all cases. Decisions might rest on information that is given in confidence or there might be a particular public interest to protect. All such explanations are given privately to the victims or, where appropriate, the next of kin, as it is not considered appropriate for the Crown to make public statements on the guilt or innocence of an accused person when they do not have the ability to test any allegations against them in court of law.

This reactive approach is favoured because there will be instances where victims do not wish to receive information and where it would be inappropriate to make unsolicited contact which may cause unnecessary distress.

In addition to this reactive approach, we have adopted a proactive approach in relation to all cases involving deaths. A proactive approach is also recommended as good practice in relation to domestic abuse, racially motivated offences, sexual offences, child victim cases and other cases involving particularly vulnerable victims.

I think it might also be helpful to refer the committee to the COPFS Statement on the Treatment of Victims and Witnesses, which is again published on our website:


This statement outlines the commitment of this department to victims and witnesses of crime and the standards of service that they can expect to receive. In particular, it confirms the important role played by our Victim Information and Advice (VIA) officers in keeping victims and witnesses advised about the progress of cases in which they are involved.

I hope this is of assistance.

Yours sincerely

Norman McFadyen
Crown Agent

A Department of the Scottish Executive
13 September 2006

Dr James Johnston
Clerk to the Public Petitions Committee
Parliamentary Headquarters
EDINBURGH EH 99 1 SP

Dear Dr Johnston,

Consideration of Petition PE 935

Firstly I apologise for the delay in responding to previous correspondence however I am now pleased to respond with the views of Victim Support Scotland in relation to the above Petition.

Victim Support Scotland provides practical and emotional support to 100,000 victims of crime annually. In addition Victim Support Scotland’s Witness Service provides support to over 70,000 witnesses within all Sheriff and High Courts in Scotland.

Victim Support Scotland recognises the significant improvements that have been implemented in recent years in relation to support inclusion for victims e.g. Victim Information and Advice, Victim Notification and the Vulnerable Witness Act.
One of Victim Support Scotland’s current strategic objectives is to encourage individuals to participate in the criminal justice system. The success of this objective will centre on individuals’ confidence in the system and the support that is provided to them while involved in this area. One factor which is critical to enhancing understanding of the system is the provision of information at all stages of the process.

Victim Support Scotland supported the recent Victim Impact Statement pilot project in Edinburgh and Ayrshire which allowed for victims of particular crimes to provide a statement for the information of the court following conviction and prior to sentencing. The thrust of the pilot was to allow for the victims voice to be heard by providing information on the impact of the crime on the victim.

A more recent initiative in Glasgow is looking at the provision of Judges Sentencing Statements to victims and relatives explaining why a certain disposal was made.

The above initiatives support the belief that the provision of information to victims greatly assists both understanding but perhaps more importantly a confidence and willingness to participate in the Criminal Justice System.

In relation to the specific issue of a procurator fiscal not proceeding in the public interest the same rationale would apply. Failing to provide information would leave individuals confused and with a lack of understanding and potentially discourage any further participating in the criminal justice process.

The Crown Office and Procurator Fiscal Prosecution Code clearly sets out the factors that can be considered with regard to public interest considerations. Interestingly the guidance indicates that in assessing the public interest the prosecutor will take account of general public concerns as well as local community interest. Arrangements can be made to enable local community representatives to discuss general matters of concern with the Procurator Fiscal although the final decision is the responsibility of the prosecutor.

It would appear therefore that the provision already exists for some form of dialogue for community groups. The petition potentially affords the opportunity to extend this existing provision allowing individuals to seek information as appropriate.

