



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Meeting of the Parliament

**Tuesday 18 December 2018**

**Session 5**



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# Scottish Parliament

*Tuesday 18 December 2018*

*[The Presiding Officer opened the meeting at 14:00]*

## Time for Reflection

**The Presiding Officer (Ken Macintosh):** Good afternoon. Our first item of business is time for reflection, and our leader is Robin Downie, former moderator of the youth assembly of the Church of Scotland.

**Mr Robin Downie (Former Moderator of the Youth Assembly of the Church of Scotland):** Presiding Officer, members of the Scottish Parliament, thank you for the opportunity to address you today.

In August last year, I had the privilege of attending a year of young people trip to Rwanda, which was organised by Interfaith Scotland and the Church of Scotland. Having little knowledge of the Muslim faith and not much of a clue about the importance of interfaith dialogue, I was a little apprehensive about the trip, to say the least. The group was formed of five young Christians and five young Muslims. We travelled to Rwanda to explore interfaith relations and the 1994 genocide.

There were many highlights of the trip. I experienced Muslim worship for the first time at Kigali national football stadium, where 20,000 Muslims met to celebrate the first day of the Eid festival. During the trip, I became close friends with many Muslims, and I was warmed by the love that shone through their faith, as well as by the many similarities in what we believed, of which there were more than differences.

Exploring the 1994 genocide, we travelled up into the hills of Rwanda, where we met a group of people who were affected by the genocide. Some had lost loved ones and seen their children murdered with machetes, yet on the day that we met them, they sat next to the men and women who had held the machetes. Many had been able to forgive the terrible events that had happened 24 years ago.

In January, I visited Israel and Palestine, and had a short visit to Gaza. It was upsetting to see the divides in that land, as well as the unrest and violence. I visited a centre in Ramallah for young people who are my age. It was run by young women of the Young Women's Christian Association, the aim of which is to find a brighter future for the young people of Ramallah. When asked about the future of Israel and Palestine, only four members of the class of 30 were hopeful

that the situation would improve for the generations to come.

Reflecting on those trips, I was sad that, having seen such unity and forgiveness in Rwanda, despite the terrible events that happened there, I then saw such unrest and violence in Israel and Palestine.

The love that I was shown by members of the Muslim faith was inspiring. The trips highlighted the importance of interfaith dialogue overseas and in Scotland. By meeting with people of different faiths and beliefs, we can build friendships and work together, despite our differences. We can challenge some of the major problems in the world, such as climate change, and we can prevent wars. Through dialogue, we can secure a brighter future for young people around the world and here in Scotland.

## Business Motion

14:03

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of business motion S5M-15189, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, on a revision to tomorrow's business.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for Wednesday 19 December 2018—

delete

1.15 pm Parliamentary Bureau Motions

1.15 pm Members' Business

and insert

1.00 pm Parliamentary Bureau Motions

1.00 pm Members' Business—[*Graeme Dey*]

*Motion agreed to.*

## Topical Question Time

14:03

### National Health Service Boards (Annual Review Process)

**1. Monica Lennon (Central Scotland) (Lab):** To ask the Scottish Government for what reason ministers will no longer hold a public session or Q and A as part of the annual review of NHS boards. (S5T-01396)

**The Cabinet Secretary for Health and Sport (Jeane Freeman):** There is no change to the core purpose of annual reviews, which is to hold NHS boards to account. This year, all 14 territorial boards will receive a ministerial review, as will the majority of national boards.

Ministers continue to have separate meetings with front-line staff through the area clinical forum and area partnership forum, and to meet with patients and carers. The meeting with the relevant board chair and chief executive allows for a focused, free and frank discussion on local performance between the minister and the senior members of the board who are directly accountable.

I am clear that health boards should be accountable to the communities that they serve. All boards have been required to hold public sessions to ensure that local people continue to have the opportunity to question their NHS boards on matters of importance, and those will have a ministerial presence. I have also asked the joint Scottish Government and Convention of Scottish Local Authorities integration review to consider how we can have whole-system reviews—jointly with COSLA, where appropriate—in the years ahead.

**Monica Lennon:** The issue is really quite simple, so I am disappointed that the cabinet secretary has attempted—again—to spin her way out of it. The decision to stop members of the public putting questions to ministers as part of the annual review of NHS boards is one that the Cabinet Secretary for Health and Sport has taken. It is a significant change in direction, and stands in stark contrast to those of her predecessors, one of whom said:

“I want the public to be full partners in the delivery of NHS services and that's why it is vitally important that they get the opportunity to participate in annual reviews. The NHS Board chairs and I look forward to answering questions members of the public have about their local health services and hearing their views.”

That quote was from former Cabinet Secretary for Health and Wellbeing and current First Minister, Nicola Sturgeon. If it was good enough for

previous health secretaries, including Nicola Sturgeon, to participate fully in public sessions, will Jeane Freeman explain to the public why she has changed the guidelines and why that requirement should not apply to her?

**Jeane Freeman:** Ms Lennon is absolutely right that our current First Minister, when she was health secretary, introduced the public question and answer sessions. Prior to that, the Labour and Lib Dem Administrations did not have them.

I repeat that all boards have been required to hold public sessions to ensure that local people continue to have the opportunity to question their NHS boards on matters of importance and to share their views, and that those sessions will have a ministerial presence. I do not know how Ms Lennon has managed to manipulate that into accusing me of spin. Let me assure members that I am spinning nothing; I am simply answering the question in the straightforward manner that I did the first time round.

**Monica Lennon:** I could quote extensively—for example, from NHS Fife chair Tricia Marwick, who is quite clear that a new format has been instigated this year by the Scottish Government.

The cabinet secretary was previously a board member of the Scottish Police Authority. Because of the scrutiny that has been carried out in Parliament, we have found out that the SPA is a world leader in secrecy. None of us wants to see the same bad practices that we saw in police governance creeping into the NHS. Our health and social care services face huge challenges, and people need to have full confidence in the NHS, their health boards and the Government. The changes that have been brought in by Jeane Freeman will undermine public scrutiny and will represent a backward step.

Will the cabinet secretary just admit that her decision to avoid public questions is the height of arrogance? Will she commit to making an immediate U-turn?

**Jeane Freeman:** I am not sure which part of what I have said—that there will be public sessions at which members of the community can ask questions, and that there will be a ministerial presence—leads to Ms Lennon's accusation that I am avoiding public scrutiny. I genuinely do not understand that.

I am also deeply disappointed—

**Monica Lennon:** Why did the cabinet secretary change the guidelines then?

**Jeane Freeman:** Perhaps if Ms Lennon can just hold off for a second and listen, she will hear me say that I am deeply disappointed that, in the absence of constructive, positive or even radical ideas about our health service from Labour

members, we have to resort to personal attacks. I will not reciprocate on that.

We are talking not about the SPA but about our health service. There will be public sessions, which will have a ministerial presence. There will be questions and ministers will be there to answer those, along with health boards who are the subject of annual reviews in order to hold them to account.

I do not know what more to say on that. I am sure that Ms Lennon will continue to want to misrepresent and manipulate those words, but they are on the record and I hope that they are clear to the rest of the Parliament.

**Clare Adamson (Motherwell and Wishaw) (SNP):** For the avoidance of doubt, and since this was not raised in the chamber when members had an opportunity to do so last week, will the cabinet secretary confirm that the reviews are about board performance, and that the requirement to hold public sessions at least once a year remains?

**Jeane Freeman:** Ms Adamson is absolutely correct—the reviews are about board performance. Ms Lennon asked about changes. I have said to boards that they must hold a public session at least once a year—in other words, they might need to hold such sessions more than once a year. That increases accountability. Ministers will be at those public sessions.

Earlier, I made the point that board annual reviews have changed over the years to reflect changing circumstances. I have not removed the opportunity for the public to question the board or to have a minister there to be part of the questioning process. The boards will need to hold such public sessions, at which there will be a ministerial presence.

I add, for the record, that the follow-up letter on annual reviews, which sets out clearly to boards my expectation of their performance in the year to follow, will, of course—as before—be public.

**Miles Briggs (Lothian) (Con):** What we have just heard is probably more an example of a Twitter spat being brought to the chamber than anything else.

It is right and proper that, in a parliamentary democracy, ministers and NHS boards undergo public scrutiny. The public have a right to raise concerns, whether on the increasing parking problems or the worsening performance on waiting times. Will the cabinet secretary consider how the Scottish Government can improve accountability rather than restrict it?

**Jeane Freeman:** I am grateful to Mr Briggs for that question. I agree with him—it is only right that there is public scrutiny in a number of additional ways. We are looking at two ways in which we can

improve what we do with regard to public scrutiny. First, as I said earlier in my first answer, I have asked the review of integration that is being jointly led by the Scottish Government and the Convention of Scottish Local Authorities to look at how we can ensure that we have a review of the whole system. I have talked previously in the chamber to Mr Briggs's colleague Liz Smith and others about a whole-system approach to health and social care. At the moment, it is the performance of health boards that is subject to annual review. We need to widen that, and I must do that in partnership with COSLA, where that is appropriate.

Secondly—again, this is an area that we have touched on previously in the chamber—we are looking at the question of how our health boards undertake public engagement and genuine community engagement throughout a 12-month period, regardless of whether they have major changes on which they want to consult. That work is under way with health boards and inside Government, and I hope that we will be able to make some proposals, which we can discuss with the Health and Sport Committee and announce in the chamber so that members are aware of the changes that we want to make to encourage our health boards to have a more consistent approach to genuine public engagement with the communities that they serve.

#### **Rail Transport (Festive Period Performance)**

**2. Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** To ask the Scottish Government what action it is taking to ensure that rail transport performs well during the festive period. (S5T-01412)

**The Cabinet Secretary for Transport, Infrastructure and Connectivity (Michael Matheson):** The member will be aware that ScotRail's ability to provide a reliable service for several parts of the Scottish rail network has been unacceptable for passengers and the Scottish Government over the past few weeks. Instead of celebrating the provision of 65,000 additional weekday seats and more than 100 additional services per day following the recent introduction of the new timetable, I am extremely disappointed to again be speaking about unacceptable levels of cancellations.

I have made my position clear to Alex Hynes, who is the managing director of the ScotRail Alliance, and to Dominic Booth, who is the managing director of Abellio UK: ScotRail must take all action that is necessary to ensure that services return to schedule as soon as possible and that passengers begin to see the benefits of the new timetable.

ScotRail has sought to reassure me that there is a plan of action to address the number of cancellations. First, ScotRail has already recruited 85 drivers and 54 conductors to deliver the new services. Secondly, an intensive training programme is under way to recover the delays that were caused by the late delivery of trains and the industrial action by the National Union of Rail, Maritime and Transport Workers. That training programme, which will continue throughout the Christmas holiday period, will allow a steady service improvement, as each staff member completes their training on the new trains and routes. Thirdly, additional expert operational planning resource has been added to ScotRail's team to optimise the use of available resources and thus minimise cancellations.

I have made it clear to ScotRail that restorative action rests entirely with it and I expect it to take whatever action is required to ensure that services return to normal as quickly as possible and run smoothly over the Christmas and new year period, delivering the benefits of more seats and services on a consistently reliable basis.

**Rachael Hamilton:** I thank Michael Matheson for that full reply and for acknowledging that there have been problems recently. However, I want to point out some of the issues, which many members will have experienced or received letters from constituents about. Last Friday, travel chaos ensued across the ScotRail network, and that continued until Monday, with more than 70 trains being cancelled. Many of our constituents experienced terrible service last week, including on the Waverley line to Tweedbank. Trains were delayed or cancelled and the situation escalated—so much so that the trains did not stop at Stow. Hard-working ScotRail staff bore the brunt of the passengers' anger. This is unacceptable. Last weekend was the first proper weekend of the Christmas rush and ScotRail failed to step up to the mark. Has it already fallen at the first hurdle?

**Michael Matheson:** I fully recognise that the experience for some of the travelling public over the past week or so has not been acceptable, and the Government has been very clear that the service has not been at the level that we expect. As an MSP who represents a constituency that has four train stations, I understand the concerns that constituents have about the quality of service that has been experienced to date.

I have outlined a range of reasons why there has been an impact on service provision, but I expect ScotRail to take appropriate action to address those issues as a matter of urgency. The three elements of work that I said ScotRail has taken forward are actions that are intended to address those very issues. Alongside that, we can see the additional progress that has been made



with the Donovan review. The Office of Rail and Road will publish its findings on the progress with implementing the review's recommendations tomorrow, and it will also set out the progress that ScotRail is making in addressing the range of infrastructure issues that also have to be addressed in order to improve reliability on our rail network across the country.

**Rachael Hamilton:** I thank the cabinet secretary for taking the time to tackle the issue. It is an absolute priority over the Christmas period. However, I reiterate that we have had the lowest performance in two decades, overcrowded trains, overworked staff, cancelled services, angry passengers and rising compensation payments. The cabinet secretary knows that this is deplorable. When will he wake up and realise that the Scottish Government needs to reinstate the performance targets and hold ScotRail to account?

**Michael Matheson:** I am a bit confused by the member's question. One minute she praises me for taking action to get the matter addressed, and the next minute she is asking when I will wake up to the matter. I assure her that I am very much awake to it.

I have outlined the variety of reasons why there has been an impact on performance. The late arrival of trains had an impact on staff training, and the industrial action also had an impact on the training programme in preparation for the introduction of the new timetable. All of that has spiralled to create the difficulties that we have at present. Notwithstanding that, I understand that the travelling public expect more, and ScotRail has committed to take forward the three actions that I set out in my initial response in order to address the issue and make sure that we get the level of performance that we expect for the travelling public in Scotland.

I point out to the member, however, that some 60 per cent of delays and cancellations on the Scottish network are due to infrastructure problems, which are the responsibility of the United Kingdom Government. As I have called for time and again in the chamber, there is a need to align the rolling stock provision with infrastructure service delivery to make sure that it is much more passenger focused, and the most effective way to do that is to devolve it to the Scottish Parliament to allow us to put in place a model that delivers a much more passenger-focused train service.

**Colin Smyth (South Scotland) (Lab):** Last month, Scottish National Party and Tory MSPs united to vote down Labour's proposal to end this failing franchise and, rather than taking enforcement action against ScotRail for plummeting performance, the transport secretary issued a waiver, allowing it to deliver the worst

punctuality since the franchise began. Had that licence to fail not been granted, the company would have been in breach of its franchise and the Government could have issued a remedial plan notice against ScotRail. Is it not time that the transport secretary stopped bailing out ScotRail and started standing up for Scotland's hard-pressed rail passengers by demanding a proper remedial plan from ScotRail showing how and—crucially—when it will hit the performance targets that it is paid to hit? I am not talking about the two inadequate improvement plans, which do not go far enough.

Will the transport secretary join Labour in calling for a fares freeze until passengers start to get the decent service that they deserve?

**Michael Matheson:** As I said, the ORR will publish its update on the Donovan recommendations tomorrow. In that report, the ORR will clearly set out the progress of ScotRail and Network Rail in addressing infrastructure and rolling stock issues, as recommended, to improve services for passengers. I await the findings in that report.

There are early signs of improvements, particularly in the Strathclyde electric area, where there is greater resilience and an overall improvement in performance—although not today, because of an infrastructure failure in points outside Glasgow Central station. Since the new timetable's introduction last week, there have been improvements in performance in that regard, too.

As the member recognised, the standards that were set in the franchise agreement remain in place. The waiver was in recognition of issues outwith ScotRail's control that have had an impact on performance, such as Network Rail's performance, which is at such a level that the ORR is investigating Network Rail for its failure to deliver properly, and weather incidents. The franchise agreement requirements remain in place and in force.

I assure the member that a Government that invests more than £400 million in new and upgraded rolling stock in Scotland and intends over the next five years to invest some £5 billion in our railways in Scotland is a Government that is about investing in our rail infrastructure in Scotland in a way that continues to drive up performance. Performance to date has not been to the level that we expect, and ScotRail is taking forward actions that it thinks can address the problems.

**The Presiding Officer (Ken Macintosh):** Five more members want to ask a question.

**Mark McDonald (Aberdeen Donside) (Ind):** This morning, passengers arrived at Dyce station in my constituency to be notified that the 7.26 to Aberdeen had been cancelled, the 7.59 to

Aberdeen was delayed and the 8.31 to Aberdeen had been cancelled. Those are important services for commuters in my constituency. Moreover, trains often run with too few carriages, which causes discomfort and inconvenience for passengers.

My constituents welcome the improvements to the infrastructure between Aberdeen and Inverness. Those improvements will bring the infrastructure into the 21st century; my constituents are asking when the train service will get there.

**Michael Matheson:** I do not know the reasons for the issues with the services that the member mentioned, but I suspect that they related to crew. As I said, because of the late arrival of the new trains, ScotRail has faced challenges with training staff and conductors.

The member will know that a key issue that we are trying to address is the need to increase capacity on the rail infrastructure. By the end of 2019 there will be a 23 per cent increase in seating capacity, but that depends on the delivery of the new high-speed trains, alongside the new Hitachi trains, which will allow the rest of the fleet to be cascaded to other routes, including routes in the north and north-east of Scotland. When that programme is complete, there will be a significant uplift in seating capacity in Scotland and in the range of available services. The actions that are being taken to address crew issues should improve the delivery of services as the new fleets become available.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Every weekday morning in recent weeks, hundreds of my constituents have been stranded at Dalmeny and South Gyle stations, due to chronic underprovision of rolling stock on services bound for the centre of our nation's capital. Ally McKean messaged me this morning from the platform and said:

"Not one soul got the 3 carriage 7.57 train at Dalmeny. People are missing meetings and shifts. This must be costing the economy millions."

Cabinet secretary, this is not just a workforce or infrastructure issue; it is chronic underprovision of rolling stock. Will the cabinet secretary tell the Parliament and my constituents when the rolling stock issue will be resolved and an effective timetable will meet with his approval?

**Michael Matheson:** The member is referring to two areas of rolling stock. First, the class 385s have been delayed by Hitachi; something in the region of 56 should have been available to ScotRail for the timetable change, and it is unfortunate that only 31 were provided. That has had a direct impact on ScotRail's ability to deliver

new rolling stock and cascade the rest of the train fleet.

Secondly, Wabtec has failed to deliver on the refurbishment of the high-speed trains. I spoke to the global president of Wabtec in the US last week. It does not expect to complete that refurbishment programme until the end of 2019.

The full Hitachi programme should be delivered for the next timetable change in May. In a discussion that I had with the global head of Hitachi just a fortnight ago, he gave me assurances that Hitachi is doing everything possible to ensure that it can deliver those carriages on time for the next timetable change.

