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Scottish Parliament

Wednesday 25 November 2020

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

Portfolio Question Time

Economy, Fair Work and Culture

The Deputy Presiding Officer (Lewis Macdonald): Good afternoon. Before we begin, I remind members that social distancing measures are in place in the chamber and across the Holyrood campus. I ask members to take care to observe those measures over the course of this afternoon's business, including when entering and exiting the chamber.

The first item of business is portfolio question time. We start with questions on economy, fair work and culture. Questions 7 and 8 are grouped together, so any supplementaries on them will be taken after both principal questions have been asked.

Covid-19 (Support for Youth Theatre)

1. **Liz Smith (Mid Scotland and Fife) (Con):** To ask the Scottish Government what measures are being put in place to support youth theatre during the Covid-19 pandemic. (S5O-04777)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): Youth theatre has been supported through our wider culture funding and through our targeted funding for youth music and arts, which is delivered by Creative Scotland. The targeted youth arts fund is supporting Youth Theatre Arts Scotland, Scottish Youth Theatre and Toonspeak Young People's Theatre. Youth theatre organisations will also benefit from the other youth arts funds.

Scottish Youth Theatre, PACE in Paisley and Shazam in Aberdeen have received funding from the culture organisations and venues recovery fund, and youth theatre freelancers have been supported through the hardship fund for creative freelancers.

Liz Smith: I have here a letter from my constituent that I received last week. Her children have been attending Perth Youth Theatre for the best part of 10 years. She points out that, because of the restrictions in theatres, the youth group has not been able to function, although activities for under-18s such as dance classes, brownies and cubs have all been taking place in a socially distanced way. Perth Youth Theatre activities have

not been taking place, despite the fact that the theatre has a lot of wide space.

Is the Scottish Government giving any thought to how it can be consistent on indoor activities for people aged under 18, particularly as we approach the winter?

Fiona Hyslop: Clearly, youth arts and youth theatre are very important to young people. We have performing arts guidance and there is guidance for young people in such places as the member references. There is definitely an issue about what can be done in the performing arts by any amateur organisation, especially at this time, given the strategic framework levels.

We are acutely aware of the need to return to such performances and other youth arts activities. I am very conscious of that and we will try to move forward as quickly as we can, but safety has to be paramount.

Sandra White (Glasgow Kelvin) (SNP): The cabinet secretary mentioned targeted funding. Music-making activity is very important for young people. Can the cabinet secretary give an update on the funding that is being provided to enable young people to take part in music-making activities? Is that part of the targeted funding?

Fiona Hyslop: The £3 million youth arts fund, which was announced in August, has a strong focus on access to music-making activities. On 12 November, we announced the projects that had been successful in applying to the youth arts fund. For example, £580,000 is going to music projects across 11 organisations, such as the National Youth Choir of Scotland and the Scottish Music Centre. Another example is Drake Music Scotland, which does fantastic work with young people with disabilities and additional needs. Creative Scotland will announce successful recipients of the small grants scheme and the open access fund in due course. All those things are part of how we are trying to help youth arts through this difficult period.

Youth Guarantee and Kickstart (Collaboration)

2. **Brian Whittle (South Scotland) (Con):** To ask the Scottish Government what discussions it has had with the United Kingdom Government regarding a potential collaboration between its youth guarantee initiative and the UK kickstart scheme. (S5O-04778)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): The Scottish Government is working closely with the UK Government, local authorities, the third sector and the business community to deliver the young persons guarantee. That includes building on the strong local employability partnerships that are already in place throughout Scotland.

As I have detailed in previous correspondence to the UK Government, alignment between the kickstart scheme and the young persons guarantee will be vital in ensuring that businesses and young people can access the support that they need. I am also keen that the delivery of the kickstart scheme is aligned to our inclusion and fair work principles.

I will meet the Secretary of State for Work and Pensions, Thérèse Coffey MP, and Welsh Government counterparts on 10 December. That meeting will provide an opportunity for ministers to discuss how we can best ensure alignment to support our young people.

Brian Whittle: The cabinet secretary will, of course, be aware of the recent announcement at the HALO project, where the UK kickstart scheme has invested £1.5 million to have 200 16 to 24-year-olds trained in digital cybersecurity. That is being matched by the partners at the HALO project to ensure that there is a 12-month scheme. Does the cabinet secretary agree that there is scope for a more significant intervention with positive outcomes if the youth guarantee initiative is implemented alongside the UK kickstart scheme?

Fiona Hyslop: Brian Whittle will be aware that the kickstart scheme is for six months. I welcome the support from employers that are extending that, but our view is that we might need a two-year provision to help young people to properly position themselves to get into work.

I am glad that Brian Whittle identified the HALO project work, which is really important. Digital skills are in great demand. If we can align the young persons guarantee with the greater demand that we know is coming in digital, that will be really important. I hope that Brian Whittle and other members will encourage other local employers to step up to the mark so that we, the UK Government, employers and everyone from education and the third sector who is working in support of young people can at least give our young people a chance through this difficult period.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Have any assurances been received from the UK Government that people who are employed through the kickstart scheme will receive a living wage? Can the cabinet secretary confirm that fair working principles and sustainable employment will be embedded in the young persons guarantee?

Fiona Hyslop: The kickstart scheme provides funding only to cover the minimum wage. It is up to employers to decide whether they want to supplement that. I have written to the Secretary of State for Work and Pensions to set out my belief

that there should be the living wage for the kickstart scheme, and I intend to raise the importance of embedding fair work and the living wage across all employment programmes when we meet in December.

I can confirm that commitments to fair work principles and sustainable employment are not only embedded in the young persons guarantee; they have a central role in all our employability work, including fair start Scotland and the no one left behind policy.

Programme for Government (Economic Impact Assessment)

3. Willie Rennie (North East Fife) (LD): To ask the Scottish Government what work it has undertaken to assess the potential economic impact of the commitments set out in its programme for government. (S5O-04779)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): The programme for government sets out a range of measures to respond to the immediate challenges that are posed by Covid-19 and to move us towards the stronger, more resilient and sustainable wellbeing economy that we want to see, with a particular focus on new quality green jobs. The measures build on the independent and expert advice of the advisory group on economic recovery, but they are, obviously, constrained by the fiscal powers that are available to us. Despite that, we have provided almost £1.3 billion of economic recovery funds on top of the £2.3 billion of original support for business; our national transition training fund will provide retraining and upskilling opportunities to support up to 10,000 jobs; and our new inward investment plan, which could deliver 100,000 high-value jobs over the next decade, will play a key role in Scotland's economic recovery.

We have not yet conducted a full retrospective evaluation of Covid-19 business support, but the early signs are that the support from the Scottish Government has provided an additional complementary impact over and above that of United Kingdom Government schemes. The commitments that we have made will protect Scotland against the continued risk from Covid-19 and will renew Scotland. As I have said, we want to build back greener, fairer and stronger.

Willie Rennie: The cabinet secretary rightly talks about green jobs. Two years ago, the Government claimed that it had saved Burntisland Fabrications, but yesterday it gave up on the company and its workers. When I stand on the harbour at Anstruther, I can see work already beginning on a wind farm off the Fife coast. The issue is therefore urgent. What new steps will the Government take to ensure that some jackets for

any of the wind farms off the Scottish coast will be built in Fife?

Fiona Hyslop: The situation is extremely difficult. I have kept in touch with, and have written to, Saipem to try to keep the door open and to see whether there can be some kind of delivery of some of the jackets at BiFab. That is extremely challenging. The unions and members of the Parliament asked me to approach the United Kingdom Government to ask it to intervene with working capital and assurance. We should remember that the majority shareholders and the directors of BiFab are not doing that themselves. The UK Government agrees with our analysis and cannot provide intervention for BiFab that is legally compliant. That is a challenge, but we will continue to work to see what can be done.

We have agreed to set up a working group that will look at what can be done for BiFab, not just in Fife but in Arnish and elsewhere, and across the wider supply chain to ensure that we have jobs in renewable energy. However, we need the contracts for difference system to be changed because, otherwise, Scotland will always be at a disadvantage to labour costs being undercut from elsewhere across the globe, as was made clear in the evidence that was given to the Economy, Energy and Fair Work Committee yesterday.

Neil Findlay (Lothian) (Lab): In the cabinet secretary's constituency and in my region, there are wind turbines as far as the eye can see and none of them has been built in Scotland. The programme for government makes all sorts of commitments to jobs and renewable energy, and we hear warm words about green jobs and a just transition. However, that is all utterly meaningless today as BiFab looks set to lose yet more work and may close.

Does the cabinet secretary agree that that is catastrophic, that it is a damning example of the abject failure to build domestic turbine manufacturing capacity and that it is one of the greatest missed opportunities of our time?

Fiona Hyslop: I do not agree with Neil Findlay's analysis, although I agree that we should be getting more jobs from procurement for the renewables pipeline. However, as we heard in the evidence that was given by industry experts to the Economy, Energy and Fair Work Committee only yesterday, some of the issues go back over decades. Changes need to be made to the powers that the Scottish Parliament has, to regulation and to the cost of the provision of the delivery of renewable energy, both offshore and onshore, so that we can build the capacity that is needed to have a resilient supply chain that will support the renewables industry.

As economy secretary, I am committed to ensuring that that happens. I am in active discussions with the private sector and others to make sure that we can get contracts, but it is not just our responsibility. That is why I have been pressing the UK Government to step up to the mark to remove some of the barriers that it has inflicted on the supply chain.

Covid-19

(Support for Arts, Culture and Tourism)

4. Gordon Lindhurst (Lothian) (Con): To ask the Scottish Government what further financial support it is considering making available to the arts, culture and tourism sectors as a result of Covid-19. (S5O-04780)

In the interests of transparency, I should perhaps mention that although I enjoy travel immensely but have no declarable interests as such, I have relatives in the Scottish tourism sector, as many members probably do.

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): To date, the Scottish Government has committed £107 million for arts and culture, with £102 million having been allocated so far. The hardship fund for creative freelancers is currently open for applications. Across the two elements of that fund, which is run by Creative Scotland and Screen Scotland, there is a total budget of £8 million.

We are aware of on-going needs in the arts, culture and tourism sectors. We are currently exploring how to provide additional financial support most effectively, including how we take forward financial support for the recommendations of the industry-led tourism recovery task force.

As the member will be aware, Fergus Ewing, who is the Cabinet Secretary for Rural Economy and Tourism, is responsible for the aspects of his question that relate to tourism.

Gordon Lindhurst: Those who are involved in the tourism sector have told me that their businesses are being decimated and destroyed by the travel implications of the Covid regulations and the impact that the pandemic has had on the sector. Individual businesses have often benefited much from United Kingdom Government schemes such as the furlough scheme. Will the Scottish Government implement a detailed, targeted and comprehensive package of support for the inbound and the outbound Scottish tourism sector?

Fiona Hyslop: The member will know that tourism is the responsibility of Fergus Ewing. However, I will try to answer the question and will correct anything if I am mistaken.

In Scotland, we have given unique support to the tourism sector. Many tourism organisations have benefited from the pivotal enterprise resilience fund and the creative, hospitality and leisure funds that were not available in the rest of the UK. There is the £20 million hotel recovery fund and, as I mentioned in my initial answer, the industry-led task force has made a comprehensive set of recommendations about what should happen to support tourism in future. As I said, we are currently looking at how we can best support that.

Gordon Lindhurst referred to the outbound tourism sector. We are considering the contingency-plus element of the funding that is provided to local government to identify what support can be given to outbound tourism organisations.

Even though tourism is not my responsibility, I hope that I have given as comprehensive an answer as I can.

UEFA Euro Championships

5. Willie Coffey (Kilmarnock and Irvine Valley) (SNP): To ask the Scottish Government whether it will provide an update on preparations for Scotland hosting the UEFA Euro championships in June 2021. (S5O-04781)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): The Scottish Government is working closely with its event partners—the Scottish Football Association, Glasgow City Council, Police Scotland and EventScotland—on preparations for the matches at Hampden next summer.

In response to Covid, we are also considering a range of planning scenarios for the tournament, including supporter attendance at the stadium and event fan zones.

We look forward to welcoming the Czech Republic and Croatia to Hampden, and I am particularly delighted that Scotland's men's national team will be there competing in its first major international tournament in 23 years.

Willie Coffey: The cabinet secretary might be aware of comments about the championships possibly not taking place in multiple countries as planned because of the Covid situation. Can she shed any light on that and perhaps offer the necessary assurances to UEFA? Will she also congratulate Steve Clarke, his squad and the whole management for taking Scotland back to our first championships since 1998?

Fiona Hyslop: I absolutely congratulate the manager and the team. It was a fantastic moment of celebration, and the whole country was lifted by that fantastic achievement.

UEFA has stated that it intends to hold Euro 2020 in the format and at the venues that were confirmed earlier this year, with 12 host cities across Europe. In response to the recent media speculation that Mr Coffey mentioned, UEFA has reiterated that there are presently no plans to change any venue. As he would expect, the Scottish Government and our event partners are in regular dialogue with UEFA to discuss planning scenarios for the matches at Hampden.

Euro 2020 will provide another opportunity to build on Scotland's reputation as a world-class host of major events, and we look forward to next summer with even more anticipation because Scotland will be competing alongside the best in Europe.

Maurice Golden (West Scotland) (Con): I would like to associate myself with the cabinet secretary's remarks congratulating Steve Clarke and his team for making the finals. I was at the world cup opener in 1998 when Scotland played against Brazil, and I did not think that I would be a middle-aged man by the time that we next qualified.

Our national game has been hit hard, especially with smaller clubs that are more reliant on gate receipts being worried about their future, and with Scottish football facing a £100 million loss. Next week, fans in England can return to matches in low-risk areas with capacity rules in place to provide extra safety. Will Scotland adopt a similar approach?

Fiona Hyslop: That is the responsibility of the sports minister, but I will attempt to answer the question.

Community football in particular is really important to our towns across Scotland. I am sure that the member will have spoken to local community clubs, as I have done, so he will know that their gate receipts are very important to them. However, safety is, too. Everyone I have spoken to understands those constraints.

I understand that funding has been provided at UK level for community football in particular, and the sports minister has written to identify Barnett consequential from the UK Government that could be used in Scotland for similar purposes.

In relation to attendance, Mr Golden will be aware that, at level 1 and level 0, football can commence with 300 people in attendance. Indeed, Ross County recently held a game that was attended. That activity can take place in level 1 areas.

Do we have a system in place where football could return with attendances in stadiums? The answer is yes—that has already happened in

Scotland—but it is obviously tied to the safety issues around the different levels.

**Covid-19
(Women's Businesses and Employment)**

6. Gillian Martin (Aberdeenshire East) (SNP): To ask the Scottish Government how it will address the impact of the Covid-19 pandemic on women's businesses and employment. (S5O-04782)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): I recognise the particularly challenging circumstances that women-led businesses and women in employment are facing as a result of Covid-19. We remain fully committed to the cross-sector partnership approach of the women in enterprise framework, and I have recently engaged with Scottish representatives of the women in enterprise policy group to discuss the issues arising out of the Covid-19 pandemic.

The women returners fund, which was launched earlier this month and is backed by £500,000, following on from a 2018-19 pilot scheme, will fund projects that help to address gender inequality in the workplace and will build on the Scottish Government's commitment to reducing the gender pay gap. A further £850,000 will be available through the workplace equality fund to help organisations to develop more inclusive and diverse workplaces.

Gillian Martin: The minister mentioned the gender pay gap, which is already a big issue, with women being employed in low-paid sectors. We also have an enterprise gap, with a long-standing deficit in women running their own businesses and receiving business support.

Covid-19 has impacted on many women-led businesses. Travel and tourism, the beauty industry and the wedding industry are all areas in which there are many women entrepreneurs. Will the minister further outline what is being done to ensure that women can recover their businesses as we recover from the pandemic, and that women's work in general is better valued?

Jamie Hepburn: Even before the crisis, we knew that there were challenges. That remains the case, and we know that it will continue to be the case if we do not take concerted action. We remain committed to doing that through our work on women in enterprise and on the gender pay gap to address the structural barriers that face women.

Last week, the Cabinet Secretary for Finance took part in a question and answer session with women in business, and engaged directly with many of the sectors that Ms Martin mentioned. We know that there are challenges there, and we

continue to look at how we can support those sectors in particular.

On a more general point about supporting women in enterprise into the recovery period, we remain committed to pursuing the concept of a women's business centre. That is an agenda that we are very much committed to taking forward.

Covid-19 (Restrictions) (Business Support)

7. Colin Smyth (South Scotland) (Lab): To ask the Scottish Government what support is available for businesses impacted by the Covid-19 restrictions. (S5O-04783)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Grants of up to £3,000 are available for businesses that are required to close by law, and grants of up to £2,100 are available for businesses that remain open but are required by law to modify their operations. Also, £45 million of additional support is being made available, including a £15 million fund for newly self-employed people and a £30 million discretionary fund for local authorities to provide additional support for businesses. We are doing everything that we can do with the powers that we have to help businesses that have been impacted by Covid-19, and we are offering support that now exceeds £2.3 billion.

Colin Smyth: A number of accommodation providers in the parts of my region that are in level 2 have contacted me to say that they are not eligible for the strategic framework business fund, despite the fact that they are clearly restricted by Scottish Government laws. For example, self-catering accommodation providers can accept only single-household bookings from the small number of people who can travel. I appreciate that the minister said that councils now have a discretionary budget, but surely those businesses should be eligible for a non-discretionary business restriction grant.

Will the minister clarify whether the strategic framework business fund provides any support for unlicensed accommodation businesses, given the huge impact that Government restrictions are having on them?

Jamie Hepburn: If Mr Smyth wants to write to me with specific examples, I will be happy to look at them in the context of the specific pockets of funding that I have laid out.

However, I make the observation that we recognise that not every element of the specific support that I have set out and the grants that are available will cover such businesses, which is why we have created a pocket of discretionary funding to empower local authorities to respond to their local circumstances and support a wider range of businesses.

If Mr Smyth wants to contact me with the details, I will be happy to look into the matter and get back to him with more information.

**Covid-19
(Support for Small and Medium-sized
Businesses)**

8. **David Torrance (Kirkcaldy) (SNP):** To ask the Scottish Government what support it is giving to small and medium-sized businesses facing difficulty as a result of the pandemic. (S5O-04784)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): The Scottish Government recognises the role that small and medium-sized enterprises play in our communities and our economy in Scotland. That is why we are committed to delivering support that meets the needs of SMEs throughout, and beyond, the pandemic. As I set out in my previous answer, that includes grants of up to £3,000 for businesses that are required to close by law, and grants of up to £2,100 for businesses that remain open but are required by law to modify their operations.

The full range of support that is offered by the Scottish Government, our agencies and local authorities, including Business Gateway, is available on our findbusinesssupport.gov.scot website.

David Torrance: Growth is crucial to the long-term survival of our businesses. Although there is no denying that the pandemic has been extremely tough on many businesses, others are in the fortunate position of looking to expand their services and the diversity of their operations. What focus has Scottish Enterprise put on companies that are in that position to assist them in taking advantage of new opportunities and in recognising expansion opportunities?

Jamie Hepburn: Scottish Enterprise has a crucial role to play at any time in supporting companies at all stages of growth. I have seen it work assiduously over the recent period; it has worked closely with us to respond to the challenges that many businesses have faced.

On the specific question, I note that earlier this month the early stage growth challenge fund committed almost £25 million of funding to support some of Scotland's most pioneering young companies to achieve their growth ambitions. In October, the flagship unlocking ambition programme was again supporting a cohort of 40 of Scotland's most talented entrepreneurs to develop their full potential and accelerate growth.

We are committed to doing all that we can to help businesses—in the current context and, of course, as we recover—to continue to grow, thrive and employ many people across the country.

Education and Skills

Covid-19 (Weekly Testing of Teachers)

1. **Anas Sarwar (Glasgow) (Lab):** To ask the Scottish Government what plans it has to provide weekly Covid-19 tests for teachers. (S5O-04785)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): To support the return of schools in August, we put in place arrangements to allow members of school staff who are concerned to get a Covid-19 test, whether or not they have symptoms. I committed in Parliament last week to make plans to build on that, including the piloting of rapid in-school testing of staff.

The Cabinet Secretary for Health and Sport will make a statement on the next stage of testing expansion following portfolio question time, and will update Parliament on plans for commencement of pilots with the objective of establishing a sustainable programme of asymptomatic testing among school staff.

Anas Sarwar: I support schools remaining open, even under the toughest of restrictions, but the cabinet secretary must recognise that teachers feel especially exposed. They feel that they are at particular risk and that the risk extends to their families. Does the cabinet secretary recognise their anxiety, and does he support the principle, at least, of weekly testing for teachers and has he been making that case to the Cabinet Secretary for Health and Sport?

John Swinney: I do recognise the anxiety that members of staff feel in the circumstances. The move to level 4 restrictions obviously has the potential to exacerbate anxiety, but I point out to Mr Sarwar that in all level 4 local authority areas the prevalence of the virus—cases per 100,000—is now lower than it has been over the past two to three weeks. We are in an improving position, albeit that the area that Mr Sarwar represents is in a level 4 designation.

I am making the case internally for wider testing of teachers. The Cabinet Secretary for Health and Sport and my ministerial colleagues are very supportive of that approach; the cabinet secretary will shortly have more to say on that in her statement to Parliament.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Will the cabinet secretary update Parliament as soon as possible on when more detail is available on the uptake of asymptomatic testing?

John Swinney: As I indicated in my answer to Mr Sarwar, asymptomatic testing will be available on a pilot basis. We have had other testing arrangements in place for school staff, who have

been able to obtain testing through the employer portal when they have been concerned about their wellbeing. I reiterate that availability to members of staff, and encourage anybody who is concerned about their circumstances to pursue it as an option, to provide either a test of virus positivity or to provide some reassurance in these difficult times.

Inverclyde Students (Examination Results)

2. Stuart McMillan (Greenock and Inverclyde) (SNP): To ask the Scottish Government what assurances it can provide to students in Inverclyde that their exam results will be reflective of the work that they do in this academic year. (S5O-04786)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): I can assure pupils and students who are undertaking national qualifications in Inverclyde and every other part of the country that every effort is being made to ensure that their hard work is recognised fairly and consistently.

I have already confirmed that we can no longer risk running a full exam diet in 2021, and I have asked the Scottish Qualifications Authority to take an alternative approach to national 5 accreditation in that year. That approach will have teacher judgment at its core and will be supported by assessment resources and quality assurance. There will be no algorithm, and the results will reflect an individual's work rather than the past performance of his or her school.

Our ambition remains for higher and advanced higher exams to proceed if possible. However, it must be safe for them to do so, and it must be fair to learners. We are monitoring the position closely and listening to all the different views on the matter. Contingency plans are being drawn up to ensure that awarding for higher and advanced higher courses is fair and consistent should exams not be possible, and a final evidence-based decision on that will be made no later than mid-February.

Stuart McMillan: The Deputy First Minister will note that the latest Scottish index of multiple deprivation figures label areas in my constituency as the most deprived in Scotland. Given that the evidence suggests that pupils who attended schools in deprived areas were the most negatively affected by the SQA's grading system for the 2019-20 academic year, what more can the Scottish Government do to drive down the attainment gap in Inverclyde and ensure that all school pupils can thrive, regardless of their postcode?

John Swinney: The Government makes available support for that purpose through the local authority settlement, and specifically through

the attainment Scotland fund, from which £6 million was spent in Inverclyde to help close the poverty-related attainment gap. In addition, £2.5 million of pupil equity funding will be available in 2021-22 to support school plans to raise attainment.

It is very important that the work that we have been taking forward on a sustained basis for some time to close the attainment gap is continued in the forthcoming period, as it will support young people. In the results that were announced in August, we saw a closure of the attainment gap, which will be welcome news in Inverclyde, as it will be in other parts of the country.

Jamie Greene (West Scotland) (Con): We know that national 5s have been cancelled in favour of on-going assessment, coursework and teacher estimates. However, the reality is far from the rhetoric. We know that the SQA is actually asking teachers to hold exams that

"replicate, as far as possible, the standard, duration, format and security"

of normal exams. If exams are cancelled, why are teachers are being asked to do the job of the SQA?

