



The Scottish Parliament
Pàrlamaid na h-Alba

Public Information Service
The Scottish Parliament
Edinburgh
EH99 1SP

Reverend J M Ritchie
2/5 Croft-An-Righ
Edinburgh
EH8 8EG

Tel: 0131-348-5000
Calls via Text Relay Service: 18001-0131-348-5000

Fax: 0131-348-5601
sp.info@scottish.parliament.uk

3 March 2010

Dear Reverend J M Ritchie

Thank you for your phone call this afternoon. As discussed, I have searched all Parliamentary business records for documents concerning the pardoning of persons convicted in Scotland under witchcraft legislation, and have discovered the enclosed Public Petitions lodged in February 2008 by Euan Irvine. I am unsure if these are the exact documents you require, however I hope they may be of some use to you. I have enclosed:

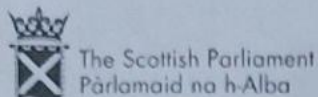
- Information on Petition 1127, and an accompanying briefing for Members of the Scottish Parliament (MSPs) created by the Scottish Parliament Information Centre (SPICe).
- Information on Petition 1128, and an accompanying briefing for MSPs created by SPICe.
- The Official Reports of the Public Petitions Committee meetings that considered these petitions, on 4 March 2008 and 9 September 2008.

I hope this information will be helpful, however please feel free to contact Public Information again if you believe there are additional documents concerning this subject, or if you have any other questions about the Scottish Parliament.

Yours sincerely

Paul Fraser

Paul Fraser
Public Information Service

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Petition by Ewan Irvine on behalf of Full Moon Investigations, calling on the Scottish Parliament to urge the Scottish Government to make representations to the Home Secretary to reconsider the decision to refuse the posthumous pardon of Helen Duncan who was tried under the Witchcraft Act 1735.

Petitioner: Ewan Irvine**On behalf of:** Full Moon Investigations**Number of signatures:**

206

Date lodged:

25 February 2008

SPICe Briefing: Briefing for PE1127**Summary:**

4 March 2008 : The Committee agreed to close this petition on the grounds that a decision on this issue has been made by the Home Secretary within the last year and that neither the Scottish Parliament nor the Scottish Government could overturn a decision made by an English court. [Link to Official Report 4 March 2008](#)

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Briefing for the Public Petitions Committee

Petition Number: PE1127

Main Petitioner: Ewan Irvine on behalf of Full Moon Investigations.

Subject: Calls on the Parliament to urge the Scottish Government to make representations to the Home Secretary to reconsider the decision to refuse the posthumous pardon of Helen Duncan who was tried under the Witchcraft Act 1753.

Background

Helen Duncan was born in Callander, Scotland, on the 25 November 1897. From an early age she is said to have displayed the 'gift of medium' with the spirit world. A prominent feature of her sittings was her apparent ability to produce 'ectoplasm'¹ from her mouth during her trances. Ms Duncan was accepted as a minister to a sizeable network of spiritualist churches and made a living by conducting séances throughout Britain, during which the spirits of the dead were alleged to have appeared, sometimes talking to and even touching their relatives.

During World War Two Ms Duncan lived in Portsmouth, headquarters of the Royal Navy's Home Fleet. In November 1941, the spirit of a sailor reportedly appeared at one of her séances announcing that he had just gone down with the battleship HMS Barham. Although Barham was sunk by a German submarine on 25 November 1941, with the loss of over two thirds of her crew, the warship was not officially declared lost until several months later, its sinking having been kept secret to mislead the enemy and protect morale. Subsequently, Ms Duncan's activities attracted the attention of the authorities and, on 19 January 1944, one of her séances was interrupted by a police raid during which she and three associates were arrested. Ms Duncan was originally charged under section 4 of the Vagrancy Act 1824, under which most charges relating to fortune-telling, astrology and spiritualism were prosecuted by magistrates in the 20th century. These were considered to be relatively petty charges and usually resulted in a fine, if proved. Helen Duncan was eventually tried by jury at the Old Bailey for contravening section 4 of the Witchcraft Act 1735, which carried the heavier penalty of a prison sentence².