Those two companies have let down ScotRail in delivering rolling stock, and that is having a direct impact on passenger experience. However, I can assure Alex Cole-Hamilton that we are applying every pressure possible to those companies to ensure that they deliver the additional rolling stock as quickly as possible in order to address the problems that we have at present.

**John Finnie (Highlands and Islands) (Green):** The cabinet secretary appears to be commending a plan of action to address the plan of action and its shortcomings. He has described that as "unacceptable" and said that he was disappointed. Here we are again. Has the cabinet secretary made any assessment of the reputational damage that the Scottish Government has incurred by not enforcing the terms of the franchise? He wants to take control of Network Rail, and he enjoys the Scottish Green Party's support for that. That would be a significant development. Why not end the franchise now and take control of ScotRail, as well?

**Michael Matheson:** For the very reasons that I have previously stated, the franchise agreement and its objectives remain in place. The 1 per cent waiver is on the basis of issues that are outwith ScotRail's control, which have had an impact on the franchise performance. Infrastructure in particular and weather events have had an impact on its performance. That is provided for in the franchise agreement. The enforcement of the rest of the franchise agreement provisions is already in place. I have also stated that there is a provision in the franchise agreement for it to be drawn to an end at an earlier stage if that is appropriate.

As I have said, I want the existing investment that we are making in our rail infrastructure and rolling stock to be successful. Our focus at this time is on ensuring that we do everything possible to deliver the best possible rail services to the travelling public in Scotland.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I refer to my entry in the register of members' interests.

Has the United Kingdom Government apologised to the Scottish Government for the performance of Network Rail, which it owns?

**Michael Matheson:** There is absolutely no doubt that, in the past couple of years, and the past year in particular, the performance of Network Rail has had a significant impact on rail service performance in Scotland—so much so that the ORR has initiated proceedings against Network Rail for its failure to respond effectively to address concerns that service operators, including ScotRail, have raised. In excess of 60 per cent of the delays and cancellations in Scotland have been caused by Network Rail. That tells me that there is something seriously wrong with the existing structural arrangements for our rail service.

The fact that Network Rail is not accountable to the Scottish Parliament, the Scottish Government or the people of Scotland through the Scottish Government is a major weakness in how we can deliver rail services. The sooner that we have direct control over the infrastructure elements of our rail network alongside the passenger provisions in order to deliver a better service for the travelling public in Scotland, the better.

**Edward Mountain (Highlands and Islands) (Con):** That is the point, of course. Every time that we have this discussion, the cabinet secretary makes the same point that it is all down to Network Rail. Given that he has quoted the 60 per cent figure, will he break that down, please? What was down to the weather, broken trains and track deaths? Unfortunate as those things might be, they cannot be controlled by Network Rail. The fact of the matter is that, even if the Scottish Government had control of Network Rail, it could not prevent the things that I have mentioned. I would be grateful if the cabinet secretary could split those things out so that we can understand exactly how much is down to matters that can be controlled by Network Rail.

**Michael Matheson:** I am not sure whether Edward Mountain realises how illogical his question is. A number of those issues are outwith the control of ScotRail, as well, never mind Network Rail. To say that all of those things are the responsibility of Network Rail would be patently untrue.

I have said that sometimes in excess of 60 per cent of the incidents are the responsibility of Network Rail. I am disappointed that the convener of the Rural Economy and Connectivity Committee is unwilling to recognise that Network Rail has a significant impact on rail service performance in Scotland. The very reason why the ORR is taking proceedings against Network Rail is its failure to be able to deliver the standards that are expected in the rail network, not just in Scotland but

throughout the UK. That is the responsibility of the Department for Transport.

**The Presiding Officer:** Four more members wished to ask questions, but it is time to move on. I apologise to Mike Rumbles, Neil Findlay and Patrick Harvie in particular.

## European Union Exit Preparations

**The Presiding Officer (Ken Macintosh):** The next item of business is a ministerial statement on preparations for EU exit. The cabinet secretary will take questions at the end of his statement.

14:30

**The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell):** Let us never forget that, on 23 June 2016, Scotland voted overwhelmingly to remain in the European Union. Every unpalatable consequence that arises from Brexit does so, therefore, as a result of the United Kingdom Government defying and denying that democratic decision. Leaving the EU—just 100 days from tomorrow—with no deal in place would be the worst such consequence imaginable.

A no-deal exit from the EU would have severe impacts on Scotland and result in irreparable damage to our economy, our people and our society. We know that and are compelled to say so. Our neighbours, like Ireland, know that and have been saying so for a long time. Now the entire EU27 knows that and will be saying so tomorrow. Even the UK Government knows that to be true, as it acknowledged at its Cabinet meeting today.

What a tragedy—what a scandal—it is that Tory members of this Parliament will still not condemn their reckless colleagues who are, carelessly or willingly, taking their fellow citizens to the brink of disaster. They will neither join the rest of us in finding a sensible way to honour Scotland's choice and avoid a no-deal Brexit, nor work with us to urge the Prime Minister to rule that out by revoking, or at least by suspending, article 50. Scotland deserves and needs better than the Prime Minister's blindfold EU exit or a no deal, as both would cause untold chaos.

Last week, I made it clear in this chamber that the Scottish Government believes that it is time to put the choice about our future back to the people in a second referendum. That is more urgent than ever now. It is essential that the UK Parliament takes control of the process, demonstrates that there is a majority for a people's vote and starts work on the legislation that will deliver another referendum. However, this Scottish Government, as a responsible Government, must also prepare the nation and the people, in so far as it can, for any eventuality, including that of a no deal.

Although this Government will do everything that we can to prepare and help, we must not let anyone believe that we can do everything. That

would be impossible for any Government, anywhere. We will, however, work with all those who have a similar task, including the UK Government, and tomorrow I will meet UK ministers to discuss these matters further.

I will outline the Scottish Government's overall approach. Over the past few months, I have met each of my Cabinet colleagues to discuss their expectations and concerns about a no-deal scenario. That process was underpinned by detailed work across Government to identify the risks and potential impacts of EU exit, and the mitigating actions that we and others could take, across a wide range of issues.

Through those processes, we have considered, in detail, the legislative, organisational and financial issues arising out of a possible no deal. Furthermore, weekly meetings of SGoRR—the Scottish Government resilience room—have been held, convened by the Deputy First Minister. The meetings have input from other cabinet secretaries, including those responsible for health, justice, transport, rural and finance issues, as well as their officials, other organisations such as Transport Scotland, Food Standards Scotland and Marine Scotland, the Convention of Scottish Local Authorities, civil contingencies responders and, of course, Police Scotland. The structure is supported by a rapid response group of officials, which will grow as need requires.

Staffing is a key issue. Across the Scottish Government, directorates are refocusing on detailed preparations for no deal, realigning staff towards that work where required. We are mobilising the Scottish Government and its associated agencies and public bodies, aligning our existing financial and staff resources towards those areas with specific no-deal impacts and ensuring that we have the right people, in the right places, with the right skills to respond quickly and effectively.

Given the wide range of problems that a no-deal exit would undoubtedly bring, members will understand that our plans and preparations are wide ranging, too. There are a number of key areas of focus. It is well recognised that, for example, the new customs arrangements and regulatory checks that no deal would involve would severely disrupt the flow of goods at UK borders, particularly Dover, which handles many of our key goods, such as food and medicines.

A no-deal exit would jeopardise Scotland's food security, as well as seriously harming the ability of Scottish food and drink producers to export to the EU their goods, such as our beef and lamb, which would face significant tariffs.

Half of all the food that the UK consumes is imported. Of the food that is imported, about 70

per cent comes from the EU. The availability and price of food and drink are expected to be significantly affected, with a disproportionate impact on the most vulnerable in our society. Consequently, the Scottish Government, including Transport Scotland, is working with distributors, purchasers, suppliers, transport providers, ports and Caledonian Maritime Assets Ltd to fully assess the impact and identify what can be done to mitigate disruption. Our aim is to secure the best flow of essential goods into Scotland by using existing routes or developing new ones.

In health and social care, no deal would risk the supply of medicines and medical devices. It would have a negative impact on our health and social care workforce, on-going clinical trials, access to future EU funding and the rights of Scottish citizens to access state-provided healthcare across the EU.

Our attempts to ensure continuing supplies of medicines are being severely hampered by the UK Government's refusal to provide us with critical information about which medicines might be subject to supply problems. It is imperative for the UK Government to provide that information now. Just two hours ago, after sustained pressure from this Government, the UK Government indicated that it would share medicines data, but we still await the information. In addition, work on the stockpiling of medical devices and clinical consumables in Scotland is on-going and will have financial implications for us, which could necessitate bringing forward funding from next year.

If there was a no-deal exit, we would lose access to many of the security and law enforcement co-operation measures that Police Scotland and the Crown Office use daily to keep people safe. We would lose membership of Europol and use of the European arrest warrant. We would also lose access to vital information-sharing arrangements. That would represent a significant downgrading of our policing and security capability when cross-border crime and security threats are increasing. Police Scotland is considering what actions could be taken to substitute for those arrangements and is organising itself to be prepared for civil contingencies emergencies.

On fishing, members will know that, unlike the UK as a whole, Scotland is a net exporter of seafood—EU member states accounted for 77 per cent of Scottish overseas seafood exports in 2017. Any delays that were experienced at the vital Dover to Calais and Eurotunnel corridor would have a catastrophic impact on our seafood industry and, in turn, on our remote rural and coastal communities, which rely wholly or partly on

seafood sectors. I feel that keenly, given my constituency interests.

The economic effects of no deal—especially of new tariff and non-tariff barriers—and the disruption to trade with the EU would be felt severely and immediately. We are actively investigating what routes might be available to ensure that such goods get to market, although the lack of inspection staff and the reversion of the UK to third-country status might well be insuperable in the short term. So much for the UK Government—and Conservative MSPs—being concerned for fishing communities.

Many other issues are on the list of risks and issues, which is being regularly updated, and work is being done on all of them. In the time that is available to me, I will emphasise four overarching issues that need to be noted.

First, one of the biggest difficulties that faces us is the problem of getting information from the UK Government. There are signs that that is improving slowly in some areas, but it is essential for the UK Government to see the provision of such information and the sharing of plans—along with joint working—as a process that requires the close involvement of, and respect for the institutions of, the devolved Administrations. I will stress that again in London tomorrow.

Secondly, we continue to press the UK Government to assess fully the financial implications of leaving the EU. We have been clear that Scotland's public finances must not suffer detriment. In the event of no deal, an urgent transfer of funds would be required from the UK Government to allow the Scottish Government to meet the obligations that it would have to enter into. Money is already being spent, and the financial implications of EU exit and its associated preparation activity have been raised on a number of occasions by the Cabinet Secretary for Finance, Economy and Fair Work with the chancellor and the Chief Secretary to the Treasury.

Thirdly, the UK Government's nebulous approach to decision making on Brexit has meant that it is impossible to know when plans might need to go into effect. The Scottish Cabinet agreed this morning, building on existing planning and activity, to further accelerate work to mitigate the potential impacts of the UK leaving the EU without a deal. We are undertaking necessary preparations to enable us to operate our arrangements at very short notice. I assure the chamber that I will keep it informed and I make an offer to the party leaders and Brexit spokespeople to ensure that they are briefed whenever new developments make activating our plans more likely.

Finally, it is vital that the people of Scotland get a clear, consistent message about the work that is being done. We are using all the normal communication channels to send that message and we will step up that public information activity if and when we are required to put those plans into operation.

It is essential that there is a single, clear, co-ordinating structure to take forward the plans and to measure them against the reality of what is taking place. Therefore, under the leadership of the Deputy First Minister, the SGoRR mechanism is now in operation and will report to the First Minister.

A no-deal, cliff-edge exit is not yet inevitable. Indeed, leaving the EU is not yet inevitable. However, as a responsible Government, we cannot wait any longer. The consequences and risks are too pressing and too severe. Given the current situation, it is incumbent on us to step up our existing planning for a no-deal outcome in the ways that I have just outlined.

The evidence is clear that a no-deal Brexit would be a disaster, and I again call on the Tories to work with us to rule it out. The challenges are not of our making, but measuring up to them is something that we can and must do.

**Adam Tomkins (Glasgow) (Con):** The cabinet secretary has just spent 10 minutes unpicking his own argument.

He opposes a no-deal Brexit. So do I. He considers that all necessary steps should be taken to avoid a no-deal Brexit. So do I. However, the truth is that there is no need at all to risk a no-deal Brexit, for the simple reason—it is simple enough for even the cabinet secretary to understand—that there is a deal on the table. There is a concluded negotiated withdrawal agreement. *[Interruption.]* It is a withdrawal agreement that I support, but which Scottish National Party members of Parliament are set to vote down.

Why does the minister not accept that the only people who are risking a no-deal Brexit are those who stand—as he does—in opposition to the Prime Minister's deal?

**Michael Russell:** It is sad to see the state to which Professor Tomkins has come. This is a very serious situation that needs to be treated with gravity. It is a situation that is not the making of this Parliament, of the people of Scotland or of any of the parties here—except Professor Tomkins's party, which has created the problem. Yet, the only response to the situation that we get from the Tories is that they get up to blame somebody else. *[Laughter.]* I hope that people who are listening to the debate will hear that the response to this very grave and serious situation from the Tory front-bench members is that they cackle.

“Like the crackling of thorns under the pot, so is the laughter of fools.”

That is a quotation from the Bible, Presiding Officer, in case you were going to upbraid me for saying it.

I say to Professor Tomkins that the UK Cabinet spent this entire morning talking about a no-deal outcome, and is now sending letters to 146,000 businesses. I understand that the Brexit secretary was talking today about the disaster that could take place. *[Interruption.]* However, that does not matter, because for Professor Tomkins—who is still shouting into the air—it is always because of something other than the Tories. The Tories have got us into this mess, but it is clear that they cannot get us out of it.

**Neil Findlay (Lothian) (Lab):** It is always telling to observe Mr Tomkins's body language on such occasions. I know that “Les Misérables” will be shown on television over the holidays; however, we need only look at the Tory front bench to see les misérables.

Mr Tomkins does not believe a single word that he said, and has not believed a single word of what he has said all the way through this sham. The Tories are taking Britain to the brink in a game of chance that risks everything in order that they can try to save the incompetent and useless Tory Government. In two years, they have created huge uncertainty for our economy, for businesses and for those businesses' employees. Labour has consistently warned against a no-deal outcome, but it is now clear that Tory incompetence is pushing us towards that.

If Tory MPs will act in the interests of the country, not in the interests of the Conservative Party, and work to end this madness, Labour stands ready to negotiate with a customs union plan that would solve the backstop issue, which is the main problem—although it is far from being the only problem.

The cabinet secretary's statement tells us that there are huge problems in major areas of the economy and our society: at our borders, in food security, in transport systems, in health and social care, medicine supplies, policing and law enforcement, fishing, exporting and much, much more. That catastrophe is taking us to the edge; therefore, it is a dereliction of duty by Scottish Tory members of the UK Parliament and MSPs to take a vow of silence.

**The Presiding Officer:** Mr Findlay, could you ask a question of the cabinet secretary?

**Neil Findlay:** I am going to ask a question.

The Tory party's hatred of the EU clearly outstrips its concern for business, employees and communities. There is still time to change. This

cannot be a choice between May's deal and no deal, because that is no choice whatsoever.

Will the cabinet secretary publish details of the work that is being done in each Scottish Government directorate? Can he advise how many ministers have met with their UK counterparts, and how many times, to discuss no-deal planning specifically? Can he advise us of the budget that has been allocated and the staffing resource that has been identified to prepare for such a scenario? The Scottish Government is right to plan for no deal—indeed, it must—but we need more detail.

**Michael Russell:** I concur with Neil Findlay that the position of the Scottish Tories on the matter is absolutely appalling and is a dereliction of duty, and that they continue to behave in a way that means that no person could take them seriously.

I will address Neil Findlay's questions. I am reluctant to burden Government staff with more publications, but I am happy to give him access to any information that I can, and will sit down and talk to him about how we can do so.

On his second question about communication, I am happy to discover how many such communications there have been. I know that, for example, Michael Matheson was in touch with his counterpart just last week to press for more information. I think that many of my colleagues are doing likewise. I will try to get the information that the member has requested.

It is important to recognise that we are in a fast-moving situation that is creating a great deal of pressure for staff. On the actual cost of staff, I noticed that figures were published last week on the number of full-time equivalent staff who are now engaged in the work. I will get those figures to Neil Findlay, if he has not yet seen them. There is a difficulty in fully accessing details of how much money is being spent, simply because the situation is so fast moving, but we will make sure that information is provided.

**Ross Greer (West Scotland) (Green):** I absolutely accept what the cabinet secretary said: not only are we being taken to the brink of disaster, but we are being taken there by the most incompetent Government in modern history. That is not the Scottish Government's doing, but sometimes we—especially Governments—must play the hand that we are dealt.

On that basis, and in the light of the cabinet secretary's response to Neil Findlay, what information will the Scottish Government put in the public domain—compared with the 105 technical notices that the UK Government has put in the public domain—other than information with which it will brief MSPs?

**Michael Russell:** Each part of the Scottish Government is dealing directly with stakeholders on issues. That we are able to do so is one of the benefits of having a smaller Government. A great deal of dialogue is going on. I know that all members would like more material to be published and put before them. We are doing the best we can with the resources that we have, in order to keep people updated. When there are requests—such as that which was made by Mr Findlay, which has been echoed by Mr Greer—for further information, I will endeavour to have it sent by officials.

We are trying to cope with a situation in which we move step by step to the stage at which, if we have to put our plans into operation, we will be able to do so virtually immediately. That is my main focus; I am sure that members will accept that it is best that that is my main focus at this stage, and that I am not distracted from it.

**Willie Rennie (North East Fife) (LD):** I cannot believe that we are having discussions of this nature. No responsible Government would ever allow this situation to happen. That the situation is real shows how irresponsible the Conservative Government has become. Is the cabinet secretary as frustrated as I am by the inability of the UK Government and the loyal Opposition to lead this country or to lead the UK Parliament? If the UK Parliament cannot decide the future on Brexit, surely it is up to the people. How can we make the people's vote happen?

**Michael Russell:** I agree with Mr Rennie that the key issue is how the people can be given the opportunity to give their verdict—not on what happened two and a half years ago, but on what has happened over the past two and a half years, and on the situation that we are now in, and to make an informed choice. If it were to be put to the test in the House of Commons, I believe that there could be a majority in favour of a people's vote.

There is enormous danger in allowing the matter, whether actively or passively, to continue to run on into the third week of January, while the potential to be able to take corrective action diminishes day by day. I am happy to work with Willie Rennie—and to work with anybody—to find a way to force the issue. I hope that there might be a change of heart on that right across the opposition parties, and that people will say that we need to get that done.