John Swinney: The SQA, along with other stakeholders in the education system, has issued guidance that indicates that prelims are not required. Individual decisions will be taken by individual schools on those questions, and I would certainly not want to second-guess that decision making. The guidance from the SQA is quite clear that there is no requirement for prelims to take their course.

The SQA has provided, and is providing, schools with assessment materials, which I would describe as part and parcel of the normal rudimentary approach to learning and teaching during the year; teachers would be undertaking some of that work. Those materials are deliberately provided in their current format to try to reduce the workload on teachers by giving them clarity about what material will satisfy the requirements for the assessment of standards. I hope that that is viewed as a helpful intervention in schools around the country.

Iain Gray (East Lothian) (Lab): Students in Inverclyde and elsewhere who are studying for SQA awards need to know that they will be fairly assessed if they lose significant time to self-isolation or if planned exams ultimately do not proceed. To that end, and to give them greater confidence, can the cabinet secretary confirm that he will ensure that they will be given the right to appeal directly to the SQA next year?

John Swinney: There are a number of issues in Mr Gray's question. The first relates to the fairness

that must be applied to all candidates—an issue that is central to me in my decision making. I have taken that decision in relation to national 5.

I am carefully examining the information that I have, and I have asked local authorities to supply me with information about the extent of the disruption of education for individuals as a consequence of self-isolation and other factors. That will be influential in the evidence-based judgment that I make about whether or not it is possible to demonstrate fairness across the country in highers and advanced highers.

Mr Gray will know that the recommendation that we re-examine the question of appeals was among the recommendations of the Priestley review. I have asked the SQA to take forward that work. There is an important issue there as Parliament considers our approach to the incorporation of the United Nations Convention on the Rights of the Child into domestic law. Some issues arise out of that in relation to appeals, and those points and others will be considered by the SQA in its review.

Schools (Staff and Pupil Safety)

3. Neil Findlay (Lothian) (Lab): To ask the Scottish Government what it is doing to ensure that staff and pupils are safe in schools. (S5O-04787)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): I am committed to ensuring that schools remain safe, open and welcoming for all staff and pupils. We have worked in partnership to develop guidance for schools that is informed by the latest scientific evidence, the advice of the Covid education recovery group and the understanding of real-life experiences as schools returned. That guidance is aligned with the levels under the strategic framework and sets out a core of comprehensive protective measures that will apply in all schools; it will also further enhance protective measures at levels 3 and 4. Those include greater use of face coverings and precautionary measures around formerly shielding individuals, physical education and out-of-school activities. We are also delivering our commitment to a Covid-19 surveillance programme in schools, and work to build on that programme, informed by clinical advice, is on-going.

Neil Findlay: According to the latest survey of schools by the Educational Institute of Scotland, teachers support the decision to keep schools open where at all possible, but they have real concerns about their and their pupils' health and safety, with 43 per cent saying that they do not feel safe under the current conditions. What additional support is the Government putting into schools to increase the safety of teachers and to

protect their wellbeing? It is clear that there are still significant concerns.

John Swinney: I recognise those issues and concerns. Indeed, I discussed them at length with representatives of the EIS in a bilateral discussion last Thursday. I take those points very seriously.

We have included a number of measures in the guidance that have strengthened the requirements for precautionary measures to be taken at levels 3 and 4. We remain open to dialogue with the teaching profession about what further steps we could take. We have expanded the size of the teaching profession, with about 1,400 additional teachers recruited and deployed in our schools. The Government has made available resources that I look to local authorities to draw down to ensure that the school environment can be kept as safe as possible through investment in cleaning services and other aspects of hygiene management.

I recognise the concerns, but I remain open to addressing any further issues that are brought to me by the professional associations, because school safety for staff and pupils is central to maintaining a safe education system.

Covid-19 (Support for Further and Higher Education Students)

4. Stewart Stevenson (Banffshire and Buchan Coast) (SNP): To ask the Scottish Government what financial and mental health support has been made available to students in further and higher education who have been negatively impacted by Covid-19. (S5O-04788)

The Minister for Further Education, Higher Education and Science (Richard Lochhead): Eligible students in further and higher education have continued to access bursary, grant and loan payments throughout the pandemic. Earlier this year, the Scottish Government provided emergency funding of £5 million to support students and early access to £11.4 million of higher education discretionary funds. In addition, £2 million was brought forward for further education students by the Scottish Funding Council. I also announced a digital inclusion fund of £5 million to support access to digital equipment and to tackle digital poverty.

Finally, we are investing a further £3.645 million to support our existing commitment to introduce more than 80 additional counsellors in colleges and universities, and I announced additional funding of £1.32 million to help students deal with the mental health impacts of Covid-19.

Stewart Stevenson: I thank the Scottish Government for the support that the minister has just delineated. What discussions has he had with

the university and college sector about the provision of support to students, particularly those from low-income backgrounds? The minister referred to the digital inclusion initiative. How helpful has the initiative been to that part of the student community? Is there access to the basic necessities of life, such as food deliveries, and are there specific steps that might help to ensure that students do not feel isolated?

Richard Lochhead: The member asked a variety of questions, but I will try to answer quickly.

Our universities and colleges have an obligation to ensure that welfare support and support with supplies are available for any student who is self-isolating in halls of residence and for other students of whom the institutions are aware. That support has now been taken forward and, as the member knows, institutions are making a huge effort to support students.

On the digital inclusion fund, it has been heartening to see the photos on social media of our colleges and universities with rooms full of laptops that they are distributing to students in need and others. That shows that the funding from the Scottish Government—as well as funding from the institutions, which they are using for that purpose—has been put to good use.

With regard to wider support, I know that 3,500 students have tapped into the £11.4 million funding for support that I mentioned in my initial answer. Those will be students in need, who fit the criteria for that fund. Another 1,500 students have successfully applied to the other funds that were already available.

Schools (Subject Choice)

5. Tom Mason (North East Scotland) (Con): To ask the Scottish Government whether it will provide an update on subject choice in the 2020-21 academic year. (S5O-04789)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Schools and local authorities are responsible for planning a senior phase that allows young people to choose their preferred subjects and we expect them to take innovative approaches to ensuring that a wide choice is available. However, Covid-19 has created many challenges and we must accept that currently some opportunities are unavailable to young people because of the safety measures that were imposed in accordance with public health advice.

Schools and local authorities are working hard to do the best that they can for their young people, while prioritising the physical, mental and emotional wellbeing of learners. The Scottish Government is working with Education Scotland, colleges and local authorities to monitor the impact

of Covid-19 on the breadth of the senior phase curriculum offer and on collaboration between schools and with colleges, and will consider whether further guidance is required in that area.

Tom Mason: The commission on school reform has found that, nationally, the number of subjects that secondary 4 pupils study has fallen from eight to seven or even six. That narrowing of subject choice means that in most schools it is not possible to study in all curriculum areas in S4, which disproportionately affects disadvantaged pupils.

The commission argues that it is disingenuous to refer to a number of subjects that are notionally available, as those subjects are not accessible for most individuals. Does the cabinet secretary recognise the reality that pupils face and will he ensure that all students can access the full range of subjects in S4?

John Swinney: I believe that all pupils are able to access a broad range of opportunities in S4. We have had well-documented discussions in the chamber and in committee about the content of the senior phase.

Fundamental differences of view exist among members as to whether we should view the senior phase as a three-year period, which it largely is for many young people who stay on at school beyond S4—a material change in circumstances since I was at school—or whether we should have a traditional curricular schedule of the type that I had when I went to school about 40 years ago.

I am satisfied that schools offer a broad—indeed, an expanding—range of choice. However, as I said in my earlier answer, the constraints of Covid restrict some of those opportunities, so with regard to ensuring that young people have them, the sooner we can get beyond the Covid period the better.

Of course, there is a chance that the curriculum review that the Organisation for Economic Co-operation and Development is undertaking, which will report in 2021, will reflect on some of those issues.

Social Care Workers (Funding of Qualifications)

6. Edward Mountain (Highlands and Islands) (Con): To ask the Scottish Government what its position is on funding level 2 of Scottish vocational qualifications training for social care workers, given their important role during the Covid-19 pandemic. (S5O-04790)

The Minister for Children and Young People (Maree Todd): This year, we are investing £0.9 million to support third sector employers that provide social care, specifically as a contribution

towards the cost of putting care staff through SVQs. It is for employers to make the decision on what level of SVQ care staff should undertake, linked to their specific role.

Supporting care providers and their workforce is critical at this time. Our plan—the “Adult Social Care Winter Preparedness Plan 2020-21”, which was published on 3 November—provides an additional £112 million for the care sector to help it to respond to the demands of winter alongside the on-going challenges of Covid-19. That amount is on top of the £150 million that the sector received earlier this year to deal with the financial implications of the pandemic.

Edward Mountain: I thank the minister for her response, but I am not sure that it answered, or even addressed, the question. She just gave a list of things that she thinks are happening.

SVQ costs at level 2 are more than £1,000, which is a barrier that prevents people, whom we desperately need, from getting into the care sector. The Government funds level 3; why does it not fund level 2?

Maree Todd: Various funding streams are available to support further and higher education. The area is complex; for example, there will be funding support streams available at SVQ level 3 that are not available at SVQ level 2. For the purposes of funding, SVQ level 2 courses are considered further education, and SVQ level 3 courses are considered higher education.

The Scottish Government provides separate funding packages for FE and HE, which have their own distinct rules on eligibility and different rates of support. Information regarding the levels of funding that are available to both FE and HE students is set out in the Student Information Scotland website.

The Deputy Presiding Officer: Question 7 is from Christine Grahame, but I can see that she is having trouble with her card that operates the microphone.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): On a point of order, Presiding Officer. My card is not working. [*Laughter.*]

The Deputy Presiding Officer: That is not a point of order, but I think that I see a light on Christine Grahame’s microphone, so it might be working better than she thinks it is.

Christine Grahame: There may be a light on the console, but I do not know if there is one in my head. I will have to get a new card.

Blended Learning and School Closures

7. Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): To ask the Scottish Government in what circumstances it would consider blended learning or a complete closure of a school or schools within a local authority. (S5O-04791)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The measures that have been put in place across wider society at different levels have been designed precisely to avoid any automatic move to remote learning or to close schools. The latest evidence that has been published by Public Health Scotland and the advisory sub-group reinforces our view that the benefits to young people of being in school outweigh the overall impact on schools of transmission rates.

The use of targeted remote learning remains an important contingency at all levels of the strategic framework. Decisions relating to public health will continue to be made by local incident management teams, and on the independent advice of local directors of public health.

Christine Grahame: The Deputy First Minister may recall that one of my previous incarnations was as a secondary teacher. Like former colleagues, I would be in daily classroom contact with more than 100 pupils. Does the Deputy First Minister agree that, as part of retaining important face-to-face teaching, pupils must adhere to the Covid rules not only in school, but outside school, to keep themselves and the staff safe, and their school open?

John Swinney: From our long association, I am very aware of Christine Grahame’s previous career incarnations.

Christine Grahame makes an important point, which resonates with the comments that Mr Sarwar and Mr Findlay made earlier. Teachers have a lot of interaction with pupils in the course of a day, so it is important that everybody follows the rules at all times in order to minimise the risk of transmission. In my earlier answer, I made it expressly clear that the measures that the Government is taking to suppress community transmission are designed to ensure that we can keep schools open. We have made choices—I know that others dispute and disagree with those choices—to try to protect the availability of schooling for young people because of the benefits that it delivers to each individual.

Scots Language Qualifications (Uptake)

8. Clare Adamson (Motherwell and Wishaw) (SNP): To ask the Scottish Government what the uptake has been for the new Scots language

award at Scottish credit and qualifications framework levels 3 to 6. (S5O-04792)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The Scots language award was introduced in the 2014-15 academic year. Since then, there has been a positive increase in the number of young people who have attained a pass in the award at SCQF levels 3 to 6. In its first year, in 2015, there were 54 passes in the award, and that number has increased substantially to 418 in 2020.

However, that does not tell the whole story, as many schools and centres choose to use only some of the units that make up the award as part of their studies. Therefore, the number of young people who have the opportunity to learn and engage with the Scots language is far higher. The Scottish Government continues to work with the Scottish Qualifications Authority and stakeholders to promote the award and Scots in education.

Clare Adamson: I pay tribute to Ciara Dillon, who won the young Scots writer award at the Scots language awards 2020. What action is Education Scotland taking to ensure that Scots is a valued and embedded part of the curriculum and is not just pulled out of a drawer on or around Burns night?

John Swinney: I associate myself with Clare Adamson's tribute to Ciara Dillon, who won the young Scots writer award at the Scots language awards. I have just written to this year's award winners to congratulate them on their achievements. Ciara will be one of those who will receive a letter from me.

I can assure Clare Adamson that Education Scotland values and appreciates the importance and significance of the Scots language. Development work is taken forward through the partnership approach that involves organisations such as the Scottish Language Dictionaries, the National Library of Scotland and the SQA. There is clear evidence from schools across the country that the Scots language has a developing place in the curriculum and that it is being used in classrooms by practitioners and learners. The Scots language is very much supported and appreciated by Education Scotland.

The Deputy Presiding Officer: That concludes portfolio question time. I apologise to members who were keen to ask supplementary questions on either portfolio but could not be called due to time pressures. I was particularly keen to ensure that all members with a question in the *Business Bulletin* were taken.

Covid-19 (Roll-out of Testing Programme)

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a statement by Jeane Freeman on the roll-out of a testing programme. The cabinet secretary will take questions at the end of her statement, so there should be no interventions or interruptions.

14:54

The Cabinet Secretary for Health and Sport (Jeane Freeman): Last week in the chamber, I updated members on our plans to deliver Covid vaccinations. Today, I am grateful for the opportunity to provide an update on our plans to significantly expand testing. The further expansion is possible because of increases in our testing capacity, which is coming from the three new national health service regional hub laboratories, from Lighthouse laboratories and from new testing options.

Yesterday, the Glasgow Lighthouse laboratory reached the remarkable milestone of having processed 5 million tests.

Work on our three new regional hubs in NHS Scotland is progressing and I thank our microbiology, virology and healthcare science workforce, who have built the largest diagnostic capacity and are a critical part of Scotland's Covid response. New options come from innovation in testing outside our labs—notably, the new lateral flow devices—bringing us significantly greater capability to test more people, more often.

I will come on to how we will use that capability, but I will first say a few words about the new tests. Lateral flow devices are rapid turnaround tests whereby samples are processed on site with no lab required and results being available in less than half an hour. The type that we are using first in our expansion—the Innova lateral flow test—has had extensive clinical validation by Public Health England and the University of Oxford. That validation found that the Innova lateral flow test has an overall sensitivity of 76.8 per cent, meaning that it will identify more than seven in 10 positive cases of Covid. That rises to more than 95 per cent of those with high viral loads—those who are likely to be the most infectious.

Understanding that matters, because, as we have said consistently from the outset, no test is 100 per cent accurate, and testing on its own does not reduce transmission. It helps to stop transmission only through the actions that are taken following the result: to isolate if positive and give contact tracers all the information about where we have been during the period when we

may have been infectious so that close contacts can be identified and told to isolate—all of which is aimed at killing off the chain of transmission.

Testing is one layer of protection. All the others—from reducing contacts and keeping our distance, to wearing face coverings, enhanced infection prevention and control in our NHS and care settings, and vaccines, when they come—work to greatest effect only when they work together. Our senior clinical and scientific advisers recently reviewed our testing strategy and their advice was clear and unanimous: test people with symptoms, test for clinical care and, when capacity allows, prioritise to protect those who are most vulnerable to the worst harm. We now have that increased capacity and we will extend testing to many more people.

By the start of December, we will extend testing to all hospital admissions to emergency departments, acute assessment centres, maternity units, and emergency mental health units. By mid-December, we will extend that testing to all medical and surgical elective admissions. We will extend our routine testing of healthcare workers. Everyone who works in patient-facing roles in our hospitals, in the Scottish Ambulance Service and in Covid assessment centres in the community, and the healthcare professionals who visit care homes, will receive twice-weekly testing. The scale of that challenge is not to be underestimated: NHS Scotland employs more than 170,000 people and although not all are in patient-facing roles, the number who are is considerable.

We know that our front-line NHS staff are at the highest risk of being exposed to Covid-19 and we know that when community transmission rises, so, too, does the risk of outbreaks in our hospitals. We will therefore phase in that extension from the start of December, to be completed by the end of that month. I know that all those NHS staff who continue to deliver an extraordinary service, and who understand so well all that they need to do to protect themselves and the patients whom they care for, will welcome that additional layer of protection.

We will extend testing in social care. There are up to 42,000 care home residents across Scotland, all of whom are entitled to a designated visitor. We will use lateral flow testing on the day of the visit so that, if that test is positive, family members can take immediate action to isolate and avert the harm that could have arisen. We will roll out lateral flow testing to up to 12 early-adopter care homes across four local authority areas from 7 December. Learning from that, we will roll out to a further number of homes across an additional seven local authorities before 21 December, with

full roll-out across all homes completed over January and early February.

Although that is positive progress and—I hope—good news, I am mindful of the approaching Christmas period and I do not want any resident or family member to be disadvantaged. For those not included in the lateral flow early adopters before Christmas, we will therefore provide access to PCR testing in the weeks beginning 21 and 28 December and 4 January.

Family and loved ones know better than anyone else that testing provides an additional layer of protection. On its own, it does not give risk-free visiting; however, combined with appropriate personal protective equipment and strict hand hygiene, I hope that it allows more relatives to visit their loved ones, reduces isolation and loneliness for care home residents and gives providers the additional confidence that they need in order to facilitate more visits.

There can be no question but that the home care workforce do a most critical job in supporting and caring for people so that they can continue to live as independently as possible in their own home. From mid-January, we are extending our testing programme to them, including permanent and visiting staff and personal assistants in a person's home, covering residential settings, sheltered housing and day care.

This is a large group of people, who are doing very important jobs, but the very nature of the jobs that they do means that they work individually in a number of different homes and settings. The logistics of this are not straightforward, so we will phase in the testing for care-at-home staff also from mid-January, starting in the local authority areas that have the highest virus prevalence at the time, and expanding from there to cover the whole sector by March.

With the significant capability now available to us, we are also extending asymptomatic testing to entire groups and communities, to help us find positive cases even before a person develops symptoms. As members know, we are doing that, first, in partnership with our universities, so that tens of thousands of students can travel to their family homes safely at the end of this term. All students who are leaving their term-time address will be offered two lateral flow tests, three days apart, from next week, and, as part of the details that are to be set out shortly for the staggered return of university students in the new year, testing will again be put in place for them.

All school staff can currently access testing if they are concerned that they have been at risk of infection. In addition, enhanced surveillance in schools has been undertaken by Public Health Scotland. However, I know that, as transmission

has risen or stayed stubbornly high in some of our communities, especially those that are now in level 4, school staff may have had concerns about risk. We will maintain the current access to asymptomatic testing, but, last week, the Deputy First Minister also gave a clear commitment to exploring the further extension of testing, and I am pleased to confirm that, from the return to school in January, we will undertake a number of pathfinder programmes to test deliverability in the school environment, with the objective of establishing a sustainable programme of asymptomatic testing among school staff.

Our testing capability now enables us to work with local partners to trial whole-community testing in exactly those areas where transmission has stayed stubbornly high. Next week, we will be deploying up to six additional mobile testing units and 20,000 home test kits to support work in five local authority areas: Glasgow City, Renfrewshire, East Ayrshire, South Ayrshire, and Clackmannanshire.

We will also set up an asymptomatic test site using lateral flow testing in Johnstone in Renfrewshire, which has one of the highest numbers of new cases per 100,000 people of any local authority in Scotland. That centre will have capacity to test up to 12,000 people a week. We are also actively planning wider targeted deployment for early January, including further asymptomatic test sites.

In deploying mobile units and home test kits, and in trialling the asymptomatic test site, we will work closely with local communities to harness their expertise in order to encourage high participation.

Testing is undeniably important, but it is just one layer of protection. Many layers are needed to fight the virus. Our increased capability to test more people, more often, is potentially powerful as we navigate our way through the coming months as safely as we can, alongside our nationwide vaccination programme.

With the plans that I have set out, we will move to testing hundreds of thousands of people without symptoms, in order to actively find the virus, and, with the continuing co-operation of people across Scotland, to prevent and break down chains of transmission before Covid-19 can cause the harm of which we know it is capable.

The Deputy Presiding Officer: The cabinet secretary will now take questions on the issues raised in her statement. We are pushed for time, but I will allow around 20 minutes for questions.

Donald Cameron (Highlands and Islands) (Con): I thank the cabinet secretary for the advance sight of her statement.

We strongly welcome the further clarification of the expanded testing programme that has been provided. It is right that these actions are rolled out swiftly, so that we can continue our efforts to suppress the virus. The positive news about vaccines in recent weeks needs to be complemented by a robust and accurate testing regime—both are critical tools.

I want to return to testing in social care—care homes and home care. Given the very difficult and emotional issues that arise for relatives and friends, especially at this time of year, which the cabinet secretary acknowledged, will she clarify whether designated visitor testing will be mandatory in all instances?

Will the cabinet secretary set out what support will be given to care homes to implement the new policies, given the importance of having a uniform approach throughout Scotland? One of the hardest issues for relatives is having different rules in different care homes.

Jeane Freeman: I thank Mr Cameron for his important questions.

As Mr Cameron knows, we do not make testing mandatory. It is not mandatory for our NHS staff. There is a very straightforward reason for that: we want people to undertake testing voluntarily—particularly the lateral flow testing, which is much more straightforward and much less intrusive and difficult for people—because they understand the importance of and rationale for testing. At this point, we do not intend to make testing mandatory for care home visiting.

We need to continue our discussions with care home providers, through Scottish Care, to ensure that providers feel that testing—which they have asked for—gives them greater confidence about opening up more visiting for their residents.

There will be support for all care homes. The pathfinder approach allows us to work directly with care homes to provide training so that people understand how lateral flow devices work and to make sure that we get the logistics of kit delivery accurate and smooth. We will then use those homes' experience to roll out the approach to colleagues who run other care homes. Training and support will be provided to all care homes as the lateral flow devices are provided to them. Of course, PCR testing is done through our NHS.

Monica Lennon (Central Scotland) (Lab): On the surface of it, there is quite a lot to welcome in the statement, but the devil is in the detail. People have been promised a lot already when it comes to testing.

The cabinet secretary recognised that our front-line workers are at higher risk and do really important jobs, but I see from the statement—I

listened carefully and wrote this down—that it will be the end of March before everyone who works in home care has access to testing. That will be a year after we went into the pandemic, which seems completely unacceptable to me and to Labour colleagues.

It is worrying that we are seeing nosocomial infections in our hospitals and infection spread in the community and into care homes. It is a worrying time for our front-line workers. Why has it taken so long to roll out testing?

I welcome the update on whole-community testing. Given the high number of cases in Lanarkshire and our level 4 status, why has Lanarkshire not been selected for whole-community testing? What criteria have been used?

Jeane Freeman: I do not think that I promise a lot and then do not deliver. The reason why members are getting this update today and not at any other point—when it would have been entirely possible to make an announcement, but it would have been an announcement with no substance—is that today we have a detailed delivery plan and I am confident that the dates that I am giving are those on which we will deliver. I think that that gives the public in Scotland and, more important, the people who need testing the respect that they deserve.

As I said, all patient-facing NHS staff will undergo routine weekly testing by the end of December—in a month's time. The nature of the job that home care staff do means that they do not conveniently gather in one place on a regular basis before they go and do their job. We need to work out the logistics of that. If we can deliver routine weekly testing to them before March, we will do that because the work that they do is vital. The fact is that they will often visit five or possibly more homes in any one day, and they have arrangements for PPE.

The other point about home care staff—the First Minister explained this yesterday—relates to authorisation for non-clinical use of the lateral flow test. The lateral flow test is the best test to use in those circumstances because of the speed of the result, but there is not yet across the UK authorisation for anyone who is not clinical staff to use that test. We can make sure that it is used in care homes, where we have nursing staff, and by our NHS staff, given all the admissions to hospital, but home care workers are different. To make the testing go smoothly as part of their shift and not be something that they have to get on their day off, we need to get that authorisation, which will help us to roll the testing out further.