After a trial lasting eight days Helen Duncan was convicted of conspiracy to contravene the provisions of section 4 of the Witchcraft Act 1735. The particulars of the offence alleged that Ms Duncan (along with her three associates):

¹ Ectoplasm is the outer layer of cytoplasm of a cell and a substance believed by some spiritualists to emanate from the body of a medium.

² BBC Scottish History website: accessed 21 February 2008.

"[...] conspired together and with other persons unknown to pretend to exercise or use a kind of conjuration, to wit, that through the agency of the said Victoria Helen Duncan spirits of deceased persons should appear to be present in fact in such place as the said Victoria Helen Duncan then was in and that the said spirits were communicating with living persons then and there present".

Helen Duncan was sentenced to serve nine months in Holloway prison. Appeals against both conviction and sentence were dismissed by the Court of Criminal Appeal. Helen Duncan was the last person in Britain to be jailed under the 1735 Act which was repealed by the Fraudulent Mediums Act 1951.

A common misconception about Helen Duncan's conviction is that she was the last person in Britain to be convicted of being a witch. In fact, the Witchcraft Act 1735 was originally formulated to eradicate the belief in witches and its introduction meant that from 1735 onwards an individual could no longer be tried as a witch. It was, however, possible to be prosecuted for pretending to "exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertake to tell fortunes". Supposed contact with spirits fell into this category.

UK Government Action

In May 2007 the UK Government issued a response to a petition which asked the Prime Minister to "pardon Helen Duncan, the last witch to be tried in Britain". The UK Government's response stated:

"By constitutional convention, the Home Secretary is responsible, in England and Wales, for recommending to Her Majesty the exercise of the Royal Prerogative of Mercy to grant a Free Pardon. The criteria currently adopted by the Home Secretary in considering whether to make such a recommendation to Her Majesty have been applied by his predecessors since around the turn of the 19th century. These criteria have proper regard to the constitutional position that the courts and not the Government decide whether a person is guilty of a crime. Thus the Home Secretary would generally only recommend the granting of a Free Pardon in respect of offences where it is impossible to refer the case to an appellate court, and where new evidence had come to light which demonstrated conclusively that no offence was committed or that the individual concerned did not commit the offence.

Moreover, the effect of a Free Pardon is that the conviction is disregarded to the extent that, as far as possible, the person is relieved of all penalties and other consequences of the conviction and it is only the courts that have the power to quash a conviction.

You will appreciate that, against this background, it is extremely rare for the Home Secretary to use his power to recommend a posthumous Free Pardon. In modern times, only one such Pardon has been recommended. It would also be particularly difficult to apply current

knowledge, morality and other criteria to events, which took place some fifty years ago”.

Scottish Government Action

The Scottish Government has not taken any action on this particular issue.

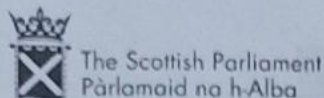
Scottish Parliament Action

The Scottish Parliament has not taken any action on this particular issue and the subject of witchcraft has not been debated or considered by the Parliament.

Graham Ross
Senior Research Specialist
21 February 2008

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However if you have any comments on any petition briefing you can email us at spice@scottish.parliament.uk

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.


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Petition 1128 (pdf size 50 KB posted 26.02.2008)

Petition by Ewan Irvine

Closed Petitions - Petition PE1128

Petition by Ewan Irvine, on behalf of Full Moon Investigations, calling on the Scottish Parliament to urge the Scottish Government to take necessary action to grant a posthumous pardon to all persons convicted in Scotland under all Witchcraft legislation.

Petitioner: Ewan Irvine

On behalf of: Full Moon Investigations

Number of signatures:

65

Date lodged:

25 February 2008

SPICe Briefing: Briefing for PE1128

Summary:

Written Submissions for PE1128

4 March 2008 : The Committee agreed to seek responses to the issues raised in the petition from the Scottish Government, Scottish Interfaith Council, University of Edinburgh and the Equality and Human Rights Commission. [Link to Official Report 4 March 2008](#)

9 September 2008 : The Committee agreed to close consideration of the petition on the grounds that the Scottish Government does not consider the use of a Royal Prerogative of Mercy appropriate in this case as the people were tried and convicted in the laws of the time. Further, it may be particularly difficult to apply modern knowledge and concepts of morality to events which took place centuries ago. [Link to Official Report 9 September 2008](#)

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Briefing for the Public Petitions Committee

Petition Number: PE1128

Main Petitioner: Petition by Ewan Irvine on behalf of Full Moon Investigations

Subject: Calls on the Parliament to urge the Scottish Government to take necessary action to grant a posthumous pardon to all persons convicted in Scotland under all witchcraft legislation.