There are three possibilities left on the table. One is no deal. It is wise that we prepare for that, although it is a nightmarish prospect. I have spent a great deal of time on that over the past several months, and I do not sleep easy at night when I consider it. The second is the Theresa May deal, which is an appalling deal that would be very damaging to Scotland—in particular, in respect of

freedom of movement. One can see today indications from the UK Government that their white paper on migration, which has been delayed for 18 months, will be even worse when it comes out, which is frightening indeed. The third possibility is the people's vote. It is the people's vote that all sensible people should settle on, so we should get on and do it.

**Joan McAlpine (South Scotland) (SNP):** The Scottish Council for Development and Industry told the Parliament's Culture, Tourism, Europe and External Affairs Committee that a no deal

"would create substantial delays for imports and exports at airports and ports"

with perishable food and drink particularly at risk. It also said:

"Scottish pharmaceutical, chemical and related products would no longer be accredited for sale in the EU. The attractiveness of Scotland as a leading destination for inward investment would be severely damaged. The supply of labour and skills would decrease in an already tight labour market",

which would cause prices to rise for consumers.

Does the cabinet secretary agree with me and the SCDI that no amount of mitigation can prevent such calamitous consequences of a no-deal Brexit?

**Michael Russell:** I have made it clear that it is not only difficult but impossible to mitigate all the effects. The member raises a sector that is of enormous importance in Scotland—the pharmaceutical sector. Leaving the European Medicines Agency has meant that the agency has moved to Amsterdam. That is bad enough. In the event of no deal, there would be no arrangement in place.

Members may remember that that was a key issue during the referendum. Michael Gove in particular stampeded round the country telling people that having our own medicines agency would accelerate the production of new drugs. That was utterly untrue. What has happened is that, first, drugs cannot be tested for the EMA outside the EU, so we have lost the jobs, potential jobs and part of an industry. The UK will become a small part—about 3 per cent—of the global pharmaceutical market. As a result, work will be done to satisfy the EU regulations and the USA regulations before the UK is even touched. What was a promise and an assertion turns out to be completely hollow and it is costing us all dear.

**Murdo Fraser (Mid Scotland and Fife) (Con):** If there were to be a second referendum on the EU, would the Scottish Government accept the result?

**Michael Russell:** It is still not possible for Murdo Fraser to rise to the occasion. We are here

looking at the serious consequences of a no deal. Murdo Fraser thinks that he is in a school debating contest. He would not win a school debating contest, but he thinks that he is in one and that by asking a clever question—it is not a particularly clever question—he can in some way deflect the attention not just of the Parliament but of the Scottish people from the massive dereliction of duty that the Scottish Tories are guilty of and the massive betrayal of the people of Scotland. That we have come to this position is a result of such childish pathetic behaviour. Murdo Fraser does not deserve to be treated as a serious politician. Fortunately, Scotland knows that he is not.

**Annabelle Ewing (Cowdenbeath) (SNP):** The cabinet secretary spoke about the need for the UK Government to take the option of no deal off the table. Does he have any confidence that the message is getting through to the Prime Minister and her cabinet colleagues?

**Michael Russell:** We may have the opportunity to assess that tomorrow when the joint ministerial committee meeting takes place. However, the Prime Minister has shown herself incapable of listening to anybody but herself. It is extraordinary.

There was a piece at the weekend by Ryan Heath of Politico, which pointed out a number of mistakes that the Prime Minister had made since the 2016 vote. The first mistake was that any politician worth their salt, realising that there were competing interests—including the fact that Scotland and Northern Ireland had voted against—would have got the key players in the room and said, "How can we work together to find a way through this? How can we construct something that all of us will get something out of?" There has been no sign of that approach—quite the reverse. She started off by saying "Brexit means Brexit", and she is still saying it. I have no confidence that she is listening, but we will go on talking because it is essential that we speak up for the people of Scotland.

**James Kelly (Glasgow) (Lab):** When Derek Mackay published the Government's draft budget last week, he indicated that it would have to be revisited in the circumstances of a no-deal Brexit. That budget contains £319 million of cuts to local councils; does the Government's assessment of a no-deal Brexit mean further cuts to local councils, which would have dire consequences for local communities?

**Michael Russell:** As I have indicated, we are working through the SGoRR mechanism in partnership with COSLA. It is a member and has been invited to take part in the SGoRR mechanism so that we will come to a common mind about what requires to be done. I will not enter into debate about local authority figures; I simply say that I noticed this morning, in the



figures that have been issued, that Argyll and Bute had a £9 million increase, which is very welcome—speaking as the member for Argyll and Bute. It is important that COSLA's input is listened to; it will be listened to.

**Ruth Maguire (Cunninghame South) (SNP):** The cabinet secretary has touched on communications, or the lack thereof, from the UK Government. What detail has he, or ministerial colleagues, had with regard to funding for Brexit planning, not least the recently announced £2 billion for a no-deal Brexit? Has any information been provided on how much of that Scotland is set to receive?

**Michael Russell:** I noticed at lunch time today that the chancellor was apparently upbraiding his colleagues for not having spent the £1.5 billion that he has already allocated to no-deal Brexit planning. We have not had anything like a proportionate share of that money. We continue to argue the case for the sums that we require to have. We are expending money; I indicated in my statement that that process has started. Derek Mackay is making representations to the chancellor and to the chief secretary and will continue to do so, but it is vital that they recognise that we will require what we will require to do that job. We will go on trying to get it.

**Jamie Greene (West Scotland) (Con):** Let us never forget that, on 18 September 2014, Scotland voted overwhelmingly to remain in the United Kingdom; this Government seems to have forgotten that throughout this narrative. The EU has publicly stated [*Interruption.*]—if I may—that substantive changes to the deal that has already been agreed between the EU27 and the UK are simply not on the table, and so say Messrs Tusk, Juncker, Varadkar, Macron and so on. On what evidence does Michael Russell base his view that anyone else will get a different or better deal?

**Michael Russell:** I will not even comment on the first point, which is utterly ridiculous and shows yet again that the Tory front bench is unable to rise to the occasion.

The answer to the second point is very simple. It has been crystal clear through this entire process that what people get out is a product of what they put in. If they set a series of impossible red lines [*Interruption.*]—members do not wish to listen to this, but I will say it because it is really important and factually based—they will get the outcomes of those red lines.

I draw Jamie Greene's attention to a slide that was produced by the Barnier task force and has been reproduced twice in Scottish Government publications, which illustrates the point; I am surprised that he has not seen it. The slide goes through various relationships with the EU, such as

the European Economic Area, a trade treaty and the Ukraine association agreement, and indicates in steps how the red lines produce the outcomes. If the red lines—the input—change, the outcomes change. For example, the present red lines include ending freedom of movement, apparently proudly; I do not understand for the life of me how anybody could be proud of that, but that is the Tory position. If ending freedom of movement is a red line, the UK cannot be in the EEA because that arrangement includes the four freedoms. That red line produces an outcome. If we remove that red line, we get a different outcome. That is simple. In fact, it is EU negotiations 101. I am surprised that Jamie Greene has not read that and seen the chart.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** The cabinet secretary spoke about the no-deal cliff edge, which the Tory members seemed to think was something humorous. Is there an option on the table for the UK Government not to be constrained by its own red lines and the arbitrary date for leaving the EU, by seeking an extension to article 50?

**Michael Russell:** Thanks to Mr Greer and his colleagues, it is absolutely clear that article 50 can be revoked by the UK or an application can be made for article 50 to be extended. That is the right and sensible thing to do. It is fairly clear that article 50 would be extended if the reason for that were either to hold a general election or to have a people's vote. In those circumstances, an extension could take place; that option is on the table.

Given the verdict of the European Court of Justice, it would be possible for the Government to revoke article 50, to have an election or vote and then resubmit the article 50 letter. That is what the judgment says. I hope that the UK Government would do a bit of work on that letter first, because it did not do any work on the first version.

In those circumstances, it would be perfectly possible to say, "Let us stop this now." We would then revert to the existing terms, which would be tremendously welcome throughout the country.

**Rhoda Grant (Highlands and Islands) (Lab):** Which ports and routes are the Scottish Government considering as alternatives to Dover? What boats does the Government hope to procure, given that it cannot find boats to fulfil its own routes and services? Will the cabinet secretary publish the Government's impact assessments so that the agriculture and fishing industries can prepare?

**Michael Russell:** Grangemouth and Rosyth are the obvious ports. Transport Scotland is considering those carefully to assess whether there is additional capacity. The member's

assessment in comparison with ferry vessels is not accurate. It may not be possible to source an alternative ferry for the Western Isles—even I have requested that—but the requirement is for a completely different type of vessel. The vessels in question are much more common and are available. That will certainly be considered.

A great deal of work is being done. I will not start publishing a great deal of material on that, because it is far more important that the work gets done. I have made it clear that I am open to answering questions, giving information and doing what we can to ensure that people understand what is taking place. However, at this stage, publishing more material on the issue would not be helpful to anyone.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Given that Scotland voted to remain in the EU, but we are being dragged out against our democratic wishes, does the Scottish Government agree that the resources that the Scottish Government is investing would be better spent preparing Scotland for the future, rather than mitigating the damage that will be inflicted by a hard Tory Brexit?

**Michael Russell:** One of the many great tragedies in this appalling situation is the time, effort and resource that are being absorbed by the whole Brexit process. Planning for a no-deal situation takes up a great deal of that. I have spent a lot of my time—as have ministers and officials—working on that and will continue to do so.

The whole thing is like a black hole that is sucking in energy and resource at a time when they could be far better expended elsewhere. It will be the judgment of history on the Conservatives that they frittered away so much on something that was so pointless.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Everywhere we turn, we see that Westminster is gripped by inertia—whether that is the inertia of Theresa May in postponing the meaningful vote, or of Her Majesty's Opposition in refusing to use the supremacy of Parliament through a vote of no confidence in the Government. While we defer that decision, uncertainty reigns and planning for a no-deal Brexit has to happen, because until we have that meaningful vote, we cannot begin to game out the other scenarios, including a people's vote.

Does the cabinet secretary agree that we must force the Government to have the meaningful vote before Christmas, even if that means cancelling Christmas for our Westminster colleagues?

**Michael Russell:** I am sure that the member would not encourage me to play Scrooge—it would be very unlike me and I am not going to do it. It would be far better to have the meaningful

vote this week or possibly on Monday, which is Christmas eve. It would be far better if we were able to get to the stage of bringing the issue of a people's vote to the House of Commons as early as possible in the new year. I agree with him on that point.

I agree with the member on something else: I am heartened to discover that Alex Cole-Hamilton now shares my despair and disdain for Westminster—I welcome him to the nationalist club.

**Mike Rumbles (North East Scotland) (LD):** On a point of order, Presiding Officer. The cabinet secretary responded helpfully to two members that he will give them information about how much the Government has spent on preparations for a no-deal Brexit, and what proportion of that is coming from the UK Government. Would it not be more appropriate for the cabinet secretary to lay that information in the Scottish Parliament information centre for all members of the Scottish Parliament to see?

**The Presiding Officer:** I am sure that the cabinet secretary has noted the member's comments, and that he intends to publish the information and not just give it to the two members. The member's comments have been noted, although that was not a point of order.

## Conduct of Reviews and Inquiries

**The Deputy Presiding Officer (Linda Fabiani):** The next item of business is a statement from Humza Yousaf on the conduct of reviews and inquiries. The cabinet secretary will take questions at the end of his statement, so there should be no interventions or interruptions.

15:06

**The Cabinet Secretary for Justice (Humza Yousaf):** As a Government and as a society, we are all committed to ensuring delivery of public services that treat all people with kindness, dignity and compassion, that respect the rule of law and individual rights, and that act in an open and transparent way.

When something goes wrong in the delivery of public services, actions should be taken as close to the point of delivery as possible, with the opportunity for errors to be acknowledged, action to be taken and lessons to be learned promptly.

In a small number of instances, however, whether because of the scale of the harm that has been caused or the wider lessons to be learned, the issues that are raised can be addressed appropriately only through the initiation of a statutory public inquiry or a focused review. Such inquiries and reviews place significant demands on the individuals who have been affected and the organisations that are involved, and they should not be considered or progressed without careful consideration and planning.

As Cabinet Secretary for Justice, I therefore warmly welcome the work of Professor Alison Britton of Glasgow Caledonian University, who was commissioned by the then Cabinet Secretary for Health and Wellbeing to conduct a review of the process of establishing, managing and supporting independent inquiries and reviews in Scotland. I and my fellow ministers thank and pay tribute to Professor Britton and her team for their efforts and for giving of their time to produce a thorough, detailed and informative report that will assist in informing future decisions about when to consider a formal inquiry or review, and how they are commissioned and conducted.

The report makes a number of valuable recommendations and, in particular, is helpful in emphasising the importance of thinking carefully in the critical early days when a review is a possibility, in order to ensure that the right questions are being asked. What type of review or inquiry? How is the chair to be chosen? Is the remit being drawn with sufficient precision?

Professor Britton was, of course, invited to undertake the review as a result of concerns that were expressed about the process of the independent review of transvaginal mesh implants that reported in March 2017. Although Professor Britton has rightly highlighted the mis-steps that were taken during that review, it is important to make three things clear. First, although I wish in no sense to minimise where the mesh review went wrong, it is only fair to point out that Professor Britton's conclusion was this:

"we were satisfied that no one involved in the Mesh Review was acting in bad faith. On the contrary, public citizenship and sense of duty were the main factors in volunteering to be part of the Mesh Review."

Secondly, it is important to remember that Professor Britton's review did not re-examine the evidence that was looked at by the mesh review, nor did it reconsider its findings. Indeed, Professor Britton noted:

"We found no evidence to support the claim that evidence was deliberately concealed."

The statistical evidence that was considered by the mesh review was published in the internationally recognised medical journal *The Lancet* in December 2016 and, as such, the chief medical officer accepted the mesh review's recommendations at the time of the publication of the final report.

Thirdly, it is important to recognise that the majority of reviews and inquiries are conducted carefully, officially and in a manner that commands public confidence. I say that with two current public inquiries in mind: the Scottish child abuse inquiry and the inquiry into the Edinburgh trams project. I wish to be abundantly clear that nothing within Professor Britton's report casts any doubt on the work of any other reviews or inquiries, and that the response to the report will not in any way delay or have an impact on the work of the statutory inquiries that are under way.

Before commenting further on Professor Britton's review—and being mindful of the fact that it was prompted by what happened during the mesh review—I say that I am deeply sorry that the suffering of the women who have been affected by mesh has been compounded by what went wrong with the process of the review. Members will be aware that, in September, the Cabinet Secretary for Health and Sport announced a temporary halt to all transvaginal mesh procedures. That temporary halt will be lifted only when a restricted-use protocol is developed and in place. It will be informed by new evidence-based guidelines from the National Institute for Health and Care Excellence and it will ensure that, in the future, transvaginal mesh will be used only in the most limited of circumstances, subject to rigorous process.

Both the Cabinet Secretary for Health and Sport and I hope that that action, which goes beyond that which has been taken elsewhere, gives reassurance that the Government treats the issue with the utmost importance, and that it goes some way towards addressing the disappointment that was felt after the mesh review.

I will not address all of Professor Britton's recommendations today, but I will touch on some of them. We are considering all the recommendations carefully, and I guarantee that the experience of the mesh review will be used to inform all such future inquiries and reviews. The Scottish Government has developed guidance that will be available to all policy teams that are undertaking considerations of calls for a review or an inquiry. The guidance covers the early consideration that I referred to a few moments ago and it addresses questions regarding the practicalities that come after the initial decision to hold a review. Does it need panel members to assist the chair? Where will suitable premises for the review be found? How will it be staffed? What information technology support is required? It includes questions around transparency, accountability and partiality. How will good governance be ensured for matters such as recording of decisions and the preservation of records for historical record?

The guidance is near to finalisation. I am happy for it to be published on the Scottish Government's website in due course. It will also be publicised internally, so that, across Government, a more consistent approach is taken to consideration of the issues. In addition, my officials, who have drafted the guidance, are available as a source of advice and support when there is a matter of public concern that has given rise to calls for a review or an inquiry.

However, I am clear that, although we wish to achieve consistency, there is no one-size-fits-all solution. Sometimes, it is obvious that nothing less than a full public inquiry is required to restore public confidence, to get to the bottom of what has gone wrong—independently of Government—and to identify how it can be avoided in the future.

Public inquiries are not quick solutions and, as I have said, they can place significant demands on those who are affected and the organisations that are involved. Sometimes, a well-focused review reporting swiftly—albeit unhurriedly—is a preferable solution. Sometimes, there are statutory bodies whose job is independent scrutiny of a particular sector. For example, statutory inspectorates play a vital role in identifying both strengths and areas for improvement in certain key public services. That is the job that they are there to perform. Similarly, a fatal accident inquiry, conducted by a sheriff, is the right mechanism to

establish the facts and learn lessons following an accident or sudden death. Of course, decisions about whether to progress a fatal accident inquiry rest with the Lord Advocate, other than in those instances where such an inquiry is mandatory.

The chair of a historical public inquiry identified the following elements of a successful inquiry: that the interested parties believe that a thorough inquiry into the issue that had caused public concern has been conducted with obvious fairness; that the final report is neither overwritten nor underresearched; that the interested parties feel that they have been given an opportunity to present their views; that the inquiry reaches conclusions that are justified by the evidence; and that the inquiry produces a report that people understand.

That summarises quite well the critical objectives of any review or inquiry. The review that was undertaken by Professor Britton is of great assistance in ensuring that those objectives will be achieved in every review and inquiry. I am determined that future inquiries and reviews learn the necessary lessons and ensure that those who have suffered harm, and the country as a whole, are confident that a fearless, independent and robust investigation has taken place.

**The Deputy Presiding Officer:** The cabinet secretary will now take questions on the issues that were raised in his statement. I will allow around 20 minutes for that.

**Liam Kerr (North East Scotland) (Con):** I thank the cabinet secretary for advance sight of his statement. The Britton report will be valuable, not least in ensuring that the right questions are asked at the outset and that parameters are clear. It is good to hear that the recommendations will be considered carefully and that guidance has been delivered.

However, I wish to focus on a particular point that the cabinet secretary made. He said, rightly, that sometimes it is obvious that nothing less than a full public inquiry is required in order to restore public confidence and, independent of Government, to get to the bottom of what has gone wrong and how it can be avoided in the future.

He was unquestionably right to say that, which is why I was surprised and—dare I say it?—troubled to receive his response to the joint letter from Willie Rennie, Daniel Johnson and me in which we called for a public inquiry into the tragic death of Craig McClelland. The cabinet secretary stated that he is

“not persuaded that a full Public Inquiry is the ... way forward”,

and he also says that

“an inquiry is first to determine the details of what happened and to make recommendations that can help prevent a similar incident happening again.”