The two areas of complication are the nature of the home care job—including the fact that we do not conveniently find home care staff in a ward or

a care home—and the need for authorisation for the widespread use of the lateral flow test among non-clinical workers. Those are the difficulties. As I have said, if we can do the testing more quickly, we will do that, but our current estimate, which is based on those two issues, is that it will—starting in January—take us until March to complete it.

The Deputy Presiding Officer: We really are pushed for time, so I must insist on concise questions and answers.

Annabelle Ewing (Cowdenbeath) (SNP): I, too, add my welcome to the significant expansion of the testing programme. What discussion has the Scottish Government had with NHS Fife and Fife Council to ensure that health and social care staff in my constituency of Cowdenbeath can access testing close to their community?

Jeane Freeman: NHS staff will be able to access testing directly in their workplace or as close to their workplace as the health board and the Scottish Government can organise it. For example, in some places it may be in one community setting where everyone needs to go to get it, but I am keen that it is part of the shift pattern and not something that people have to do on their days off. I have already explained to Ms Lennon some of the issues in relation to social care, but where we have social care staff directly employed by local authorities—in my opinion, that does not happen often enough, unfortunately—the testing is logistically easier to organise. We will be talking to Fife Council and others to make sure that we test those individuals in shifts and as close to the workplace as we can.

Brian Whittle (South Scotland) (Con): I would like some clarification of the cabinet secretary's answer to Donald Cameron's question. I appreciate that she cannot make it mandatory for everyone to take a test, but will the cabinet secretary make it mandatory for all care homes to offer testing to staff, residents and visitors?

Jeane Freeman: I cannot really do that either. At the minute, care homes have to meet certain criteria before different levels of testing are permitted by the local directorate of public health, so my clinical adviser team is looking at what we can say about the requirement for testing—both the offer and the taking of it—for the four-hour visits, for example. In relation to the latter, we need to be careful that we are not discriminating against residents or visitors for whom taking the test is not possible, which is why we must get that bit of it right.

Nevertheless, I completely understand and agree with the sentiment behind what Mr Whittle and Mr Cameron have asked, and, as soon as the position is clear, I will make sure that they are aware.

Anas Sarwar (Glasgow) (Lab): After eight months, this is progress, but—I am sorry—it is not good enough. Full care home testing will not be done until the end of February. That will be almost a year since the beginning of the pandemic. Care home staff are not celebrating today. They feel broken. Care home residents and their families feel broken. This situation is not good enough. We are breaching their human rights and ignoring basic decency. Almost a year until full testing—

The Deputy Presiding Officer: Please get to your question.

Anas Sarwar: Will the cabinet secretary offer testing care home residents and their families to allow them to have loved ones close to them at Christmas, so that they can, at least, have some close contact, given the year that they have gone through and the fact that those might be the final moments that they have with those loved ones?

Jeane Freeman: If Mr Sarwar would like to read my statement, he will find that it answers his question.

I will make another point. In February last year, NHS Scotland was capable of delivering 350 tests at day. I think that the expansion that our staff, our virologists, our healthcare scientists and all of our policy and delivery staff have secured and achieved in the face of a pandemic, now with new innovations in testing, is quite remarkable. They should be considerably thanked for that and we should not look at this situation as if the glass is half empty.

Alison Johnstone (Lothian) (Green): I am delighted that all front-line NHS staff working in health and social care are finally going to be giving given weekly testing, which is something that my Green colleagues and I have been calling for since April, and it is the least that our doctors and carers deserve. However, it has taken seven months to get to this point, and I am slightly concerned about that.

Last week, Parliament voted for the Green motion calling on the Scottish Government to introduce routine testing for asymptomatic staff and senior pupils in Scotland's schools and, in her statement today, the cabinet secretary made a tentative commitment to trials in January. I would be grateful if the cabinet secretary could tell us whether we will have to wait another seven months before our schools can benefit from regular testing.

Jeane Freeman: The commitment is not tentative. We have given a commitment that, in discussion with the Deputy First Minister, from the return of schools in January, there will be pathfinder lateral flow programmes, precisely so that we can ensure that we have smooth deliverability, taking account of the point that I

made earlier to Ms Lennon about the authorisation of the non-clinical use of lateral flow tests. That is the reason—it is a straightforward reason and I am not hiding anything. That is what we will do and, as soon as we can roll it out, we will do so.

Alex Cole-Hamilton (Edinburgh Western) (LD): The news that lateral flow tests will be offered to students to confirm their Covid status before the journey home for Christmas will be a welcome reassurance for families. However, I want to ask the cabinet secretary about the return to campus in the new year. Her statement hints that testing will be made available for that, but will it be made available to students while they are still at home, so that they can self-isolate there if need be, or are we going to test them on campus, risking a repeat of the chaos that we saw this freshers week?

Jeane Freeman: I think that I must have done something wrong when I was delivering my statement, because I did not hint at that at all; I said pretty clearly that testing would be part of the plans for the return of students after the Christmas break. Those plans have to be worked through between the Deputy First Minister and Mr Lochhead and the university sector. As they work those through, we will provide them with clinical advice about the most effective way of delivering that testing. However, of course, we can deliver that testing only in Scotland. If students are travelling from elsewhere in the UK or beyond the UK, we will not be able to deliver that testing for them.

We need to reach a sensible approach to this, in a way that minimises the risk as far as possible. I have every confidence that the Deputy First Minister will set out those plans once he has completed his necessary and perfectly proper discussions with Universities Scotland and the National Union of Students.

Stuart McMillan (Greenock and Inverclyde) (SNP): I welcome the cabinet secretary's statement on the routine testing of healthcare staff. Will that testing also include maintenance staff who may be required to enter wards or rooms with Covid-19 patients? That issue has raised with me by a constituent.

Jeane Freeman: Yes, it will include estate staff, who undertake a number of roles and all of whom, at various points in their jobs, have to enter wards and other areas where there are patients. It will include maintenance as well as other staff who are non-clinical.

Jamie Greene (West Scotland) (Con): I welcome plans for rapid testing to get students home for Christmas. However, other young adults, many of whom have disabilities, live in other forms of residential care during term time, and they have

been told that, if they want to go home for Christmas, they must self-isolate for 14 days. Surely that is unacceptable to us all. Can the cabinet secretary provide reassurances that her commitment to get students home for Christmas through the use of testing will be extended to other young adults, who deserve the dignity and respect that is afforded to the rest of society?

Jeane Freeman: The commitment that I can give is that I will talk to my colleagues the Deputy First Minister and Maree Todd to see whether there is anything that we can do in that regard and, once we have reached a view, I will update Mr Greene.

Joan McAlpine (South Scotland) (SNP): The cabinet secretary knows that I have been calling for the testing of carers in order to protect people with learning disabilities, who have a high rate of mortality from Covid. Many people with learning disabilities are in supported living, where the risks are similar to those in care homes, but the cabinet secretary did not specify them today. The staff in those settings, unlike home care staff, are in one place and are often employed by local authorities, so they are not difficult to identify. Therefore, can the cabinet secretary offer reassurance on how soon those staff can be tested? Given that they are easy to identify, why can we not roll out the care home programme to cover them?

Jeane Freeman: I apologise if that was not clear in the statement either, but that work will begin from mid-January for the staff that Ms McAlpine referred to.

Colin Smyth (South Scotland) (Lab): I welcome the plans for a system of two lateral flow tests, three days apart, for students leaving their term address, but why has the Government so far rejected that solution for passengers who arrive at Scotland's airports, especially given that the airports would provide the tests? What is the science that says that it is a safe thing to do for students but not for airline passengers?

Jeane Freeman: Our clinical advisers continue to talk with the airport authorities in Scotland. They have not yet reached a final view or agreement on that, but that work is under way and, as soon as we have that advice, we will take steps to introduce whatever we are advised to do.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Many of my constituents work in the oil and gas sector and they are typically asked to get tested before going offshore. However, because they cannot access testing privately in the islands, they often have to get tested in Aberdeen, which adds days on to the length of their journey. Although I understand the reasons why the testing machine in Stornoway is only for people who are symptomatic, is there anything that can be done to

improve things for people who are caught in that situation?

Jeane Freeman: I appreciate the points that Dr Allan made; he has made them before and I understand them. Two things are under way that might be of assistance in resolving that issue. The first is that we will look at what more we might do where there is underuse of existing capacity, either through the UK portal sites or directly through our NHS labs, although, to a large extent, our NHS labs will now be fully utilised by what I have announced today.

Secondly, we will now continue to look at sectoral arguments for asymptomatic testing, which include the particular circumstances of the oil and gas sector, in which individuals work offshore. Whether that offshore testing could be undertaken depends, again, on the authorisation of the non-clinical use of lateral flow testing. However that consideration and that work are under way, and we will make sure that we keep Dr Allan and other colleagues who represent islands and the north-east of Scotland updated as we make progress.

Pauline McNeill (Glasgow) (Lab): The city of Glasgow has a high transmission rate and we are in tier 4. Does the cabinet secretary agree that it would make sense to extend asymptomatic testing to Glasgow, as she has done in Johnstone, which is a very small part of the country, or does that indicate how far behind we are with asymptomatic testing? Why can people from Glasgow city—and wider Glasgow—not get a test, particularly after the five-day Christmas period, when it would make good sense for people to volunteer to have one, in order to fight the virus?

Jeane Freeman: First, I apologise to Monica Lennon; I missed answering part of her question on Lanarkshire, so I hope that I cover it now. The introduction of the community asymptomatic testing that I described, which will happen from the start of December, is done in direct negotiation and consultation with local authorities. We have not excluded Lanarkshire—I am not excluding anybody. Lanarkshire will come forward with its proposals, but at this point they are not finalised, so I am not going to announce them. I am not confident yet about what exactly they will be. They will come, but we do not have them yet.

Following discussion with the local authority and health board, a particular part of Glasgow will be designated for community access asymptomatic testing at the beginning of December.

As I said in my statement, we will continue to look at whole-town and whole-city testing as we move into the early part of 2021. We have worked out how to do community access asymptomatic testing with local authorities and other partners.

That will happen in the early part of December. We have the Renfrewshire site, which will give us a great deal of learning, as will what eventually comes through to us from Liverpool. All of that will help us to look at running asymptomatic testing—depending on the prevalence of the virus—in other parts of the country, either at community level or at the wider town or city level.

The Deputy Presiding Officer: That concludes questions on the roll-out of the testing programme. I apologise to Rona Mackay for being unable to reach her question.

Policing (Complaints Handling, Investigations and Misconduct Issues) (Independent Review)

The Deputy Presiding Officer (Linda Fabiani): The next item of business is a debate on motion S5M-22450, in the name of Liam Kerr, on the independent review of complaints handling, investigations and misconduct issues in relation to policing. I ask those who wish to speak in the debate to press their request-to-speak buttons.

15:26

Liam Kerr (North East Scotland) (Con): I thank Dame Elish Angiolini for her “Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing”. It is a sobering and, at times, shocking read. It tells us this: the Scottish National Party’s system of police complaints and governance has been broken since inception.

Dame Elish’s forensic analysis has been described as a “watershed moment” for policing in Scotland, and fixing the SNP’s apparatus is vital in order that we can repair and enhance public confidence. However, the SNP got the report, issued a bland press release, then disappeared, which is why the Scottish Conservatives have called for this debate in Opposition time.

The debate is also about supporting and protecting the thousands of police officers to whom we all owe an immense debt of gratitude. Those men and women selflessly keep us safe every day, and nothing that will be said by Conservative members—or, I am sure, by members from all across the chamber—will question their commitment, ability or professionalism. They deserve to know that the complaints process is efficient, transparent, proportionate and fair.

Yesterday, Douglas Ross and I met a group of women from different parts of our policing community. They included a former constable, a firearms officer, a senior officer and a former Scottish Police Authority board member. They had all experienced injustice that was, thanks to the structures that were implemented in a rush by the SNP, the starting point for something worse. When they engaged with the complaints process, they were let down. Not only were careers ruined, but some of those people suffered ill health and life-changing financial loss.

Karen Harper spent 22 years as a constable in Lanarkshire and Dumfriesshire before being forced to retire through ill health. Later, she won her sex discrimination claim. Ms Harper describes the report as an

“exoneration for myself and many other officers betrayed by the fundamentally unfair system”.

What angers Ms Harper most is that the corrosive saga that has consumed her life for five long years could have been prevented at the outset, if only the system had been fair. She tried everything. In 2015, she even contacted the First Minister. She began by saying that writing was a “last resort”. However, all she got back was a brief and impersonal letter from a junior civil servant, which did not address any of the serious and specific issues that she had raised.

The Cabinet Secretary for Justice will, no doubt, remind me that it is not politicians’ place to meddle in processes or to influence public bodies in discharging their duties, but what happens when the systems that have been put in place to protect the public and police officers fail?

Since the creation of Police Scotland seven years ago, there has been a relentless flow of troubling revelations around the complaints process and governance. I spoke with Moi Ali, who is a former member of the Scottish Police Authority. Ms Ali resigned over concerns about lack of transparency, which was contrary to the public interest and good governance, and she spoke out—but nothing substantive has changed.

I also spoke with Angela Wilson, who is a former assistant chief constable in Tayside. She bemoaned the “deafening silence” from the Scottish Government on the report—and she was surely right to do so. Ms Wilson believes that major change is necessary for Scotland to achieve a diverse police service that truly reflects those whom it represents. How do we do that?

Dame Elish has made more than 100 recommendations in her preliminary and final reports. We do not have time today to give proper consideration to the relative merits of each recommendation, but we can, in this debate, focus on some of the most fundamental ones, including the need for the Police Investigations and Review Commissioner to be truly independent and to be given the power that it needs in order to become an effective watchdog. Dame Elish has also rightly stated that PIRC should no longer be answerable to ministers, but to the Scottish Parliament.

Dame Elish has recommended that the Scottish Police Authority be stripped of its power to investigate senior officers. She cited possible perception of bias due to their close working relationship.

Another recommendation is the need for serious misconduct proceedings to continue against officers even if they resign or retire. On that point, Dame Elish urges the Scottish Government to work with the United Kingdom Government to adopt good practice from England and Wales by

extending barred and advisory lists to Police Scotland. Those lists are public databases of officers who have been dismissed for gross misconduct or who left while being investigated.

There are numerous other areas in which Dame Elish urges the Scottish Government to learn something about transparency from our friends in the rest of the UK. They include the holding of police gross misconduct hearings in public, as happens in other professions, and allowing for accelerated misconduct hearings in cases with apparently incontrovertible evidence of guilt.

Some of those things require amendment of existing legislation or new laws; others need structural, procedural or even cultural changes within Police Scotland, the SPA or PIRC. All of them need ministers to act.

What has been notable—worrying, even—has been the response so far from the SNP. Dame Elish’s 150,000-word 500-page publication was made public two weeks ago today, and was on ministerial desks prior to that. The SNP’s response has been a bland press release that contained little more than vague platitudes and completely lacked any firm commitment to act. Hiding behind the defence that the SNP commissioned the report in the first place is rendered meaningless by inaction. We need action.

The Cabinet Secretary for Justice (Humza Yousaf): I have, of course, spoken to Police Scotland, the SPA, the Crown Office and Procurator Fiscal Service and other key stakeholders about recommendations in the report. Has Liam Kerr spoken to any of the key partners at which the recommendations are aimed?

Liam Kerr: Yes, of course I have. In order to assist the cabinet secretary, I will provide a suggestion. It came from Moi Ali, but will be endorsed by many stakeholders. I am sure that he will be interested to hear it. Like many of the best ideas, it is very simple, and there is no excuse for not implementing it.

The suggestion is this. The Government should list all Dame Elish Angiolini’s recommendations on the Scottish Government’s website for the public to see and, alongside each, list whether or not the Scottish Government accepts the recommendation. If recommendations are not accepted, the Government should say why not. If a recommendation is accepted, let us have further columns that show which agency is responsible for progressing it and tracking it. That action tracker could inform the public. Adopting that suggestion would be inexpensive and would be a signal of sincerity about change.

I want to end on a comment that Karen Harper made to me. She said:

“Whether this report will make any difference to such deep-rooted institutional problems remains to be seen.”

I say to the cabinet secretary that doing nothing is not an option. Shirking responsibility is not an option. Sticking Dame Elish Angiolini’s report in a filing cabinet and forgetting about it is not an option.

The public deserve better. Our police officers, who are working under an SNP-created policing structure, deserve better. The time for action is now.

I move,

That the Parliament notes the report of the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, produced by Dame Elish Angiolini QC and submitted to Scottish Ministers on 11 November 2020, and calls on the Scottish Government to implement its proposals, in particular to expand the role of the Police Investigations and Review Commissioner without delay, and to work collaboratively with the UK Government to adopt good practice from England and Wales that is appropriate to Scotland, as set out in the report.

15:34

The Cabinet Secretary for Justice (Humza Yousaf): I thank the Conservatives for lodging the motion. Far from shirking responsibility, I think that we have an excellent opportunity to debate an excellent and substantial report, for which I thank Dame Elish Angiolini.

As Liam Kerr rightly pointed out, there are a number of substantial and significant recommendations in the report. I am sure that we will give many of the key recommendations a good airing during the debate. Nobody is hiding from them.

In that vein, I was pleased to note that this morning, the chief constable spoke at the SPA board meeting about reviewing equality matters. He said that

“Racism and discrimination of any kind is deplorable and unacceptable, and I utterly condemn it. It has no place in society, and no place in the police service of Scotland.”

He went on to accept and agree with Dame Elish’s recommendation that there be an independent review of equality matters. I was delighted to see that recommendation, and to see that the chief constable has moved at pace.

In that light, where the Government can move at pace, we absolutely will. It has been two weeks since the almost 500-page report with more than 80 recommendations was released. A substantial number of the recommendations—more than 30—are for the Scottish Government. There will be no dithering, nor will there be delay. Of course, we are in the midst of a global pandemic, but I absolutely assure Liam Kerr and Conservative

members that I have spoken to the SPA, the Crown Office, Police Scotland and other key partners. I will take up conversation with the PIRC and will review some of the recommendations for that body very carefully.

The report was substantial, and we have to make sure that we take our partners on board on the journey. Across the chamber, we all have a shared endeavour—*[Interruption.]*—and we all want a complaints process that is fairer and more transparent, and which carries an even higher degree of public confidence.

Daniel Johnson (Edinburgh Southern) (Lab): I will ask the cabinet secretary a simple question. Did he ask the Minister for Parliamentary Business and Veterans whether a statement could be made on the report, or is this the first time that he has thought to speak on the matter?

Humza Yousaf: The Minister for Parliamentary Business and Veterans and I have been discussing how difficult the timetable is in the run up to the end of the year; there is the Hate Crime and Public Order (Scotland) Bill, for example. The Government does not have parliamentary time—the Opposition has brought the debate forward. As my amendment, which I hope will get Labour’s support, indicates clearly and explicitly, I am more than happy to come back early in the new year to give an update on where the Government is on the matter. There is no dithering or delay. Of course, conversations must be had among partners. That is the understandable and sensible approach to take.

It is important that we take the public with us. The SPA has published the findings of its latest independent survey, which showed that 61 per cent of respondents rate their local police as excellent or good; there is a high degree of public confidence in the police. By enacting the recommendations in Dame Elish Angiolini’s report, I want to ensure that that percentage gets even higher.

There is no complacency on my part, or on the part of the Government. That can be evidenced by the fact that of the interim report in 2019’s 30 recommendations, approximately 21 have already been implemented, either fully or partly. The remainder have not been implemented because they require legislative change. I have always been up front and clear that it would be sensible to wait for the final report so that we can take legislation forward not in a piecemeal fashion, but in a more sensible way.

Liam Kerr: It is notable that the minister came straight to the chamber to give a ministerial statement on the interim report. The difference is interesting.

Will the cabinet secretary address my point about an action tracker, and will he implement that tracker?

Humza Yousaf: I was the minister who was in charge when the interim report was published in June 2019.

I do not think that the action tracker is a bad idea. I am more than happy to look at it, and do not see why I would not do that. Of course, the report and the recommendations are public; people can view them. However, if Liam Kerr thinks that an action tracker would help to focus their minds, I am more than happy to consider that. I see no reason why that should not be the case.

Given the extent of many of Dame Elish Angiolini's recommendations, it is right that we take time to consider them. They are significant and will require legislative change. I have been having a discussion with the Justice Committee's convener about how tight the timetable is for parliamentary business, which means that getting legislation passed will be incredibly difficult. However, it is important that we do not rush it.

I accept that there is a need and a desire for change in the complaints process; I associate myself with that desire. However, it is important that we get this right, and do not rush it.

I will conclude by saying that I recognise that every one of us across the chamber wants exactly the same thing: a complaints process that has the highest degree of public confidence, and which is seen to be absolutely independent, fair and transparent. My belief is that we have in place a good complaints process in place, but I do not want just a good complaints process. I want the very best; I want the gold standard. That is important for me as justice secretary, but it is more important—it is vital—for the public. As the chief constable regularly states, policing in Scotland does not derive its consent from Parliament or from ministerial direction, but from the public.

Therefore, I commit to working across the parties and with stakeholders to ensure that we consider Dame Elish Angiolini's report carefully, and that we implement the recommendations.

I move amendment S5M-23450.2, to leave out from “, and calls on” to end and insert:

“; welcomes the review as a detailed and substantial piece of work with over 80 recommendations in total that will require careful consideration from the Scottish Government, Scottish Police Authority, Police Scotland, the Police Investigations and Review Commissioner (PIRC), police staff associations and trade unions, and the Crown Office and Procurator Fiscal Service; recognises the significant public interest that there is in having a rights-based approach to the issue of the handling of police complaints; notes that Dame Elish Angiolini will give evidence to the Justice Sub Committee on Policing on 7

December 2020; further notes a number of recommendations would require legislative change; acknowledges the Chief Constable's membership of the National Police Chiefs' Council, which provides an opportunity, where appropriate, to share best practice across the UK; calls on the Scottish Government and other key stakeholders to meet as a matter of urgency to consider the implementation of recommendations; notes the recommendations for wide-ranging changes to the role, responsibilities and structure of the PIRC, which will require public consultation involving police staff associations and trade unions, and urges the Cabinet Secretary for Justice to update the Parliament on discussions with key stakeholders and his response to the report early in the New Year.”

The Deputy Presiding Officer: We go to Rhoda Grant. You have four minutes, Ms Grant. I should also say that you should speak to and move your amendment S5M-23450.1.

15:40

Rhoda Grant (Highlands and Islands) (Lab): I welcome the publication of Elish Angiolini's report. Two years ago, Scottish Labour's Daniel Johnson raised concerns about how police complaints were being handled. As yet, little appears to have happened to address that. We cannot delay in implementing the report's findings.

When the then Police Investigations and Review Commissioner, Kate Frame, gave evidence to the Justice Committee in November 2018, she said:

“In one example, a complaint involving someone who had been unlawfully detained was recorded by the police as a quality of service complaint. In another example, an allegation of rape was recorded by the police as incivility. There is a further example in which someone was punched twice on the face, and that was recorded by the police as excessive force rather than as assault.”—[*Official Report, Justice Committee*, 6 November 2018; c 17.]

That is clearly unacceptable. It is important that the public have trust in the police. If there are complaints about the service, either from within the force or from the general public, they need to be dealt with openly and transparently.

In the short time that I have available, I will focus on our amendment, which highlights concerns about diversity. It is important that the make-up of the force reflects the community that it serves. There is some way to go for Police Scotland to achieve that. We acknowledge the targeted recruitment campaigns for groups that are underrepresented in the service, but more needs to be done.

The report makes worrying observations about the treatment of officers from minority groups. It highlights that black, Asian and minority ethnic people who joined the force tend to leave within a short number of years instead of pursuing a career in it. The report says:

“The evidence suggests that some officers and staff experience discriminatory conduct, attitudes, behaviours

and micro-aggressions, both internally and externally, in the course of their duties. We heard that many of these incidents go unreported even though some of these behaviours constitute misconduct and that there was a reluctance in those Black, Asian and minority ethnic officers to report for fear of being characterised as 'playing the race card'."

Again, that is clearly unacceptable.