Statistical information available from the Crown and Procurator Fiscal Service indicates that during the years between 2002-2006 on average 15% of cases reported (circa 50,000) are not proceeded with. Cases not processed with in the public interest are not

President HRH The Princess Royal
Victim Support Scotland, National Office West, 10 Jocelyn Square Glasgow G1 5JU
Tel 0141 553 1726 Fax 0141 552 3316 Email info@vss-nationalofficewest.org.uk Website www.victimsupport.org

Victim Support Scotland, company limited by guarantee registered number 110185
Recognised as a charity by the Inland Revenue, Scottish Charity Number SC002138

Helping people affected by Crime Victim Support Scotland Helpline 0845 6-3 9213
specifically mentioned and as a result the issues associated with volume/resources requires to provide information to victims is not subject of comment.

It would appear that if the general headings for not proceeding in the public interest are currently in the public domain via Crown Office publication it would appear reasonable that this information be provided to victims so requiring this level of detail.

Victim Support Scotland recognises that this level of information is not necessarily universally required, however would support the disclosure of this information to victims were requested.

I trust this information will be of assistance to you.

Yours sincerely,

Jim Andrews

HEAD OF VICTIM SERVICES

President HRH The Princess Royal
Victim Support Scotland, National Office West, 10 Jocelyn Square Glasgow G1 5JU
Tel 0141 553 1726 Fax 0141 552 3316 Email info@vss-nationalofficewest.org.uk Website www.victimsupport.org

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Ben Conway

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Petition by Ben Conway calling for the Scottish Parliament to urge the Scottish Executive to promote pastoral and spiritual care in hospitals to ensure that the physical, psychological, social and spiritual needs of patients are properly addressed.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:
Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

<table>
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<th>Helen Eadie MSP</th>
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<td>Correspondence to follow.</td>
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Petitioners appearing before the Committee
The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

| I do NOT wish to make a brief statement before the Committee |

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

| Signature ...... |
| Date ......................... 12-01-06 |

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186          Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
1 March 2006

Dr James Johnston
Clerk to the Public Petitions Committee
The Scottish Parliament
TG.01
Parliamentary Headquarters
Edinburgh
EH99 1SP

Dear Dr Johnston

Consideration of Petition PE923

I am happy to make the following comments on the petitioner Ben Conway’s request calling for “the Scottish Parliament to urge the Scottish Executive to promote pastoral and spiritual care in hospitals to ensure that the physical, psychological, social and spiritual needs of patients are properly addressed.”

I will do this in two sections, first of all to explain what the Scottish Executive has been doing in this area over the past few years, and secondly to explain in more detail the workings, reactions and representations there have been on behalf of chaplains and others to the interpretation of the Data Protection Act.

My own work for the past four years has been as the ‘Healthcare Chaplaincy Training and Development Officer and Spiritual Care Co-ordinator/Advisor’ to NHS Scotland. I have been closely involved with the Scottish Executive Health Department (SEHD), the Health Boards, the chaplains and the various faith communities throughout Scotland including the Scottish Interfaith Council. There have been real developments in the area of spiritual care and there have been some areas of difficulty such as the UK Commissioner’s interpretation of the Data Protection Act.

Scottish Executive and Spiritual Care

In October 2002 the SEHD issued a Health Department Letter (HDL (2002) 76 Spiritual Care in NHS Scotland). This was based on guidance drawn up by a multi-faith working group which was brought together by the SEHD and presented to a conference on health and social care and endorsed by the then Minister of Health, Mr Malcolm Chisholm. The HDL went to every health board asking them to use it to write and implement a spiritual care policy, in line with its principles, and which took account of local community needs.

One of the issues highlighted in the HDL was that although church attendance had declined, the needs of patients for spiritual care in its broad sense, i.e. not necessarily religious, were as great or greater than ever. Fewer people now had a minister or priest to call on during times of anxiety, and chaplains were being increasingly called on to fulfil a pastoral role. The multi-cultural and multi-faith nature of Scottish society was recognised and the rights of the smaller faith groups to equal levels of care were underlined.

Contd.........1 of 4
In accord with World Health Organisation policy, it was stated that spiritual needs were an integral part of health, alongside physical, psychological and social needs. A holistic view of health requires a holistic response.