He is absolutely right.

Surely, however, that is applicable to the McClelland case. What would it take to persuade him that it is a case in which nothing less than a full public inquiry is required in order to restore public confidence? What weight does he afford genuine cross-party calls for an inquiry? Will he reconsider that decision in order to ensure that all lessons are learned and that such tragic events can never happen again?

**Humza Yousaf:** I thank Liam Kerr for the question and for the tone in which he asked it. There is nothing that I can do to reduce the grief that the McClelland family have faced. I have met them on three occasions to listen to their concerns, to help to assemble the information from the relevant agencies and to gain a better understanding of the circumstances of Craig’s death, while also ensuring that wider lessons are learned. I think that Liam Kerr would accept that a decision to move forward with a public inquiry, or not to do so, is a difficult one that must be taken under extremely careful consideration.

The Scottish Prison Service, Police Scotland and the Scottish Government accepted all 37 recommendations that were made by two independent inspectorate reviews, which have already examined the home detention curfew scheme, including the circumstances of James Wright’s release and subsequent breach of his HDC. I have written to the family of Craig McClelland to provide them with more information and with direct answers to the 34 questions that they asked of the SPS, Police Scotland and the Scottish Government. To add an element of independent scrutiny, I have asked HM inspectorate of prisons for Scotland and HM inspectorate of constabulary in Scotland, as part of reviewing how the recommendations are being implemented, to consider the responses and whether they raise further issues or concerns that need to be addressed.

I would address the matter in a slightly different way from Liam Kerr—by asking whether we are ensuring that lessons have been learned from what was a terrible tragedy. Two independent inspectorate reports have made 37 recommendations, all of which have been accepted. That will lead to changes in the HDC regime, some of which Liam Kerr has been calling for for a time. After the six-month review that will take place, if the inspectorates come back to me and say that more changes need to be made and more questions need to be answered, I will be willing to have further conversations about what more can be done.

**Neil Findlay (Lothian) (Lab):** I thank the minister for his statement and Professor Britton for her very good report. I have been involved in forcing the Government to undertake three major reviews of policy—two on policing and one on transvaginal mesh. The first resulted in the police investigating the police; the second will report next year.

The mesh review has caused me most angst. It was characterised by systematic and repeated failures that are all identified by Professor Britton in her report. The review was supposed to take one year, but took three. The review’s chair resigned, as did three other panel members. It was riddled with conflicts of interests and the chairs were chosen without any consideration of the skills that were required. The review acted under direction from Scottish Government officials rather than autonomously, sub-groups were established that excluded members of the review, and agendas were directed by officials. The final report excluded important information that had been included in the draft report. Those are just some from the catalogue of errors and problems.

Professor Britton’s report is good; it exposes serious failures and proposes 46 recommendations for change. Will the Government implement all the recommendations? The Government has had the report since June, and it was published in October. How many of the recommendations will the cabinet secretary accept today? Is there any intention to revisit the mesh review?

After months since the report’s publication, today’s statement is pretty pathetic. We do not want written guidance from the Government; we want all Professor Britton’s report’s recommendations to be fully implemented. Will the cabinet secretary bring the matter back to Parliament, or will the guidance be sneaked out at some point?

**The Deputy Presiding Officer:** Please come to a close.

**Neil Findlay:** It is clear that the cabinet secretary wants to shelve the recommendations and the report, but we will not let him do that.

**Humza Yousaf:** That is not the intention. First, it would be churlish not to pay credit to the work that Neil Findlay has done on the plight of the women who have suffered due to transvaginal mesh issues. However, he is incorrect: I will try to explain the reasons why.

I said very clearly that we would publish the guidance on the Scottish Government’s website. I can make sure that Neil Findlay gets a link to it when it is published.

The member asked whether we will accept all the recommendations. We will accept the vast majority. There are at least a couple of recommendations with which I take issue, but I would be happy to have a discussion with him—or, indeed, Parliament—about that. The recommendations with which I take issue will be obvious from the guidelines. For example, there is a recommendation about having in the Scottish Government a centralised unit for directing inquiries. My and the Scottish Government's view is that from a logistical and governance point of view, that is better done in portfolio areas, so, for example, the health portfolio would take the lead on transvaginal mesh, the justice portfolio would take the lead on justice-related inquiries and so on.

I absolutely accept the vast majority of the recommendations, but I am giving further consideration to a few others. Once the guidance is published and Neil Findlay has the link to it, if he or the rest of the Opposition have more questions, I will of course be open to having those discussions. Many of the review recommendations, certainly the central ones, make a lot of sense to me, especially those on impartiality of members and there being more transparency about remits and terms of reference.

The transvaginal mesh review is a matter for the health secretary, but the Government will not rerun that review. There are a few reasons for that, including the fact that the process has been looked at by Professor Britton. There was no re-examination of the evidence, and its findings are in line with findings from England, Australia and the European Union. Further, the health secretary has introduced an effective temporary ban on transvaginal mesh procedures until a restricted-use protocol is in place. That is an important outcome, which should be welcomed by members from across the chamber.

**The Deputy Presiding Officer:** The two opening questions have taken much more time than would normally be acceptable. I allowed that because of the important and sensitive nature of the questions. However, unless other members are quick with their questions and the cabinet secretary is fairly quick with his answers, I will not be able to get everybody in.

**Alison Johnstone (Lothian) (Green):** The Britton review

“found that the Mesh Review was ill-conceived, thoughtlessly structured and poorly executed.”

It also raised concerns about the wellbeing of those who took part in the review: it said that some members left meetings crying and were “traumatised” by publication of the final review.

I appreciate that the cabinet secretary has said that he is determined that lessons will be learned, but will he advise what mechanisms will be put in place to prepare and support people who will be taking part in what could be very challenging processes?

**Humza Yousaf:** That will be part of the guidance. The point that Alison Johnstone has raised is very important. The reason why we have public inquiries and reviews under statute is that such issues are of huge importance to people. Often, the issues are controversial and can have huge emotional impacts on people. Further consideration of the wellbeing structures that we have put in place will absolutely be part of the guidance.

On the mesh review, I go back to the point that I made to Neil Findlay. I do not wish to labour the point, but as far as outcomes are concerned, I believe that the action that the health secretary has taken will be welcomed across the chamber. The findings are in line with those of mesh reviews that have been conducted elsewhere in the world. The central point that Alison Johnstone made about the wellbeing of people who take part in reviews is absolutely critical, and is not lost on the Scottish Government.

**Willie Rennie (North East Fife) (LD):** Before lessons can truly be learned, it is necessary to understand what has gone wrong. That has not happened in the Craig McClelland case, which is why we need a public inquiry.

In his statement, the cabinet secretary referred to fatal accident inquiries. One of Professor Britton's recommendations is about the speed of conducting inquiries. We have still not had a fatal accident inquiry into the M9 crash, and the Clutha inquiry will not happen until next April. What influence will the Britton review have on the speed of fatal accident inquiries in the future?

**Humza Yousaf:** I disagree with Willie Rennie about the Craig McClelland case, on which there have been two independent inspectorate reviews that have made 37 recommendations. The Government has not only accepted all the recommendations, as have the SPS and Police Scotland, but; has changed the HDC process and will look at how it can further reform it. It is therefore wrong to suggest that lessons have not been learned.

Where there are further questions, Opposition and other members can, of course, come with them to me directly, to the SPS or to Police Scotland, and we will do our best to answer them. If independent scrutiny is needed, there might be roles for Her Majesty's inspectorate of constabulary in Scotland and Her Majesty's inspectorate of prisons for Scotland in that.

On his second question, Willie Rennie knows very well that FAIs come under the remit of the Lord Advocate. They were not specifically within the focus of Professor Britton's report, which was about inquiries and reviews. The Government has given money to the Crown Office and Procurator Fiscal Service to help to speed up fatal accident inquiries. That issue has been raised with me—and, no doubt, with the Lord Advocate—by many members from across the chamber, so clearly there is further discussion to be had about how to speed up the many FAIs that are outstanding. Although FAIs are not directly part of the review, I continue to have conversations with the Lord Advocate on the matter.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** The executive summary of the investigative review states that

“we were satisfied that no one involved in the Mesh Review was acting in bad faith”.

How can we ensure that, when conducting reviews, adopting the best of intentions results in the right outcomes?

**Neil Findlay:** Implement the report.

**Humza Yousaf:** I hear Neil Findlay shouting that we should implement the report's recommendations. He is absolutely right, and we will look to implement the vast majority of them—

**Neil Findlay:** All of them.

**The Deputy Presiding Officer:** Mr Findlay, it is someone else's question.

**Humza Yousaf:** I hear Mr Findlay shouting again, saying that we should implement all of them. We have a genuine concern about a couple—or, as I said, perhaps even a few—of the recommendations, but we will accept the vast majority of them. If members wish to come back and ask for our reasons for not accepting all of them, I will be more than open to having such conversations.

The answer to Rona Mackay's question lies in the Britton report and the guidance that we are developing. By following steps to ensure that the right people are appointed and that they have the right support, by drawing up remits carefully and appropriately, and by identifying conflicts and managing them at an early stage, we can ensure that reviews command public confidence. I reiterate that that is what happens in the overwhelming majority of cases but, clearly, we want every single one of our inquiries and reviews to command public confidence.

**Miles Briggs (Lothian) (Con):** From what we have heard, it is clear that the devil will be in the detail of the recommendations. We have heard that the Scottish Government is working on

guidance that will be published, and it is important that we get that right, so that the public can have confidence in the system. I want to ask about two specific points: impartiality, and putting in place the recommendation for identifying potential conflicts of interest. What work is the Government doing to take those points forward, and will the cabinet secretary share that guidance with parties before it is published?

**Humza Yousaf:** We have been considering the report since its publication, and the answers will be in the guidelines. I have looked at the report in great detail and its points about impartiality and conflicts of interest are well made. We are giving serious consideration to those points, and I think that they will leave us in a better place when it comes to the conduct of inquiries and reviews in the future.

I am very clear that the points about impartiality and the potential for conflicts of interest, which are related to public confidence, will be dealt with explicitly in the guidelines that we produce. Thereafter, if Miles Briggs wishes to have further conversations with me, he can. The Government believes that Professor Britton's important points, which Mr Briggs has reiterated, will help us to make the process for inquiries and reviews better, more robust, more transparent and more accountable in the future.

**The Deputy Presiding Officer:** I have to say that neither the questions nor the answers are any shorter or snappier than usual.

**Gil Paterson (Clydebank and Milngavie) (SNP):** As the cabinet secretary knows, reviews often involve personal tragedies. How can we ensure that reviews are always realistic about what they can achieve, so that those who have experienced life-changing events can also have clarity on what reviews can achieve?

**Humza Yousaf:** That is a really important point. We do not want to raise unrealistic expectations. Professor Britton's report touches on the fact that it is incumbent on all of us—politicians, people in the media and others—to temper people's expectations, because they will often relate to controversial issues that carry a huge emotional impact for individuals.

However, we must be absolutely robust when it comes to the transparency, independence and fearless nature of inquiries and reviews. Of course, that does not mean that all stakeholders will like the answers that emerge from inquiries or reviews. Self-evidently, a review cannot heal a loss, but when there has been a tragedy, it is right that we seek to find out the truth of the matter. The fact that reviews and inquiries are not there to allocate criminal or civil blame, or to hold people to

account, is a point that perhaps needs to be made clearer from the outset.

**Neil Bibby (West Scotland) (Lab):** The attempt by the justice secretary, a week before Christmas, to dismiss calls for a public inquiry into the failures that led to the murder of Craig McLelland is as shameful as it is insensitive. Two reviews have indicated that there were 37 failures, but they have not answered Craig's family's most important question about why those failures were allowed to happen. Why were they allowed to happen?

Given that the cabinet secretary has been unable to answer that question—we simply do not know—why does he continue to ignore the calls of Craig's family and a majority of parties in the chamber for a full inquiry?

**Humza Yousaf:** It is extremely disappointing that Neil Bibby has chosen to politicise and characterise the issue—we are talking about a death—in the way that he has. I find that not just shameful, but incredibly upsetting.

I have met the family on three occasions. *[Interruption.]* They wrote to me with 34 questions—

**The Deputy Presiding Officer:** Mr Bibby, would you stop shouting from a sedentary position, please?

**Humza Yousaf:** The family wrote to me, the Scottish Prison Service and Police Scotland with 34 questions. Responses to those questions have been given to the family. To provide an additional level of independence, I have asked HMICS and HMIPS to look over those responses. If, in the six-month review that they are carrying out, those answers raise further issues that must be looked at, the Government will be open to looking at what those further issues might be.

Of course the questions that we are considering are difficult to answer. The decision that I have taken bears no weight at all when it comes to the grief that the McClelland family have suffered. I do not take that away. *[Interruption.]* Mr Bibby can shout from a sedentary position all he wants, but he should recognise that—

**The Deputy Presiding Officer:** Mr Bibby, would you kindly stop being so rude and let the cabinet secretary finish his answer?

**Humza Yousaf:** I finish on the point that Professor Britton's report suggests that politicians and the media should be careful not to fuel unreal expectations when it comes to inquiries and reviews. I say to Neil Bibby that the politicisation of this issue is completely wrong-headed.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** The investigative review says that media involvement, among other things, can

often create “pressure or emotional stress” for members of a review. What lessons can be learned about how to manage that inevitable feature of prominent reports in the future?

**Humza Yousaf:** A key learning point is that there should be consideration of whether the subject matter is likely to give rise to a strong media interest. In most cases, when an inquiry or a review is held, there will be an intense amount of media and indeed political scrutiny. In such cases, as Professor Britton recommends, support, advice and perhaps even media training should be made available to the chair and the panel members as required. However, I go back to Alison Johnstone's point and note that it is important that appropriate support and wellbeing structures are in place for those who take part.

**The Deputy Presiding Officer:** I can allow one more question. I call Gordon Lindhurst.

**Gordon Lindhurst (Lothian) (Con):** Willie Rennie mentioned the length of inquiries. Thinking of the Edinburgh trams inquiry, my question to the minister is this: will consideration be given to setting in advance of inquiries being conducted the length of time that will be allowed and the budget that will be spent?

**Humza Yousaf:** To clarify, I make the point to Gordon Lindhurst that Willie Rennie was asking about fatal accident inquiries. It is really important that we do not conflate fatal accident inquiries with inquiries and reviews.

I will not go into the specific example of the Edinburgh trams inquiry, but it is important to note that the report that we are discussing stresses the importance of transparency and accountability around inquiries and reviews. If a Government minister was to limit the budget or the time for an inquiry, questions would arise as to whether it was being rushed or limited and whether the Government was interfering unnecessarily.

In the trams inquiry, as the member knows, there were literally millions of documents—6 million, if I remember correctly. If the minister or cabinet secretary who made the decision had limited the time or the budget for the trams inquiry, it might not have been able to examine and explore those 6 million documents in the required detail.

I understand Gordon Lindhurst's point, which comes from a good place, I think, and a desire to get to the truth and get answers as quickly as we can, but I would have concerns about limitations because they could cause inquiries or reviews to be rushed.

**The Deputy Presiding Officer:** That concludes the ministerial statement on the conduct of reviews and inquiries. I am sorry that I was unable to call



Stewart Stevenson, Daniel Johnson and Tom Arthur. Perhaps all members will consider the time that they take to ask questions and give answers.

## **Damages (Investment Returns and Periodical Repayments) (Scotland) Bill: Stage 1**

**The Deputy Presiding Officer (Linda Fabiani):** The next item of business is a debate on motion S5M-15169, in the name of Ash Denham, on the Damages (Investment Returns and Periodical Payments) (Scotland) Bill at stage 1.

15:38

**The Minister for Community Safety (Ash Denham):** I am very pleased to be here to open the debate on the general principles of the Damages (Investment Returns and Periodical Payments) (Scotland) Bill. I thank the convener and members of the Economy, Energy and Fair Work Committee for their insightful scrutiny at stage 1 of what is quite a technical, detailed and, in places, complex bill. I welcome the committee's positive support for the general principles of the bill, as set out in its report.

I also put on the record my thanks to the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee for their additional scrutiny and consideration. Like the Economy, Energy and Fair Work Committee, I am grateful to all those who provided evidence on the bill. Finally, I thank the Government Actuary's Department, whose analysis and expertise have been invaluable in informing the bill.

For some time, the personal injury discount rate has been the subject of criticism. Prior to 2017, pursuers' representatives expressed concern that the rate was, in effect, undercompensating pursuers, and a judicial review was sought. Since the most recent change, there has been criticism from defenders' representatives and insurers, on the basis that setting the rate by reference to returns on index-linked gilts intrinsically overcompensates many pursuers. There have also been concerns that the duration between reviews has contributed to the scale of the impact of changes, as well as concerns about a general lack of transparency in the process.

When we consulted on the issue in 2017 and asked whether the law on how the discount rate is set should be changed, 78 per cent of respondents agreed that a change is necessary. During the various consultations, common concerns emerged to do with the fairness, clarity, certainty, regularity and credibility of the method and process for setting the rate.

The bill attempts to address those points. It will put in place a new statutory regime for calculating the discount rate that should be applied to future pecuniary losses in personal injury cases. In

providing new methodology, the bill requires the Government Actuary's Department to assume that the damages that are awarded for future loss will be invested in a notional investment portfolio, comprising set classes of investment asset. The portfolio has been designed to meet the objectives and match the characteristics of the "hypothetical investor", as identified in the bill.

It is encouraging that, in its stage 1 report, the Economy, Energy and Fair Work Committee said:

"the Committee welcomes the additional clarity and transparency provided by having the method for calculating the discount rate set out in legislation."

The committee noted that that view was shared by most of the respondents to its call for evidence.

As the bill stands, the rate will be reviewed every three years. Currently, there is no statutory requirement for the discount rate to be reviewed regularly. It is clear that the lack of a regular review is detrimental to all parties. Most consultees agreed that the rate should be reviewed on occasions specified in legislation.

The Scottish Government took account of respondents' views and decided that a review should be carried out every three years, with the possibility of a review being instigated sooner than that, if circumstances require it. Such an approach will provide a significant degree of certainty, tempered with a proportionate degree of flexibility.

Stakeholders suggested that a three-year review period might mean that settlement of cases would be delayed if one of the parties anticipated that a more favourable rate would come into force, and argued that a five-year review period would go some way towards addressing that issue.

The Scottish Government's view is that it is imperative that reviews are regular. In its stage 1 report, the committee said:

"the Committee believes—in the interests of finding that balance between flexibility and certainty—that five years would be preferable to three."

As I said in my response to the report, we listened carefully to the people who gave evidence and we considered the committee's conclusion. I agree with that conclusion. We will lodge an amendment at stage 2 to alter the frequency of review from every three years to every five years. The facility to call for an out-of-cycle review will, of course, remain.