It is also clear that the drive to recruit more officers from diverse backgrounds has the aim of changing the culture of the organisation. Sadly, the culture that those officers are recruited to change is driving them away because it is discriminatory.

Similar attitudes towards female officers, of sexism and misogyny, have been spoken of by Rhona Malone. She is not the first female officer to raise those concerns, but the attitudes appear to persist throughout the force.

If those attitudes are held by officers in the force, they are being displayed by officers to the public. Such attitudes need to be met with zero tolerance, and I believe that the recommendation that the force be subject to a review by an independent organisation needs to be implemented urgently. Underlying institutional attitudes would not influence the outcome of such a review.

The police must have the confidence of the public, and our officers must have confidence in the force. Therefore, they are held to a higher standard than is the general public. A small minority can damage the reputation of the force and make the work of ethical officers much more difficult.

When racism, misogyny and discrimination are allowed to go unchecked, that creates a workplace that breeds such attitudes, and it cannot be put right by gestures. It requires a change in the institution's culture, so we urge that the report's recommendations are acted on urgently.

I move amendment S5M-23450.1, to insert at end:

"; notes with concern the findings in the report that there has been discriminatory treatment towards individuals and staff from minority groups, including Black, Asian and minority ethnic people, women and LGBTI people; agrees that Police Scotland should have a workforce that is reflective and representative of the communities that it serves; believes that the policies, procedures and practices of Police Scotland should promote and not hinder equalities issues, including a complaints procedure that is trusted by officers when they seek to raise equalities issues, and therefore calls for an independent review of equalities matters across the force, as recommended in the report."

15:45

John Finnie (Highlands and Islands) (Green):
I thank Dame Elish Angiolini, her team and

everyone who contributed to what is a significant piece of work that has rightly received a warm welcome, including from the Scottish Green Party. It is important that the report is properly examined and actioned, and that the proposals that consultation should take place before any legislation is put in place are dealt with appropriately.

I am convener of the Justice Sub-Committee on Policing. I am not speaking in that capacity, but I want members to know that we are taking evidence from Dame Elish on 7 December; I look forward to that.

The terms of reference that Dame Elish worked to included

"fairness to all those who make or are the subject of a complaint"

and other terms including accountability, transparency, proportionality, effectiveness and efficiency. Those terms have been delivered on. There is also mention of a "learning culture" and relatively new systems. There have been tensions in relationships as well as what we might call turf wars, but I think that we are getting there with that.

There have been challenges with the procedures in relation to chief officers. That issue is being addressed by the Scottish Police Authority and PIRC. We need to draw a distinction between service complaints and complaints about individuals, so I look forward to the outcome of that.

It is not new for the code of ethics to be discussed in police circles. It is fair to say that it means different things to different people, but it is important to note that it is a baseline, so I look forward to discussions on that.

Perhaps one of the amendments that I am most proud of securing in Parliament was when the legislation for Police Scotland was going through. I had an amendment accepted that meant that officers joining Police Scotland should swear an oath to uphold the human rights of citizens. From recent events, we know that Police Scotland has high regard for human rights. The Covid legislation has been overseen by an independent advisory group, led by John Scott QC, and it was Mr Scott who led the inquiry into stop and search powers, which as I recall concluded by saying that the police should be the front-line defenders of citizens' human rights. I am clear that we must take a rights-based approach to the report, and I welcome the explicit use of that term in the Government's amendment.

Police officers have human rights, too, and I think that there is much common ground across the parties on that. I hope that all members will support the Labour amendment, as the Green

Party does. I welcome what the cabinet secretary said about the chief constable's announcement responding specifically to that element that is covered by the Labour amendment.

The inclusion of victim involvement is interesting. From my past career, I know that people can feel that their interests are not represented at a fatal accident inquiry, in the same way as victims of sexual crime do not always feel that their interests are being represented in a court of law. There is an interesting discussion to be had about how we address that through

"meaningful involvement and constructive engagement",

to use Dame Elish's term.

I also want to reflect on the idea of blameless error. The police have a lot of interactions and, as Dame Elish said, we need to show maturity and wisdom in how we respond. We need to be cautious about changes to informal resolution.

Wherever the deliberations take us, I hope that we will have regard to one phrase that could apply anywhere. Dame Elish said that

"the systems need to demonstrate a greater degree of humanity".

If we get that approach right, everyone's interests will be met.

15:49

Liam McArthur (Orkney Islands) (LD): I thank Liam Kerr for giving Parliament the opportunity to briefly consider the report that Dame Elish Angiolini has produced. As he observed, it is regrettable, and perhaps slightly baffling, that the Government did not see fit to debate the report in its own time, not least at a point at which we are seeing a huge number of statements being shoehorned into the parliamentary timetable.

As others have done, I pay tribute to Dame Elish for her work in producing the report, as well as for her willingness to engage with the Justice Committee, including in relation to her interim findings.

It is worth taking a moment to remind ourselves of the context in which the review was set up. Back in 2017, after the Government's rushed centralisation of Scottish policing, serious allegations were made against former chief constable Phil Gormley. Instead of being suspended pending investigation of those complaints, Mr Gormley was put on special leave. The PIRC, meanwhile, was left in the dark. Mr Gormley's return to work was later approved by former Scottish Police Authority chair Andrew Flanagan, who hastily backed down after an intervention by the then justice secretary, Michael

Matheson. Shortly after that, both Mr Gormley and Mr Flanagan left their posts.

It is little wonder that, in her interim report, Dame Elish referred to "actual or perceived partiality" due to relationships between senior police and SPA board members that were, in her words, "too cosy". Susan Deacon alluded to something similar when she resigned as SPA chair at the end of 2019, citing governance and accountability arrangements for policing that were "fundamentally flawed in structure, culture and practice".

A year on, and Dame Elish's final report paints a picture that is no less stark. Her recommendation to remove the option for police officers to avoid investigation by retiring reflects earlier calls by the Justice Committee. Giving the PIRC responsibility for key stages of proceedings involving senior officers makes sense. So, too, does the introduction of greater independence and transparency into all gross misconduct hearings.

However, it is the aspects of the report relating to inclusion and diversity, as well as mental health, that are most striking. I welcome the Labour Party amendment, as John Finnie did. Discriminatory attitudes and behaviours more than two decades after the Macpherson report are wholly unacceptable. We should all be concerned about BAME officers leaving the service or being unwilling to recommend it as a career choice for others. The comments on "underlying sexism" and a "machismo culture" with a lack of willingness to accommodate requests for flexible working are all blunt messages requiring urgent and sustained action by Police Scotland, the SPA and the Scottish Government.

There is also a blunt message on the need for mental health to be of "paramount importance" for the police service. About a year ago, my colleague Willie Rennie highlighted to the First Minister evidence of widespread issues of poor mental health affecting officers and staff. At the time, the cabinet secretary claimed that he was "very satisfied" with police wellbeing. Since then, I have consistently raised the issue with Mr Yousaf, but there is no sign yet of the Government getting to grips with the scale of the problem. That is not good enough. Our police deserve better, the public expects better and Parliament should demand better.

The Deputy Presiding Officer: Thank you for being so succinct. We move to the open debate. We are pushed for time, so speeches should be of no more than four minutes.

15:52

Gordon Lindhurst (Lothian) (Con): I start at what I consider to be the beginning and with what

should be emphasised: our police officers do an often difficult job very well indeed. We should always remember that and that we are fortunate in Scotland to have them. We should be thankful for the work that they do.

Individual police officers, far less the whole of Police Scotland, do not always get things right—of course they do not. However, since I became an MSP in 2016, I can say that local police commanders have always been ready and willing to look at specific constituency cases that I have raised with them. They have considered them and they have acted if something has not been dealt with as it ought to have been. The issues have varied considerably, from rural constituents' concerns that the police were not there for them to disagreements between cyclists and others that perhaps went too far on one side or the other—I say that as both a pedestrian and cyclist.

Policing is about duty, about responsibility to the people of Scotland and about treating whoever comes into contact with the police, for whatever reason, with fairness and respect. The word “whoever” does not need qualification or definition, because it includes everyone in Scotland. It is not the job of the police to take sides with individuals against others—quite the opposite. The police must be confirmed and protected in their neutrality from any attempts by individuals or organisations to involve them in what are essentially political disputes. In a democracy, the place to resolve political disputes is here in Parliament.

The duty and responsibility of the police is to apply the law without fear, favour or affection towards anyone or any cause. That does not mean, of course, that the police have no discretion in how, when, where and why they approach the application of the law. Using such discretion can be a difficult part of any job, and it may be where Police Scotland has sometimes fallen down, including internally.

As Dame Elish Angiolini found, there is not only room but a need for improvement. All the recommendations that she makes in her report should be considered carefully. That includes, for example, understanding how an increase in powers for the PIRC could work. Greater independence within a complaints and investigation process should be a good thing, provided that an intelligent and informed understanding of policing is applied in that context, especially given that we have seen attempted interference in such processes by Government in the past.

It would also be welcome if the Scottish Government were to collaborate with the UK Government in understanding and seeking to apply in the Scottish context some of the useful lessons that have been learned from the English

experience, while avoiding any repetition of mistakes that may have unintentionally happened in England.

At the end of the day, however, considered reforms encouraged by the recommendations will be futile unless wider structural issues and funding deficits for Police Scotland are resolved. The centralisation of administration and cuts in funding under the Scottish National Party Government have had a huge number of negative knock-on effects. I hope for, and look forward to, real action for real people in respect of the report and its consideration.

15:56

Rona Mackay (Strathkelvin and Bearsden) (SNP): This is a very important debate and I thank the Conservatives for bringing it to the chamber. It is important for a number of reasons, but primarily because the public must have access to a comprehensive and fair system for complaints, investigations and misconduct issues in relation to the police.

The report from Dame Elish Angiolini is extremely detailed—it runs to 489 pages and 81 recommendations, which in itself speaks volumes about the complexity of the issue. It is clear that there is a lot for Police Scotland, the SPA, the PIRC and the Scottish Government to consider.

As a member of both the Justice Committee and the Justice Sub-Committee on Policing since 2016, I have been extremely impressed with the professionalism and ethics of Police Scotland, which consistently co-operates with both committees fully and transparently. The Covid-19 pandemic has demonstrated that, even under extreme pressure, Police Scotland can operate in a proportionate and efficient manner to maintain public confidence.

That said, there are issues relating to individual cases, some of which have been highlighted today by Liam Kerr and Liam McArthur. Those issues throw up questions, and there must be an effective process for dealing with them. Some high-profile historical cases have demonstrated an urgent need for reform of the complaints system. In any democracy, the police service must be held to account for its actions if a complaint is raised, because police officers are, like everyone, human and fallible, and things go wrong. The report lays out starkly the challenges that exist with regard to the complaints procedure and, at times, the deficiencies in the historical culture of Police Scotland.

As the cabinet secretary said, many of the report's recommendations require legislation, which the Government will consider, informed by stakeholder views. Many of the recommendations

have already been progressed following Dame Elish's interim report, which was published in June 2019. For example, Police Scotland has worked to make its complaints system clearer and more accessible on its website, and it has resolved many complaints simply through direct conversation with the complainant, rather than by instigating a lengthy multistage process.

Chief Constable Iain Livingstone has made it extremely clear that discriminatory attitudes have no place in a modern police service, and Police Scotland is working hard to address those matters by developing diversity and equality in the force. However, the report notes—as Rhoda Grant highlighted—that there has been discriminatory treatment of minority groups. I find that deeply troubling; I agree with Dame Elish's recommendations in that respect and I hope that measures to address those issues are progressed urgently. The cabinet secretary confirmed today that the chief constable has already agreed to a fundamental review of that area, which I welcome.

There are also recommendations on death-in-custody investigations, structural changes and additional powers for the PIRC, and on giving a basis in statute to gross misconduct hearings and a code of ethics.

There is so much in the report that it is possible only to scratch the surface of the detail in a short speech. Dame Elish Angiolini will give evidence to the Justice Sub-Committee on Policing on 7 December, and I look forward to hearing more on the detail of the report.

The report is very welcome, as a review of the complaints system was very much needed. I congratulate Dame Elish Angiolini on what is an enormous body of work, and I acknowledge the steps that have already been taken by Police Scotland to address some fundamental issues. That is vital to ensuring that the public can have full confidence and pride in our national police force.

16:00

Liz Smith (Mid Scotland and Fife) (Con): I recall that, in the 2013 parliamentary debate about the merger of Scotland's eight police forces, my colleague John Lamont expressed his concerns not about the reforms themselves but about how the SNP intended to implement them—specifically, how local accountability could be protected, how financial savings could be delivered and how there could be much greater transparency within the system, especially if serious complaints or disciplinary issues were exposed.

That is why, at the time, the Scottish Conservatives were keen to see directly elected police commissioners and why we wanted to see a

commitment to 1,000 extra police officers on the beat. We believed then, and we believe now, that policing works best when there is local accountability and when there is full transparency over how the police force operates, including in relation to the complaints system.

As Liam Kerr pointed out, Dame Elish Angiolini's report fully exposes some fundamental flaws in the system—flaws that I believe will undermine public trust in the system unless they are quickly and properly addressed. Even if there have been some operational improvements, the report makes it abundantly clear that not nearly enough is being done to ensure that police officers will be treated fairly and given the necessary support. The report is extremely clear that, overall, there is a poor complaints system, and that is simply not acceptable.

Although the cabinet secretary appears to recognise that some things have gone wrong—specifically, that there has not been a sufficiently robust or transparent system in place—he needs to address why that is the case. Undoubtedly, he should be most concerned about the stubborn problem of racism, sexism, homophobia and other discriminatory behaviour within the force, in what Dame Elish referred to as “canteen culture”. He should also be concerned about the knock-on effect that that has had on recruitment and retention, particularly of women officers and those from ethnic minorities.

On that theme, Dame Elish singled out the Scottish Police Federation for not being as approachable as officers have a right to expect. That is something that should surely worry the cabinet secretary, too. We must realise that the job is hard enough for police officers as it is without their feeling that their professional standards are being undermined by bigotry or discrimination. I know from his previous statements in the chamber that the cabinet secretary genuinely believes that such a culture is unacceptable, but we are now 20 years on from the Macpherson report, and it is very apparent that lessons still need to be learned. The cabinet secretary needs to give a strong commitment that he will do all in his power to end that ugly culture and to ensure that we make some progress.

The cabinet secretary should also think about why there has not been sufficient transparency in the system. Specifically, he should tell us whether he will adopt Dame Elish Angiolini's recommendations that the Police Investigations and Review Commissioner should have more powers and become more accountable to the Scottish Parliament, so that there can be greater scrutiny of decision making, and that any gross misconduct hearings should be held in public. That follows the very unsatisfactory situations that have

surrounded the departure of some senior officers, as discussed by Liam McArthur, on which the full facts have not been made clear.

Dame Elish has identified why there need to be legislative changes in order to address the concerns that her report identifies. She recommends that there should be much stronger relationships between the Scottish and UK Governments in order to share best practice and to learn from each other's failings.

I will close with a comment from the current chief constable, Iain Livingstone. He said that the "core values" of the police should be

"integrity, fairness and respect and a commitment to upholding human rights."

He is absolutely correct, but it is clear that, at present, we have a long way to go until those values can be fully delivered.

16:04

Fulton MacGregor (Coatbridge and Chryston) (SNP): It is fundamental in any democracy that the police service is held to account for its actions. I am sure that Parliament will agree that the "Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing" is a comprehensive and robust report. As others have mentioned, it runs to nearly 500 pages and makes 81 recommendations overall, which reassures me that the review—the first of its kind—has done its job of investigating our complaints procedures with regard to policing.

As has been said, Dame Elish Angiolini will give evidence to the Justice Sub-Committee on Policing on 7 December. As a member of that committee, I welcome the upcoming session as an appropriate time to ask questions and to begin to make progress on the recommendations. It certainly does not feel to me as though the report has been put in a filing cabinet, as per an earlier remark in the debate.

It is vital that anyone can make a complaint that will be responded to fairly. There have been challenges in the complaints process. Although we are all very well served by our police service, to which we are indebted, we need to be able to recognise when things are not quite as they should be. It is in everybody's interests, including those of the police, that the complaints procedure is carried out in a fair and transparent manner. Overall, that will strengthen the public's confidence in policing, which benefits society and the police force.

As we have heard from other members, as local MSPs we all know, through constituents, of situations involving complaints. I say again that it

is really important that the public have trust in the process.

With the presentation of such a robust and detailed report, it is my hope that the Scottish Government will take the time to fully understand the difficulties and concerns that have been set out, to consider the recommendations and how to implement them appropriately and, overall, to engage with those who have been affected, while also linking in with the work of the Justice Committee and the Justice Sub-Committee on Policing, as appropriate.

Legislative changes are likely to be needed, which will require meticulous planning and consideration, but we are not starting from scratch—the interim report that was published in June 2019 has already resulted in many changes taking place in Police Scotland. There are now audits of complaints processes, improved training and an improvement in the relationship between key bodies. The complaints procedure is also now clearer, and it is evident that Police Scotland is making efforts to rectify the issues that are seen in its procedures. Police Scotland acknowledges the presence of discrimination and has stated that it is committed to addressing discriminatory attitudes and behaviours. That point, which picks up on what Liz Smith said, is important.

Police Scotland has played a pivotal role in the response to the pandemic, as have all our public services. The debate about the review is extremely important and will continue to be so, long after today's business, but in the midst of a pandemic, it is only right that we, as elected representatives, come to the chamber—or, in my case, connect from home—to stand up for our officers on the street. Having been on the front line while the pandemic has hit our nation, they have faced higher risks than usual, have ensured compliance with difficult and ever-changing restrictions with empathy and in a supportive manner, and have used enforcement as a last resort when it has been required. I want to put on record my heartfelt thanks to all officers and, of course, a special thanks to those who work in Coatbridge and Chryston.

Public confidence in Police Scotland, especially during this tough period of the pandemic, remains high. Each person who interacts with the police brings with them their own experience—both positive and negative—and each police officer brings theirs. I welcome the report, and it is my hope that, as the proposed changes are implemented over time, the police's rating with the public will grow even higher.

16:08

Claire Baker (Mid Scotland and Fife) (Lab): I welcome the opportunity to speak in this afternoon's debate. Dame Elish Angiolini has produced a significant and wide-ranging report, which has many important recommendations on areas in which we need to see prompt action.

The Home Office commissioned Dame Elish Angiolini to produce a report into deaths in custody in the UK, which was published in October 2017. As the cabinet secretary knows, I have raised concerns and called for reform in that area, following my engagement with the family of Sheku Bayoh, who died in police custody in May 2015 after his arrest on the street in Kirkcaldy. Mr Bayoh's family and friends have suffered, and it has been a long journey for them to the public inquiry, which needs to provide them with answers and make recommendations to prevent similar deaths in the future.

Following the 2017 report, I called for comparable work to be undertaken in Scotland. I welcome the broad manner in which the independent review into complaints handling, investigations and misconduct issues in relation to policing has been approached.

Labour's amendment highlights the worrying evidence that is presented by the report of the racism, homophobia and misogyny that are experienced by police officers in the force. I have to say that I was disappointed by part of the response of the Scottish Police Federation. It is regrettable that the SPF gave the impression that it was downplaying the criticism by describing the police service that is portrayed in the report as one that it did not recognise, when it is clear that the report reflects the lived experience of police officers who have been affected by an unacceptable culture. I support the need for a fundamental review of equality matters, and I welcome the chief constable's commitment to an independent review.

I welcome the recommendation that deaths in custody be treated with the same urgency as homicide investigations, and that the family of the deceased have access to free legal advice and representation from the earliest point and throughout any subsequent inquiry. I have seen how overwhelming it is to deal with the immediate investigation and then the police complaints system and to attempt to find answers, all while dealing with grief and the loss of a loved one. Access to free legal advice would go some way towards addressing the imbalance that is felt by a family that has experienced a death in custody, and providing support at a traumatic time.

It was 30 days before the police officers who attended the arrest of Sheku Bayoh gave evidence

to the PIRC. On the day of Mr Bayoh's death, officers all returned to the same station and spent eight hours together. I understand that police officers are entitled to the same protection as all citizens; however, the current legislation and regulations—and, in the Sheku Bayoh case, the guidance at the time—create an environment that makes it possible for information not to be shared at key moments in an investigation. That is not acceptable, and the recommendation that all police officers should be interviewed swiftly, and without contact with other officers, in death-in-custody cases is an obvious reform that needs to happen. The recommendation that early retirement would not exclude police officers from gross misconduct cases is important, as it would retain and strengthen accountability.

The recommendations regarding the PIRC identify some of the key issues that have risked undermining the PIRC's reputation. There is a need to balance the number of former police officers in the PIRC with expertise from outside the force, and to increase transparency and accountability, as well as democratic oversight.

Although there will be those who defend the current system of police complaints and the role of the PIRC, the report addresses significant issues on which we need to see demonstrable progress. The report is extensive, and I have focused on only a few issues that have been central to my work as an MSP.

It is only a few weeks since the publication of the report into policing during the miners' strike, which made it clear that when the police become isolated from the community, and lack transparency and accountability, the souring of that relationship can last for years, and it can be difficult to rebuild trust. Our police force must be welcoming and inclusive to all, which can only strengthen its position in our communities.

16:12

Shona Robison (Dundee City East) (SNP): I also thank Dame Elish Angiolini for her hard work in compiling a comprehensive report with 81 recommendations, which build on the many recommendations in the interim report. I also put on record my thanks to the police service, which continues to enjoy robust levels of public confidence across the country. The police service has been doing a challenging job during the pandemic.

We can all agree that it is fundamental that the police service is held to account for its actions, and that anyone is able to make a complaint and, in doing so, can be confident that it will be responded to fairly and robustly. The report is clear about the challenges in the complaints

process and, importantly, about the culture that needs to change. Key recommendations include expanding the role of the PIRC, which is crucial.

The final report, which was received by the Scottish Government just over two weeks ago, and its recommendations will need to be properly considered by Police Scotland, the SPA, the PIRC and the Scottish Government, which will take some time.

Liam Kerr: In the Government's amendment to the motion, the cabinet secretary says that he will respond to the report in the new year. Does Shona Robison think that it is good enough to have to wait at least two months to find out what the Scottish Government's response is to such a major report?

Shona Robison: We have heard some of its response today. As the work is taken forward in detail, it is important that all stakeholders and, indeed, the Parliament are involved. I would have thought that Liam Kerr, as a fellow member of the Justice Committee, would want that committee to be very involved in discussing the recommendations. On that note, Dame Elish Angiolini will give evidence to the Justice Sub-Committee on Policing on 7 December, which will be an important part of the parliamentary process.

It is important to recognise that many operational improvements have already been implemented by Police Scotland and others. In fact, I understand that about 21 of the 30 recommendations in the interim report have already been partly or fully implemented. It is important to recognise that. As has been said, other recommendations require legislative change, which will need to be fully informed by stakeholder views and, of course, prioritised in the legislative programme.

One of the issues that has quite rightly received major attention is the need to tackle the equality matters that have been raised. It is right that an independent review is taken forward and that the chief constable has moved swiftly to act on the issue. It is crucial that our police service reflects our society more generally. I agree with Liam McArthur's comments that, so long after the Macpherson report, some of those issues remain and that we must make progress on them.

It is important that all parties have the opportunity to consider the recommendations in detail, and the Parliament has a really important role in allowing us to do so. Today, the cabinet secretary has confirmed that he will take forward a consultation involving police staff associations and trade unions and that he will update Parliament on the discussions with key stakeholders early in the new year.

I am happy to support the amendment in the name of Humza Yousaf.

16:16

Daniel Johnson (Edinburgh Southern) (Lab): I echo the thanks of members across the chamber to Dame Elish Angiolini for her wide-ranging and thorough report, and I thank the Conservatives for lodging the motion so that Parliament has the opportunity to consider that important report. Most important, I thank the police, as others have done. In my time on the Justice Committee and as justice spokesperson for Labour, I have been struck by the dedication and integrity of the many officers to whom I have spoken—those on the front line and those at the most senior levels. I have no doubt about their dedication and commitment to policing by consent.