All staff should be helped to become more aware of this approach as all have a part to play in spiritual care. All in the health service, including staff as well as patients and carers have the right to be valued, listened to, helped as their circumstances caused them to ask questions of meaning, affirmed, cared for and accompanied on what can often be a difficult journey. Those with particular religious needs such as prayer times, worship or meditation, should be enabled wherever practical to exercise their religion.

Health Boards have established spiritual care committees and this type of care is now seen as a responsibility of the service in partnership with faith communities. In general this approach sits comfortably alongside other policies and initiatives of the service such as Fair For All, Patient Focus.

Public Involvement and Equality and Diversity. The rights of individuals and groups to be treated appropriately and without discrimination is now upheld by law (Reform Act 2004) and is in keeping with this understanding of spiritual care. Chaplains and 'Departments of Spiritual and Religious Care' are now better integrated into the healthcare system. A multi-faith Spiritual Care Development Committee has been established to work nationally to enable faith communities, patients, chaplains, staff and others to engage with the SEHD and each other on matters concerning spiritual care. Other work is being done to establish proper levels of standards for a chaplaincy service and work is underway to establish and improve the education and training of staff and chaplains for this area.

It is clear that the Scottish Executive is promoting and encouraging this holistic approach to health care and is in tune with the words of the petitioner. Of course there are resource considerations with the need for quiet spaces as well as trained chaplaincy personnel. Spiritual care is not yet as well understood as it requires to be and the research evidence which shows the value and cost effectiveness of specialist chaplains and of good spiritual care is growing steadily.

**Data Protection and Spiritual Care**

'Data Protection and its effect on chaplains and faith community visitors in NHS Scotland'

*What is the Problem? And – is there a solution?*

The implementation of the Data Protection Act 1998 has had considerable effect on the work and, in particular, the access for chaplains and faith community visitors to patients. Until recently it was not uncommon for there to be a book at the reception desk of a hospital, which on enquiry, would be given to any member of the clergy for their perusal and information. That information would then be used to plan a pattern of visitation, either to members of their congregation or to people living in their parish area.

The Act makes it clear that such sensitive information is a private matter for individuals and should only be shared with others with their informed consent.

With regard to the NHS it is recognised that it is good practice for staff to have information about a patient in order to care for them and give them the medical treatment they need. Health Professionals are thus exempt from the provisions of the Act and may have access to the information they need without this explicit informed consent. Chaplains, because they are not a registered health care profession, and because they are not, according to the UK Commissioner for Data Protection, "part of the medical team", are not exempt.
Therefore unless a patient gives their informed consent, a chaplain has no right to know either that a patient is in hospital or what (if any) religious faith they may profess, nor whether they would wish to share any sort of spiritual need. This information is of course no longer available to visiting clergy or pastoral groups such as those of the petitioner.

The recording of a patient’s religious or spiritual need is notoriously inefficient and often either does not happen or contains many mistakes. Such needs change rapidly during a spell in hospital and so the admission process alone will never manage to do this adequately.

The World Health Organisation and recent policy statements of the SEHD are in complete agreement on the need to understand healthcare needs in a broad framework i.e., physical, psychological, social and spiritual, and that any view of health which omits any of these aspects is seriously deficient. It seems logical that chaplains, who are increasingly employees of the health service, should be understood as members of the healthcare team, and therefore have the exemption rights of their colleagues in the multi-professional team. If spiritual need (the need for affirmation, love, forgiveness, help in the search for meaning, etc) is an integral part of health, then it is difficult to see why the practitioner specialists in this area are denied the information they sometimes need to facilitate the appropriate spiritual or religious care.

The denial of this information can and has led to a poorer spiritual care service in certain instances. This was not the intention of the Act or the legislature but it is the effect. Many people’s spiritual needs have not been picked up and met. For example, there are reports of Roman Catholic patients not being given the last rites because no one had either asked or passed on the information and Jewish visitors can not find their people to visit because they can no longer see the patient lists. Whilst it is important to guard the privacy of people and to understand that they have a right not to be imposed upon where it is not wanted, it would seem that the sledgehammer of the law has covered a greater area than the nut of malpractice it was intended to avert.