Background

The following information has been taken from 'The Survey of Scottish Witchcraft'¹ ("the Survey").

The Survey identified a total number of 3,837 people who were accused of witchcraft in Scotland between 1563 and 1736. The authors state that older accounts of the subject tended to produce much higher figures, such as 4,500 or 30,000 and whilst these figures are sometimes repeated, the authors state that they are based on speculation rather than detailed research. Of the 3,837 people who are on the survey database, 3,212 are named in addition to a further 625 unnamed people or groups. Of the 3,212 named individuals, the sentence given after trial is only known in 305 cases: 205 were to be executed; 52 were acquitted; 27 were banished; 11 were declared fugitive; 6 were excommunicated; 2 were "put to the horn" (outlawed); 1 person was to be kept in prison; and 1 person was to be publicly humiliated. In addition, a further 98 were recorded as having fled from prosecution. This seems to suggest that 67% of those tried were sentenced to death.

However, the authors state that this figure is probably not very accurate. It is based on only 305 cases—less than a tenth of the 3,212 people known to have been accused. The question is whether the 305 cases were typical, and the authors state that in two ways they were not. Firstly, most of them come from trials in the central judiciary court (see below). This probably acquitted a higher proportion of witches than local courts—and most trials were in local courts. Secondly, however, the 3,212 named individuals include a number who were being investigated by the church authorities. Probably some of these went on to receive a criminal trial, and may then have been executed; but others' cases were probably dropped before they came to trial. The first of the problems would suggest that the overall execution rate was higher than 67%; the second problem would suggest that it was lower. That does not mean that the figure of 67% is correct; it means that there is a good deal of uncertainty about it.

¹ Julian Goodare, Lauren Martin, Joyce Miller and Lousie Yeoman; 'The Survey of Scottish Witchcraft' <http://www.arts.ed.ac.uk/witches/cite.html> (archived January 2003, accessed 20 February 2008). Scottish History, School of History and Classics, University of Edinburgh.

A number of courts were involved in the trials of witches:

- Local church courts (kirk sessions and presbyteries) – these courts had no criminal jurisdiction and would pass on complaints about witchcraft to one of the following bodies
- Privy Council, committee of estates or parliament – these bodies did not hold trials but would issue "commissions" authorising people to hold trials
- Court of Justiciary – the highest criminal court situated in Edinburgh which tried numerous witches
- Circuit courts – travelling versions of the Court of Justiciary which often tried witches in the locations at which they were held
- Regular local courts (sheriff courts and burgh courts) – witchcraft was a serious crime and normally beyond the jurisdiction of these courts
- Local criminal courts held under commissions of justiciary (see above) – these were usually ad hoc courts trying one person at a time. Most Scottish witches were tried in such courts

The Survey states that four types of evidence were used in the trials which took place:

- Confession evidence – this was often extracted under torture. Typically, if a suspect was interrogated they would be expected to confess to making a pact with the Devil and to harming their neighbours by maleficent witchcraft, though one or other was often omitted
- Neighbours testimony – statements by neighbours usually ignored the Devil. They usually described quarrels with the suspect followed by misfortune they had suffered
- Other witches' testimony – when witches were interrogated they were sometimes asked about their accomplices. The people they named could then be arrested and interrogated. This was an effective way of increasing the number of suspects; it seems mainly to have happened during short periods of intense witch-hunting.
- The Devil's mark – the Devil was believed to mark his followers at the time they made a pact with him, as a parody of Christian baptism. A physical search of the suspect's body could find this mark – either a visible body blemish or an insensitive spot. The insensitive spot was discovered by pricking with pins, sometimes by the interrogators themselves and sometimes by itinerant professional "witch-prickers" (of whom about 10 are known to have acted in Scotland)

The Survey states that the lawyers in charge of the central courts gradually became less convinced that the usual kinds of evidence could prove guilt. The validity of confessions made under torture was questioned, and pricking for the Devil's mark came to be seen as fraudulent. The Survey goes on to say that after the Glorious Revolution of 1689² the state became more secular and no longer needed to prove its godliness by executing witches. The Scottish Witchcraft Act (which was passed in the Parliament of Scotland in the Ninth Parliament of Queen Mary, entitled, *Anentis Witchcrafts*), was repealed in 1735 by the introduction of the Witchcraft Act 1735 which was, in turn, repealed by the Fraudulent Mediums Act 1951.