**Daniel Johnson (Edinburgh Southern) (Lab):** I accept the minister's point, in broad terms. Will she give some detail about the out-of-cycle review? In a five-year period, assumptions around investments can change radically. That happened at the turn of the millennium, when there was a stock market crash.

**Ash Denham:** Daniel Johnson makes a good point. The general point is that the rate must meet the needs of the hypothetical investor and ensure that they get the right amount of money, so that, at the end of the term, the money is exhausted and the person will not have been overcompensated, and, equally, will not have been undercompensated.

The member is right to say that economic conditions can change rapidly, which is why the bill provides for the facility to have an out-of-cycle review, so that if circumstances should change, the Scottish Government will be able to review the methodology and the distance between and frequency of rate reviews and so on, to ensure that the rate still meets the needs of the hypothetical investor.

The 2017 consultation provided options for those who might set the rate, some of which involved ministers and some of which did not. However, overall there was more support for the options that did not involve ministers. The bill therefore provides that the rate will be reviewed by the Government actuary, and the courts will continue to have the ability to apply a different rate should they decide to do so.

The policy decision to place the duty to review the discount rate on the Government actuary is consistent with and integral to the overall policy aim of reforming the law to make provision for a method and process for setting the discount rate that is clear, certain, fair, regular, transparent and credible. The policy approach has been to regard the determining of the rate as an actuarial exercise in which there should be no need to exercise political judgment. The bill will provide, in an accountable way, the framework in which the rate should be set, and thereafter the mechanics of determining the rate will sit with an appropriate professional. The Scottish Government thinks that that strikes an appropriate balance.

Currently, courts can make a periodical payment order for future pecuniary loss resulting from a personal injury only if the parties consent. In certain situations, periodical payments can be an attractive option to provide a guaranteed payment year on year for the duration of an award. The bill will, for the first time, require courts to consider imposing a periodical payment provided that the source of the funding is reasonably secure.

**John Mason (Glasgow Shettleston) (SNP):** The committee had concerns about the fact that the court could impose on a pursuer who, for various reasons, might not want a continuing relationship with the defender. Will the minister comment on that?

**Ash Denham:** We have taken account of that. We recognise that there are many reasons why a

PPO might not be suitable for a pursuer or a defender, but we think that the court would take that into account. Both parties would be entitled to put their views on whether they saw a PPO as acceptable, and the court would take those views into consideration before it made its judgment.

The bill also provides for the variation or suspension of PPOs and similar agreements. I note that the committee would like the Scottish Government to lodge amendments to attach more weight to the pursuer's views when a court is asked to decide whether damages should take the form of periodical payments. I set out the Scottish Government's thinking on that issue in my response to the stage 1 report, and I will continue to give it further consideration.

I also note that the committee asked the Scottish Government

“to outline how it will promote the use of PPOs beyond the public sector.”

The bill, of course, obliges the courts to consider the use of periodical payments in every case. Again, I have responded to the committee on that point, and I confirm that we intend to progress that matter with the Scottish Courts and Tribunals Service and that we will look carefully at what the Ministry of Justice intends to do on the same issue and see whether anything can be learned from that information.

The report made a number of other recommendations that require action on the part of the Scottish Government. I intend to touch on them in my closing speech.

I very much look forward to listening to the debate.

I move,

That the Parliament agrees to the general principles of the Damages (Investment Returns and Periodical Payments) (Scotland) Bill.

**The Deputy Presiding Officer:** I call Gordon Lindhurst to speak on behalf of the Economy, Energy and Fair Work Committee for up to eight minutes.

15:48

**Gordon Lindhurst (Lothian) (Con):** I trust that all members present have read our stage 1 report, which is a classic of the genre. Neil Findlay is not present on this occasion to ask me a question about that particular line. I would not comment on whether the report falls within Mark Twain's definition of a classic as

“something that everybody wants to have read and nobody wants to read”,

but I am sure that the minister has read it. I thank her and her officials for engaging constructively with the committee.

Personal injury cases might seem small in number, but the impact for the individuals affected and for their families is considerable. We are talking about catastrophic life-changing events, compensation for which should be calculated in a fair and transparent manner. That is also a matter of concern to those who pay the compensation.

The Association of British Insurers said that the current system was “broken” and that the bill took a “much more modern” approach:

“We are therefore very supportive of this legislation, which changes the framework for setting the rate to one that bears much more relation to what happens in reality.”—[*Official Report, Economy, Energy and Fair Work Committee*, 30 October 2018; c 3.]

The minister has helpfully set out the context and content of the bill, so I will focus my remarks on the committee's findings.

We welcome the additional clarity on how the discount rate—the adjustment to a compensation award to cover future loss—is calculated. That welcome was shared by the majority of respondents to our call for views, but opinion was split on the detail of the bill, with pursuer representatives on one side and defender interests on the other.

The pursuers felt that any investment risk added to other risks, such as the cost of care or of modifying accommodation. Those were risks that the victim of injury would not face had they not been wrongfully injured, and they would be on top of the risk, or perceived risk, in seeking legal redress in the first place. The culmination of those risks could, in their view, lead to undercompensation.

From the defender perspective, the concern was overcompensation and that any discount rate not reflecting the ordinary and prudent investment was unfair and that adjustments to include higher-performing assets would result in better returns. That, as they saw it, was a blunt instrument.

The committee recognises that the calculation of compensation is not an exact science. The approach is of a hypothetical investor with a notional portfolio for a theoretical period of 30 years. We have little information on actual investor behaviour, but the point is not what people do in reality. Rather, it is to provide a standardised approach that works across a range of cases.

The committee asked for more detail on keeping the 30-year figure under review. We do not always receive a response to a committee report before the debate, but we did on this occasion. We can

only hope that the minister's fine example is not lost on her ministerial colleagues.

The discount rate has several adjustments factored in, which are intended to reduce the risk of undercompensation. They cover inflation, tax and investment advice, and underperformance. On balance, the committee is satisfied with that approach. We are also content with the role of the UK Government actuary in setting the rate, which, we heard, was a technical rather than a political exercise—accountability is to be found in setting the legislative framework.

We were also told of concerns about gaming the system—holding back or pushing forward proceedings to suit the timing of a review. One suggestion was to work from when the claim was raised, rather than the date that it is settled. We asked the Scottish Government to consider the merits of such a change. The minister's response was reflective, if rather sceptical, although she has not ruled anything out, which we appreciate.

This is a complex policy area, and the impact on both the pursuer and defender must be appraised carefully. Let us not lose sight of what this bill is about. The Association of Personal Injury Lawyers told us:

“The award of damages is not an investment pot—it is not a reward. It is a sum of damages ... to look after somebody's needs for the rest of their life.”—[*Official Report, Economy, Energy and Fair Work Committee*, 23 October 2018; c 26.]

I turn to the review period. A review held in 2017 was the first for 15 years, and its outcome was not well received by defenders or insurers. The bill proposes that the discount rate be reviewed every three years, with a review of the portfolio preceding every regular review and a ministerial power to call for out-of-cycle reviews. The committee considers that to be a suitably rigorous approach. In the interests of balancing flexibility and certainty, we recommend a five-year review cycle. I am pleased that the minister agrees and that, as she has said today, she is committed to lodging an amendment at stage 2.

On the matter of periodical payment orders, we asked that more weight be given to pursuers' views. PPOs are regular instalments paid over time, rather than a lump sum on conclusion of a case. The minister has said that she will reflect on the matter, which is welcome, as is her willingness to explore how barriers to the take-up of PPOs can be overcome.

We thank all the witnesses who helped to inform our scrutiny. We are content that the bill's provisions are consistent and credible and that the change in the law will balance the interests of pursuers and defenders. We look forward to further consideration of the points that I have

outlined and which the minister has undertaken to look at in advance of stage 2.

The author Ambrose Bierce defined the future as

“That period of time in which our affairs prosper, our friends are true and our happiness is assured.”

His was a sardonic take on life, but the reality is that victims of personal injury face risk and uncertainty. They contend with trauma and ill health, often for long periods, which have resulted from catastrophic injuries that they have suffered. They encounter a legal process that often seems drawn out, and they should have a fair and transparent compensation system. We commend the general principles of the bill.

15:56

**Dean Lockhart (Mid Scotland and Fife) (Con):**

I thank those who provided submissions on the bill and the witnesses who attended the three Economy, Energy and Fair Work Committee sessions that were dedicated to the bill. As the minister said, the bill is technical, but it is important. It provides for a new statutory regime to calculate the personal injury discount rate that applies to compensation awards in personal injury cases.

Under Scots law, the role of compensation is to restore the injured party—to the extent that a financial award can—as closely as possible to the position that they were in before they were injured. When assessing the amount of a lump-sum award, courts take into account the net rate of investment return that a claimant might expect to receive from a reasonably prudent investment of the lump sum. That is referred to as the discount rate.

As the committee's convener and the minister said, the committee heard evidence that pursuers and defenders want a more stable, transparent and fair method for setting the discount rate. The bill takes into account a number of factors in how the discount rate should be calculated.

First, the bill defines a hypothetical investor. It says that the discount rate should be calculated by reference to the assumption that the hypothetical investor will invest over 30 years and that they will invest in a notional portfolio that is made up of investments in a fixed class of assets. In addition, the bill proposes making a series of standard adjustments to the discount rate—an adjustment to reflect the impact of inflation; a deduction of 0.5 of a percentage point to represent the costs of tax and investment advice; and a further deduction of 0.5 of a percentage point, which is referred to as the further margin—to reduce the risk of undercompensation of the party that suffered loss. The bill also provides for regular reviews of how

the discount rate is set and gives courts additional powers to impose periodical payment orders.

There was consensus among defender groups and pursuer groups on a number of areas, including the need to update the system; the need to increase the availability of periodical payment orders and give courts further powers on them; and the need for regular reviews of the discount rate. We are grateful that the Scottish Government is to follow the committee's recommendation that the review cycle for the discount rate should be over five years instead of three years.

The committee heard differing views on particular aspects of the bill. I will raise three areas where there was a lack of consensus in the evidence.

There is concern among defender groups that the notional portfolio is overcautious and is too highly invested in fixed assets, which offer a lower return than higher-returning investments in equities. The proposed portfolio assumes that only 20 per cent of the investment would be in equities, which is lower than the percentage in a typical balanced investment portfolio. That is important because the interest rates on Government bonds have historically been much lower than the higher returns on equity investments.

**Daniel Johnson:** I thank the member for giving way. I accept some of what he is saying, but does he not accept that the language being used—the talk of a portfolio of balanced asset classes—is language that many people being awarded damages will simply not be able to navigate and that we also need to take that into consideration in relation to our so-called hypothetical investor?

**Dean Lockhart:** The member makes a fair point. That is why the further adjustments that we will come to—such as the 0.5 per cent deduction to pay for professional advice in this area to ensure that the injured person has all the necessary professional advice—are an important part of the protection mechanisms that the bill puts in place.

Defender groups acknowledged that the Government will have regularly to change and update the notional portfolio through secondary legislation to take into account market changes. With some time available before stage 2 of the bill, it would be advisable for the Scottish Government to stress test the composition of the notional portfolio to ensure that it does indeed provide the right balance of investments.

The second area that attracted differing views was the further margin adjustment of 0.5 per cent. Defender groups have expressed concern that this further margin adjustment will increase compensation payments beyond the level of 100 per cent, which is the general principle. They

argue that a cautious portfolio, which is already baked into the legislation, is likely to produce overcompensation, so there is no need for a further adjustment to deal with the risk of undercompensation.

In the bill's policy memorandum, the Scottish Government recognises that there is a probability of overcompensation as a result of the application of this further adjustment of 0.5 per cent. Although we understand the Government's approach of legislating in favour of a risk of overcompensation rather than risking undercompensation, we have to recognise that this will come at a cost. The costs associated with paying more than 100 per cent of compensation will fall on insurers and ultimately on their customers, medical professionals, the national health service in Scotland, and other public bodies that self-insure.

Parliament should recognise as a matter of public policy that if the further margin provision of 0.5 per cent is passed into law, it comes at a cost.

**John Mason:** Will the member accept that it is inevitable that some people will be undercompensated and some will be overcompensated? It is not possible to exactly compensate everyone.

**Dean Lockhart:** That is a fair point to make, although the vast majority of the evidence sided with the probability that overcompensation would be the likely result of these new provisions.

The third area where there has been some disagreement relates to the assumption that the hypothetical investor will hold assets for 30 years. A longer period of investment would increase the likely returns and therefore increase the discount rate. It was not obvious from the evidence given to the committee why a period of 30 years should be used. We heard evidence to suggest that the average for a settled claim could be much longer and last around 40 to 45 years.

That led the committee to call on the Government to assess how the 30-year period would work in practice and we are grateful to the minister for confirming that her department will keep under review the operation of the 30-year period of investment to ensure that in reality it does not produce a significant divergence in returns.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Will the member give way?

**Dean Lockhart:** I am literally about to wrap up.

The Damages (Investment Returns and Periodical Payments) (Scotland) Bill is technical, but it is vitally important for those affected and we believe that it will provide greater clarity and certainty for everyone involved.

16:03

**Daniel Johnson (Edinburgh Southern) (Lab):** I, too, thank the clerks and members of the Economy, Energy and Fair Work Committee for their excellent work at stage 1 of the Damages (Investment Returns and Periodical Payments) (Scotland) Bill. I acknowledge the many organisations and individuals who participated in the consultation process.

Scottish Labour welcomes the introduction of the bill. The bill seeks to calculate personal awards of damages through the injury discount rate in a way that is

“clear, certain, fair, regular, transparent and credible”.

Ultimately, the bill is about providing security to those who have been injured through the actions of others, often leaving them with life-altering conditions and with substantial life decisions to make.

As members have noted, although this is a technical bill, at its heart is something fundamental and understandable. It is about protecting vulnerable people and making sure that we have in place a system that is fair and equitable, so that they can make the decisions that they need to make in very difficult circumstances. Importantly, it is also about finding the right balance so that our public bodies, in particular the NHS, do not incur unreasonable costs and liabilities. There is also the important point that undercompensating can lead to many such bodies having large bills. If we undercompensate—if we give people too little—often it is the NHS that ultimately picks up the bill.

Although Labour agrees with the broad principles that are outlined in the stage 1 report, we recognise that there are parts of the proposed legislation that need to be tested robustly as the bill proceeds through stages 2 and 3. I will outline two or three such areas in my speech. The first area that requires scrutiny is the make-up of the notional portfolio, which we have already heard about. Concerns have been raised that it is too cautious and too focused on fixed assets at the expense of equities, even though equities would deliver a higher rate of return.

However, we need to strike a cautious note, in particular around the notion of the hypothetical investor. Although it is reasonable to assume that vulnerable people will invest, it is not reasonable to assume that they will become investment experts, or that they should assume risk or that they require to be speculators. It is not reasonable that they have to put their damages award under a metaphorical mattress, but nor should we expect them to bet on the stock market and to base their future on such speculation.

The notional portfolio would need to be updated regularly to keep up with market changes, but it is unclear whether the Scottish Government or the UK Government Actuary's Department would be responsible for doing that. Likewise, it is unclear whether the series of adjustments that are set out in the bill would be adequate to cover the cost of inflation, tax and investment advice or underperformance. We must test all those aspects as the bill proceeds.

Periodical payment orders would allow courts to make awards for future economic loss and for payments to be made in a periodic manner, thereby increasing the security of such payments. We welcome that provision, which can mitigate against some of the uncertainty that is associated with lump sums. For vulnerable individuals in particular, it can provide welcome certainty. However, more weight should be given to a pursuer's views when a court is asked to decide on a PPO and members have already raised that point. Ultimately, the bill should seek to empower those who seek compensation, instead of taking away any more of their control.

On the 30-year period, despite evidence that suggests that the average life expectancy following a serious personal injury claim with damages of more than £250,000 is 46 years, the bill creates an assumption that the hypothetical investor will hold their assets for a 30-year period. In her evidence, the minister stated:

“There is no authority on which to base that figure; it was chosen merely as a useful duration that was neither too short nor too long.”—[*Official Report, Economy, Energy and Fair Work Committee*, 6 November 2018; c 8.]

It is important that the period is examined and carefully considered so that the bill provides for a payment period that is realistic.

Labour welcomes the bill and supports its aim of creating a

“fair, ... transparent and credible”

personal injury discount rate. Although it represents progress, the bill is far from perfect and the proposed legislation must be tested robustly and scrutinised closely as it moves forward. Changes in the areas that I have mentioned will help strengthen the bill to provide greater security to those people who have been injured through wrongful action, while also protecting public bodies from unreasonable costs and liabilities. The bill will ensure that we have in place a just system that is fair and equitable. I look forward to following the bill's progress through stages 2 and 3.

**The Deputy Presiding Officer (Christine Grahame):** We move to the open part of the debate. Members have a generous four minutes for speeches.

16:09

**John Mason (Glasgow Shettleston) (SNP):**

The bill has been more interesting than I think that some committee members might have anticipated. The bill may affect a relatively small number of people, but how compensation is calculated is of immense importance. The whole question of a lump-sum settlement, and how it is invested, is a tricky one.

There seems to be widespread agreement that the present system, which is based on index-linked gilts, needs modernising, while keeping intact the fundamental principle of 100 per cent compensation so that neither party should gain or lose. As an aside, on the question of gilts, it seems to me that there is something fundamentally wrong when a saver gets a lower rate of interest than inflation. However, I accept that that is a wider question and beyond the scope of the bill.

Overall, I agree with the Government approach that we should move towards a cautious but low-risk portfolio. We heard evidence from defenders, including insurers and the NHS, of the risk of overcompensation. Clearly that would hit the premiums of others who take out insurance, or the public purse in the case of the NHS. However, evidence from pursuers' spokespeople raised the risk of undercompensation, which is certainly not desirable when a person may have suffered horrendous life-changing injuries.

In practice, a perfect balance, with no risk of over or undercompensation, is impossible to achieve, as there will always be uncertainties in such cases; for example, some people live longer and some for shorter periods than had been expected. The Government has argued that we need a standardised approach, and most witnesses and the committee agree. However, there will always be disagreements on how a hypothetical investor will invest their lump sum and whether the assumption of a 30-year period is reasonable, as others have indicated. The Government has indicated that it is open to more than one rate if that seems to be needed, for example by having a 15-year rate and a 50-year rate as well, and that is welcome.

Particularly contentious for defenders has been the further margin adjustment of 0.5 per cent on the discount rate. On the one hand, that is seen as reducing the risk for the injured party; on the other hand, it is seen as moving away from the concept of 100 per cent compensation—no more, no less. We heard that the injured party or pursuer takes on a range of risks, including living for longer than expected, higher inflation, or stock markets plunging, as they did in 2008. On the other hand, if investments do well, the pursuer might gain.