Chaplains have a professional code which prevents them from passing on information without consent or from imposing their beliefs on patients, and an ethical code which guarantees a degree of confidentiality. They have the same constraints (or more) than other health care professions with information they are given. It is strange that they are almost singled out in not being given exemption.

Visiting clergy or faith community pastors are, in one sense, members of the public (as the NHS cannot vouch for them) and so it is even less likely that they will be given information without explicit consent. It might be possible for them to be accredited and to agree to a code of confidentiality but for the present that would not suffice. This is the situation of the petitioner and it would be illegal and open the health board to possible litigation if someone objected to the giving of sensitive information without prior consent.

I am in agreement that in the past information was too available and that it is important to protect a patient’s privacy. However the legislation and its interpretation has taken this too far, causing a reduction in care. Considerable lobbying has taken place throughout the UK and questions have been asked in Westminster (Data Protection law is UK Law). In Scotland I, along with a senior civil servant, have spoken with the UK Commissioner’s representative on this matter. The Spiritual Care Development Committee and others have written to state the case for better information for chaplains but without any significant success.

I am sure that the petitioner and his group of pastoral visitors have been appreciated by many of the people they have visited in the past, however there may have been some who did not want their presence in the hospital to be known. Whereas those who are employed or accountable to the health service should, I believe, have better access to information, I do not think it likely nor entirely desirable for congregational pastoral groups to be given access to the details of who are in hospital without prior consent.
I am happy to support the general aim and object of the petition. I am sure it is in line with SEHD policy. However I believe there must be safeguards to the privacy of patients for those who do not wish their presence to be known to others in the community.

Submission by:

Rev Christopher L Levison
Healthcare Chaplaincy Training and Development Officer/Spiritual Care Advisor
Email: Chris.Levison@nes.scot.nhs.uk
Tel: 0141 223 1443
Dear Dr. Johnston,

Thank you for your invitation to comment on petition PE923. I am happy to make the following comments in relation to the petitioner Ben Conway’s request. The following are my comments for consideration:

**Spirituality in healthcare practices**

The importance of spirituality for the practice of healthcare is rapidly taking on significance within the healthcare disciplines. Importantly, there is a growing evidence base to suggest that religion and spirituality may be positively associated within the development and maintenance of quality of life and human well-being. There is also research evidence to suggest that patient’s want spiritual aspects of their experiences of illness addressed within the process of care. This is important in the light of the patient’s charter which clearly articulates the right of health service users to have their needs recognised and addressed. This combined with the Scottish Executive’s current emphasis on patient focussed care (PFPI & CSAC), which stresses the importance of patient and carer’s views informing service developments, would indicate a need for spiritual care in general and chaplains in particular (chaplains viewed as specialists in spiritual care), to be seen as integral rather than peripheral to the practise of healthcare.

**What do we mean by ‘Spirituality?’**

In assessing the significance of these matters, it is important to distinguish between “religiosity” and “spirituality.” Religiosity is defined as participation in the particular beliefs, rituals, and activities of traditional religion. It can serve as a nurturer or channel for spirituality, but is not synonymous with it. Spirituality is more basic than religiosity. It is a subjective experience that exists both within and outside traditional religious systems. Spirituality relates to the way in which people understand and live their lives in...
view of their sense of ultimate meaning and value. It includes the need to find satisfactory answers to ultimate questions about the meaning of life, illness and death. It can be seen as comprising elements of meaning, purpose, value, hope, love and for some people, a connection to a higher power or something greater than self. Perceived in this way, spiritual care is not simply for “religious patients,” but for all patients of all faiths and none.