Scottish Government Action

The Scottish Government has not taken any action on this particular issue.

Scottish Parliament Action

The Scottish Parliament has not taken any action on this issue and the subject of witchcraft has not been debated in the Parliament.

Graham Ross
Senior Research Specialist
21 February 2008

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² The term Glorious Revolution refers to the series of events in 1688-89 which culminated in the exile of King James II and the accession to the throne of William and Mary. It has also been seen as a watershed in the development of the constitution and especially of the role of Parliament.

officers in full-time posts. I would like us to put a specific question on that to the Government, along with the more general questions.

John Farquhar Munro: The minister said that the design of snares was to be amended to make them more humane—if that is the right word. Legislation suggests that those setting the snares have to examine them again within 24 hours, but that has never been enforced. More should be made of the legislation to ensure that such re-examination takes place. We should find out from the minister what the current situation is and when the Government is likely to introduce legislation.

Rhoda Grant: We should also ask how the Government will review the legislation. As Robin Harper and Nanette Mine have said, very few wildlife officers are in post to track how the new legislation is working. I would be keen to hear how the Government plans to review the legislation, and I would be keen to hear whether the legislation has had the desired effect.

Col 1044

The Convener: Issues arise on monitoring and implementation, but also on alternatives to snaring—differing views exist on whether to snare or not to snare. Let us get some responses from the Government.

Advocacy Services (PE1126)

The Convener: PE1126 by Lesley Learmonth and Joan Mulroy, on behalf of Enable Scotland, is on dealing with legislation in order to ensure that people with learning disabilities have an enforceable right to the services of an independent advocate, and that such services are adequately funded.

We should explore the matter. Before recess, Enable gave a good presentation to the committee. We should find out whether people can get adequate guidance on the procedures if they wish to challenge a lack of independent advocacy. We should also ask for guidance on what practical steps have been taken—for example, through outcome agreements or adult protection committees—to ensure that NHS boards and local authorities work together to help with advocacy issues.

Nigel Don: Rather than going through the Government, might we write to one or two NHS boards and ask them what their approach is, so that we can get a view on what is going on?

Robin Harper: The issue was debated during the festival of politics. It is a serious issue.

The Convener: Okay, we will take all those recommendations on board.

Witchcraft Act 1735 (Posthumous Pardons) (PE1128)

The Convener: PE1128, by Ewan Irvine, on behalf of Full Moon Investigations, calls on the Parliament to urge the Government to take the necessary action to grant a posthumous pardon to all persons convicted in Scotland under all witchcraft legislation.

The Government has indicated that it does not consider the use of the royal prerogative of mercy appropriate in this case. It may well be difficult to apply what we now know to the circumstances of centuries ago.

Rhoda Grant: It is regrettable, but we have come to the end of the line with the petition. We have asked for a response and we have received a pretty definitive response. Some of us are disappointed, but I do not think that we can do anything else with the petition.

The Convener: We will recommend the closure of the petition.

Members *indicated agreement.*

Col 1045

Funeral Costs (PE1129)

The Convener: Our final petition today is PE1129, by Paul Dowsland, on behalf of Rights Advice Scotland. The petition calls on the Scottish Parliament to urge the Scottish Government to ensure that adequate resources are made available to local authorities to ensure that no family is driven into poverty as a consequence of meeting the cost of arranging a funeral, and to urge the Scottish Government to make representations to the UK Government on the funding levels and eligibility criteria under the social fund funeral payments scheme.

Representations have been made to the UK Government, but we could urge the Scottish Government to keep the petitioner informed of any dialogue that it has with UK ministers on this issue. Individual social fund budgets are for local authorities to allocate appropriately, bearing in mind the other pressures on them.

Shall we close the petition?

Members indicated agreement.

Col 1046

New Petitions (Notification)

17:00

The Convener: New petitions will be timetabled to come before us for consideration at the earliest opportunity in the next week or so. We will next meet on Tuesday 23 September.

