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Scottish Parliament

Thursday 17 December 2020

[The Presiding Officer opened the meeting at 12:00]

Trade (Disclosure of Information) Bill

The Presiding Officer (Ken Macintosh): We begin today's business with consideration of legislative consent motion S5M-23736, in the name of Ivan McKee, on the Trade (Disclosure of Information) Bill.

Motion moved,

That the Parliament agrees that the relevant provisions of the Trade (Disclosure of Information) Bill, introduced in the House of Commons on 15 December 2020, which relate to the disclosure of information by authorities other than Her Majesty's Revenue & Customs, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive functions of the Scottish Ministers, should be considered by the UK Parliament.—
[Ivan McKee.]

The Presiding Officer: Mr Finnie wishes to speak against the motion.

12:01

John Finnie (Highlands and Islands) (Green): The Scottish Greens opposed the Trade Bill, one of the United Kingdom Government's flagship Brexit bills, because it should have marked a change in approach, empowering the UK Parliament, the Scottish and Welsh Parliaments and the Northern Ireland Assembly and giving democratic oversight of all future trade arrangements. However, the bill does none of that and will mean that trade negotiations continue to escape parliamentary scrutiny.

This emergency bill was introduced on Tuesday and will be passed by Thursday afternoon—members of the Scottish Parliament have been given less than a day to read the legislative consent memorandum. There has been no committee scrutiny and only 20 minutes have been set aside for a debate.

None of those comments is a criticism of you, Presiding Officer, or the Scottish Government. However, the process is a pathetic parody of scrutiny and disrespects our parliamentary process.

Conservative MSPs regularly demand additional scrutiny measures—they are often right to do so and are often supported in that by the Scottish Greens. However, we can see now how a Conservative Government works in practice. The

Conservatives have brought about a crisis of their own making and have zero respect for the role of the Scottish Parliament in holding power to account.

The emergency bill was introduced to address a potential crisis of the UK Government's making. We are on a cliff edge because of the UK Government's failure to negotiate its supposedly over-ready deal. It is worth remembering that we are being asked to approve an LCM from a UK Government that will ignore legislative consent decisions, not only here but in Wales and Northern Ireland, and will force through its wrecking ball of an internal market bill. Yet again, the UK Government is confirming that it has nothing but contempt for Scottish democracy.

The Scottish Greens will not oppose the LCM today because it is needed, but it is important that those particular concerns are put on record.

12:03

The Minister for Trade, Investment and Innovation (Ivan McKee): The Minister of State for Trade Policy wrote to me yesterday to confirm that the UK Government had introduced the Trade (Disclosure of Information) Bill on 15 December to be debated in the House of Commons on 16 December before being sent to the House of Lords today to complete its parliamentary process.

The minister explained that the provisions of the bill, which allow for the collection and sharing of trade-related data, had been lifted from the Trade Bill, to which the Scottish Parliament gave its consent on 8 October. The Trade Bill is unlikely to receive royal assent this year, so the UK Government has introduced standalone legislation, replicating the existing data-sharing provisions, to give it the powers to manage any friction that arises at the end of the transition period. The scramble to make that last-minute change is just one more example of the unnecessary upheaval caused by the UK Government's disorderly approach to Brexit. On that point, I agree with Mr Finnie.

Despite all that, the Scottish Government legislative consent memorandum lodged this morning sets out why we are recommending that the Scottish Parliament gives legislative consent to those parts of the Trade (Disclosure of Information) Bill, where that is required.

The bill addresses matters on which we have sought previously through the Trade Bill to protect devolved interests; it allows the Scottish Government access to trade flow data, which will help us understand better what Scotland is exporting and allow us to better target support for sectors and businesses to meet our export growth

objectives, as outlined in our export growth plan “A Trading Nation”.

Unlike the Trade Bill, the Trade (Disclosure of Information) Bill provides some specific authority for the disclosure of trade-related information to the devolved authorities. The Scottish Government had asked that an amendment along those lines be made to the Trade Bill, and the UK Government has committed to amend the bill in that way before it completes its parliamentary process.

The Trade (Disclosure of Information) Bill is a temporary fix, and it contains a sunset clause to ensure that its provisions will expire when the data-sharing clauses in the Trade Bill come into force. The UK Government has made certain commitments in relation to how the data-sharing provisions in the Trade Bill will work in practice, and those commitments have been repeated in terms of this bill. The UK Government will consult the devolved Administrations before devolved bodies are added to the list of authorities that can share data, and it will share analysis of the data that is collected by Her Majesty’s Revenue and Customs.