However, it is clear from the report that there are serious deficiencies in the organisation and systems, and that the outcomes that result from those systems run contrary to those individuals' efforts. Given the very recent creation of Police Scotland and the concerns that were set out at its inception, the report leads one to the conclusion that the fundamental flaws in the creation of Police Scotland and in the Police and Fire Reform (Scotland) Act 2012 need to be addressed.

Let us be clear: as members have pointed out, the report—which is almost 500 pages long and contains 80 recommendations; indeed, the executive summary alone runs to almost 30 pages—makes for very uncomfortable reading. The points that Labour has highlighted in our amendment regarding equalities and the treatment of minorities within the police are perhaps the most stark. The points about that in the report were unexpected, but I have to say that I was not entirely surprised.

It is almost a quarter of a century since the publication of the Macpherson report, and I find the fact that that report needs to be quoted in this one very serious. I spoke to many of the same people to whom Liam Kerr spoke, including Rhona Malone and other female police officers who pursued complaints. The stories that they told me were, frankly, shocking.

First, they experienced systemic opposition to their complaints. Vital safety equipment was not suitable for females or for people of smaller stature in policing roles. When police officers raised complaints, they faced the system being used against them through the recategorisation of complaints. They were frustrated in pursuing their complaints. They saw the system being used against them in relation to their fitness for front-line service and, ultimately, found themselves in

positions in which they had no option but to resign from the police service.

That is unacceptable. It is a situation that must be confronted by the police, and I urge senior officers to take those issues seriously and to tackle them head on. It is not enough to say that that is not their intent or objective in the way that they manage their service; they need to accept that casual inaction is just as much at fault in such situations.

We must also take very seriously the points that have been highlighted regarding structures, governance and oversight. As many people have pointed out, at the heart of our policing is the principle of policing by consent. As Gordon Lindhurst pointed out, we need real action for real people. We cannot have confidence that we have policing by consent if the fundamental structures that are there to oversee our police are not working properly—and that is what the report tells us.

The report tells us that the PIRC—the body that we charge with investigating serious issues in our police—does not have the powers or standing that it needs in order to do its job properly. We hear that the SPA does not have the capacity or capability to undertake its job properly; indeed, the former chair of the SPA says exactly that. In short, the legislation that was enacted in 2012 was simply not adequate. We need to invest in the systems and ensure that the police service can invest in its organisation and that we have adequate oversight; otherwise, quite simply, we undermine the very principle of policing by consent. The Government should reflect on the fact that it has already conceded that it will need to introduce legislation to correct the Police and Fire Reform (Scotland) Act 2012 so soon after the creation of Police Scotland—that is a very serious situation in which to find itself.

The Deputy Presiding Officer (Christine Grahame): Thank you—you finished just as I was about to say, “You must conclude”.

16:21

Humza Yousaf: It has been a helpful debate. Let me address some of the key points that members raised.

The point that Daniel Johnson made about officers from a minority ethnic background and the complaints and concerns raised by female officers is a good place to begin. The point was made very well by many members across the chamber, including Liam McArthur, Liz Smith, Shona Robison, Rhoda Grant and—as I said a moment ago—Daniel Johnson. Members should be in no doubt that the Government views that situation with concern. Equally, on the other hand, I am

pleased with the swift and decisive action that has been taken by the chief constable to accept the recommendation in Dame Elish Angiolini’s report. I also note that the various staff associations that represent either minority groups or female officers have been positive about the chief constable’s swift action. I noticed comments from the lesbian, bisexual, gay, transgender and intersex staff association, the Scottish women’s development forum and SEMPER Scotland—which represents ethnic minority officers—straight away, all welcoming the swift and decisive action.

I speak to the chief constable frequently—during the pandemic, weekly, if not even more frequently—and I can tell the chamber very clearly that he has an absolute commitment to equality and diversity. The issue came up in conversation well in advance of Dame Elish Angiolini’s report, and I have every confidence in him, as well as in the SPA, taking it forward. Nonetheless, I agree with members right across the chamber that what Dame Elish Angiolini highlighted in her report is of grave concern.

A number of members suggested that the current system is not fit for purpose, which does a slight disservice to those who work at the PIRC, for example. We know from the 2019-20 annual report from the PIRC that 240 complaint handling reviews were conducted, with 30 investigations resulting from police referrals and 46 investigations referred from the Crown.

There is a great deal of work to be done and there are many recommendations. Liz Smith asked directly whether the Government believes that the PIRC should have more powers, and the answer is yes. That is a very clear thread from Dame Elish Angiolini’s review, and it comes across in many of her recommendations. However, it is right that the Government takes time to speak to the PIRC, the Crown, Police Scotland and the SPA, to navigate exactly how and when we do that.

Liam Kerr: On that point, does the cabinet secretary accept that the SNP has, in the past, undermined the independence of the PIRC, which has led to some of the problems that are identified in the Angiolini report?

Humza Yousaf: No, I do not accept that at all.

On Liam Kerr’s point—which I think was also raised by one or two other members—about the Government needing to come forward with a statement on the report, our amendment says that I will come back early in the new year.

I think that Liam Kerr suggested—incorrectly—that, when the interim report was produced, I made a statement to Parliament. I think that he will want to check the record on that and perhaps clarify the situation. I gave evidence on the interim

report to the Justice Committee. I have not yet been invited again by the Justice Committee or by the Justice Sub-Committee on Policing, although I understand that the sub-committee may want me to come before it in the new year, and I would be happy to do that. If the sub-committee wants to see me earlier than that, it may issue the invitation and, of course, I will do what I can to attend.

I am more than happy to come forward. I think that it makes sense, however, for there to be a little time—it does not have to be extensive—for partners and key stakeholders to understand how we are going to implement the recommendations. We also have to think about the legislative timetable, particularly as we are in an election year, with a new Parliament forthcoming.

Gordon Lindhurst was right to point out the resource implications, which is another reason why we have to work through the recommendations. If we are to accept them, there will undoubtedly be resource implications. He was, however, wrong to say that there have been recent cuts to policing in Scotland. That is not the case. We increased Police Scotland's budget last year by £60 million, which was £10 million more than the Conservatives asked for.

As the Government's amendment says, we take the recommendations of Dame Elish Angiolini extraordinarily seriously. However, we take equally seriously the concerns that are raised in Rhoda Grant's amendment, so we will support the Labour amendment.

I will end as I did in my opening remarks. As the chief constable regularly states, policing by consent is derived from the consent not of ministers, nor of the Parliament, but of the public. It is imperative that we do everything in our power to increase the confidence that already exists in policing. I certainly commit myself to coming in front of the Parliament and its committees as often as they would like, to give continued updates on the report. I give an absolute commitment that we will not only take the report seriously but implement its recommendations, to ensure that we continue to increase confidence in policing, which we all want to see across the board.

The Deputy Presiding Officer: I call Margaret Mitchell to close for the Conservatives. You have up to six minutes.

16:27

Margaret Mitchell (Central Scotland) (Con): In 2017, the Justice Committee decided to carry out post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012, which had established a single police force in Scotland. Thereafter, it became evident that police handling of complaints was a major issue. In 2018,

ministers asked Dame Elish Angiolini to conduct an independent review into the effectiveness of the new system for dealing with complaints against the police in Scotland, including how well such complaints were investigated and processes reviewed.

The final report includes a number of welcome recommendations to strengthen the office of the Police Investigations and Review Commissioner. Those include, but are not limited to, reforming the PIRC to include one commissioner and two deputy commissioners, the commissioner being appointed through nomination by the Scottish Parliament—not ministers—and made accountable to the Parliament; giving the PIRC the statutory power to call in an investigation of a complaint, the ability to investigate a current practice or policy of Police Scotland, and the power to recommend suspension of a senior officer if the PIRC considers that not suspending the officer might prejudice the effectiveness of a misconduct investigation; and transferring the statutory preliminary assessment function from the Scottish Police Authority to the PIRC. Crucially, many of those new powers for the PIRC will require legislative change.

The Justice Committee took evidence on the recommendations in Dame Elish's interim report in June 2019, and a third of the 30 recommendations require important and necessary legislative change. Legislative changes are required, for example, to make provision for dealing with vexatious complaints; to give the PIRC the power, when investigating a serious incident, to compel police officers to attend an interview within a reasonable timescale; to establish a new, statutory board whose members would be appointed through the Scottish public appointments process; to make provision for scrutinising the work and performance of the PIRC; to make provision for vesting in the commissioner or deputy commissioner the power to make recommendations to direct the reconsideration of complaints; and to place a statutory duty on the chief constable to comply with recommendations unless there are sound, overriding, operational or practical reasons for not doing so.

In June 2019, during an evidence session on the interim report, I asked the justice secretary whether the necessary legislation would be prioritised, and he assured me that it would be discussed with partners that summer. Despite that, almost 18 months later, not one of those recommendations has been implemented. I understand that the coronavirus has disrupted the Scottish Government's legislative programme, but the legislation that is required has not featured anywhere in the Government's legislative agenda. On the Government amendment and the justice secretary's remarks, I say to the cabinet secretary

that the key stakeholders have met and discussed the interim recommendations. What is urgently required is legislative action from the Scottish Government.

Humza Yousaf: Will the member at least acknowledge that 21 of the 30 recommendations have been partly or fully implemented? It would not make sense to deliver legislation in a piecemeal fashion. Does the member agree that the sensible approach was to wait for the final report and then bring forward legislative plans to implement the recommendations in full?

Margaret Mitchell: If the cabinet secretary considers the recommendations that I just mentioned, he will see that some of them should have featured in legislation. A talking shop is not what we required.

The final report was published more than two weeks ago, but, as Liam Kerr said, no ministerial statement on it has been made. That hardly inspires confidence, particularly given that a substantial number of recommendations in the final report also require changes to legislation.

On a more general point, it is important to put the police complaints review recommendations in context. The police have the power to deprive citizens of their liberty, so their interaction with the public must be beyond reproach. However, even when the police act with absolute propriety, their actions can make them the subject of adverse comment and reactions or vexatious complaints. The necessary checks and balances must therefore be in place to ensure that the police officers who carry out their essential role have confidence in the complaints system and that the public are reassured that police engagement is fair and proportionate and does not infringe their human rights.

The culture is essential in that regard. Complaints—especially those that allege criminality—must be dealt with fairly and timeously, and they must be subject to independent investigation. That is why an accessible complaints procedure is so important. The report confirms that more needs to be done to improve the process.

A crucial point, which the Labour amendment highlights, is that the process must reach out to communities, to tackle the culture of fear and mistrust and to provide options on different ways for the public to complain.

The independent review recommendations need to be implemented. That means that the structures, powers and accountability of the agencies that are involved in the complaints process require fundamental changes to strengthen the system and enhance public confidence. Currently, however, the legislation that

is necessary to provide for the checks and balances that would make that happen is not in place. That situation cannot and must not be allowed to continue.

Legal Advice (Publication)

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-23445, in the name of Murdo Fraser, on legal advice. I encourage all members who wish to contribute to press their request-to-speak buttons.

16:35

Murdo Fraser (Mid Scotland and Fife) (Con): Three weeks ago, Parliament resolved that the Scottish Government should hand over to the Committee on the Scottish Government Handling of Harassment Complaints all the legal advice that it received in relation to the judicial review taken against it by the former First Minister Alex Salmond. That was a clear majority vote of the Parliament, and it is deeply disappointing that, three weeks later, that advice has still not been forthcoming.

It is a matter of regret that we are again having to spend parliamentary time asking the Scottish Government to meet its obligations to the Parliament and to the committee. The Government's failure to comply with the will of Parliament is deeply disrespectful to the institution and it flies in the face of numerous demands that Scottish National Party ministers have made in the past that the will of Parliament be respected.

The background to the situation is the on-going inquiry into the Government's handling of harassment complaints against the former First Minister Alex Salmond. We should never forget that at the heart of this matter are a number of women who made complaints in relation to the behaviour of the former First Minister, and who have never seen a resolution to those complaints. By continually refusing to co-operate with the committee and meet the committee's reasonable requests for information, the Scottish Government can only be adding to the stress and discomfort that those individuals feel. They have a right to know what went wrong, as indeed does the committee, members of the Scottish Parliament and the broader public.

We are dealing with a situation where more than £500,000 of taxpayers' money was paid out in legal costs to the former First Minister, and that sum takes no account of the in-house costs and external costs incurred by the Scottish Government itself. Remarkably, we still do not have a functioning complaints process at the heart of the Scottish Government that is compliant with the law, nearly two years on from the concession of the judicial review.

Last week the Lord Advocate, James Wolffe, appeared at the committee to answer questions in

relation to the conduct of the judicial review. He was asked a series of questions by various members of the committee in relation to the Government's legal position on the judicial review and the legal advice that it took. He refused to answer those questions, not once, not twice, but on 27 separate occasions, in each case citing the law officer convention that ministers do not confirm the involvement or non-involvement of law officers in any particular matter. That is 27 separate occasions on which members of the committee from different political parties felt that there were relevant issues that needed to be explored, but the Lord Advocate refused to answer the questions.

That puts in context the line in the Government amendment that talks about the Lord Advocate's co-operation with the committee—there are 27 ways in which to refute that statement. That is not transparent government and it is not the way to get to the bottom of what has gone wrong here.

What we do know is that when the judicial review case was conceded by the Scottish Government, the award of expenses paid to Mr Salmond, from taxpayers' money, was at the highest level possible, which is payable only when, in the words of Lord Hodge, a defence has been conducted "incompetently or unreasonably".

It is, in my view, therefore perfectly reasonable to ask the question: what went so badly wrong with the Scottish Government's defence that it could be classified as either unreasonable or incompetent? However, we cannot get to the bottom of that key question until we see the legal advice.

Three weeks ago, Mr Swinney said that the Scottish Government would reflect on the vote in Parliament and consider what could be produced. Three weeks later, we are no further forward, and time is running out.

For months, the committee has been asking for this legal advice. The committee hopes to conclude taking oral evidence by Christmas, effectively giving us four weeks of parliamentary time from now. It will be extremely difficult, if not impossible, to meet that deadline unless the legal advice is forthcoming. It is hard, therefore, to avoid the conclusion that the Government is cynically running down the clock on the inquiry, hoping that time will overtake us and we will not be able to do the job that Parliament expects us to do.

We should remember that this committee was established back in February 2019. The Government has had ample time to deal with the provision of evidence and should not be scurrying around at the last minute trying to make excuses about why vital documentation should not now be made available. Further, it is not just the Opposition parties saying that. Three weeks ago,

the Scottish National Party MSP Alex Neil said this:

“The Government is going to have to release this legal advice. In my view the founding principles of the Parliament are openness, transparency and accountability. In this instance, the logic of that is this legal advice has to be given to the committee.”

He is right. Writing yesterday, in *The Press and Journal* and *The Courier* newspapers, the former special adviser to the Scottish Government Campbell Gunn said that he could not see the logic in the Scottish Government’s position. He said this:

“If, as they say, they have nothing to hide, then surely they shouldn’t hide things ... Do ministers, advisers and senior civil servants have any conception of how their current position looks from the outside?”

If even people in the SNP are saying that, the Government really needs to start listening. There have been numerous occasions in the past when the SNP and ministers have demanded that the will of this Parliament be respected. For example, on 31 March 2017, the First Minister said this:

“In my view, the will of the Scottish Parliament must be respected. It is a question not of if it is respected, but how”.

That is the situation that we are in today. It is time for Scottish ministers to respect the will of Parliament, stop delaying, stop the obfuscation and provide the legal advice without further delay.

Time is running out on the committee inquiry. If the Government wants to have any shred of credibility left when it comes to openness and respecting the will of Parliament, it must produce the legal advice. That is what my motion says, and I have pleasure in moving it today.

I move,

That the Parliament recalls the vote on motion S5M-23218 on 4 November 2020, in which it called on the Scottish Government to publish the legal advice it received regarding the judicial review into the handling of harassment complaints against the former First Minister, Alex Salmond; notes that the legal advice sought has not yet been published, despite the Committee on the Scottish Government Handling of Harassment Complaints requesting this by 13 November 2020, and calls on the Scottish Government to respect the will of the Parliament by providing the legal advice without any further delay.

16:42

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Earlier this month, when Parliament last debated this issue, I set out the reasons why Scottish ministers considered that the balance of public interest lay in maintaining legal professional privilege. After that debate, Parliament voted in favour of the motion calling on us to publish that legal advice. I take that vote seriously, and the

Scottish Government always seeks to respect decisions that are taken by Parliament.

On 10 November, the convener of the committee wrote to me asking that the legal advice be released by Friday 13 November, three days later. I wrote back to the convener on 13 November, setting out my intention to consider with my ministerial colleagues both the vote of the Parliament and the arguments put forward during the debate.

In that letter, I explained that, even if ministers were to decide that the balance of public interest lay in disclosure of legal advice, we would have to obtain the prior consent of law officers, which could be given only if there were compelling reasons for doing so. What is more, if the law officers consented, significant further work would be required to implement that waiver of legal professional privilege.

Documents already provided to the committee, and those prepared for disclosure in the near future, which I have already written to the convener to make clear are being submitted to the committee shortly, would need to be reviewed in order to remove any legal privilege redactions and to add any redactions needed to protect the identities of the complainers or to comply with data protection law. That is an important point to appreciate. We are not talking about two or three documents that clearly constitute legal advice, which we could release and which would satisfy the call for us to waive legal privilege. The Scottish Government has already provided more than 1,000 pages of documents to the committee and has also processed at least the same again for release, pending agreement with the former First Minister’s lawyers.

Each of those documents would need to be reconsidered and potentially released to the committee in a different form; that would take time.

I set out that detail to address the comments of those, including Mr Fraser, who have criticised the Government for not immediately releasing the legal advice and to explain the scale of the task involved. That would be a serious and significant decision for the Government to take and an equally serious and significant undertaking to fulfil.

Murdo Fraser: The Deputy First Minister is aware that the committee has been asking for sight of that legal advice, not in the past three weeks but for many months before that. If the Government decides to produce the legal advice, can he give us an estimate of the likely timescale for all that work? Given the committee’s planned programme of work, are we talking about weeks or months?

John Swinney: I will make two points. The first is that, although the committee has been asking

for the legal advice, the Government has been maintaining its position, which has been maintained by all Governments in these islands, that legal professional privilege is an important principle to protect. The Government's position has been clear that we are not persuaded by the arguments about waiving the legal professional privilege that is clearly stated in the ministerial code, to which members rightly hold ministers on a regular basis.

In relation to the consideration of the material, more material will be made available to the committee, as I confirmed to the convener in a letter yesterday. I gave commitments some time ago that we wanted to issue more material, but that it would have to be agreed, because some of the information is in dispute with the lawyers for the former First Minister. Based on the information that has been cleared for release, I hope to provide as much information as I can to the committee in the coming days.

We need to take the necessary time to consider those issues and to formulate a proper response to the decision that Parliament took a few weeks ago. As Mr Fraser referred to, the Lord Advocate attended a meeting of the committee on 17 November. During the evidence, the Lord Advocate made it clear that complying with the law officer convention and the Government's assertion of legal professional privilege—which was casually dismissed by Mr Fraser in his comments—would not prevent the Lord Advocate from giving a full account to the committee of the legal position that was taken by the Scottish Government throughout the judicial review. Of course, the Government's legal position has been set out in the disclosure of all the pleadings that have been submitted to the committee, along with a detailed timeline that explains the changes to the Government's pleadings, based on the changes to the issues that were raised in the process.

Alex Cole-Hamilton (Edinburgh Western) (LD): The Deputy First Minister's recollection of the Lord Advocate's evidence to our committee is correct. One of the things that the Lord Advocate would not disclose to the committee was whether an approach had been made by the Deputy First Minister or other ministers to ask the Lord Advocate's view on whether it was in the public interest for that legal advice to be published.

John Swinney: I think that Mr Cole-Hamilton knows the answer to that, but I presume that he raises it so that I can confirm it.

The ministerial code prevents me from disclosing whether I have taken the advice of the Lord Advocate and from disclosing the sources of any legal advice that I have taken. Mr Cole-Hamilton knows the obligations that I am under; they cannot be casually dismissed because, if I

dismissed them, I am sure that members would complain that I had breached the ministerial code by which I am held to account.

Over the course of more than two hours, the Lord Advocate responded to questions from the committee and gave detailed descriptions of the Scottish Government's decision making and legal position at each stage of the process. During the meeting, he committed to write to the committee on specific points and stands ready to provide further information as required. Since the last debate on the issue in Parliament, significant further detail has been provided to the committee through the Lord Advocate's evidence, so the Government has endeavoured to respond constructively to the debate in Parliament that took place in early November. No final decision has been made by the Government in our further consideration of the issue. I confirm that the issue was discussed with the Cabinet yesterday. The First Minister recused herself from that part of the meeting, as is appropriate. Given the seriousness of the issue involved, before the Government and I come to a conclusion, I will consult the Cabinet again.

I am reflecting on the arguments that were put forward in the previous debate and I will consider any new arguments put forward today that will help to inform the decision-making process.

The Government has made available to the committee significant detail on our legal position through the evidence that has already been provided by the Lord Advocate. This is not a straightforward decision. There is no clear precedent for the Scottish Government to waive legal privilege in these circumstances and there is real potential for negative consequences from such a decision. It would potentially create a new precedent that would potentially undermine the Government's ability to receive legal advice in all candour that would enable it to take decisions during litigation in the future. Taking the time necessary to consider the significant issues raised by the request for release of our legal advice, including the precedent involved, is therefore only right and proper. To do anything else would not respect Parliament in this or future sessions, nor would it respect the significant issues of sexual harassment that lie at the heart of the debate.

I move amendment S5M-23445.2, to leave out from "notes that the legal advice" to end and insert:

"acknowledges that this complex matter is being actively considered by Ministers; notes that the right of private access to legal advice is a fundamental right under Scots Law, and recognises that, since that vote of the Parliament, the Lord Advocate has shared extensive detail of the Scottish Government's legal position with the Committee on the Scottish Government Handling of Harassment Complaints at its meeting on 17 November 2020, will be

writing further to the Committee following that meeting, and stands ready to provide additional information as the Committee requires.”

16:51

Jackie Baillie (Dumbarton) (Lab): It is tempting to make the same speech that I made the last time we debated this issue, because in the past three weeks, absolutely nothing has changed—not one single thing. The cabinet secretary’s pace on the issue makes a snail look like a sprinter. As for the Scottish Government, it is treating the Parliament with contempt and it is treating with contempt the parliamentary committee that was set up to scrutinise its actions. The Scottish Government appears to be determined to withhold the legal advice that underpinned its botched handling of the judicial review. The outcome of that cost taxpayers just less than £1 million but, more important, it failed the two women who made complaints in the first place. They and other women who might come forward in the future are faced with a policy that has been successfully challenged in the courts and which, despite the years that have passed, has not been altered or used since. Shame on the Scottish Government for allowing that to happen.

Shame, too, on the Scottish Government for the position in which it has placed the Lord Advocate. He is an honourable man, placed in an impossible position. Five times I had to ask him a basic question that was allowed by the ministerial code, and five times he could not or would not answer. I bow to Murdo Fraser’s counting of the number of unanswered questions, which totalled 27.

As well as being Scotland’s senior law officer, the Lord Advocate is a member of the Cabinet. He is a minister, bound by the ministerial code. I was not asking him about the content of legal advice. It was a process question about whether the cabinet secretary had spoken to him following the vote in Parliament. Given the Lord Advocate’s discomfort, I can only assume that the cabinet secretary had not bothered to pick up the phone, because he had no intention of providing the information to Parliament. That is certainly what I understand the cabinet secretary told the Scottish National Party group meeting recently. He is simply refusing to hand over the legal advice.

The Scottish Government likes to think of itself as a world leader, and indeed it is: a world leader at dissembling, obstruction and secrecy. The latest example of that is information on the complaints handling process. It was promised to the committee for July. Then it was August. September and October sailed by and nothing was received. When the committee invited witnesses to give oral evidence to talk about the complaints handling phase, the Government refused. It said

that the witnesses could not attend because the written evidence had not been received. Who, I ask, was responsible for not providing the evidence? It was none other than the cabinet secretary himself.

John Swinney: Would Jackie Baillie care to share with Parliament any of the detail of the correspondence that I shared with the committee about the obligations that I am under to ensure that, in supplying evidence to the committee, I do not end up in contempt of court?