**In what way does spirituality improve quality of life?**
On the basis of current knowledge we might consider that religious and spiritual beliefs may affect patient’s well being in the following ways:

- Enhances coping by offering such things as hope, value, meaning and purpose.
- Facilitates social integration and support by linking religious patients with specific forms of caring communities.
- Provides systems of meaning and existential coherence.
- Establishes a perceived relationship with a divine other, i.e. persons can extend their circle of social support by drawing in religious and spiritual figures.
- Promotes participation in specific patterns of religious organisation and lifestyle which may offer support and protection from, for example, anxiety and depression.

**Understanding the experience of illness**
These aspects of the impact of spirituality are important when we reflect on the experience of illness. Illnesses are deeply meaningful events within people’s lives, events which often challenge people to think about certain aspects of their lives quite differently. Spirituality is important in that it provides belief structures and modes of coping within which people can make sense of their lives, explain and cope with their illness experiences and find and maintain a sense of hope, inner harmony and peacefulness in the midst of the existential challenges illness inevitably brings. Enabling people to work with and care for this dimension of their illness experience forms the heart of spiritual care and comprises the core of the task of professional chaplain. To imply that such experiences are unimportant or somehow secondary within the process of healthcare is to misunderstand in a quite fundamental way the nature and experience of illness and to omit a vital dimension from our understanding of what patient’s are actually going through.

**The role of chaplaincy**
While many of the healthcare disciplines are beginning to recognise and explore the significance of spirituality for healthcare practices, it is the chaplain who specialises in recognising, responding to and caring the spiritual dimension of patient’s experiences of illness. To exclude chaplains from vital sources of information which have the potential to enable them to do this well and in so doing enhance the quality of patient’s lives would appear dissonant and inappropriate. We must therefore think carefully about the implications of the data protection act as it relates to the discipline of chaplaincy. If we are serious about whole-person care, then it is vital that we address patients as whole persons whose feelings, experiences, hopes and desires are taken very seriously and cared
for in a professional manner. Providing informational access to full-time chaplains in order that they can respond effectively to patient’s spiritual needs seems not only sensible, but vital if the provision of meaningful whole-person care is to become a reality.

It is however important to acknowledge that with regard to the data protection issues that form a part of the current discussion, there is a difference in circumstances between full-time chaplains, many of whom are Trust employees and bound by the ethical and professional codes of the healthcare service, and people who visit hospitals with the aim of providing spiritual care (Parish ministers, priests, rabbi’s etc) and who are not directly responsible to the Trusts or governed by the same legislation and codes of practice. In the light of this, please note that the discussion reflected in the previous section of the paper relates primarily to full-time hospital chaplains.

**Imposing false values or genuinely person-centred care?**

It is certainly true that one would wish at all costs to avoid imposing alien values on vulnerable people. However, the evidence would suggest that people going through illness are encountering experiences which are deeply spiritual. (in the wider sense outlined above). Not to address these issues in a clear and professional manner risks imposing false de-spiritualised values and approaches to care which fail to meet the expressed needs of suffering and vulnerable people. Access to information that will enable chaplains to perform their tasks effectively and sensitively is therefore a vital dimension of the process of care offered by a person-centred multidisciplinary healthcare team.

**Conclusion**

In conclusion, the role of spirituality (in its broadest sense) within contemporary healthcare practices is an aspect of care which is gaining in both credibility and in interest. The Scottish Executive have been deeply involved with developing research and educational strategies which have enabled this dimension of people’s experiences to be recognised and cared for effectively. Nevertheless, the discussion remains complex particularly in relation to whom should access information about patients and why they might have the right to do so. In this paper I have focused primarily on full-time hospital chaplains who are employed by either the Church or by the Trusts. There is a clear case for chaplain’s being allowed access to information relating to patients in order that they can effectively perform their professional role. Likewise there are clear checks and balances to ensure that this information is dealt with in ways which protect the confidentiality and safety of the patient. The case for providing access to other spiritual carers who sit outside of the formal healthcare system is much less clear.