I apologise that the LCM has not followed standard procedures, but that has not been of our choice or our doing. The bill offers the opportunity to resolve previous difficulties that we have had in obtaining trade information and with the accuracy of the UK modelling of Scottish data.

The Presiding Officer: Thank you, Mr McKee. Because of the urgent nature of the LCM, we will go straight to the question. The question is, that motion S5M-23736, in the name of Ivan McKee, on the Trade (Disclosure of Information) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions of the Trade (Disclosure of Information) Bill, introduced in the House of Commons on 15 December 2020, which relate to the disclosure of information by authorities other than Her Majesty’s Revenue & Customs, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive functions of the Scottish Ministers, should be considered by the UK Parliament.

The Presiding Officer: I suspend proceedings until 12:20, when we will resume with First Minister’s questions.

12:06

Meeting suspended.

12:20

On resuming—

First Minister’s Question Time

The Presiding Officer (Ken Macintosh): Before we start First Minister’s question time, I ask the First Minister to update us on the Covid situation.

The First Minister (Nicola Sturgeon): The total number of cases reported yesterday was 858—4.4 per cent of all tests reported—and the total number of positive cases is now 109,296. A total of 1,012 people are now in hospital, which is 19 fewer than yesterday, and 50 people are in intensive care, which is one more than yesterday. I regret to report that, in the past 24 hours, a further 30 deaths were registered of patients who first tested positive over the previous 28 days. The total number of people who have died under that daily measurement is now 4,203. Again, my condolences are with everyone who has lost a loved one.

Shortly, we will publish the latest estimate of the R number. We expect that that will show that the R number has risen slightly this week and is now around 1 again, as opposed to just below 1. That underlines the importance of having taken a cautious approach to this week’s levels review and why we have reinforced our guidance to people ahead of the Christmas period. I will briefly re-emphasise that guidance.

First, the safest way to spend Christmas this year is to stay within your own household and in your own home. My strong recommendation is that that is what people should, do if at all possible. Any interaction that you have with another household should, if possible, be outdoors. However, if you consider it essential to meet indoors with someone from another household—pragmatically, we recognise that some people might—you should limit both the duration and the numbers as much as possible.

The five-day period over Christmas is a limited window, not a period of time that we think that it is safe to meet for. My recommendation to anyone who considers it essential to form a bubble is to not meet up with people in it on any more than one day over the Christmas period and to keep the duration as short as possible. People should also limit numbers as far as possible. Three households and eight people is a maximum that tries to account for the fact that families come in all shapes and sizes—but the smaller, the better. Please make sure that you keep a safe distance from others, wash your hands and surfaces, and keep windows open. Lastly, we recommend against travel from high-prevalence to low-prevalence parts of the United Kingdom, and that

includes advising against travel between Scotland and tier 3 areas of England.

The five-day window of opportunity over Christmas is a pragmatic recognition that some people might not be willing to leave loved ones alone, and therefore it is an attempt to put some risk-reducing boundaries around that. I reiterate that our clear advice is that the safest way to spend Christmas this year is to stay within our own homes and households and to keep any interaction with other households outdoors. We now have a real prospect of vaccination within weeks for many and within months for most. All of us should therefore do all that we can to keep one another safe until then.

Finally, Christmas aside, I briefly remind everyone how important it is to stick to the general rules and guidance. The postcode checker on the Scottish Government's website is there if you do not know what the rules are in your area. Please do not visit one another's homes, stick to the rules on travel and follow FACTS: wear face coverings; avoid crowded places; clean hands and surfaces regularly; keep 2m distance from people in other households; and self-isolate and get tested if you have symptoms. As always, doing all those things is the best way of protecting ourselves, our communities and one another, and of protecting the national health service as we go further into the winter.

The Presiding Officer: Thank you. The First Minister will now take questions. I encourage all members who wish to ask a question to press their request-to-speak buttons.

Drug Deaths

1. **Ruth Davidson:** There were 1,264 drug deaths in a single year: a record number of deaths; the sixth year in a row of record numbers of deaths; double the loss of life from drug deaths in 2007; and three and a half times worse than in other parts of the United Kingdom. Scotland's recorded drug death rate is the worst not just in Europe but in large parts of the rest of the world.

However, just an hour from here, there are world-class rehab facilities—at Castle Craig—which help get people off drugs entirely. In 2002, those facilities admitted 257 national health service patients; by 2008, the number had dropped to 145. First Minister, what was the number in 2019?