Another interesting area, which I think that my colleague Angela Constance will touch on, is periodical payment orders. The discussion has focused on whether we should move away from the current position, in which PPOs happen only when both parties agree. As an outsider looking on, PPOs can seem an attractive option, as they can take away some of the injured party's risk, for example the risk of living longer than expected. However, we heard arguments against PPOs, including the pursuer not wanting an on-going relationship with the defender; the financial solidity, or lack of it, of the defender; possible restriction of the pursuer's need to spend more up front, for example on accommodation; and defenders not liking PPOs as they add uncertainty to their financial position and, in particular, to their financial statements.

The committee was reluctant to go the full way of giving courts complete autonomy on this. That is why conclusion 10 in our stage 1 report suggests an amendment that would provide for a statutory presumption in favour of the pursuer's preference. I note the minister's reluctance to limit the court's ability to make the best decision, and I think that we need to consider that further after today's debate and at stage 2.

I think that there is general support for the bill. The committee supports the general principles of the bill and I am happy to align myself with that position.

16:13

**Maurice Corry (West Scotland) (Con):** I, along with my colleagues, welcome this stage 1 debate on the bill. Suffering personal injury is never expected. No one ever wants to have to claim compensation for injuries that have been caused by wrongful behaviour. Through no fault of their own, individuals can find themselves in the midst of a confusing legal framework that does not always work in their favour.

It goes without saying that the framework for such cases must not only be in place, but must operate as clearly and fairly as possible—most definitely for the pursuer, but also for the defender. That is how we can ensure that those individuals are treated sensitively and by a credible system.

We can see that the current personal injury discount rate needs improvement. With a lack of frequent reviews, we have a process that can seem ambiguous and unclear to pursuers and defenders in civil action cases. I hope that the introduction of the bill will see a helpful adaption of how the personal injury discount rate is calculated, with careful consideration of periodical payment orders and how best to set the rate of return.

I offer my appreciation for the work of the Economy, Energy and Fair Work Committee on the bill and generally. The committee's insightful analysis of the bill has offered the scrutiny that is needed. I hope that its recommendations will help to further mould the bill and make an end result that works for everyone.

I have no doubt that the elements contained in the bill are well intentioned. Making the current calculations for allocating compensation fairer and more efficient is clearly necessary. The process for claimants can be technically murky, especially when they face what can be a very stressful period of uncertainty. We know that few personal injury cases need a discount rate to be applied, but it is still fundamental that the legal framework is absolutely clear for individuals and their family members, not to mention for defenders and their representatives. Making the legislation as clear as possible is in everyone's interests.

The bill will modernise exactly how compensation will be calculated, and I support that. It allows for adjustments to be made to the discount rate and opens the possibility for PPOs to be changed in certain circumstances. Although there are varying opinions on how beneficial that will be, the principle behind those methods is most welcome.

I believe that the bill will be better attuned than the current legislation to how pursuers behave, especially regarding how compensation is invested. Indeed, the idea of a hypothetical investor, as set out in the bill, should encourage a more modernised framework that will allow for greater flexibility for the injured party as well as clarity.

Of course, there are aspects that will be worth examining in further detail. For example, the 30-year period for holding a pursuer's assets is, for some, not long enough, yet I recognise that that measure is designed to cover a broad range of cases and will be revisited regularly; I hope that that will be the case as necessary. There is also a question of the extent to which the proposed investments and reductions can lead to under or overcompensation. Indeed, the principal aim is to award full compensation—not more, not less—and its importance for those who are involved should never be underestimated. Neither the pursuer nor the defender should be placed at a disadvantage. With that in mind, I hope that the bill's end result will allow for adjustments that will accommodate for the needs of each individual. That will lessen the potential risk for pursuers and reduce the likelihood of their being undercompensated.

I welcome the bill at stage 1. Although further assurances and examination of certain aspects of the bill would be beneficial, I echo the support that has been given by the committee. Finding a

standard that can be implemented across the board—and which works for each case, despite their differences—is quite rightly our goal. Therefore, I hope that the proposed calculations for setting the discount rate will lead to a more credible and fair outcome for those who are affected by personal injury and give the clarity that each party deserves.

16:17

**Angela Constance (Almond Valley) (SNP):** Although the number of people who are directly affected by the bill is small, the bill is nonetheless crucial. We should always remember whose interests are at the very heart of the bill: the people who have suffered an accident at work, a birth that did not go to plan, or negligence or lack of care by an individual or organisation, which mean that they live with the tragedy of no longer being who they were meant to be or leading the life that they had worked for or, indeed, had dreamed of.

The minister has helpfully put the legislation into the context of a wider programme of reform that abides by the principles of clarity, transparency and fairness. I will return later to the importance of principles.

In the time that I have, I will focus principally on periodical payment orders, because the committee heard substantial evidence about the risks that victims of personal injury bear with compensation, particularly if it is received in a lump sum. No matter how good the legislation, calculating an award for damages, particularly for future loss, is not an exact science and never will be, so the risk of undercompensation can be minimised but never removed.

We have to remember that damages are not surplus funds; they are meant to replace loss of earnings and meet future care costs. Professor Wass advised the committee about inflation-busting care costs, the unpredictability of life expectancy and the costs of specialised accommodation. All of those point to the advantages of a periodical payment order.

The bill will give the courts for the first time the power to impose, without the consent of either party, PPOs. Crucially, courts will only be able to do that where the continuity of payments is secure. However, in his evidence, Patrick McGuire from Thompsons Solicitors expressed concern about the potential for a victim to be forced to accept a PPO and how disempowering that could be for someone who has already suffered a catastrophic injury and endured a lengthy court process.

The committee recommended that the Government lodge amendments to give more



weight to the views of the injured person and suggested a statutory presumption. In her transparent and clear response to the committee, the minister said that she did not want to undermine the ability of courts to make the best decision and that courts would inevitably weigh up the views of both pursuer and defender. Far be it from me to be disrespectful to our learned friends of the judiciary, but let us also not be deferential, because we know that little in life is inevitable.

That brings me back to principles: if we cannot have a presumption—and I am not convinced that we cannot—we should at least put some robust principles in the legislation relating to the views and voice of the injured person. There is precedent for that in the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003, among other legislation. Under such provisions, the court or tribunal, after weighing up all the evidence and hearing all the views, could take decisions to infringe people's liberty, although it would do so under a clear obligation to listen to the views of those impacted and to demonstrate a wide range of principles.

Let us not add to the feelings of powerlessness and of not being listened to that are all too frequent in the lives of those with significant disabilities, illness or injury. The minister went some way towards recognising that when she acknowledged that PPOs would not be for everyone, given that some people would need a clean break from those who had been responsible for their injury. I am glad that she gave a commitment in Parliament to continue to consider that issue.

16:21

**Jackie Baillie (Dumbarton) (Lab):** As a member of the Economy, Energy and Fair Work Committee, which scrutinised the bill, I am grateful to have the opportunity to speak in the debate. Four minutes is not a lot of time to develop elegant arguments—

**The Deputy Presiding Officer:** I can give you five minutes.

**Jackie Baillie:** Oh, my goodness! I cannot guarantee that my arguments will be any more elegant. Let me cut to the chase and focus on two areas: the discount rate and periodical payment orders.

I appreciate that, as other members have pointed out, the Scottish Government's intention is that there should be neither overcompensation nor undercompensation for people to whom awards for personal injury are made. The principle of 100 per cent compensation is right—albeit that, in

practice, that might be difficult to achieve absolutely.

Those who are responsible for paying out compensation—the defenders—believe that the Government is being overgenerous in its calculations of what people with an award would do with their lump sum. Their view is that the Government is too cautious in its assumptions and that investors should invest in equities, rather than fixed assets, thereby potentially maximising their return. However, that clearly carries a level of risk that might be considered to be too high, given the volatility of markets. On the other hand, those who represent pursuers say that any portfolio should be based on no-risk investment. Although I am minded to agree, I think that the Government's approach is sufficiently low risk and cautious that it strikes the right balance between the two competing interests.

To be honest, most normal people with a personal injury award have probably never considered an investment portfolio before. They will naturally err on the side of caution, wanting to be sure that they have a secure return for their money and that the money will meet their needs well over their lifetime. However, I know that people will invest on the basis of expert financial advice. The Association of Personal Injury Lawyers welcomed the inclusion of standard adjustments in the bill, but noted that the amount for financial advice and tax was underestimated. It would be helpful for the minister to review that before stage 2.

The second area that I will cover is periodical payment orders. I welcome them, because many people with personal injury awards may have to live with the consequences of their injury for many years and will require varying degrees of long-term care. Periodical payment orders are a useful way of dealing with someone's needs over their whole lifetime, and they are flexible enough to be reviewed and adjusted if a person's condition deteriorates significantly, for example.

However, for some people with personal injury awards, the preference is to take a lump sum. That might be because they want to buy a house or adapt their existing home. It might be because they have no faith in the organisation making the payment, because it might have caused the injury in the first place. Whatever the reason, it is important for the court to be flexible and a combination of lump sum and periodical payment might be the best option for some.

I ask the minister to give thought to the committee's recommendation about giving more weight to a pursuer's views when the court decides whether to award a PPO. I am entirely with Angela Constance on that. It would be disempowering for somebody who has faced that

degree of personal injury to have that choice removed. I listened carefully to what the minister said to John Mason, but I am not convinced that the Government cannot go further towards meeting the committee's recommendation.

It would also be helpful if she would ensure that, if there is a requirement to vary a PPO because of a change in circumstances, the pursuer would not need to bear the costs of doing so. That is an important principle that we will want to clarify.

As other members have said, it is a technical bill. The Scottish Government has, by and large, taken a balanced approach and, in the main, made the right policy choices, but I will not let the Government off the hook easily. There are always areas that can be improved and I look forward to the minister co-operating with the committee to ensure that we have a fair and transparent system of compensating those who have suffered personal injury.

16:26

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I have not been involved with the bill thus far, but I want to develop a number of its aspects; Jackie Baillie has touched on them already.

The committee's convener, Gordon Lindhurst, mentioned the balance between pursuer and defender and the different views that can be taken. It is worth saying that the phrase "hypothetical investor" is a good one, because most people who will be in receipt of the kind of compensation that we are talking about are not knowingly investors in anything. They are often investors through their pensions without realising it. Many people have industrial life insurance, which was traditionally sold door to door and for which the money was collected every week, or they might have a life policy.

I had a life policy that I took out in 1975 and took the money out of 31 years later—that is almost exactly the period that we are talking about. I have just done the sums, and the discount rate was just under 6 per cent, but I have not taken account of the value of the insurance part of that, which would make the discount rate a little bit higher. That was before the crash, of course, and discount rates now look rather different. The bottom line is that the hypothetical investor about whom we are talking is a pretty cautious beast, and rightly so.

Jackie Baillie used the phrase "no faith" when she was talking about periodical payments, and that was a fair observation. The bill says:

"A court may not make an order for periodical payments unless it is satisfied that the continuity of payment under such an order would be reasonably secure."

It then goes on to say that the payment must be assumed to be secure when it is a Government that is paying the money out. The one thing that is not in the bill, and which might usefully be added, is that when the court decides that it is satisfied about the continuity of payment, it should explain why it is satisfied, so that, if there is a different view, that view can be challenged. That is a technical point that protects the person who is in receipt of the compensation payment.

There has been some discussion about the costs of tax and investment advice. I am a bit dubious about the 0.5 per cent deduction. I have the feeling that the costs might be a bit higher than that in the real world, so I am not sure that 0.5 per cent is adequate to cover them. I do not speak with certainty, but it is a question that would usefully bear some—

**John Mason:** Will the member give way?

**Stewart Stevenson:** I will give way to somebody who knows more than I do about that matter.

**John Mason:** The committee received evidence—I do not know whether the member would agree with it—that perhaps the investment cost would be higher at the beginning and lower later on.

**Stewart Stevenson:** I am absolutely sure that the member is correct, but that goes to the heart of how the compensation is provided: whether it is paid in a lump sum up front or in periodical payments. The actuarial risks associated with the two are fundamentally different. When Dean Lockhart said that a longer period of investment would increase the discount rate, I did not agree. I think that the discount rate is what it is, and that is the actuary's view. The discount cost goes up as the period increases—rather obviously, because there are more years over which the discount will apply.

**Jackie Baillie:** I will helpfully supply Stewart Stevenson with the discount rate that he was looking for. The Association of Personal Injury Lawyers supplied us with it: it is between 1.5 and 2 per cent per annum.

**Stewart Stevenson:** That is broadly what I would have expected, so I am obliged to the member for that.

Investors come in all shapes and forms. Over the years, with my wife, I have been an equity investor. We have twice lost all our money on an investment, and in 2008, my bank investment dropped by 96 per cent. Being in the equities market carries a substantial risk. Ultimately, investors in equities are the last creditors to get paid and they may find themselves paying in if the shares are not paid up in value.

The bill strikes a measured balance between the various options. I looked at it for the first time in the past 36 hours. It strikes me as a sensible piece of legislation, which I shall be happy to support.

16:32

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** As the stage 1 report states:

“A person can claim compensation if they are injured through the wrongful behaviour of another person or organisation. The role of compensation is to put the person—to the extent that a financial award can—as close to the position they were in before they were injured as possible.”

The bill is necessary, as the Association of British Insurers explained. It said that

“The current framework for setting the discount rate is broken, because, as a result of the damages framework and decision making by the courts, the way in which the rate is set bears no relation to what pursuers do in reality.”

It continued by saying that

“we think that, broadly speaking, the old framework is broken and this new framework is a significant improvement.”—[*Official Report, Economy, Energy and Fair Work Committee*, 30 October 2018; c 2-3.]

However, there are issues that need further consideration, especially in relation to lump-sum payment adjustments and periodical payment orders. It is a legal principle that a successful pursuer should receive 100 per cent compensation—no more and no less. However, in order to do so, broad assumptions are being made in relation to life expectancy, future care costs and economic conditions.

The vast majority of claims are settled by a lump-sum payment that must support an individual for 30 years or more. As a result, the bill requires that a series of set adjustments be made to the rate, calculated on the basis of the hypothetical investor investing in the notional portfolio. These are the impacts of inflation: a deduction of 0.5 per cent to represent the costs of tax and investment advice, and a deduction of 0.5 per cent to reduce the risk of undercompensation.

The Association of Personal Injury Lawyers highlighted that

“On the standard adjustment rate, two rates are proposed in the bill—one to reflect investment charges and tax and the second to reflect other contingencies. The suggestion in the bill is 0.5 per cent. The committee needs to look at that area in more detail. The information that we have received suggests that the investment charges and the tax costs could be anything from 0.5 per cent up to 1.5 or 2 per cent.”—[*Official Report, Economy, Energy and Fair Work Committee*, 23 October 2018; c 25.]

Part 2 of the bill gives courts the power to impose periodical payment orders. Currently, PPOs are used only in the most serious personal injury cases, in which compensation for future loss

makes up a significant part of the award. There are only a few such cases per year in Scotland. Thompsons Solicitors LLP expressed concern about a PPO being forced on an injured person, and stated that such a situation

“when a person does not want a PPO and wants the choice of a lump sum but the court makes the decision for them—can be very difficult for somebody at the end of what is often an extremely long road to compensation, as catastrophic injury cases inevitably are. The process of finally getting compensation is ultimately empowering and a decision that is forced on a person in many ways disempowers them. I caution against creating a situation whereby the decision can be forced on a victim. That is not necessarily the case for insurers, but if a victim wants a PPO, they ought to be able to argue for that and a court can make a decision irrespective of an insurer’s view.”—[*Official Report, Economy, Energy and Fair Work Committee*, 23 October 2018; c 32.]

In the future, if more personal injury cases result in PPOs being awarded, consideration must be given to how people’s changed housing circumstances can be funded. A person who has been seriously injured might be forced to move home, or require an extension to be built to their existing home. If they remain in their existing home, they might require adaptations to their house—for example ramp access, wider doors, lower kitchens or installation of a wet room, all of which require capital sums. If a periodical payment order is imposed, depending on the size of the PPO award they might not have the funds to meet the cost of alterations. As Jackie Baillie stated, there might be a need for a combined financing model to meet up-front housing costs.

Although I welcome the provisions in the bill, including greater use of PPOs, the concerns of pursuers or their representatives must be considered in moving the bill forward.

16:37

**Daniel Johnson:** I apologise to members; they are getting a double whammy from me this afternoon. I hope that they do not seek damages as a result. I am working on the humour, Deputy Presiding Officer: that is my new-year resolution.

I would like to make a few brief remarks to reflect on comments that have been made in this afternoon’s debate. First and foremost, we have heard loud and clear from all across the chamber about the need to understand the requirements of the individual. The circumstances in which people find themselves when they are awarded damages are often life changing and catastrophic. As we have just heard from Gordon MacDonald, people might have to consider making changes to their homes. Angela Constance pointed out that the person might have to consider not living the life that they had expected to live. That was very well put.

The question, therefore, is this: what is it reasonable for an individual to have to consider, and what decisions is it reasonable for us to expect them to make? That is why I would like to touch on the hypothetical investor. Dean Lockhart set out well the rational considerations that we might expect a person to make about a notional investment portfolio and the balance that it might achieve, but we need also to ask ourselves about the general understanding of investment and about the decisions that people might make.

I gently put it to the chamber that people in such circumstances might not always make the most rational decisions. They will certainly be cautious, as we have heard from a number of members, but the hypothetical investor is quite different. As the bill progresses, we will need to consider whether we are dealing with the average or reasonable investor, or whether we need a portfolio that also accommodates the unreasonable individual or the vulnerable person who might not make the right decisions. We have had a great deal of discussion this afternoon about getting right the balance between undercompensation and overcompensation, but I suggest that we should seek to err on the side of overcompensation in order to accommodate those things. I know that that is part of the calculation process.

That brings me to a point that was made by John Mason when he illustrated some of the challenges. If we look at the past 20 years and think about what a reasonable investor might have done, we see that the situation has altered quite dramatically in quite short spaces of time. There was a time when gilts were seen as a rock-solid, no-brainer investment, but that has been turned on its head in the past 20 years, which is quite a short period. Likewise, the equities market has been back and forth in my adult life. The requirement for the calculation to reflect that and to be agile is important.

Although I understand the arguments that have been made by committee members about three years versus five years for review, it is important that we test flexibility so that when circumstances change—such as in a black swan event—and there are alterations in the underlying market assumptions about what a reasonable investment looks like, the change can be reflected. After all, in our living memories, we have seen such changes.