Professor John Swinton
21st March 2006-03-21
University of Aberdeen.
Dear Richard,

CONSIDERATION OF PETITION PE923

Thank you for your letter of 4 May to Vanessa Taylor reminding us that SIFC has not yet responded to your invitation to submit a response to the above petition. I have just taken up appointment as part-time Policy and Equalities Officer during Vanessa's current absence on maternity leave.

I am very grateful to you for providing SIFC with the opportunity to make a submission in relation to this petition, however, SIFC has decided on this occasion not to make a direct response. The petition was, however, highlighted to members of SIFC in our last Parliamentary newsletter and members were encouraged to make their own direct input.

Yours sincerely

DEBORAH WILKIE
Policy and Equalities Officer
I offer the following comments on the petition PE 923 submitted by Mr Ben Conway which requests that we “promote pastoral and spiritual care in hospitals to ensure that the physical, psychological, social and spiritual needs of patients are properly addressed.”

I will first of all explain what we have done, and continue to do to promote spiritual care across NHSScotland and, secondly, explain how the Data Protection Act has impacted on our ability to support the work carried out by groups like that co-ordinated by Mr Conway.

Background

We established a multi-faith Working Group on Spiritual Care in the NHS in 2000 to review the way in which NHSScotland supported the spiritual and religious needs of its patients. The Group’s report was issued for consultation in the summer of 2001, and it and the responses to the consultation were discussed at a conference in November of that year. Further discussion and consultation then took place on a draft Health Department Letter (HDL) with the final guidance - HDL(2002)76 Spiritual Care in NHS Scotland1 - issuing in October 2002.

The HDL accepted the World Health Organisation (WHO) description which recognises spiritual needs as an integral part of health, alongside physical, psychological and social needs. It noted that, although church attendance had declined, the needs of patients for spiritual care in its broad sense were as great as ever. Fewer people now had a minister or priest to call on during times of anxiety, and hospital chaplains were being increasingly asked to fulfil a pastoral role. It also recognised the multi-cultural and multi-faith nature of Scottish society and the right of patients from smaller faith groups to have their spiritual and religious needs met.

The HDL identified a broader role for the NHS, one which accepted that patients, and those who care for them, have the right to be valued, listened to and supported as the circumstances of what can often be a difficult journey of care caused them to ask questions of meaning, such as ‘why me?’. Similarly, those with particular religious needs, such as prayer times, worship or meditation, had to be supported wherever practical to exercise their religion while in hospital. This view of health required the NHS to develop a more holistic approach to the care it offered. The HDL therefore required Boards to develop and implement a spiritual care policy which was in line with its guidance and which took account of local community need.

The HDL’s approach was, subsequently, underpinned by the Department’s wider Fair for All approach and the NHS Reform (Scotland) Act 2004 which placed a duty on Boards to ensure that individuals and groups are treated without discrimination.

Progress since 2002

NHS Boards have now, in partnership with local faith communities, established Spiritual Care Committees to oversee the work of their Department of Spiritual and Religious Care and to help them ensure that chaplains and their work are integrated into the mainstream healthcare system.

Nationally, we have established a multi-faith Spiritual Care Development Committee to enable faith communities, patients, chaplains, NHS staff and others to engage with the Executive and each other on matters concerning spiritual care in the NHS. NHS Quality Improvement Scotland has also begun work to develop standards for chaplaincy services, while NHS Education Scotland has taken responsibility for the improving the education and training of staff and chaplains in this area.

The Executive will continue to promote and encourage the development a holistic approach which recognises that pastoral and spiritual care are an integral part of good healthcare. As part of this, we agreed with the faith communities when the HDL was issued that there would be benefit in reviewing its implementation after some 3 years. For that reason we will later this year consult fairly widely about the guidance in the light of the experience of the past three years, and to consider ways in which it could be updated and developed. This consultation will include churches and faith groups, as well as chaplains, spiritual care committees, lead NHS managers and interested groups like Mr Conway’s.