Jackie Baillie: I would be happy to share that. It is available on the website. However, I say to the cabinet secretary that he has had not just the time that the committee has been meeting. He has had 20 months since the committee was established to get his act together and deliver on this.

We are facing a complete and utter farce. The Scottish Government is a joke and should be embarrassed at how incompetent it appears to be. There have been attempts to blame the former First Minister for the delay. I would simply note, from their letters, which were published today, that his solicitors, Levy & McRae, received the documentation on 2 November and have been going through it since. They tell us that there are pages and pages of irrelevant material, that there is some new material that was not provided to the Court of Session, and that—surprise, surprise—some material is missing. Given that Levy & McRae will turn that around in a month, can the cabinet secretary explain to us why the Scottish Government, with all its resources, has taken more than five months past the original deadline of July to get the information to the committee?

I look forward to the cabinet secretary apologising to members, including his back benchers, for the incorrect briefing that they received, because it was patently untrue.

On 17 January, the First Minister promised that the committee would get whatever information it required. In light of the Deputy First Minister’s actions, it is clear that that was a hollow and meaningless promise. The Parliament voted by majority for the release of the legal advice, and it asked the Deputy First Minister to get on with releasing it. If he refuses to do so, he and his Government will be holding the Parliament in contempt. It is becoming increasingly evident that he has something to hide.

16:56

Andy Wightman (Lothian) (Green): Here we go again. As members have already stated, the Parliament expressed its will in unequivocal terms and voted on 4 November. I want to reflect on the question about timetables that Murdo Fraser asked the cabinet secretary. There are two

questions that the cabinet secretary really needs to address. First, in principle, will he and his Government agree to release the advice? Secondly, if the answer to that is in the affirmative, can we have a conversation about timescales? However, he failed to answer that question.

Alex Cole-Hamilton asked the cabinet secretary whether he had requested that the Lord Advocate consider whether he was prepared to give his prior consent. Essentially, the answer that the cabinet secretary gave was the law officer convention, which is mentioned in paragraph 2.39(b) of the Scottish ministerial code. That paragraph states that the convention prohibits ministers

“other than in exceptional circumstances”

from disclosing

“the fact that legal advice has or has not been given to the Government by or sought from the Law Officers”.

The convention does not cover paragraph 2.40 of the code, which states that

“the Law Officers must be consulted”

if ministers are minded to release legal advice.

As many members have made clear, there is no doubt that, for the committee to discharge the responsibilities that Parliament has given it, it needs to have access to the legal advice. No one—not the cabinet secretary or any member of the Scottish Parliament—has suggested otherwise. How can an inquiry that, in substantial part, is concerned with a judicial review be able to assess the full circumstances of the matters that it is considering without sight of the relevant advice?

The conclusions that the committee eventually comes to when it reports could be anywhere on a spectrum, from the innocent to the malign, and it would be utterly inappropriate right now to speculate on that question. However, it serves nobody’s interests that its deliberations may be compromised by a lack of access to key information.

It is not helpful to speculate about what the advice may be, either. From personal experience, I am well aware that legal advice is just that—it is legal advice. In my recent defamation case, I did not follow legal advice at one key moment, and I am glad that I did not. For a defender in a civil action, there are always other considerations. In the case of the Scottish ministers, there were the legitimate interests of the complainers and the legitimate desire perhaps to see a point of legal interpretation tested in the courts.

Paragraph 2.30 of ministerial code states:

“the overarching duty on Ministers”

is

“to comply with the law.”

The law was, of course, a matter of dispute between Mr Salmond and the Government, and the court was the only place that could resolve that question.

The other duty that is imposed by paragraph 2.30 of the ministerial code is that ministers should

“ensure that their decisions are informed by appropriate analysis of the legal considerations and that the legal implications”

are properly considered in all decisions. That is not controversial, and it gives ministers a fair degree of leeway. As decision makers, they are not bound to follow legal advice any more than anyone else is. However, the judicial review was conceded, and complainers being badly let down by a process that was found to have been unlawful is at the heart of the matter. It is the committee’s job to ascertain why that happened. It simply cannot do so without sight of the legal advice.

In closing, let me be crystal clear about one thing. Paragraphs 2.38 to 2.41 of the ministerial code prohibit ministers from publishing legal advice unless it is deemed to be in the public interest and unless the consent of the Lord Advocate has been obtained. Last time, I argued that the Parliament is a far better arbiter of the public interest than ministers whose actions, in this instance, are being scrutinised by the committee. Therefore, where Parliament has instigated an inquiry into apparent serious failings in Government procedures and has voted to uphold the committee’s request for legal advice, it is simply inconceivable that the Lord Advocate would withhold consent unless there were compelling reasons in relation to, for example, the integrity of the justice system. However, this was a judicial review of a public authority’s decision. It was an important judicial review but a straightforward civil process whereby a decision was being challenged in court. That is all.

There is only one party who stands in the way of releasing the legal advice and one party who is defying the will of the Parliament and the committee. His name is John Swinney.

17:00

Alex Cole-Hamilton (Edinburgh Western) (LD): We should not be having this debate. I say to Government members who will likely criticise the use of parliamentary time for a topic such as this in the middle of a pandemic: I agree, but this is on the Government.

The Parliament has expressed a clear will that it wishes to see the legal advice regarding the conduct of the judicial review that was raised by the former First Minister. It did so three weeks ago, yet we are still waiting. The SNP Government

is dangerously close to standing in contempt of the chamber.

Why does the legal advice matter? Because in its pages we will finally see the anatomy of a collective thought process that led to the collapse of a Government case at a cost to the taxpayer in the order of £1 million but, more importantly, because it will show why the women at the heart of this were denied a fair hearing and access to justice for complaints that will now most likely never see the light of day again.

The Committee on the Scottish Government Handling of Harassment Complaints has heard from those in the Government who were most connected to the judicial review, including those who head up the Government's legal services division, the permanent secretary, who was the first of two named responders in the petition, and the Lord Advocate. However, although the Government's legal position is a matter of public record, the legal advice is still shrouded in abject mystery.

The Government first sought the advice of independent senior counsel in September 2017, shortly after the original petition was launched. Before a judicial review is fully commenced, permission for it to be heard must be granted by the court. The criteria for granting permission to proceed hinged on the court's belief that the petition in the name of Alex Salmond had a realistic prospect of success. Permission was duly granted by the court and the Government did not contest that ruling. From that, we can infer that, right out of the traps, the Government understood that there was a real prospect of defeat, with all that that entailed for the public purse and the complainers—but still, it decided to proceed.

Legal advice is never offered in absolutes. A Queen's counsel will never tell a party that they will win a case. Instead, they will offer an assessment of the balance of probabilities, with the chance of success weighed against the risk of defeat. In the foothills of this judicial review, the Government believed that it was facing a challenge to the procedure. However, as the weeks dragged on, it became clear from the incremental retrieval of evidence by the Government—sometimes forcibly brought out by the court itself—that the Government was far more exposed on the application of that procedure by the civil service on the grounds of apparent bias.

That drip-drip release of emails and correspondence towards the ends of 2017, which would ultimately lead to the collapse of the case, was a shocking way for the Government to have behaved towards the court. Fundamentally, it changed the kind of difficulty that the Government was facing and, very probably, it gave cause for

the Government's senior counsel to threaten to resign.

Without the production of legal advice, the Salmond inquiry cannot hope to discharge its responsibilities in full. It will leave yet another tang of doubt around the actions of the First Minister, who we now know had ultimate sign-off over the tactics of how the judicial review was handled. The optics of that are terrible for the SNP and everything about it reeks of a cover-up.

It has been three weeks since the Parliament demanded the release of the advice and the Government remains defiant to the supremacy of the chamber. Our patience is at an end. Should the Deputy First Minister not deliver what we seek in short order, he may well face another kind of motion in the coming days—one that tests the confidence of members and those responsible for blocking the will of the Parliament.

The Presiding Officer: I am conscious that this is a debate, so I have given as much time as possible for interventions. However, we are pushed for time, so members have only four minutes for speeches, please.

17:04

Margaret Mitchell (Central Scotland) (Con): Three weeks have elapsed since the Scottish Parliament agreed to a motion calling on the Scottish Government to publish all the legal advice that it received regarding the judicial review taken by the former First Minister Alex Salmond. In response, the Deputy First Minister said that

“ministers always seek to respect the decisions that are taken by the Parliament”,

and that he would

“now consider the implications of the motion”.—[*Official Report*, 4 November 2020; c 90.]

The committee specifically asked the Scottish Government to provide its legal advice by Friday 13 November. That deadline was not met, and the committee does not consider the Deputy First Minister's explanation for that to be acceptable.

Since then, the Deputy First Minister has been very busy. Last Thursday, he refused the committee's request to take oral evidence from two civil servants on the Scottish Government's handling of complaints, on the pretext that they might inadvertently breach a court order or undertaking. The convener replied in writing on behalf of the committee, stating that that was “unacceptable”, given that

“it is the Scottish Government which has put its own employees in this position.”

On 3 November, Paul Cackette, the former director of the Scottish Government's legal

services, told the committee that it would be possible to calculate the approximate cost of the time that Scottish Government lawyers put into working on the judicial review, and that he could and would do that. With the scale of the costs incurred by the Scottish Government's decision to contest the judicial review already confirmed as being more than £630,000, it is now apparent that the actual cost must be nearer to £1 million, instead of the £500,000 that the Scottish Government originally acknowledged. Once again, the Deputy Minister stepped in. On 13 November, he wrote to the committee to clarify that it was not possible to provide an accurate figure for the total cost of the legal advice given to the Scottish Government.

A very distinct pattern has emerged of the Scottish Government constantly thwarting the committee's efforts to fulfil the inquiry's remit—and now, it would seem, even the will of the Parliament—because, quite simply, it thinks that it can.

The committee's convener has voiced her frustration at the continued and unacceptable delays that the committee has faced as a result of the Scottish Government's behaviour. As deputy convener, my concern goes deeper; it raises the issue of trust. The legitimate criticisms that are levelled against the Scottish Government are made against the background of the former First Minister and others alleging a conspiracy against him. This is in a modern, supposedly democratic Scotland, where the judicial review was conceded by the Scottish Government on the basis that its handling of the harassment complaints procedure against the former First Minister was unreasonable and "tainted by apparent bias" and where the head of our independent prosecution service is also a member of the Scottish Government and is its chief adviser on legal matters, with collective responsibility for a failed judicial review.

The Scottish Government has serious questions to answer and information to release without further delay or obfuscation. It must start today by releasing counsel's advice and the other legal advice on the judicial review that it received. The complainers caught up in this mess, the general public and our democratic process demand nothing less.

17:08

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I start by agreeing with Murdo Fraser when he sympathised with the complainers, which was entirely proper.

Let us look at precedents in relation to the disclosure of legal advice. It is worth saying that these precedents all stem from a period when

Jackie Baillie sat in the Government and Alex Cole-Hamilton's colleagues sat beside her.

Answer number 1 was to Alex Neil:

"The Scottish Executive does not generally disclose the legal advice it may have taken on any particular matter. Any such advice would, in any case, be confidential."—*[Written Answers, 14 March 2006; S2W-23743.]*

Answer 2 was to me:

"Our policy is not to publish the legal advice we receive, this being covered by solicitor-client confidentiality."—*[Written Answers, 18 January 2007; S2W-30908.]*

Answer 3 was to Christine Grahame:

"certain categories of information are exempt from the commitment to provide information ... This includes legal advice."—*[Written Answers, 11 February 2003; S1W-33541.]*

Finally, answer 4 was to Fergus Ewing:

"I am not prepared to divulge the terms of the legal advice to Scottish ministers and I am unable to provide the legal advice obtained."—*[Written Answers, 15 June 2004; S2W-08398.]*

The Tory motion asks for the Government to provide the legal advice "without any further delay". A look at the Tory record on disclosing information might tell us whether today's motion represents gross hypocrisy, opportunism or legal blindness.

One way of learning about what is going on in Government is via freedom of information. The freedom of information legislation is particularly dear to me because the training material that was prepared for officials contained a quote from one of my parliamentary speeches on the subject.

I will give some numbers that illustrate how the Tories, to use a word in their motion, "respect" honouring such requests only in the breach. The percentage of requests granted in full by the Tories in government has declined every year since 2010, from a high of 62 per cent in 2010 to 44 per cent in 2019. The percentage of requests withheld in full has steadily increased from 21 per cent in 2010 to 35 per cent in 2019. Last year, United Kingdom Government departments upheld their original decision in 83 per cent of internal reviews—that is the highest proportion in the past decade. The trend towards greater secrecy in the UK Government is unmistakable, and it has been led by the largest and most powerful Whitehall departments. In the past five years, the Cabinet Office, the Treasury, the Foreign Office and the Home Office have all withheld more requests. I got those figures from a report that was published yesterday by openDemocracy, which reveals that Tory minister Michael Gove's department has a skunk team that was specifically established to prevent us from knowing what goes on in the Tory Government.

I have not been able to find a single example of legal advice being published, north or south of the border, where the matter relates to litigation. Yes, Governments do occasionally publish legal advice—to be fair to the Tory Government, it did so in 2018 in relation to advice on Brexit—but never advice relating to litigation.

The protection of legal professional privilege is vital to all parties to legal actions. The demand that is being made in relation to this piece of legal advice is simply a cover for the fact that the Tories are unable to properly question witnesses.

At the committee's most recent meeting on 17 November, the Lord Advocate said:

"That will not prevent me from giving evidence to the committee today about the Government's legal position from time to time in relation to the judicial review."—[*Official Report, Committee on the Scottish Government Handling of Harassment Complaints*, 17 November 2020; c 2.]

Murdo Fraser said that the Lord Advocate refused to answer 27 times, but that is not correct. Only three questions were asked of him, and he repeatedly gave the same answer. The Tories' failure today lies in them not finding the right questions. After all, the Lord Advocate said that he would answer questions about the Government's legal position. Because they do not have the questions, we can be certain that seeing legal advice could not answer their questions.

Gross hypocrisy, opportunism or legal blindness? All three, Presiding Officer, all three.

17:13

James Kelly (Glasgow) (Lab): Here we go again. For the second time in three weeks, we are having a debate that concentrates on the release of legal advice pertaining to the judicial review by the former First Minister, Alex Salmond. It is deeply regrettable that parliamentarians from across the chamber are again calling for the publication of that evidence, and it is quite clear that the Scottish National Party and Scottish Government continue to delay its publication.

It is unacceptable for John Swinney to say that he will consider the issues raised in today's debate. At the end of the previous debate, when the vote on the motion had been won, Mr Swinney stood up and said that he would consider the result of the vote. It is deeply inappropriate for him to then tell Parliament three weeks later that he will consider the issues. It shows that there is a trail of obstruction and cover-up that lies at the heart of the Scottish Government's conduct on the issue.

When the issue first came to the fore 20 months ago, the First Minister stood where John Swinney sits just now and promised full transparency and full co-operation. What have we had? We have

had delays, obstructions, cover-up, witnesses refusing to answer questions, witnesses having to change their evidence and the Deputy First Minister blocking two witnesses from coming to the committee. That raises deep and fundamental questions about accountability and the democratic process within the Scottish Parliament as an institution.

The other point that needs to be made is that the motivation of the SNP and the Scottish Government is political. They are not motivated by legal matters. It is clear that they are deeply concerned about what will be revealed about the Government's conduct in the handling of the complaints against Alex Salmond and how that will reflect on members of the Government and the SNP. That political motivation is why the way in which the Lord Advocate has been compromised is inappropriate. Anyone looking at the Lord Advocate's performance at the committee can see how difficult and uncomfortable it was for him. Basically, he is head of the Crown Office, but has to provide advice in a political context to members of the Government. That is the position that he has been put in, and it is deeply inappropriate.

One of the key issues that has come out in the debate is that publication of the legal advice and all the requests that the committee has made are in the public interest. There are two reasons for that: the £630,000 cost to the public; and the fundamental issues around the way in which the complainers were let down by the Scottish Government's handling of the process.

It is time that that Parliament was treated properly by the Government, and not with contempt and disrespect. It is time that we had an end to the culture of secrecy. I say to the Government: publish the information with full transparency and let the committee get on with its work and reach its conclusions.

17:17

James Dornan (Glasgow Cathcart) (SNP): Yesterday, we saw the Parliament at its finest, working across parties to pass an important piece of legislation for people across the whole of Scotland. It gave us a glimpse of what this place is capable of being and doing.

Today, unfortunately, we are back to normal—political opportunism, point scoring and desperate attempts to gain some headlines as we head towards the Scottish Parliament elections, and as support for independence continues to grow.

We will hear a lot today about the integrity of the Government, the Deputy First Minister, the First Minister and anyone else those members can drag down to the gutter with them. But please do not be fooled—this is not about integrity; indeed, it is the

exact opposite. Eight days ago, the Lord Advocate told the committee that the DFM was still considering whether he should make the advice public. There is a complicated process going on, which the Opposition parties are well aware of—but why give up the opportunity to have a sly kick at your opponents when you can?

Presiding Officer, if you want to see just how opportunistic and hypocritical is the motion from the Scottish branch of the Westminster Tories, ably supported by their better together team mates, let me mention just two names: Priti Patel and Robert Jenrick. So far, there is no sign of the report that shows the Home Secretary to be a bully, for which crime her Prime Minister—who, to be fair, I note had previously been caught on tape discussing a journalist being beaten up—fully supported her.

As for Mr Jenrick, let us just say that there were many options to select from, but this one is extremely timely. It was reported on 11 November that officials are refusing to release the justification for a controversial £25 million handout to a cabinet minister's constituency, which was approved by a colleague. His department's top civil servant cleared the grant, but has agreed to release only

“a summary of his assessment provided in confidence”

to the House of Commons Public Accounts Committee. Transparency? Openness? Nah! Hypocrisy? Tories? Never!

Murdo Fraser: On a point of order, Presiding Officer, I am sure that you are aware that standing orders require members to address the terms of the topic of the debate. We have before us a motion and amendments. Are you able to advise whether it is the wording of the motion or of the amendment that the member is currently addressing?

The Presiding Officer: I have been following the member's contribution with close interest, Mr Fraser. He has been making a point. However, he has now made his point with his comparison with other ministers, and he would be best served by getting back to the main point of the debate.

James Dornan: Thank you, Presiding Officer—although I have to say that pointing out the hypocrisy of the Tories is very important to what the debate is all about.

As my colleague Stewart Stevenson said, there have been a lot of examples in the Scottish Parliament of previous Governments not providing legal advice. It is a long-standing practice across the United Kingdom. The Deputy First Minister has already said that he will respond to the request and is still considering his response. However, we have to remember that the law officers have the final say on whether their advice can be released.

What do we get out of the debate? Some members will vote for the motion, knowing that it will change nothing, except that they will have a press release to put out to their local media, and to speak to on radio and television. In my view, the debate has been a waste of parliamentary time; it has simply been an opportunity for Opposition politicians to discuss an on-going parliamentary committee inquiry while shouting “SNP bad”, and it helps absolutely no one to move forward on the so-called substance of the motion, which I have no doubt the DFM will deal with in the near future.

Yesterday was a good day for the Parliament. Today, in my humble opinion, is not. Let us have more yesterdays in the future.

17:21

Annie Wells (Glasgow) (Con): As members have said, here we are again. I had thought that the SNP would, after it lost the crucial vote in the chamber three weeks ago on a motion that had cross-party backing, surely reconsider its approach, and release the legal advice that it was given on the Salmond judicial review. The Scottish people deserve nothing less. After all, £500,000 of taxpayers' cash has been wasted on the SNP Government's botched handling of claims of sexual harassment. In fact, as we heard in the chamber today, the cost could be nearer £1 million. Even £500,000 would be enough to pay the annual salaries of about 15 registered nurses in Scotland.

However, perhaps my optimism got the better of me. The SNP continues to dig in its heels, shamefully ignoring the voices of committee members and MSPs who simply want the issue to be resolved. We want to move on. Unfortunately, this latest move is symbolic of the Government's arrogance and of its genuinely contemptuous attitude to the Scottish Parliament. This Parliament, which is supposed to represent openness and transparency, will not stand for it. Therefore, why should the people of Scotland? It is that simple.

The investigative committee also deserves full transparency and co-operation from the Scottish Government. However, it has become all too clear that this Government has made every attempt to hinder the committee's ability to fulfil its duties. The Deputy First Minister's blocking of two key witnesses is just the latest example of obstruction in a long-running pattern of behaviour from the SNP leadership. What on earth have they got to hide? The release of the legal advice is an essential step in providing the committee with the ability to assess the full picture. There should be no ifs and no buts—the Government must hand over all the necessary documentation so that the

committee can thoroughly investigate, and do the job that it has been assigned.

There is clear precedent for the Scottish Government releasing legal advice, given that it has done so on various occasions, ranging from the trams inquiry to the UK infected blood inquiry. At Westminster, there has been a litany of calls from SNP members of Parliament for the UK Government to release legal advice on a series of issues. Whether it is the European Union withdrawal agreement, the Benn act or Syria air strikes, the SNP has certainly not been shy in demanding that others release legal advice when it thinks that that would suit its goals. That is, quite frankly, breathtaking hypocrisy, and we will continue to call it out.

I am afraid that the Government's current position cannot stand any longer. The public are frustrated that the debacle has not been brought to a close.

As has already been mentioned, the Scottish Parliament provided a clear instruction to the SNP Government to release the legal advice immediately. That call has, unfortunately, fallen on deaf ears, to the detriment of the Parliament's reputation. I agree with Douglas Ross: if the SNP continues to dodge scrutiny and ignore Parliament, legal action might be necessary in order to force it to come clean. For the time being, however, power remains in the SNP's hands.

There is still time to do the right thing and to cooperate fully with the committee, which the First Minister had previously promised that the SNP Government would do. It is high time that that commitment was honoured. I hope for the sake of the Parliament and people of Scotland that the SNP chooses to do that, before it is too late.

17:25

Shona Robison (Dundee City East) (SNP): I begin by reiterating what I said in the debate on 4 November. I made three points then on the issue of legal advice, and I wish to repeat them.

First, as has been mentioned by other members, the protection of legal professional privilege has been relied upon by Scottish and UK Governments of all political hues, and that must be respected.

Secondly, the continued existence of legal professional privilege for the Scottish Government helps to ensure the rule of law and the administration of justice.

Thirdly, the Scottish ministerial code recognises the existence of legal privilege. It is clear that ministers can say that legal advice has been obtained, but must not divulge it. The exceptions

that were made previously were on issues of public policy, which is not the case here.

In thinking about the debate, in a week when we have seen further evidence of the effectiveness of minimum unit pricing, I reflected on my time as a minister. In particular, that got me to reflect on the importance of the legal advice that we, as ministers, received at that time.

I have also reflected on whether that legal advice might have been different, had the lawyers who provided it been concerned about its possible release. Given the legal issues that are involved and the subsequent legal challenge, I think that I am right to reflect upon that. I do not know whether that legal advice would have been different, but I do know that it is crucial that those who give advice to ministers do so in a full and frank manner, and are not affected by concerns about its subsequently becoming public. Whatever ends up happening in this case, it is crucial that no precedent is set that could affect future important policy decisions. I hope that the Government will reflect on that.

The ministerial code is very clear about the public interest in ensuring that the Scottish Government can have confidential communications with its lawyers. I understand that the Lord Advocate shared extensive detail of the Scottish Government's legal position with the Committee on the Scottish Government Handling of Harassment Complaints at its meeting on 17 November. As the amendment in the name of John Swinney confirms, the Lord Advocate

"will be writing further to the Committee ... and stands ready to provide additional information as the Committee requires."

I hope that the Parliament will not have to spend more debate time discussing the issue, given that we are in the middle of a pandemic. There are far more pressing issues for the Parliament to consider.

17:28

Jackie Baillie: Now we know. We know from today's speeches, from the briefings to the SNP group and from the reports to their meetings by John Swinney that the Scottish Government has no intention of releasing the legal advice. It has utter contempt for the Parliament and for the Committee on the Scottish Government Handling of Harassment Complaints. It is likely that the Parliament will again vote this evening for the advice to be released, and it looks like that will be completely ignored.