That brings me to adjustment factors. I understand that it is impossible to make it an exact science, but we need to test the amount that is factored in for investment and tax advice. It seems to be on the low side at 0.5 per cent but, again, that can change. As we speak, there are changes in the market with the development of technology and the lowering of costs, which need to be reflected.

I will touch on the arguments on PPOs that were made by Angela Constance and Jackie Baillie. The matter is important because PPOs provide an awful lot of benefits and advantages for a great number of people. We need to make sure that we are not being overly paternalistic. The presumption towards the pursuer's wishes is hugely important, but as with much of the bill, we must seek balance. I instinctively feel that PPOs provide huge advantages to people with particular vulnerabilities and with a need for the certainty that a lump sum might not provide. I also note that there are advantages to PPOs over lump-sum awards to self-insured organisations and institutions, including public bodies.

My final point is about gaming the system, which Gordon Lindhurst raised and is a key point. The bill seeks balance: it seeks to speculate against a myriad of different considerations, some of which are not predictable or understood. Above all, it is important that the bill strikes the right balance and has the flexibility to continue to strike the right balance in the future.

**The Deputy Presiding Officer:** I have time in hand, so I can give you seven to eight minutes, Mr Halcro Johnston. I am sure that you can use them.

**Daniel Johnson:** Seventy-eight minutes?

**The Deputy Presiding Officer:** Did I say 78? No, seven to eight minutes, for the avoidance of doubt. That has taken up a little bit of time.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** I understood what you meant, even if others did not.

**The Deputy Presiding Officer:** Thank you very much. I like you, Mr Halcro Johnston, please proceed.

16:43

**Jamie Halcro Johnston (Highlands and Islands) (Con):** I join other members of the committee in thanking our clerking team for their typical diligence in preparing and supporting the drafting of the stage 1 report. I acknowledge the range of written and oral evidence that we have received as part of the process and I extend my thanks to all those who contributed.

The evidence has proved extremely useful in scrutinising the technical aspects of the legislation and providing members with an understanding of how the current law operates in practice. The bill has two major components: provisions relating to the application of the discount rate and those relating to periodical payment orders.

Near the beginning of our report, the committee recognises a very simple concept that remains an important principle of our law. The report states:

“The law requires that, where a person or body has acted wrongfully, they are liable to compensate anyone who suffers loss as a direct result.”

That straightforward maxim has global appeal. Although it is intrinsically linked with Scotland and our legal system, it has also had considerable influence around the English-speaking world and even beyond. In many ways, it gets to the essence of what we have been asked to consider in relation to damages.

Many of the people whom the provisions will touch have been wronged, often significantly, and have suffered considerable and, as Daniel Johnson said, often life-changing injuries and harm. In many cases, those individuals cannot work or their ability to earn is impaired. In the most extreme cases, they might be entirely dependent on care and support for the rest of their lives.

While there is a clear fundamental principle on the compensation of loss, how that principle is exercised can be opaque. As the wronged party, the pursuer is probably uppermost in all our considerations. As Maurice Corry highlighted, no one wants to be in a position in which they must claim compensation for injuries or accidents caused by wrongful behaviour.

However, for the reasons that members have highlighted, it is incumbent on Parliament to ensure an end result in which, as far as is possible, the law will neither under nor overcompensate. We understand compensation to be a fair reflection of loss but, equally, the committee has heard about the dangers of overcompensation. It is not a perfect science when we are considering a lifetime of injury, but we should at least begin with a solid regulatory framework that attempts to find a balance, because overcompensation will have an impact. In a successful personal injury action against the national health service, for example, compensation is a necessary part of righting a wrong. To overcompensate, however, is not about making a required payment but about a direct transfer of funds away from front-line services. We know that millions of pounds are paid out by NHS Scotland in such cases every year. As claims often take many years to process, the backlog of open cases against the NHS is expected to result in payments of hundreds of millions of pounds over the years.

**Daniel Johnson:** Will the member take an intervention?

**Jamie Halcro Johnston:** Of course.

**Daniel Johnson:** I thank Jamie Halcro Johnston for giving way. Given that he has 78 minutes to speak, perhaps he will thank me for it.

On his last point, does he also accept that, very often, it is the NHS that ends up picking up the bill

if there is undercompensation, because it has to bear the brunt of the additional health costs that are incurred when the individual comes back to the service?

**Jamie Halcro Johnston:** I thank Daniel Johnson for that intervention. He is right; in a number of cases, it can be the NHS that picks up the bill—not in all cases, but certainly in some.

In actions against businesses, the effects often extend more widely. Inevitably, insurance bears the burden of payment in such cases, spreading the consequences beyond the defender and rippling throughout the wider economy. We should rightly be cautious in how the discount rate is applied in principle and in practice. Our recommendations readily acknowledge the importance of the rate to individuals and their families. The bill sets out the means by which it will be calculated. As some members have touched upon, we have considered the impact of the 30-year assumed period, as well as the assumptions on investor prudence. The minister's responses in those areas have been welcome.

The committee recognises that almost all respondents to our call for evidence supported the provisions around periodical payment orders. As Jackie Baillie and Angela Constance both highlighted, we looked to the flexibility available to pursuers and recommended that the Scottish Government consider approaches that will offer a greater reflection of the pursuer's views. The minister has suggested that that will impact the ability of the courts to look at a situation in the round. It will be interesting to see how such issues are considered in the later stages of the bill.

I have already touched on the opening speech given by my colleague Gordon Lindhurst. It was interesting to hear both Mr Lindhurst and Dean Lockhart comment on the areas in which defenders' and pursuers' groups agreed and disagreed on the terms of the bill as they were considered. As convener of the committee, Gordon also highlighted that there is little evidence of what the actual investor does, so we based all our considerations on a hypothetical investor.

The committee has recommended that the general principles of the bill be agreed to. However, I recognise that there was a significant divide in the evidence that the committee heard, which, we have recognised, can be crudely divided into arguments that are in the pursuer's interests and those that are in the defender's interests. I mention that solely as a caution: assuming that the bill proceeds today, an effective balance will have to be struck in any future amendments.

Last week, the committee received the minister's response to our report. There are clearly

areas that are still to be developed and I welcome the minister's commitment to further careful consideration of calculating the discount rate with reference to when a settlement is reached, rather than when the injury occurred. Although I accept some of her reasoning, there remains scope for gaming actions by extending out the timescale for claims. I will watch with interest to see how the Government's approach develops.

**The Deputy Presiding Officer:** I gently remind members to use full names when referring to other members in the chamber.

I call Ash Denham to wind up the debate on behalf of the Government. Minister, if you can—you do not have to—please take us up to decision time.

16:49

**Ash Denham:** Thank you, Presiding Officer. I will do my best to get the timing right.

I have listened with great interest to the debate and the speeches from across the chamber, which have been reflective and thoughtful. I welcome the general support that has been expressed for the bill.

The fundamental aspiration of the bill is to ensure fairness, clarity, certainty, regularity and credibility in the method and process for setting the rate. I am very pleased that the committee supports the bill's general principles and is content that its provisions have been framed in the interests of achieving

“fairness and regularity ... across a range of cases”,

and for both sides of the argument. As the Faculty of Advocates commented,

“the Bill balances the interests of parties.”

It is clear that, in its scrutiny, the Economy, Energy and Fair Work Committee recognised that the process is not an exact science, as has been echoed in the debate. Although much has been made of investor behaviour, I welcome the committee's view—which I share—that

“the point here is not what pursuers actually do but to provide a standardised approach that can work in the interests of fairness, regularity and credibility across a range of cases.”

Fortunately, there will, in relative terms, be very few people who will be affected by the discount rate or PPOs, but for those who are—those who have suffered what are often catastrophic injuries that change their lives for ever—the bill is incredibly important.

In my opening speech, I mentioned that if time allowed it I would like to turn to some more recommendations from the committee's stage 1 report, so I will address a few of them now. I note

that, as Gordon Lindhurst said, the committee believes that there is merit in applying the personal injury discount rate that is in force at the time when the claim is raised, rather than the discount rate that would apply when the claim was being settled. In that way, the committee hopes to avoid deliberate delaying of settlements by pursuers and defenders—the practice is sometimes known as gaming—when a change to the rate is anticipated that would obtain a more advantageous outcome. I have to say that I am not entirely convinced by that argument, but I listened carefully to what Gordon Lindhurst said. He was right to note that, at this stage, I have not ruled anything out. I will reflect further on the matter and give it careful consideration in order to establish whether there is a potential way forward.

The committee's report raises the issue of the Motor Insurers Bureau. As I indicated in my response to the report, I would be happy to undertake to report back to the committee in 12 months on the outcome of our consideration of whether the Motor Insurers Bureau can be designated as a reasonably secure body.

The committee also wanted to know more about what would trigger a move to more than one personal injury discount rate. John Mason raised that issue in his highly reflective speech. As I set out in my response to the committee, ahead of each review, the Government Actuary's Department will check the returns on the portfolio over different time periods—it will probably do so after 10 to 15 years and after 50 years. If the outcome of that exercise demonstrates a significant divergence in returns, that will point to use of more than one rate for different lengths of award being more appropriate in pursuit of the goal of 100 per cent compensation.

**John Mason:** The minister mentioned 100 per cent compensation. Is she still committed to that principle? Dean Lockhart feels that, overall, we are heading towards giving more to the pursuer, whereas Daniel Johnson suggests that we are going the other way and that there is too much risk for the pursuer. Does the minister feel that we are getting the balance right?

**Ash Denham:** The Government is committed to 100 per cent compensation. I will come on later in my speech to address other points that John Mason raised.

For the choice of the assumed investment period and the potential use of split rates, the GAD has cautioned against setting out an approach that is too formulaic, because that would be what it calls “spurious accuracy”. Therefore, interpretation of the outcomes will require judgment rather than application of a formula. However, I reassure Parliament that if the evidence points to the need for a formula, I am open to considering that option.

I will turn to other issues that have been raised during the debate. Dean Lockhart and Daniel Johnson mentioned the mix in the notional portfolio. In the 2017 consultation, a small majority were of the view that the most suitable investment approach was a mixed portfolio that balances a number of low-risk investments, because they believed that that was closest to actual pursuer behaviour in the real world. The matter has been the result of extensive analysis by both the GAD and an investment research firm, so I can assure Parliament that it has been looked at carefully and tested extensively, and that it will be kept under review.

**Daniel Johnson:** What are the minister's reflections on my point that it is all well and good to come up with a portfolio for a reasonable investor, but that we need also to consider the unreasonable investor and the need to safeguard vulnerable individuals?

**Ash Denham:** Daniel Johnson is right to raise that point, but he must accept that what is proposed is a proxy that is intended to apply across a broad range of cases. Also, we expect that the person will take investment advice when they are looking at their lump sum, and will use the notional portfolio for that purpose.

A number of members mentioned periodical payment orders, including Angela Constance—in a speech that reminded us all why the bill is so important—and Jackie Baillie. I assure Parliament that I listened carefully to the points that those members and others made about what more the Government could do to increase uptake of PPOs, and to Jackie Baillie's point about giving extra weight to pursuers' views about PPOs. I will reflect on those points and see whether what the Government proposes can be strengthened for stage 2.

Not unsurprisingly, there are polarised views on the shape of the reforms: essentially, they have been split along the lines of pursuer and defender interests. It is clear that, although the principle of 100 per cent compensation must—and does—remain key, there are many issues aside from the personal injury discount rate that can impact on people achieving that. Any investment comes with a degree of risk, and the Scottish Government accepts that there is always a possibility of undercompensation or overcompensation. However, I am glad that the committee is satisfied with our approach, which is to apply adjustments with the aim of reducing the risk of underperformance and the probability of undercompensation.

The bill seeks to remove the exercise of determining the rate from the political arena, where there is the potential of pressure from external interests to attempt to influence the

outcome. The review of the discount rate will be firmly focused on ensuring that those who have suffered loss and are awarded damages for future pecuniary loss receive the full compensation—neither more nor less. That should provide fairness to all parties that are involved. The GAD will publish its reasoning in pursuance of professional standards, along with a rate, which will ensure transparency in the process. As the Association of Personal Injury Lawyers said in its written evidence to the committee:

“We agree entirely with the Scottish Government's approach of removing the possibility of political influence over the setting of the rate. There is no legitimate reason or necessity for political involvement. Setting the discount rate should be an actuarial task, not a political one.”

At the most fundamental level, the bill will ensure that reviews are carried out regularly, which should, in turn, ensure that the impacts of changes are minimised. We hope that the provisions on periodical payments will encourage use of PPOs and provide the courts with powers to impose them where they consider that the circumstances are right to do so.

I thank members for their contributions to what has been an interesting and informative debate, and for their support for the general principles of the bill.

## Decision Time

17:00

**The Presiding Officer (Ken Macintosh):** There is one question to be put as a result of today's business.

The question is, that motion S5M-15169, in the name of Ash Denham, on the Damages (Investment Returns and Periodical Payments) (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Damages (Investment Returns and Periodical Payments) (Scotland) Bill.

## Fife Alcohol Support Service

**The Deputy Presiding Officer (Linda Fabiani):** The final item of business is a members' business debate on motion S5M-14126, in the name of David Torrance, on Fife Alcohol Support Service: supporting Fifers for 40 years. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament commends Fife Alcohol Support Service (FASS) on its 40th year of helping people overcome issues with alcohol; understands, that since it was founded, 200 counsellors have supported over 23,000 Fifers and their families to help them deal with addiction; notes that this counselling is provided in health centres, surgeries and community venues across the Kingdom; acknowledges the merger of the Fife Community Drug Service with FASS in 2015 to help provide outreach support and help for vulnerable people affected by both alcohol and substance misuse problems, including specialist help for recreational drug users and people who misuse prescribed medication; praises FASS's Curnie Clubs, which tackle isolation and loneliness through work with dedicated project workers who identify need and barriers to change and help people engage in community-based social activities that help them to find their way back into community life; recognises what it sees as the relationship between isolation and loneliness and their association with physical and mental health issues and drug and alcohol problems; commends FASS on its invaluable work with some of the most vulnerable in Fife, and wishes it all the best.

17:02

**David Torrance (Kirkcaldy) (SNP):** I thank members who supported the motion and enabled the invaluable work of Fife Alcohol Support Service over the past 40 years to be debated today. I congratulate FASS on reaching this significant milestone and I welcome the board members, staff and volunteers who have travelled to the Parliament to join us in the public gallery.

Alcohol and drug issues are ingrained in our lifestyles and are partly the result of social changes and modern pressures. Addiction and abuse are not the same things. An addiction to alcohol is a psychological dependence on alcohol that is manifested in continued compulsive drinking, which leads to individuals becoming physically dependent. Alcohol abusers are typically heavy drinkers, who might not drink consistently but whose high level of consumption can have serious consequences for their personal safety and their relationships with loved ones and families. Alcohol abuse can lead to dependency.

According to the 2017 edition of "The Scottish Health Survey", one in four people drinks at a hazardous or harmful level—that is, they consume more than 14 units, or roughly seven pints, per week. It was reported that in more than two



fifths—42 per cent—of violent crimes in Scotland, the victim said that the offender was under the influence of alcohol. There were 36,235 alcohol-related hospital stays in 2016-17, and 24,060 people in Scotland had at least one admission to hospital due to an alcohol-related condition. In 2017, alcohol caused 1,235 deaths. Although that represented a reduction of 2 per cent from 2016, 2017 saw the third-highest annual total since 2010.

The facts and figures on the economic and human cost of alcohol misuse in Fife are startling. There were 2,344 hospital stays last year, and the rate of stay was six times greater among people who live in the most deprived areas. There is an average of 62 alcohol-related deaths a year, and that death rate is three times greater among people who live in deprived areas. In total, alcohol-related harm is estimated to cost Fife £130 million per year. As the figures show, there is an ever-increasing need for alcohol and drug support in Fife, as the role of alcohol in our society and our relationship with alcohol continue to change.

Fife Alcohol Support Service, which is based in Kirkcaldy, was established in 1977 to provide a community-based alcohol counselling service for individuals who are affected by alcohol problems, and their families and friends. Back then, FASS was a council on alcohol—one of 30 or so similar organisations that spanned Scotland, each of which had the mission to address the health and social consequences of excessive alcohol use. The original councils on alcohol were founded during the 1960s in Glasgow, Edinburgh and Dundee.

Recognition must be given to the late John Balfour, who was instrumental in the creation of FASS. In 1973, he joined the newly formed Scottish Council on Alcohol—it is better known today as Alcohol Focus Scotland—for which he served as an office-bearer for many years. The charity that was known in 1977 as the Local Council on Alcohol for Fife broke new ground by setting up counselling and support for people with alcohol problems, and for many years it was the only service available outside Alcoholics Anonymous that provided for the needs of vulnerable adults who suffered from the effects of alcohol misuse and addiction.

John Balfour's involvement with FASS continued until his passing in May 2009. He served as chairman for 25 years until he retired in 2002; he then became honorary president of the charity. Staff and volunteers remember him fondly and attest to his great dignity and humanity and his strong belief in always doing the right thing, especially when times are difficult.

Since FASS's inception in 1977, its amazing staff and volunteers have observed John Balfour's

principles and continued to progress the charity by responding to the changing role and influence of alcohol in our society. In 1995, FASS, with the support of NHS Fife, introduced its alcohol counselling service into primary care. The charity was one of the very first services to do that. The event marked the beginning of considerable growth for the counselling service as it responded to awareness of the extent and damage of alcohol-related problems and the community's need for a reliable source of help.

Over the years, working in partnership with other organisations—including many third sector organisations, Police Scotland Fife division, national health service services and Fife community drug service, with which FASS merged in 2015—FASS has delivered a number of key initiatives, projects and treatment programmes that have been hugely influential and extremely effective in helping to tackle the ever-increasing problems that are faced as a result of alcohol and drug-related problems. That merger of partners between FASS and FCDS created an organisation with the scope to serve the needs relating to an ever-increasing range of issues with even greater organisational efficiency and increased capacity for responsive improvements and changes.

These days, FASS has a multifaceted and comprehensive approach to addressing and tackling alcohol and drug harm through four main services: the alcohol support service, the community drug service, the alcohol and drug abuse prevention and treatment—ADAPT—substance recovery project and the currie clubs network. Each of those high-quality and professional services provides a vital and unique approach that serves to complement and enhance.

The alcohol support service provides specialist alcohol counselling. That work is facilitated by counsellors who are predominantly volunteers. During 2017-2018, six staff and 15 volunteers dealt with 616 referrals.

The community drug service provides specialist help for individuals and families who are concerned about the use of substances, ranging from cocaine and ecstasy to the new psychoactive substances—NPSs—or legal highs. Outreach support is provided through crisis counselling, advocacy and mentoring.