Meeting closed at 17:00.

criminal conviction or a legal process. It is important to strike a balance. I have huge sympathy for the sentiments behind the petition, but we must be careful that, in looking favourably at one thing, we do not open up problems on other fronts.

The Convener: Okay. Do members have any more suggestions? Should we contact any other organisations?

Robin Harper: We should contact the Centre for Research on Families and Relationships.

The Convener: Okay. That is helpful. Are there any others?

Robin Harper: The Commissioner for Children and Young People in Scotland might like to be contacted.

The Convener: Okay. Thanks for that. We will await the responses.

Plastic Bags (Environmental Levy) (PE1121)

16:30

The Convener: PE1121, by James Bell, calls on the Scottish Parliament to consider and debate the re-introduction of the Environmental Levy on Plastic Bags (Scotland) Bill. Members will have seen recent media coverage of a major retailer's decision to charge a nominal sum for carrier bags and will have seen recent statements on the issue by the Prime Minister and the Scottish Government. Do members have any views on how we should deal with the petition?

Robin Harper: This is another petition that addresses a live issue that is worth pursuing. We should at least seek the views of the Government, the Scottish Environment Protection Agency and waste aware Scotland.

Nanette Milne: Different retailers are now voluntarily doing a lot about plastic bags, so perhaps we should get an up-to-date view from the British Retail Consortium.

The Convener: Would it be appropriate to draw the petition to the attention of the member who introduced the bill in question and ask for his comments?

Robin Harper: Yes, that would be courteous.

The Convener: At the least it would be helpful, given his previous involvement with the issue. He may have a different view now, having gone through the process and been bagged and dragged through the debate, so it would be helpful to have his views on the approaches to take. We will seek views on the petition and await responses.

Col 595

Helen Duncan (Posthumous Pardon) (PE1127)

The Convener: PE1127, by Ewan Irvine, on behalf of Full Moon Investigations, calls on the Scottish Parliament to urge the Scottish Government to make representations to the Home Secretary to reconsider the decision to refuse to pardon posthumously Helen Duncan, who was tried under the Witchcraft Act 1735. The petition was submitted to the Parliament last week. We have received an e-mail on the petition from Lord Moncrieff, which was also e-mailed to the petitioners. I think that most members have a copy of the e-mail from Lord Moncrieff, who I understand is in the public gallery.

Do members have views on how we should deal with PE1127? Members should remember that this petition is specifically on the Helen Duncan issue; a second petition on the general issue has been submitted, too.

Rhoda Grant: I should just say ditto for this petition, because I do not want to rehearse the same arguments that I made about PE1119. We should treat PE1127 in the same way as PE1119, because it deals with a reserved matter.

Nigel Don: I do not think that I have seen the communication from Lord Moncrieff, so I apologise if what I say should be different. Irrespective of the discussion on PE1119, I am entirely on Rhoda Grant's side on PE1127. I can see no practical purpose in any conceivable outcome from PE1127 or the next petition, which is about the same issue. I genuinely feel that we have got much better things to talk about. With the greatest respect to the clerks, who told me that the petition is competent, I would like to kick this petition firmly over the grandstand and into the canal beyond, because it is not worth our time. It is an interesting lesson in history, but it has no purpose whatsoever. I would like to close it now.

The Convener: Okay. We will probably return to the earlier debate shortly.

Nanette Milne: I would not put things as strongly as Nigel Don has done, but I agree with Rhoda Grant. Action was recently taken at Westminster: the Home Secretary turned down the request that was made. I cannot envisage any advantage or different result from the Scottish Government making representations to Westminster.

Robin Harper: Our legal advice appears to be that neither the Scottish Parliament nor the Scottish Government can overturn a decision that is made by an English court, therefore I see no point whatsoever in pursuing the matter.

The Convener: A number of members have said that we should close the petition.

Col 596

Claire Baker: What reasons for closing the petition will we give to the petitioner? We seemed to struggle to find reasons for closing PE1119. Comparable reasons apply to closing PE1127.

The Convener: I think that Nigel Don is keen to reiterate what he said.

Nigel Don: I am not going to do so. The reasons for closing the petition are that there would be no beneficial outcome, as I said, and that an answer has already come from the Westminster Government, as Nanette Milne pointed out. We would simply get the same answer from the Westminster Government. There is no possibility of receiving a different answer.