I remind the SNP that, when the UK Government refused to reveal its legal advice on Brexit, the SNP supported a motion tabled by Labour to have that legal advice revealed. It then

went on to support a contempt of Parliament motion, which demanded that the UK Government reveal its legal advice on Brexit. That motion was won and the Cabinet Office published the full legal advice the following day. Will the Deputy First Minister publish the legal advice—at the very least the written opinions from the senior counsel, Roddy Dunlop QC?

Rumours abound that senior counsel threatened to resign in the latter stages of the judicial review, so bad was the Scottish Government's case, yet the civil servants were determined to plough on regardless. I have given the example of the SNP's support for the release of legal advice in the UK Parliament, but it does not support that release in the Scottish Parliament where it is in control—a clear-cut case of double standards.

Of course, there is precedent. The Scottish Government has released legal advice to the UK bloods inquiry, the child abuse inquiry and the trams inquiry. I should point out that the trams inquiry is not even a formal public inquiry, so why is a parliamentary inquiry a lesser consideration? Why are the women at the centre of this matter, and those who might come forward in the future, not considered more important than trams?

It is essential to understand what went wrong, the grounds on which the policy was challenged, and when it was conceded, in order to learn lessons for the future. The committee needs to see the legal advice in order to do just that. It is central to the committee's remit, which the SNP agreed with when the committee was established.

I will talk again about the obstruction that the committee faced. I raised the issue previously but will do so again, as it perfectly illustrates how bad things are with the Scottish Government. Early letters from John Swinney said that the Government could not share any information from the judicial review as that was a matter for the Court of Session. That simply was not true. It took the attendance of the Lord Advocate, giving evidence under oath, and a letter from the committee to the Court of Session to expose the Scottish Government's complete lack of candour. That was not ignorance of how the courts operated, but deliberate obstruction.

I do not know why I continue to be surprised. By its every action, the SNP demonstrates the secrecy and the lack of transparency and openness at the very heart of Government. If John Swinney ignores the motion, he is quite deliberately holding the Parliament and the committee in complete contempt.

I was never a believer in conspiracy theories—they are just a tad too far-fetched for my taste—but the more the SNP refuses to co-operate with a parliamentary committee, the more I think that

there might just be something in them. The one thing that one can be sure of is that, despite Mr Swinney and the Scottish Government's best efforts to dissemble, obstruct and hide everything under a veil of secrecy, we will get to the bottom of this, and the truth will out.

17:32

John Swinney: I will reflect on a couple of the contributions, because they illustrate the arguments that I gave in my opening speech.

Stewart Stevenson brought his deep analytical knowledge of most subjects to bear on a number of previous responses, from none other than Jackie Baillie when she was a minister, on the question of the unwillingness of Government to release its legal advice for reasons of good governance.

Jackie Baillie rose—

John Swinney: I will develop the point and happily give way to Jackie Baillie.

I made the point earlier that ministers today have a duty to ministers in the future, which is that we do not create precedent that can essentially weaken the ability of Government to exercise its functions. Jackie Baillie, in her responses to the various questions that Stewart Stevenson cited, did exactly that in the early part of this century, in order to establish the principle of maintaining confidentiality over legal advice to enable ministers to exercise exactly that responsibility in future years.

Jackie Baillie: The fundamental difference that John Swinney fails to mention is that we never faced, and lost, a vote in the Parliament and were never in a situation in which the Government withheld legal advice that the Parliament demanded.

John Swinney: That is not the fundamental point; the fundamental point is the maintenance of legal professional privilege, which has existed in law for all time, and which, as a minister, Jackie Baillie was asserting. That is relevant, as set out by Shona Robison, who was the minister who presided over much of the handling of the arguments around minimum unit pricing. The Government relied on legal advice in relation to the successive legal challenges to that policy. In her contribution, Shona Robison raised a legitimate concern about whether that advice would have been as robust and as accepting of the risks that are inherent in judicial review if there had been a fear of the advice becoming public.

The Government's legislation was successful at every stage of the legal challenge, but there were plenty of commentators at the time who said that the Government's legal position was weak and

vulnerable. However, in the privacy of the exchange of advice and information—which one week might have been strong, and another week might have been weak—fundamentally, we had the ability to formulate a position that was successfully defended. That is what is potentially jeopardised by the creation of a new precedent in that area of activity.

Andy Wightman: Can we take it from the cabinet secretary's observations that he has no intention of publishing any legal advice in relation to the judicial review?

John Swinney: I am simply airing to the Parliament the issues with which I have to wrestle. I am the minister who will have to decide on the question, and I am simply airing to the Parliament the factors that I have to consider.

I say to James Kelly that the Lord Advocate is a man of entirely independent mind. I would not be able to tell the Lord Advocate what to do, say or think in any circumstance. Anybody who believes that I have the ability to do so is mistaking the Lord Advocate for somebody else. He is appointed to be an independent legal adviser and independent head of the prosecution service, and there is nothing that I can say to dictate to or direct him, or to restrict his opinions on particular subjects.

The Lord Advocate himself has made it clear that the legal position of the Government took account of the range of legal advice that was received from internal and external sources, and he has gone to great lengths, while maintaining legal professional privilege, to explain to the committee the Government's response to a number of different questions about mediation, the strength of the litigation, the issues that were being considered and the decisions that the Government took in that respect.

The Lord Advocate has addressed the issues at committee, the Government has been open with the committee with thousands of pages of documents and information, and there is more on the way. We intend to ensure that we fulfil our obligations to co-operate with the committee, but we are reflecting carefully on the issues around legal professional privilege, because there are inherent dangers that we create precedents that could undermine the exercise of good government in the years to come. Nobody in the Parliament will thank the Government for creating a precedent that in any way jeopardises the ability to exercise good government, today or in the future.

17:38

Donald Cameron (Highlands and Islands) (Con): I refer members to my entry in the register of members' interests as a member of the Faculty of Advocates.

I will begin on a bit of a tangent, and I hope that the reason for doing so becomes clear. There is a well-known play called "A Man for All Seasons", which tells the story of Thomas More, who, as members will know, was Lord Chancellor of England. In the play, there is a famous scene in which Thomas More debates the distinction between the law on the one hand and morality on the other. He says:

"I know what's legal, not what's right. And I'll stick to what's legal."

He also says:

"The currents and eddies of right and wrong ... I can't navigate. I'm no voyager. But in the thickets of the law, oh, there I'm a forester."

For Thomas More, there was a firm difference between what is legal and what is right. The two are not always the same. Of course, in the end, he went to his death obeying his conscience and doing the right thing, despite the passage that I have just read out. In the final reckoning, that was ultimately more important.

So, we find ourselves here, in the debate. As a matter of law, John Swinney is correct. In Scots law, there is an indisputable right for any recipient of legal advice that is tendered to them to keep that advice private—it belongs to the client.

However, one of the first lessons that is learned by lawyers who tender advice is that anything can happen to that advice. It is not theirs. It does not belong to them. It can be published. That answers the points that Shona Robison and John Swinney made. Any lawyer has to give frank, informed and competent advice—that is their responsibility—but anything can happen to it thereafter.

There is a right—legal professional privilege—and the law states that an individual cannot be forced to waive that right. That is what the law says, but what about the other deeper question that is nagging away: what is the right thing to do?

We are not here to analyse the law or to adjudicate on it. We are not a court; we are a Parliament. We are a Parliament that decisively made its views known about this matter just three weeks ago. We are a Parliament whose committee that was specifically tasked with investigating this affair has had its requests to see the legal advice consistently refused and its deadlines rejected. We are a Parliament whose votes the Scottish Government, on a whim, sometimes decides to respect and sometimes decides to ignore. We are a Parliament that was told by Nicola Sturgeon:

"The inquiries will be able to request whatever material they want, and I undertake today that we will provide whatever material they request."—[*Official Report*, 17 January 2019; c 14.]

That was an unequivocal statement.

It is absolutely clear from the ministerial code that the Government can release the legal advice. As Andy Wightman said, the code explicitly provides that ministers can disclose the source or content of legal advice if they feel that the balance of the public interest lies in doing so.

As others have said, on several occasions, the Scottish Government has published legal advice under that frame of provision. To deal with Shona Robison's point, I note that such legal advice was not just about public policy; it was about things such as infected blood, the child abuse inquiry and trams—investigations into hugely contentious issues involving public funds.

John Swinney: I would be grateful if Mr Cameron would reflect on the point that the examples that he has cited are examples not of litigation but of the conduct of public policy, and on the significant differences that arise between them.

Donald Cameron: There are no differences at all. On many occasions, SNP parliamentarians have demanded that other Governments publish legal advice that is given to them.

I do not need to rehearse at length why it is plainly in the public interest for the advice to be disclosed. Other members did so far more eloquently today and three weeks ago. Let me focus on the essential points.

Andy Wightman was absolutely right that the legal advice is central to this matter, especially in relation to the timing of the Government's settlement of the case coming so late in the day, with all the consequent expense to the taxpayer. We know that, during the judicial review, there were more than 10 consultations between counsel and Government.

We know that the expenses that were awarded to Mr Salmond were at the highest level possible and not on the usual basis. That level of expenses is very rare. It arises in only two instances: when litigation has been conducted unreasonably or incompetently. For any litigation lawyer, that is a damning judgment. That is another reason why we need to see the legal advice.

Let me take issue with one thing that the Deputy First Minister said. He said, "Oh well, the advice is in the pleadings. We have released those, and that discloses what the advice was." That is not right. Parties set out their argument in their pleadings—the facts that they seek to prove and the remedies that they seek or refute. They categorically do not contain legal advice. The advice behind the pleadings might be the complete opposite.

As Margaret Mitchell said, this is a tale of shameful obstruction by the Government in terms of supplying any documentation, let alone legal advice. The convener of the committee, who is a colleague of Mr Swinney, could not have been clearer about that in her letters.

Of course, following the vote three weeks ago, we should not be here. No Parliament should have to express its view twice on such a serious matter, but here we are again having to force the Government's hand, because it seems that the Government wishes to bury that legal advice a thousand feet deep.

I return to the point about doing what is right, which I made at the start of my speech. What should the Government do? I think that, in his heart of hearts, John Swinney knows the answer to that.

Let us remind ourselves what this is about, lest that is forgotten, because one of the tragedies of this whole affair is that that is too easily forgotten. First and foremost, it is about the private complaints of two women about sexual harassment. It is also about at least half a million pounds of public money. Most striking, it is about the conduct of four specific individuals: the most senior civil servant in Scotland, the Lord Advocate, the former First Minister and the current First Minister. It is a story involving four of the highest office holders in the land. If all that does not engage the public interest, what does?

Business Motion

17:44

The Presiding Officer (Ken Macintosh): The next item of business is consideration of business motion S5M-23470, in the name of Graeme Dey, on behalf of the Parliamentary Bureau, which sets out a business programme.

Motion moved,

That the Parliament agrees—

(a) the following programme of business—

Tuesday 1 December 2020

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions

followed by Ministerial Statement: COVID-19

followed by Equalities and Human Rights Committee Debate: Valuing the Third Sector

followed by Public Petitions Committee Debate: Mental health support for Young People in Scotland

followed by Committee Announcements

followed by Business Motions

followed by Parliamentary Bureau Motions

6.40 pm Decision Time

followed by Members' Business

Wednesday 2 December 2020

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions: Communities and Local Government; Social Security and Older People

followed by Scottish Labour Party Business

followed by Business Motions

followed by Parliamentary Bureau Motions

followed by Approval of SSIs (if required)

5.10 pm Decision Time

followed by Members' Business

Thursday 3 December 2020

12.20 pm Parliamentary Bureau Motions

12.20 pm First Minister's Questions

2.30 pm Parliamentary Bureau Motions

2.30 pm Portfolio Questions: Finance

followed by Committee of the Whole Parliament - Stage 2 Proceedings: The Scottish Parliament (Assistance for Political Parties) Bill

followed by Final Stage: Solicitors in the Supreme Courts of Scotland (Amendment) Bill

followed by Stage 1 Debate: Heat Networks (Scotland) Bill

followed by Financial Resolution: Heat Networks (Scotland) Bill

followed by Business Motions

followed by Parliamentary Bureau Motions

5.05 pm Decision Time

Tuesday 8 December 2020

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions

followed by Ministerial Statement: COVID-19

followed by Finance and Constitution Committee Debate: Parliament's evolving scrutiny function

followed by Committee Announcements

followed by Business Motions

followed by Parliamentary Bureau Motions

6.00 pm Decision Time

followed by Members' Business

Wednesday 9 December 2020

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions: Environment, Climate Change and Land Reform; Rural Economy and Tourism

followed by Scottish Government Business

followed by Business Motions

followed by Parliamentary Bureau Motions

followed by Approval of SSIs (if required)

5.10 pm Decision Time

followed by Members' Business

Thursday 10 December 2020

12.20 pm Parliamentary Bureau Motions

12.20 pm First Minister's Questions

2.30 pm Parliamentary Bureau Motions

2.30 pm Portfolio Questions: Transport, Infrastructure and Connectivity

followed by Stage 3 Proceedings: Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

followed by Stage 1 Debate: Scottish General Election (Coronavirus) Bill

followed by Financial Resolution: Scottish General Election (Coronavirus) Bill

followed by Business Motions

followed by Parliamentary Bureau Motions

6.35 pm Decision Time

(b) that, for the purposes of Portfolio Questions in the week

beginning 30 November 2020, in rule 13.7.3, after the word “except” the words “to the extent to which the Presiding Officer considers that the questions are on the same or similar subject matter or” are inserted.—[*Graeme Dey*].

Motion agreed to.

Parliamentary Bureau Motions

17:45

The Presiding Officer (Ken Macintosh): The next item of business is consideration of 11 Parliamentary Bureau motions. I call Graeme Dey, on behalf of the Parliamentary Bureau, to move motion S5M-23471, on the timetable and procedures for the consideration of a bill; motions S5M-23472 and S5M-23486, on committee meeting times; and motions S5M-23473 to S5M-23480, on the approval of Scottish statutory instruments.

Motions moved,

That, subject to the Parliament’s agreement to the general principles of the Scottish General Election (Coronavirus) Bill, the Parliament agrees for the purposes of further consideration of the Bill that:

Rules 9.5.3A and 9.5.3B be suspended;

Rules 9.7.8A, 9.7.8B and 9.7.9 be suspended;

Rule 9.10.2 be varied to replace the word “fourth” with “third”, so that the deadline for lodging stage 2 amendments will be the third sitting day in advance of proceedings, and

Rule 9.10.2A be varied to replace the word “fifth” with “second”, so that the deadline for lodging stage 3 amendments will be the second sitting day in advance of proceedings.

That the Parliament agrees that, under Rule 12.3.3B of Standing Orders, the Rural Economy and Connectivity Committee can meet, if necessary, at the same time as a meeting of the Parliament during 2pm to 4.30pm on 2 December 2020 for the purpose of considering and agreeing its report on its inquiry into the construction and procurement of ferry vessels in Scotland.

That the Parliament agrees that, under Rule 12.3.3B of Standing Orders, the Committee on the Scottish Government Handling of Harassment Complaints can meet, if necessary, at the same time as a meeting of the Parliament from 3.30pm until Decision Time on Wednesday 2 December 2020 for the purpose of taking evidence from Scottish Government officials.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 21) Regulations 2020 (SSI 2020/354) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 22) Regulations 2020 (SSI 2020/358) be approved.

That the Parliament agrees that the Scottish National Investment Bank p.l.c. (Miscellaneous Listings) Order 2020 [draft] be approved.

That the Parliament agrees that the Scottish National Investment Bank p.l.c. and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 [draft] be approved.

That the Parliament agrees that the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2020 [draft] be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment Regulations 2020 (SSI 2020/347) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 20) Regulations 2020 (SSI 2020/343) be approved.— [Graeme Dey].

Decision Time

17:45

The Presiding Officer (Ken Macintosh): The first question is, that amendment S5M-23450.2, in the name of Humza Yousaf, which seeks to amend motion S5M-23450, in the name of Liam Kerr, on the independent review of complaints handling, investigations and misconduct issues in relation to policing, be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division. I will suspend proceedings for a few moments to allow members both in the chamber and online to access the voting app.

17:46

Meeting suspended.

17:50

On resuming—

The Presiding Officer (Ken Macintosh): Members may cast their votes now. This is a one-minute division.

That vote is closed. If any members believe that they were not able to register their vote, they should let me know through a point of order, please, either in the chamber or online.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)

Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Ind)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)

Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wishart, Beatrice (Shetland Islands) (LD)

The Presiding Officer: The result of the division, on amendment S5M-23450.2, in the name of Humza Yousaf, which seeks to amend motion S5M-23450, in the name of Liam Kerr, on the independent review of complaints handling, investigations and misconduct issues in relation to policing is: For 65, Against 59, Abstentions 0.

Amendment agreed to.

The Presiding Officer: The next question is, that amendment S5M-23450.1, in the name of Rhoda Grant, which seeks to amend motion S5M-23450, in the name of Liam Kerr, on the independent review of complaints handling, investigations and misconduct issues in relation to policing, be agreed to.

Amendment agreed to.

The Presiding Officer: The next question is, that motion S5M-23450, in the name of Liam Kerr, as amended, be agreed to.

Motion, as amended, agreed to.

That the Parliament notes the report of the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, produced by Dame Elish Angiolini QC and submitted to Scottish Ministers on 11 November 2020; welcomes the review as a detailed and substantial piece of work with over 80 recommendations in total that will require careful consideration from the Scottish Government, Scottish Police Authority, Police Scotland, the Police Investigations and Review Commissioner (PIRC), police staff associations and trade unions, and the Crown Office and Procurator Fiscal Service; recognises the significant public interest that there is in having a rights-based approach to the issue of the handling of police complaints; notes that Dame Elish

Angiolini will give evidence to the Justice Sub Committee on Policing on 7 December 2020; further notes a number of recommendations would require legislative change; acknowledges the Chief Constable's membership of the National Police Chiefs' Council, which provides an opportunity, where appropriate, to share best practice across the UK; calls on the Scottish Government and other key stakeholders to meet as a matter of urgency to consider the implementation of recommendations; notes the recommendations for wide-ranging changes to the role, responsibilities and structure of the PIRC, which will require public consultation involving police staff associations and trade unions; urges the Cabinet Secretary for Justice to update the Parliament on discussions with key stakeholders and his response to the report early in the New Year; notes with concern the findings in the report that there has been discriminatory treatment towards individuals and staff from minority groups, including Black, Asian and minority ethnic people, women and LGBTI people; agrees that Police Scotland should have a workforce that is reflective and representative of the communities that it serves; believes that the policies, procedures and practices of Police Scotland should promote and not hinder equalities issues, including a complaints procedure that is trusted by officers when they seek to raise equalities issues, and therefore calls for an independent review of equalities matters across the force, as recommended in the report.

The Presiding Officer: The next question is, that amendment S5M-23445.2, in the name of John Swinney, which seeks to amend motion S5M-23445, in the name of Murdo Fraser, on legal advice, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. This will be a one-minute division.

The vote is closed. If any member believes that their vote was not registered, please let me know through a point of order.

Kevin Stewart (Aberdeen Central) (SNP): Presiding Officer, my screen has gone completely blank, so my vote might not have been recorded.

The Presiding Officer: I can confirm that your vote was registered, Mr Stewart.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I had the same issue, Presiding Officer.

The Presiding Officer: Mr Macpherson, I can confirm that your vote was registered.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Ind)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Fraser, Murdo (Mid Scotland and Fife) (Con)

Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)
 Wishart, Beatrice (Shetland Islands) (LD)

Abstentions

Fabiani, Linda (East Kilbride) (SNP)

The Presiding Officer: The result of the division on amendment S5M-23445.2, in the name of John Swinney, which seeks to amend motion S5M-23445, in the name of Murdo Fraser, on legal advice, is: For 58, Against 65, Abstentions 1.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S5M-23445, in the name of Murdo Fraser, on legal advice, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. This will be a one-minute division.

The vote is closed. If any member thinks that their vote was not registered, please let me know, through a point of order.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Presiding Officer, my connection was lost during the vote. I would have voted no—that is, against the motion.

The Presiding Officer: Thank you, Mr Doris, I will make sure that your vote is added to the roll.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Ind)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Boyack, Sarah (Lothian) (Lab)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Davidson, Ruth (Edinburgh Central) (Con)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harris, Alison (Central Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McNeill, Pauline (Glasgow) (Lab)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Elaine (Central Scotland) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)

Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)
 Wishart, Beatrice (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Gougeon, Mairi (Angus North and Mearns) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Abstentions

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Presiding Officer: The result of the division on motion S5M-23445, in the name of Murdo Fraser, on legal advice, is: For 65, Against 55, Abstentions 4.

Motion agreed to,

That the Parliament recalls the vote on motion S5M-23218 on 4 November 2020, in which it called on the Scottish Government to publish the legal advice it received regarding the judicial review into the handling of harassment complaints against the former First Minister, Alex Salmond; notes that the legal advice sought has not yet been published, despite the Committee on the Scottish Government Handling of Harassment Complaints requesting this by 13 November 2020, and calls on the Scottish Government to respect the will of the Parliament by providing the legal advice without any further delay.

The Presiding Officer: I propose to ask a single question on the 11 Parliamentary Bureau motions, if no member objects.

The question is, that motions S5M-23471 to S5M-23480 and motion S5M-23486, in the name of Graeme Dey, be agreed to.

Motions agreed to,

That, subject to the Parliament's agreement to the general principles of the Scottish General Election (Coronavirus) Bill, the Parliament agrees for the purposes of further consideration of the Bill that:

Rules 9.5.3A and 9.5.3B be suspended;

Rules 9.7.8A, 9.7.8B and 9.7.9 be suspended;

Rule 9.10.2 be varied to replace the word "fourth" with "third", so that the deadline for lodging stage 2 amendments will be the third sitting day in advance of proceedings, and

Rule 9.10.2A be varied to replace the word "fifth" with "second", so that the deadline for lodging stage 3 amendments will be the second sitting day in advance of proceedings.

That the Parliament agrees that, under Rule 12.3.3B of Standing Orders, the Rural Economy and Connectivity Committee can meet, if necessary, at the same time as a meeting of the Parliament during 2pm to 4.30pm on 2 December 2020 for the purpose of considering and agreeing its report on its inquiry into the construction and procurement of ferry vessels in Scotland.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 21) Regulations 2020 (SSI 2020/354) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 22) Regulations 2020 (SSI 2020/358) be approved.

That the Parliament agrees that the Scottish National Investment Bank p.l.c. (Miscellaneous Listings) Order 2020 [draft] be approved.

That the Parliament agrees that the Scottish National Investment Bank p.l.c. and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 [draft] be approved.

That the Parliament agrees that the Companies Act 2006 (Scottish public sector companies to be audited by the

Auditor General for Scotland) Order 2020 [draft] be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment Regulations 2020 (SSI 2020/347) be approved.

That the Parliament agrees that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 20) Regulations 2020 (SSI 2020/343) be approved.

That the Parliament agrees that, under Rule 12.3.3B of Standing Orders, the Committee on the Scottish Government Handling of Harassment Complaints can meet, if necessary, at the same time as a meeting of the Parliament from 3.30pm until Decision Time on Wednesday 2 December 2020 for the purpose of taking evidence from Scottish Government officials.

The Presiding Officer: That concludes decision time.

Inverclyde Royal Hospital (Intensive Care Provision)

The Deputy Presiding Officer (Linda Fabiani): The final item of business is a members' business debate on motion S5M-22984, in the name of Jamie Greene, on the intensive care unit at Inverclyde royal hospital. The debate will be concluded without any question being put.

Motion debated,

That the Parliament is significantly concerned over reports that the ICU provision of the Inverclyde Royal Hospital's critical care offering, in Greenock, is closing and that patients requiring that type of critical care will be transferred to the Queen Elizabeth University Hospital in Glasgow for treatment; believes that Inverclyde has been disproportionately impacted by the COVID-19 pandemic; considers this closure to be ill-advised given the continuing prevalence of COVID-19 and need for intensive care in the surrounding region; notes the considerable hardship and stress that it believes this will place on local families who visit their loved ones in hospital; understands that, in the seven days leading up to 3 October 2020, Inverclyde recorded 34 new cases of COVID-19 at a rate of 43.7 per 100,000 people; notes the calls on all political parties represented in the Scottish Parliament to collectively raise these concerns with the local NHS board and the Cabinet Secretary for Health and Sport, given the current national health emergency, and further notes the calls on the Scottish Government to look into this matter immediately with a view to a substantial rethink of this action.