The ADAPT substance recovery project is the main drug and alcohol triage service in Fife. It provides assessment of need and referral to specialist drug and alcohol services. The most significant number of referrals to the service are self-referrals by clients and family members.

The newest addition to the network is the currie clubs. Introduced in 2016 and funded by the

national lottery through the Big Lottery Fund, those groups provide support to people who have become socially isolated as a result of living with a range of challenging issues. The clubs run throughout Fife, offer a supportive environment for people who are isolated or lonely, and act as partner organisations to front-line services such as mental health and drugs and alcohol services.

Loneliness and social isolation have been emerging social issues over recent years. Although loneliness and social isolation are related, they are very different issues, and it is important that the differences between them are recognised and understood to ensure that the appropriate support is given, as both can have a hugely detrimental effect on an individual's physical health and mental wellbeing. It was fantastic to learn that, only last month, the project secured funding of £350,000 from the Big Lottery Fund's improving lives programme. That funding will allow the group to further develop its work and expand into other areas of Fife.

The importance of FASS and the work that it does day in, day out cannot be overstated. On behalf of the 23,000 Fifers and their families whose lives have been greatly impacted by the wonderful work of FASS staff and volunteers both past and present, I offer my heartfelt thanks for its 40-year-long life-changing contribution to the local community. I look forward to continuing to work with FASS and wish it a happy birthday and every success in continuing to create positive pathways for many more Fifers in the future.

**The Deputy Presiding Officer:** We move to the open debate. Speeches should be about four minutes, please. I call Claire Baker.

17:09

**Claire Baker (Mid Scotland and Fife) (Lab):** Thank you for calling me now, Presiding Officer. It is a pleasure to recognise Fife Alcohol Support Service's 40 years of work this evening, and I thank David Torrance for securing the debate. I apologise, as I have to leave the chamber early because of a family commitment, but I will look with interest at the *Official Report* tomorrow, particularly the minister's response.

For many years, FASS has been a leading provider of counselling and psychotherapy for people in Fife with alcohol-related problems. Following a merger with Fife community drug service in 2015, it also provides a community drug service that offers outreach support in the community for people with drug-related problems.

As well as providing support for people who are struggling with addiction and working with them to address the underlying causes and consequences, FASS supports families and

friends who are trying to cope. Too often, people who are struggling with alcohol and substance abuse do not receive much public sympathy. They can be isolated as family networks are damaged by their addiction and it can often take a while before they acknowledge that they have a problem. Organisations such as FASS provide a valuable service to people who are often very vulnerable.

FASS's ADAPT project is a triage service, which supports those who are struggling with alcohol or substance issues into the best help and treatment that is available in Fife and to change their lives. It also focuses on encouraging rehabilitation, and the expanding currie clubs, which David Torrance mentioned, help people who are suffering social isolation to find their way back into community life. It is good to hear that the project recently received a big award from the Big Lottery Fund.

Recently I attended FASS's annual general meeting at the Town House in Kirkcaldy, which was an opportunity to reflect on the past 40 years. Jim Bett, the service manager at FASS, highlighted the importance of the charity's volunteer counsellors who have been serving the people of Fife for 40 years. During that time, the service has trained 200 volunteer counsellors.

Jim Bett highlighted that more than 23,000 Fifers have approached FASS's counselling services for help since it began operating. The AGM concluded with a very moving personal experience from a former client who recounted his harrowing journey of drug addiction that had almost resulted in his death and his journey to recovery with the help of the charity's community drug service. His story highlighted the devastating impact that drug and alcohol abuse has had on so many families, which often results in lifelong issues.

I return to the number of users who have accessed the service. As I said, 23,000 people in Fife have needed help from the service. Those people often identified as vulnerable, with a high percentage of them suffering with poor mental health, which often comes from underlying traumas. I will highlight the pressures that wider mental health services in Fife face in that regard.

Fife health and social care partnership, which works extremely hard, is developing programmes that focus on early intervention, group therapy programmes and additional clinical time. However, the services are stretched, and people have to wait too long for the help that they need. Too often, the voluntary sector is left to pick up the pieces of the NHS's strained services.

It is clear that a centralised, joined-up approach is needed urgently. A solution might be the addition of a mental health centre in Fife, where

those who are suffering with mental health issues could be properly assessed and referred to the appropriate services. Voluntary sector provision is often the correct response but, like the NHS, the sector needs to be provided with funding that reflects its crucial role and makes sure that it can deliver the service to everyone who needs it.

This week, FASS's focus is promoting safe drinking through the festive season. The service has issued guidelines, with advice on practical steps, to ensure that those who are drinking throughout the party season take the necessary steps to stay safe; that demonstrates its commitment to promoting prevention and awareness.

FASS provides people in Fife with a valuable service, which treats everyone as a valued human being and supports people through difficult times in their lives. I thank FASS for all its work, and I am pleased to see it being recognised in the Parliament.

17:14

**Annabelle Ewing (Cowdenbeath) (SNP):** I congratulate my colleague David Torrance on securing this important debate, which gives us the opportunity in our Parliament to shine a light on the important work that Fife Alcohol Support Service carries out in areas across Fife, including my constituency—Cowdenbeath.

As we have heard, FASS's work has a number of important strands. FASS has its roots as a provider of volunteer alcohol counselling services. Since 1978, FASS has seen some 200 volunteer alcohol counsellors, some of whom have gone on to become leading figures in alcohol and drug service delivery in Fife and beyond.

To this day, FASS maintains a team of 15 volunteers, who all receive extensive training and support, which can take up to three years to complete. Those skilled volunteers deliver effective interventions for vulnerable people who are suffering from a range of alcohol-related problems.

As we have heard, since 1995, FASS has provided alcohol counselling services in primary care across Fife. It started its important involvement in primary care with participation in just six practices, but it now provides alcohol and substance misuse counselling in 30 surgeries, health centres and hospitals throughout Fife.

FASS added substance misuse services to its core activities further to partnering with Fife community drug service in 2011 for the ADAPT project to provide a range of supportive help for people in need, including access to services through recovery clinics and structured alcohol or

drug counselling. A diversion from prosecution scheme also ran until 2017 and involved more than 6,500 referrals from Police Scotland; I will seek to find out why that scheme is no longer running, because it sounds as though it was doing a very good job.

As we have heard, FASS and Fife community drug service merged in 2015, and the ADAPT service continues as the primary alcohol and drug triage service in Fife for people with opiate, recreational drug and alcohol problems. The service helps some 850 vulnerable people each year, and its success lies in the fact that FASS recognises the complex needs of individuals who perhaps live chaotic lifestyles with no family or professional support.

As David Torrance said, a recent development has been FASS's introduction of curnie clubs, which are designed to help people who are suffering from isolation and loneliness, perhaps because of health issues including alcohol and drug problems, because of bereavement or unemployment or because of all three issues. Curnie club support workers help people to build social skills and confidence and, so far, more than 240 people have been helped. I am pleased to note that there is a curnie club in Cowdenbeath and that FASS has supported an excellent new initiative in Kely called oor wee cafe, which I had the pleasure of visiting some weeks ago.

It is worth noting that curnie clubs were recognised by Fife Voluntary Action this year with a super start-up award and, as we have heard, in November, a further three years of funding was—happily—received from the Big Lottery Fund. I say very well done to all who were involved in securing that funding, which is not an easy task. That is a credit to all who were involved.

It is clear that Fife Alcohol Support Service plays a pivotal role in tackling alcohol and drug problems in Fife and has done so for many years. It is a great credit to the charity's founders and to the current board, staff and volunteers that their interventions have made such a difference to many people who needed a bit of help. I take the opportunity to pay tribute to every one of those who have been involved in FASS and to thank them for all that they have done. I wish FASS continuing success and stand ready, as the MSP for Cowdenbeath, to help in any way that I can to ensure that its important work continues to make a difference to many individuals and families across Fife.

17:18

**Alexander Stewart (Mid Scotland and Fife) (Con):** I am delighted to take part in the debate

and I pay tribute to David Torrance for bringing it to the chamber.

As we have heard, Fife Alcohol Support Service provides a Fife-wide, community-based, confidential one-to-one alcohol counselling service for individuals who are affected by alcohol problems and their families. For 40 years, FASS has delivered counselling and psychotherapy services for individuals. I welcome the members who have turned out to take part in and support the debate and those who are in the public gallery.

The charity provides specialist help for people who have a drink problem, whether a regular or a binge-drinking issue, which may relate to underlying issues. We have already heard some of the facts and figures about what happens in Fife, the difficulties that some of these individuals are encountering, and the trauma that can lead to such drink problems. The charity is there to extend a helping hand on a personal level, on a family level, on a social level, on an employment level, and on a lifestyle issues level. Those are all vitally important in order to identify individuals and try to ensure that they are given the support that they require.

The counselling and the information provided is there to maintain effective relationships with relevant organisations and ensure that people get the support that they require across the piece. FASS also provides community-based counselling services, which are designed to meet the special needs of those affected by alcohol-related problems. Moreover, as members have already heard, a large number of volunteers have given of their time and their talent to ensure that counselling is taking place. FASS provides the information, the education, the training and research on prevention and early diagnosis to give individuals the opportunity to have interventions for alcohol-related problems.

We have heard that 23,000 Fifers have had support from FASS. That is an enormous number of individuals and each case is quite tragic in some ways. The individuals found themselves in a situation of needing support, and they were given that support by FASS, which helped them to get back on the right path. In itself, that is a huge contribution to the community.

In addition, three years ago the drug service embraced FASS and became part of that process. FASS joined forces with the drug service to tackle both alcohol and substance misuse problems.

We have already heard about the curnie clubs. FASS has employed dedicated project workers to identify loneliness and isolation. Both those conditions can sometimes make individuals turn to drink or find themselves at a low ebb and the clubs seem to be a release for them.

It is worth mentioning that the exceptional work of FASS has been rewarded by money from the National Lottery. In 2016, FASS received £149,750 from the Big Lottery Fund—a massive amount of money—to help it to set up a network for adults to help them to connect with their local communities through their curnie clubs. That was followed by FASS receiving over £350,000 in October this year. Such amounts of money, as has already been mentioned, are hard to obtain. For FASS to obtain such large sums proves that it is hitting the mark and the funding ensures that it can give something back to the communities that it represents by setting out action plans for people and by making sure that they are realistic and achievable, along with the regular monitoring that goes on. FASS has done a huge amount of work and it has punched above its weight.

Fife Alcohol Support Service has been an invaluable resource in Fife as well as a great help to many individuals. I commend and congratulate all who are making such an effort and who are making such a difference in supporting individuals who are at risk. This organisation goes the extra mile; it has gone the extra mile; and it deserves the accolades and the recognition of a debate in the chamber this afternoon.

17:23

**Brian Whittle (South Scotland) (Con):** First, I add my thanks to David Torrance for bringing this debate to the chamber and allowing us to once again shine a light on a very important subject—especially at this time of year.

As I have mentioned before, early on in my time in this place, I spent some time at Addaction, looking to see whether I could speak to some of its service users as part of the Health and Sport Committee's inquiry into early intervention and the preventative agenda. I wanted to get down to the brass tacks of what may have sent service users along that path and what other choices had been available to them at that time. Let me tell you, Presiding Officer, that was a real eye-opener.

People in recovery suggested that I was under the misapprehension that they had had a really terrible time. On the contrary, some said that to start with, they were having a great time. They were down the pub with their mates; "merry" was maybe not the exact word they used, but I am sure that people get the gist. That could go on for as long as a few years before their life really started to unravel, as they lost their job, their family, their house and, finally, their so-called friends down the pub. Where they got their next drink became the real driving force in their lives, to the exclusion of everything else.

That is a very isolated and lonely place to be, and once a person is in that cycle, it is extremely difficult to break. With addiction comes the associated mental health issues. More often than not, there is an underlying mental health issue that has taken a person down that path in the first place.

An issue that consistently arose was that some mental health services would not engage with people who were still in the grip of their addiction. Those people were sent instead to third-sector agencies that are tasked with tackling such addiction, but the problem with that is that addiction agencies are generally not equipped to deal with complex mental health problems. Although the agencies would never turn those cases away, without mental health intervention alongside the addiction services, the chances of a successful outcome are much reduced. Many of those cases are people who are struggling because of trauma and poor mental health and, without multi-agency support for the individual plan, conversion rates can be poor. In rural areas, such as the constituencies that I represent, that trauma can go unseen until it becomes a major issue.

Recent reports have shown that the lowering of the alcohol limit for driving has, at least initially, not had the results that we had all hoped. I do not think that that will necessarily come as a surprise. The people who would be most affected by the policy of reducing the alcohol limit are likely to be those who would consider popping into the pub for a swift pint or a glass of wine after work with colleagues. They would recognise that the new laws would possibly put them close to or beyond the legal limit and they would most likely forgo that after-work drink or, at least, replace it with a soft drink. The people who would get behind the wheel of a car after a few drinks are highly unlikely to pay attention to any change to the legal limit. Therefore, people who would have been caught by the police for drink driving prior to the tightening up of the laws would still be prepared to take that risk.

The reduction of the legal drink-driving limit is not enough in itself. In order to be effective, a long-term public campaign needs to accompany the change in legislation. An on-going education programme, with policies to tackle the underlying drivers of alcohol and substance abuse, needs to be in evidence. We recently had a debate in Parliament on the alcohol and drugs strategy, which involved very good input from across the chamber. That conversation needs to continue and evolve into positive action.

I have long been an advocate of the need to support the third sector with a more collaborative approach involving the NHS and council-led services. David Torrance quite rightly highlighted

the great work that is going on in his constituency. I would like to thank the many third-sector agencies and our NHS for the fantastic work that they are doing in East Ayrshire, against a backdrop of limited resource.

Addiction is a health issue and I know that it will continue to get support from across the chamber.

17:28

**The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick):** I add my congratulations to David Torrance for securing the debate and I take the opportunity to place on record my thanks to FASS and all its staff who, as we have heard, have been providing treatment and support services to people across Fife for more than 40 years. I add my welcome to those people from FASS who are in the gallery tonight.

The motion specifically focuses on FASS, but it would be remiss of me not to draw attention to the many other organisations that undertake similar work. Excellent work is taking place in communities across Scotland to support people who are among the most vulnerable in our society. I have not yet had the chance to visit FASS, but I am sure that one of the Fife members might put an invite in the post soon, and I would be keen to take up such an invite. I have had the opportunity and been fortunate enough to meet—

**David Torrance:** Will the member take an intervention?

**Joe FitzPatrick:** Of course.

**The Deputy Presiding Officer:** I thought you were going to refuse, minister. I do not think you should try that, what with all the Fifers in the gallery.

**David Torrance:** I believe that FASS's annual general meeting is on 29 August next year and it would like the minister to be a guest speaker.

**Joe FitzPatrick:** I am sure that the member will send an invite in the usual way. If an invitation is made and I am able to take it up, depending on other diary commitments, I would be keen to attend. I would be keen to visit FASS, whether at the AGM or another opportunity, to see first hand the work that it is doing.

I have had the opportunity to visit a number of other organisations across Scotland and to speak to the staff and to people who are benefiting from treatment and support services. There are a couple that I particularly want to talk about today. I recently visited the Cairn centre in Dundee, which is where we launched the alcohol and drugs strategy. It was refreshing to speak to individuals who had benefited from that service directly. I was also able to speak to some parents and partners

of people who had benefited from the service, to see just how important the support had been for them.

I have met several groups, and one with which I was particularly impressed was the Family Addiction Support Service in Glasgow. It was powerful to hear directly from parents and partners who, in the main, had lost family members or who had family members who were still receiving treatment for various addictions, whether to alcohol or drugs. It is powerful for me, as a minister, to get those first-hand experiences. As MSPs, we can all make sure that our policies are fit for purpose. One message that I have taken back from visiting those organisations is that they are important services and their importance cannot be overestimated. They play a crucial role in providing vital support for people in our communities who need it most.

As I mentioned, when I visited the Cairn centre just over two weeks ago, it was to launch the Scottish Government's new alcohol and drugs strategy. A key aspect of the strategy recognises that, in general, services need to do more to better meet the needs of those most at risk. That will, in part, involve taking a person-centred approach so that treatment and support address people's wider needs. Claire Baker and Brian Whittle talked about how addiction is often not an isolated issue that people have to deal with. Poor mental health, isolation, employability and homelessness can all be involved. I was particularly interested to hear from Alexander Stewart that the service in Fife had extended to start looking at isolation and loneliness, helping people to reconnect with their communities. That is really important.

I recently took part in the sleep in the park event at Slessor Gardens in Dundee and was able to spend some time speaking to people from Addaction, which Brian Whittle mentioned, from whom I heard about the complexities of addictions. It is clear that homelessness is often something that goes hand in hand with addiction. It can be difficult for people to start to challenge addictions if they do not have a regular place to lay their head at night.

It is refreshing that we have this opportunity to reflect on the positive work that is going on in Fife Alcohol Support Service and elsewhere, as services work to support vulnerable individuals struggling with drug and alcohol use—particularly the aspects of that work that focus on addressing the loneliness and social isolation that we know often go hand in hand with harmful drug and alcohol use.

Through the debate, it has been interesting that a number of people, starting with David Torrance, mentioned the 23,000 people who have been

supported by, as he put it, the “life-changing” contribution of the service at FASS.

Claire Baker mentioned that FASS had extended its services to include drug services. That is important, because the challenges of drug and alcohol addiction are similar. Importantly, Claire Baker also mentioned that for many people who suffer from addiction, there is a lack of sympathy from the public. When I have spoken with people who are going through or have gone through addiction, they have said that the stigma that is attached is such a barrier to being able to seek help and support. That means that organisations such as FASS have to go that step further to try to find those people and to provide support.

As we move into the festive season, my message today is for people to try to be a little more human. If someone has an addiction, we should try to see them as a human being. A little bit of love and compassion can go an awful long way, as we have seen with the 200 volunteer counsellors whom Annabelle Ewing spoke about. They work out of more than 30 locations across Fife and give of their time in order to help others—that is really important. I was interested to hear from Annabelle Ewing that the number of people who are helped each year has gone up to around 850 people. That is a lot of people every year, and I am sure that it is making a real difference.

I am sure that we will come back to this topic on many occasions. Today's debate has recognised the work in Fife over the past 40 years and members across the chamber have highlighted examples of good practice. As I said two weeks ago when we talked about the alcohol and drugs strategy, we should work on this issue together. I am very pleased to work with members across the chamber on it, so if any MSPs would like to meet me to discuss how we can work together, I ask them to please make contact. I am really keen to do that and take us forward so that we can make a difference for so many vulnerable people across Scotland.

I again congratulate David Torrance on securing the debate and FASS on providing more than 40 years of vital treatment and support services. I wish FASS a very happy birthday.

*Meeting closed at 17:36.*

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