The Convener: Are members happy to close the petition on the grounds that have been mentioned?

Members *indicated agreement.*

The Convener: Okay. That is one each.

Witchcraft Act 1735 (Posthumous Pardons) (PE1128)

The Convener: PE1128 is on broadly the same issue, although its emphasis is slightly different.

John Wilson: With due respect, it is not.

The Convener: Okay. Sorry about that.

PE1128, by Ewan Irvine, on behalf of Full Moon Investigations, calls on the Parliament to urge the Scottish Government to take the necessary action to grant a posthumous pardon to all persons convicted in Scotland under the Witchcraft Act 1735. Do members have any comments on the petition?

Robin Harper: I agree with John Wilson. PE1128 is quite different from PE1127: it is about the treatment of women in Scotland in previous centuries. I would not like to close PE1128 for the simple reason that there is a debate to be had. The papers contain a powerful article by Lesley Riddoch that clearly explains why the issue that PE1128 raises is different from that which PE1127 raises. Perhaps it is time in this country's history for us to acknowledge how badly women were treated in previous centuries and to do something to show how we have moved on.

John Wilson: My thinking is similar to Robin Harper's. The problem is that referring to the Witchcraft Act 1735 may result in a misconception. Most of the actions in question were taken when Scotland had its own Parliament and legislative structure, before the union of the Parliaments. Robin Harper is right. Women were persecuted and accused of acts of witchcraft that could not be proved by evidence. There was either a failure actually to bring prosecutions against women or, in

Col 597

the trials that took place after 1735, there was a failure to provide sufficient evidence to show that witchcraft was involved.

It is clear that we are talking about a travesty of the times, which lasted for almost 200 years. Women in particular were persecuted in Scottish society. The matter is nothing to do with English or UK legislation; it is to do with Scottish legislation and things that happened in Scotland. Anybody who visits St Andrews and walks round some of the historic sights will find out what used to happen to women there. Markers show where women accused of witchcraft were burned in the main streets.

Accusations did not need to be verified. I hope that we have all read some of the great works of literature that describe what happened when accusations of witchcraft were made in certain societies. In Scotland, allegations were made against women in particular, and those women were put to death. If, as a Parliament, we review the legislation from 300 or 500 years ago that allowed such things to happen, we will have to acknowledge the persecution of women and the bad parts of Scotland's history. The Public Petitions Committee has the right to ask the Scottish Government to review the situation and to acknowledge what happened.

Rhoda Grant: I am not 100 per cent sure how we should deal with this petition. The laws were repealed, which shows that we as a society do not agree with how they were used. This discussion opens up the debate over public apologies. Should we apologise for the sins of our fathers, for want of a better phrase?

We should obtain more information before deciding how to proceed. We have to make a clear statement that women were treated abysmally under the old laws, but I am not 100 per cent sure that a pardon or an apology is needed.

Among our briefing papers is information on the cost of rerunning trials. We do not want to rerun trials, because there is no longer any crime to come to trial. However, society must have a way of putting on record that we do not hold with how people were treated. We can never make up for what happened, but we should have some way of marking it.

The Convener: The suggestion is that we write to the Scottish Government for its views. We will await a response before determining whether we can take the matter further.

Rhoda Grant: Would it be worth seeking information from equalities groups, for example groups that are interested in women's rights? Women still tend to be targeted in certain areas, so it would be useful to widen the debate. If, on the back of this petition, we can discuss equality

Col 598

and the treatment of women, we will be able to show that we are serious about such issues. Progress along those lines could be a monument to the suffering of women in past centuries.

The Convener: A couple of texts have been identified as source material. It would be useful to hear from academic specialists. I understand the strength of people's feelings, but I do not want to get into an endless examination of what happened in the past. If we do that, we will never move forward; we will merely speculate about all the things that we should or should not have done. We know that certain things happened, and we should put them in context and stress that we would never want them to be repeated, but whether there should be a full pardon is a different question. Let us seek views before deciding what to do with the petition.

John Wilson: We should write to the Scottish Inter Faith Council to seek its views on what happened. I do not want to get into what might be regarded as religious persecution, but some of the organisations that were involved in persecuting women were the religious faiths of the time.