18:03

Jamie Greene (West Scotland) (Con): I thank the members who have supported the motion and helped to bring the debate to the chamber. Saying "save our hospital" is one of those perennial but powerful tools in the political toolkit that strikes at the heart of communities as an emotive subject, because hospitals are places of worry, sorrow and joy, illness and recovery, and life and death—things that are the essence of politics and public policy.

I accept that change is sometimes difficult to accept, understand or even communicate. Patient safety is, of course, paramount, but it should not be used as a smokescreen to make unpopular changes that are the by-product of systemic problems of resource, finance or governance.

There is nobody in Inverclyde, Renfrewshire, North Ayrshire or Argyll who does not have an Inverclyde royal hospital story to share. It is a truly ominous building, and it has sat at the heart of our community since the year before I was born.

I was a youth volunteer at the hospital radio station in my teens. I had a weekly show there, the highlight of which was a Christmas Day request show. I am not sure that we had many listeners, but I recall that, one year, the phone rang in the studio—I nearly fell off my chair.

It seems serendipitous that, one day, that same hospital would serve as a place of care and love for many of my friends and family. Some of them walked proudly back out of its front door, others, sadly, did not. I have spent many a night in the intensive care unit family room, sleeping on its uncomfortable floor, with kind nurses bringing me cups of sugary tea. We do not always remember the names of folk in those situations, but we never forget their faces.

The strength of feeling locally to protect the intensive care unit in the interests of all patients who need it, for as long as they need it, is not just palpable but entirely justified. On 1 October this year, shocked staff were told that level 3 ICU patients would be moved to Glasgow. That type of care had been under threat for much longer than that, because, in December last year, the Government confirmed in writing that its two funded level 3 care beds were already at risk, and said that challenges and risks existed that might impact the unit's on-going sustainability. Guess what those challenges and risks were. It will come as no surprise to members that they involved workplace issues and skills shortages. That was a year ago. It is there in black and white.

Following that, Covid came along, and temporary changes were made to patient pathways. People get that—I get that. Inverclyde was hit hard by Covid, with the death rate twice the national average. People understand the need for temporary changes in response to a temporary health emergency. However, what they do not appreciate is that fact being used as a cover to make permanent changes. The rumours were not just rumours. Before the very eyes of staff, patients were being stabilised in Inverclyde and moved to Glasgow.

In response to reports of those substantive changes, the *Greenock Telegraph* launched an online petition, which has received more than 11,000 signatures. Protecting the ICU in Inverclyde has united Inverclyde. It has brought together residents, staff and politicians of all political colours. Local businesses have got on board, too—McGill's Buses printed the campaign message on the back of its bus tickets.

Political parties also condemned the move. One local Scottish National Party councillor said:

"It is a disgraceful decision in the midst of a global pandemic."

I do not disagree. Another councillor said:

"Local people need to speak loudly by sending a clear message to our political leaders in Holyrood."

Normally, those local people would be in the gallery behind us, but I know that they are watching online, so I will address them directly: you have spoken loudly, and I hope that your

message is crystal clear to our political leaders today.

Of course, the national health service board responded quickly, saying that the ICU is not closing. However, it admitted that level 3 patients are indeed being transferred to the Queen Elizabeth hospital in Glasgow. That mantra was repeated by the Cabinet Secretary for Health and Sport, and we might hear it again today. A change has been made under the proviso of Covid, with no guarantee of reversion to pre-pandemic pathways. That is the guarantee that we seek today.

We know that the NHS is operating in unusual times. Until March 2021, at least, it will be operating under a state of emergency. However, presumably, that means that, post-Covid, we can expect pre-Covid conditions of care.

Inverclyde ICU has proven its value. It currently admits around 1,450 patients a year, but this new pathway will move at least 100 of those patients to Glasgow. That is not just a number; it represents 100 people and 100 families who are already in despair and are in their darkest moments but who will have the added stress of worrying about how to make that journey from Greenock to Glasgow, often twice daily. As I know far too well, that is a long distance when things go wrong in the middle of the night.

It is simply disingenuous to claim that there is nothing to see here, that nothing has changed and that this situation is just a case of poor communication. It is not. The fact remains that, historically, level 3 care patients were not just stabilised in Greenock, but were treated there, too. It remains a fact that patients who required intrusive ventilation were given that there and that people received multidisciplinary support there. I know that because, like thousands of others, I have seen it with my own eyes.

We have been offered a jargon-filled briefing in defence of the change. The beds are there and the staff are there, so the ICU must still be there. That is fine but, if that is so, why are patients being put into ambulances and transferred to Glasgow when, this time last year, they were not? If that does not constitute a major change, what does? It cannot be an ICU by name alone.

If the issue is resource, that is a legacy for which this Government must take responsibility. There are gaps in consultancy, anaesthetics and middle-grade nurses, and the use of locums is rocketing. The unit has been chronically underresourced for years, and services have been chipped away: the ear, nose and throat unit, the out-of-hours general practitioner service, the orthopaedic unit, the physical disability rehabilitation unit, the maternity unit—the list goes

on and on. Those are not “perceived” threats—they are actual threats.

In closing, here are some questions for the Government and the health board, on behalf of the people back in Inverclyde. In the middle of the pandemic, why on earth are we reducing, rather than beefing up, ICU care in our local hospital? Why has Inverclyde been put into restrictions because of fears about ICU bed capacity in Glasgow, when we have a hospital right on our doorstep? Why are there no guarantees that the temporary changes are indeed temporary? What is the long-term plan and vision for the hospital over the next five or 10 years? How can we have confidence that the hospital will lie at the heart of providing cradle-to-grave healthcare for the people whom it serves?

It is time to end the obfuscation. We should give the hospital what it needs, give the staff the reassurances that they deserve and give the people of Inverclyde some respect by providing some much-needed honesty in the debate, because they all deserve nothing less.

18:11

Stuart McMillan (Greenock and Inverclyde) (SNP): I congratulate Jamie Greene for bringing this important debate to the chamber. As he indicated yesterday in his comments to the *Greenock Telegraph*, the situation has evolved since the motion was lodged.

First, I want to highlight my frustration with the health board. As I have said publicly on previous occasions, and to health board staff directly, the communication of the process and the change has been nothing short of a disgrace. Telling staff of a change with 24 hours’ notice is no way to run any service, and it certainly shows a disregard for local staff and for Inverclyde, so I fully understand and support the comments from my constituents expressing their anger.

Both Jamie Greene and I have raised the issue of the ICU in the chamber, and I did so directly with the First Minister, as the minister will be aware. I will put on the record a couple of undeniable facts. First, the campaign that was run was adamant that the ICU was closing, but it is not. The beds are still there and are being used, the staff are there and patients are still going to the ICU. Level 1 and level 2 intensive care services remain at the Inverclyde royal hospital.

The issue concerns level 3 intensive care, which Jamie Greene touched on. I want level 3 fully returned to the IRH. In fact, I would like more services at the hospital—I will come to that point in a moment. I have spoken formally and informally to various members of health staff at the hospital, and it is clear that there are a variety of opinions

as to the decision that was taken and the care that patients will get. Ultimately, however, the patient should be uppermost in the minds of everyone who cares about this issue and other issues in respect of the IRH.

I would like level 3 care to be fully delivered at the IRH once again, and I would like that to happen as quickly as possible. Jamie Greene touched on the state of emergency that is in place until spring 2021. The health board will provide many reasons for why there are challenges to local provision. Those need to be fully understood, and solutions need to be put in place to try to deal with them. However, staffing is always raised as an issue, and—to be frank—the public of Inverclyde do not always accept that as a reason.

The health board regularly states that the IRH has a long-term future, and I agree with it on that point. However, the one action that would put that beyond any doubt would be for the health board to build a replacement for the Inverclyde royal hospital. That would remove any accusations that the hospital is going to close or is going to be downgraded.

Locally, I have yet to meet anyone who thinks that the building of the hospital in its current location—at the top of a hill with no shelter, totally exposed to all the elements—was a good idea. It is no wonder that the building has had so many problems with water ingress over the years. I welcome the investment that has gone into the hospital. The new facilities, including the new theatre, will be put to good use. However, unless a new-build hospital is progressed, debates in the chamber such as this one and debates across Inverclyde will continue for many years to come.

In some quarters, there is a belief that the health board does not consider Inverclyde to be a priority, but I do not share that view. We now have Orchard View hospital, which was the replacement for Ravenscraig hospital, and the new Greenock health centre is currently under construction. Those two projects alone will provide better health outcomes for patients and better working conditions for staff. I know that from my own family’s experience—one of my aunts was a patient at Orchard View and previously at Ravenscraig hospital.

The continual claims that services are going and that the hospital is shutting will do nothing to entice people to work at the IRH. Who would want to work in a hospital if they thought that it was going to shut? That is yet another reason why a new-build hospital is important: it could help to deal with some of the recruitment issues that the health board continually highlights.

The public perception in Inverclyde is that we need to travel elsewhere for some services. Not

one person has raised travel as a concern when it comes to specialist services. However, having to travel for services that are considered to be more routine frustrates many of my constituents. My constituency has one of the oldest population shares in Scotland and, under the Scottish index of multiple deprivation, we now have some of the most deprived data zones in the country, including the zone with the highest level of deprivation.

Many people in my community have underlying health conditions, many of which are a result of their previous working conditions. The health board understands most of that but, along with the investment in the two new facilities that I mentioned, it can show that it fully understands by committing to a new build. That will result in improved recruitment and make it easier for services to be delivered locally, rather than asking my constituents to travel elsewhere for routine services.

18:16

Maurice Corry (West Scotland) (Con): I, too, am pleased to speak in the debate, and I thank my colleague Jamie Greene for taking this very important issue forward on behalf of his constituents in the Inverclyde area, which is part of the West Scotland region that we both represent.

Inverclyde, which was previously the region of Scotland that was hardest hit by Covid, has undoubtedly been heavily impacted by the pandemic. The first wave resulted in a high death toll, which left it unenviably dubbed Scotland's Covid capital. The area currently sits at level 3, having made a marked improvement, with cases currently stabilised.

In response to those challenges, continued local clinical provision has been vital for the community. The Inverclyde royal hospital has served local people well through the years, covering an expansive area across Greenock, Dunoon, Cowal, Largs, Gourock and Port Glasgow. Altogether, it serves a population of 125,000 people.

The intensive care unit, which is staffed by a dedicated team, provides the highest quality of critical care, and I am aware that many families—Stuart McMillan spoke about his own family's experience—have a deep appreciation for the treatment that their loved ones have received. Any changes to how that critical care is to be provided must therefore be communicated clearly and sensitively, especially as Covid cases continue.

Every health board holds a responsibility to communicate clearly, transparently and openly any changes to the delivery of services. In failing to do so in this case, Greater Glasgow and Clyde health board's previously unclear messaging regarding critical care at the IRH has caused

distress, frustration and tangible concern across Inverclyde, which is certainly regrettable.

A 2018 Audit Scotland report highlighted the need for greater engagement and collaborative decision making in how health and social care services are delivered. It makes the point that any changes must be implemented in a way that involves local communities from the start, which I am sure would help to allay understandable concerns and encourage discussion.

I recognise and appreciate the steps that the health minister has taken to seek assurances from the health board that the ICU in Inverclyde would not, in fact, be closing. Clarity from the health board on that point was sorely needed from the outset. Furthermore, I am relieved to hear that local patients who require critical care will, in most cases, continue to receive treatment at the unit. Only those who require the most specialist care will be transferred to the Queen Elizabeth hospital and, post the Covid pandemic, they should return to Inverclyde for continued specialist care and to be near their families, which is important.

Research has shown that almost a third of Covid-19 patients who require ventilation are also in need of renal support, which regrettably has not been available at the IRH for some time. That raises concerns that services at the IRH will continue to be reduced or downgraded, which I sincerely hope will not be the case.

Of course, these are unprecedented times. The strain on health and social care provision has been enormous, especially as we head into winter. I therefore recognise that, in response to that burden, changes to clinical pathways might have to be made. However, although the health board has advised that this particular change might affect only a small minority of patients, its decision suggests that the Inverclyde royal hospital is undergoing a further reduction in services for local people. The debate raises the bigger question of the need for greater investment in the Inverclyde area.

The latest change contributes to the concerns that Inverclyde is not receiving the investment that it needs, especially in these difficult times. Local people deserve greater provision, and that includes a renewed emphasis on not only securing but expanding health and care services at Inverclyde royal hospital.

18:20

Neil Bibby (West Scotland) (Lab): This is an important debate. I welcome the opportunity to speak in it and to make the case for local services at Inverclyde royal hospital, which has served the communities of Greenock, Gourock, Port

Glasgow, Inverkip, Kilmacolm and many others well through the years.

As has been said, Inverclyde has, sadly, the highest Covid death rate in Scotland. It is also home to the most deprived community in Scotland. We should be investing in services in Inverclyde, not removing them from it.

For many residents of Inverclyde and beyond, it seems that NHS Greater Glasgow and Clyde is particularly wedded to a policy of centralisation. That is despite profound community concern that the hospital will be left behind; concern that the views of patients, families and local residents will be ignored; concern that previous moves to centralised services, such as in out-of-hours primary care and birthing suites, indicate a pattern of behaviour; concern that staff are treated as an afterthought; and concern about the geography of Inverclyde and the reliance on coastal transport links that can be subject to flooding, weather-related disruption and congestion.

According to Transport Scotland, the M8 between Renfrewshire and Glasgow is the most congested section of motorway in the country. People who travel from elsewhere in the city have access to a number of alternative routes, but those who travel from Inverclyde are limited.

For all those reasons, there is deep anxiety in the community about the extraction of any services from the IRH, let alone the extraction of intensive care beds.

The Scottish Government's failure to understand that anxiety or to intervene and set the health board on a different path is increasingly met with frustration and distrust. The specific decisions to relocate ICU beds have been taken without any meaningful consultation at all with the local community. A worker at the hospital told me that staff are not even clear about what the deciding factor was in deciding to reduce ICU services. They also want to know what the contingency plans are for the emergency department, given the increased pressures from the lack of ICU services.

As has been said, the public have made their feelings known. More than 11,000 people have signed a petition that calls for the ICU in Inverclyde to be safeguarded.

The health board's communications—even with senior councillors and the integration joint board in Inverclyde—have been appalling. The leader of Inverclyde Council, Stephen McCabe, could not have been clearer when he said:

"The board say they are committed to the IRH, but the bottom line is people no longer believe them."

There is a real sense of betrayal in Inverclyde. It was not all that long ago that the Scottish Government promised to keep health local. It said

that there would be a presumption against centralisation. Prior to the previous election, the First Minister came to the west and took to the front page of the *Greenock Telegraph* to promise that there were

"no plans to centralise services out of Inverclyde".

Only a few weeks ago, the Cabinet Secretary for Health and Sport gave an assurance that the Scottish Government was totally committed to the IRH. However, services are under continued threat and, under freedom of information provisions, I have obtained information that shows that the total repairs backlog cost at the IRH now stands at an eye-watering £100 million and counting. I say to the Scottish Government that that is a strange way of showing that it is totally committed to a hospital.

The people of Inverclyde are faced with constant threats of cuts and closures, the removal of ICU beds without consultation and a repairs backlog that keeps getting worse. Surely even Government ministers in Edinburgh can understand why they feel forgotten and left behind.

I pay tribute to the NHS staff, who have gone above and beyond throughout the Covid crisis. It is important that people whom we depend on to care for us have a safe modern working environment and certainty about the future of the services that they provide. It does not matter whether they work in a big city hospital or in a hospital such as the IRH, in the west: every part of the country should be getting a fair deal, and a fair deal for West Scotland means investment in our hospitals and a complete rethink of the centralisation agenda. If the Scottish Government and health boards really are committed to hospitals such as the IRH, they should prove it by investing in the IRH and keeping health services local.

The Deputy Presiding Officer: I call Clare Haughey to respond to the debate. Minister, you have around seven minutes.

The Minister for Mental Health (Clare Haughey): [*Inaudible.*]

The Deputy Presiding Officer: Minister, we cannot hear you. Please hold on until broadcasting sorts you out.

Mr Greene seemed to be desperate to say something a moment ago. Mr Greene, you can have a minute while we sort this out.

Jamie Greene: You are very kind, Presiding Officer. It is an unusual precedent to set, and I hope that nobody follows it. Given the nature of the new virtual proceedings, it is difficult to intervene on a Government minister during their formal response, and we do not have the opportunity to sum up.

I want to stress to the minister that I will be listening carefully, with respectful intent, to what she says. We have posed specific questions and raised specific concerns, and I hope that they are addressed. If our questions are not answered during the debate today, members will be writing to her for more information.

The Deputy Presiding Officer: I should say that I am not setting a precedent and that it really is for the minister to respond to such points.

Clare Haughey: [*Inaudible.*]

The Deputy Presiding Officer: Minister, we still cannot hear you. Would anyone like to jump in for a wee minute?

We will try again. Will it be third time lucky? No—but you have a very nice living room, minister.

Emma Harper would like to make a little contribution. This is not setting a precedent.

18:26

Emma Harper (South Scotland) (SNP): I have listened to the debate with great interest because, in Dumfries and Galloway, we also have issues with care being moved to other centres. I have a question to ask the health secretary tomorrow about cancer patients going to Edinburgh and bypassing the Beatson, in Glasgow, which adds two hours to their journey. That is not really optimal. I am concerned about how we are going to look at issues such as staffing, which is a concern, and about the fact that we do not have enough ICU spaces for the level 3 care that is required. I will be happy to hear the minister's responses to those points.

The Deputy Presiding Officer: I would also be happy to hear the minister. We will go to Maurice Corry.

Maurice Corry: I have been very involved with the Vale of Leven hospital in Alexandria. One of the lessons that we have learned is to keep up the pressure in any campaign. It is therefore important for the residents of Inverclyde to keep this thing going and eventually we will see progress. It is important that services are delivered in our localities in the best interests of the residents, and that care is delivered to people near their families.

Neil Bibby: In addition to the £100 million repairs backlog at the IRH, there is a £76 million backlog at the Royal Alexandra hospital in Paisley, a £15 million repairs backlog at the Vale of Leven hospital in Dumbarton and a £30 million backlog at Crosshouse hospital in Ayrshire. All those hospitals serve West Scotland and it is only right that we have a fair deal for them. We need significant investment, not just in new big-city

hospitals but in the hospitals that serve the communities in the west of Scotland.

The Deputy Presiding Officer: I want to say two things. First, if I had known this was going to happen, I would have been armed with all the figures for Hairmyres hospital in East Kilbride.

Secondly, it is of course impossible—and it could not be expected—for the minister to respond to all those additional points.

We have still not managed to get Clare Haughey back online so I suggest that we suspend for a couple of minutes to see whether information technology colleagues can get her.

18:29

Meeting suspended.

18:31

On resuming—

The Deputy Presiding Officer: I invite Clare Haughey to respond to the members' business debate on the ICU at Inverclyde royal hospital.

18:32

The Minister for Mental Health (Clare Haughey): Thank you, and I apologise for the technical difficulties.

I welcome the opportunity to respond on behalf of the Government to this members' business debate. I start by making completely clear that, contrary to what is stated in Mr Greene's motion, the two ICU beds at Inverclyde royal hospital remain open, and there are no plans to close them. The chief executive of NHS Greater Glasgow and Clyde has given the Cabinet Secretary for Health and Sport an absolute assurance about that.

I am sure that all members agree that the quality of care and patient safety must be of paramount importance, and those principles underpin what is happening in Inverclyde. The health board is formalising the clinical pathway that ensures that the most seriously unwell local patients can access the specialist services and support that they need. That is referred to as level 3 critical care, such as the provision of support for multiple organ failure, and involves the transfer of a small number of such patients to Glasgow. During the Covid-19 pandemic, that has already been happening on an ad hoc basis, with a small number of local patients having been transferred to the Queen Elizabeth university hospital under the pathway from March this year. Nonetheless, the board has been clear that the two ICU beds at the IRH will remain open. Patients will continue to be assessed locally, and will not bypass the

hospital. Those patients who require level 3 care will be stabilised and will, if necessary, receive invasive ventilation before being transferred. As such, critical care services at the IRH—comprising the ICU, high dependency and coronary care units—will continue to stabilise or treat local patients with a range of complications, such as diabetes, sepsis, pneumonia, exacerbations of asthma, heart attacks, and other cardiac conditions.

The changes in the clinical pathway reflect the best evidence about the quality of care and outcomes. For example, we have learned that around 30 per cent of Covid-19 patients who require ventilation also require renal support. That support has not been available to ICU patients at the IRH for a number of years; therefore, patients who require such highly specialised care will be transferred to Glasgow, following admission and stabilisation at the IRH. Contrary to the terms of the motion, the change is about ensuring that local patients who are most acutely ill, including as a result of Covid-19, can receive the best treatment and care.

However, that does not mean that all critically ill Covid-19 patients from Inverclyde are being transferred. We have learned from the initial wave of Covid-19 that many patients benefit from non-invasive ventilation in a high dependency unit setting. As such, NHS Greater Glasgow and Clyde has increased capacity to offer that on the IRH site, and has made new appointments in respiratory medicine to support its delivery. The board anticipates that that should reduce the number of patients who ultimately require transfer for specialist support.

The health board has been clear that the IRH critical care team will continue to provide treatment for local patients, including those who are admitted to the two ICU beds. That includes those who do not require to be transferred and those for whom transfer would not be clinically appropriate. For patients who are transferred to Glasgow for specialist treatment, once they improve and no longer need the level 3 support, they will be assessed for transfer back to the IRH for their continued recovery and rehabilitation.

It is important to appreciate the change in context. The IRH critical care service currently admits approximately 1,450 patients per year. The health board estimates that the number of most unwell local patients that it will need to stabilise and transfer under the pathway is approximately 100, which equates to less than 7 per cent of total critical care admissions each year. Therefore, the overwhelming majority of local people who require critical care will continue to be treated at the IRH, while the most unwell people will receive the specialist care that they need in Glasgow.

NHS Greater Glasgow and Clyde has further assured the Cabinet Secretary for Health and Sport that local staffing and all other IRH services, including surgery and the accident and emergency department, will be unaffected. It should be noted and respected that this change, predicated as it is on maintaining the quality and safety of patient care, has the full backing of local clinicians.

That said, I agree that this small but important change to the patient pathway should have been better communicated by the NHS board. That would clearly have helped to allay the level of local concern that was expressed in early October. Members can be assured that the issue has been raised with the board and that it accepts the criticism. I know that local elected representatives were fully briefed on the issue by NHS Greater Glasgow and Clyde on 8 October, and that the board issued a media release the same day to further clarify the position.

None of that should be news to Mr Greene, as the health secretary wrote to him on 30 October setting out the same detail that I have provided today.

I reiterate the Government's commitment to ensuring that, wherever possible and appropriate, health boards and their planning partners fulfil their obligations to meaningfully engage with local communities about any proposed changes to their services. I am clear that the change that we are discussing is being informed by the emerging clinical evidence about how best to treat the most critically ill patients, not least those with Covid-19.

As a result of the pandemic, NHS boards are currently operating under a state of emergency that will run until at least the end of next March. This is not business as usual. For obvious reasons, operational changes that are required to ensure that patients are safely and effectively treated during this time cannot be subject to the levels of public engagement and formal consultation that are ordinarily required. That said, members can be assured that, when the current state of emergency ends, any proposals for permanent changes of services would have to be considered in the normal way, which includes the process surrounding major service change and ministerial approval.

I assure local people that the IRH will continue to play a key role in the delivery of their healthcare services. For the avoidance of any doubt, both the Scottish Government and NHS Greater Glasgow and Clyde have been consistently clear about our commitment to the continued provision of comprehensive hospital, community and primary care services across Inverclyde, including those provided at the IRH.

Meeting closed at 18:39.

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