Data Protection

Turning now to the issue about the availability of information about who is in hospital to pastoral groups. Can I first of all place on record my appreciation of the excellent work that Mr Conway and many like-minded pastoral visitors do to support patients across Scotland. This type of support is a vital element of the holistic approach we are developing and is a perfect complement to the clinical work of our staff. However, as Mr Conway’s letter records, the implementation of the Data Protection Act 1998 has required us to develop a different way of using this valuable source of community support.

Having accepted the WHO’s holistic description of health, the HDL stated, at paragraph 20, that the:

‘provision of spiritual care within the NHS is therefore an integral part of the health care offered. Spiritual care-givers are therefore members of the professional care team’ and should be ‘provided with the information they need to provide spiritual, religious and pastoral care’.
Paragraph 21 therefore recognised that:

‘Patients have a right to appropriate spiritual care and a right of confidentiality. It is the duty of the NHS to ensure these rights are met. As part of the health care team, chaplains are under the same duty of confidentiality as all other health care professionals. Informed consent is the ideal. In order to provide spiritual care, a certain level of information is required. However, on occasion more comprehensive information will be required. All patients should be informed that they have the right to withhold personal information, such as religious affiliation and that if they do not exercise this right, this information will be passed to the spiritual care department.’

Effectively, the HDL placed the onus on the patient to ‘opt out’ of arrangements to provide the Spiritual Care Department with information about their religious affiliation. If they did not do so, the information was used by the Spiritual Care Department to arrange for them to be visited by either a member of the team or, where appropriate, the local minister, priest or a member of the faith group to which they belonged.

However, the Information Commissioner subsequently advised us that, in terms of the Data Protection Act 1998, information on a person’s religious affiliation is confidential information and, as chaplains are not a registered health care profession, they could only have access to such information with the explicit, informed consent of a patient. We have therefore clarified the Act’s requirements in an addendum to the HDL which indicates that:

‘Where details about a patient’s religion are specifically requested by the care team, for example as part of an admission procedure, the patient should be informed about why this information is being recorded. Confirmation should be sought that the patient explicitly consents for this information on religion to be recorded and disclosed to the chaplaincy service. In other words patients should opt in to receiving chaplaincy services.’

We are aware that this clarification has led to less information being available to pastoral groups. Until recently it was not uncommon for a list of in-patients to be kept at the reception desk of a hospital which clergy or pastoral visitors could use in planning visits, either to members of their congregation or to people living in their parish area. However, the Data Protection Act makes it clear that such information is a private matter for individuals and should only be shared with others with their prior, informed consent.

I am aware that there is a widely-held view among UK faith groups that this interpretation of the legislation is leading to a reduction in the quality of care available to some patients. However, we are in no doubt about the correctness of the interpretation of the Act’s provision now contained in the addendum to the HDL.

Conclusion

I know that chaplains, who are increasingly employed by the NHS, have a professional and ethical code which prevents them from either passing on information without consent or from imposing their beliefs on patients. As chaplains operate under the same constraints as the health care professionals with which they work, I welcome their professional Association’s stated intention of taking the necessary steps to see NHS chaplaincy formally recognised as a health care profession. This should, in time, allow chaplains’ access to the information already available to other members of the clinical team.
I am afraid however that the position for community pastoral visitors, like Mr Conway, is unlikely to change as the provisions of the Data Protection Act make it illegal for the NHS to give pastoral groups access to details of who is in hospital without the patient's prior informed consent. We have tried to address the type of concern expressed by Mr Conway by stressing in the addendum to the HDL the importance of staff explaining why they are requesting details about a patient's religion in the hope that, if the patient is aware of the availability of this type of support, they will consent to the information being recorded, disclosed to the chaplaincy service and, where appropriate, shared with a recognised pastoral group.

I am sure that the work of Mr Conway and his group of pastoral visitors have been appreciated by many of the people they have visited in the past. They should rest assured that we are doing everything we can to ensure that, while complying with the requirements of the Data Protection Act, patients across Scotland can continue to benefit from their excellent support.

ANDY KERR