The First Minister (Nicola Sturgeon): This is the first opportunity that I have had to address the issue in the chamber. The figures that were published this week are completely unacceptable and no one will hear political answers from me on the subject today. We have much to do to sort this

out—and sorting it out is our responsibility, and it is a serious responsibility.

Behind every one of the statistics is a human being whose life mattered: someone's son or daughter, mother or father, brother or sister. I say that I am sorry to every family who has suffered grief. Every person who dies an avoidable death because of drug abuse has been let down.

The fact is that the issue is difficult and complex, but that is not an excuse. There is much work under way, which is being led by the public health minister and the drug deaths task force. However, the figures tell us that we need to do more and quicker.

The next meeting of the task force will take place on 12 January. I will attend the meeting to take stock with the task force and to consider what further, immediate steps we need to take. I will make a statement in the chamber before the end of January after I have had that discussion, to set out what further steps we intend to take.

Undoubtedly, part of that will involve rehabilitation facilities. We have been doing mapping work—we asked a working group to do that. Between the private sector, the third sector and the public sector, there are 365 rehabilitation beds across the country. We are not satisfied that that is necessarily sufficient, or that they are being used sufficiently.

That is not the only issue; it is one of the issues that require to be considered properly and fully as we move forward to discharge that responsibility for sorting out something that is completely unacceptable. I think that all of us take that view.

Ruth Davidson: The First Minister's apology is welcome, but it does not answer my question about rehab beds. The answer is just five. Castle Craig could be saving more than 250 Scots a year—it has done it before—but instead, the number is five.

Another rehab facility said that 60 per cent of its patients were not from Scotland. We have leading facilities on our doorstep to tackle the exact crisis that we face. Those facilities are full, but they are not full of people from Scotland. They are treating people from Eindhoven and Amsterdam, while people in Possil and Dundee are dying.

Castle Craig and the other rehab facilities want to treat Scottish patients again. It is not their fault—the Government no longer funds places there. From the Scottish National Party's own report, it seems that universal credit funds more rehab beds than this Government does.

I know that rehab is no panacea, but it can work and it does save lives. Why did her Government stop funding those beds? How many lives has that decision cost?

The First Minister: Alcohol and drug partnerships across the country fund a number of beds in rehab facilities. However, I agree that there is a question about why that does not happen more.

As members are aware, we have had a working group gathering information on residential rehab beds. That information was published for the first time last week. It sets out the number of rehab beds across the country. Of the 365 total, around 100 are estimated to be taken up by those who are resident outwith Scotland. The majority of the beds are provided by the third sector; relatively few are provided by private or statutory providers.

That is one of the issues that the drug deaths task force is rightly considering, but it is not the only issue. There are a number of issues that it is right and proper that the task force continues to consider, and I will discuss all those issues with it on 12 January. I will come back to the chamber with a statement before the end of January to set out the further action that we intend to take.

Ruth Davidson: That was a really long way of saying it, but the First Minister is right to say that, today, to get rehab, people need to be really lucky and get charity help, or they need to be wealthy enough to afford it, because the Government provides only 13 per cent of rehab beds in Scotland.

The First Minister's own report says that people can be on a rehab waiting list for a year. Charities cannot do this on their own. Jericho house does not get a penny and warns that its position is unsustainable. It runs three facilities, including the only residential rehab centre in Dundee, which has now overtaken Glasgow as Europe's drug death capital. Not that it is much better in Glasgow. A year ago, the Mungo Foundation's cothrom eile rehab service closed for good. That service was in the First Minister's constituency.

In 2006, Nicola Sturgeon stood where I am—right on this spot—berating the then Scottish Government for cutting rehab funding. In fact, she went further, claiming that it showed why Scotland needed a new Government. If cuts to rehab funding were to be condemned in 2006, as they should have been, why does the First Minister think that they should be accepted now?

The First Minister: I said at the outset of our exchange that I am not going to give political answers. Many of the criticisms that are being made of the Government are valid and legitimate, and we have much work to do to ensure that we sort the problem of people dying avoidably from drugs. That is what we are already doing. The drug deaths task force has already undertaken many actions and recently published its forward work programme. It is not true to say that work is

not being done, because considerable work is being done. However, as I said in my original answer, I believe that there are hard questions for us to address about whether that work is sufficient and whether it is being done quickly enough. I am not going to shy away from that today. That is why I will meet the task force in January and consider with it the work that is being done and the additional steps that require to be taken. As I have already said, I will come back to the chamber before the end of January and set out the conclusions from that meeting.

Rehabilitation is, undoubtedly, a part of that, which is why work is already under way to look properly at rehabilitation services across the country: what is there just now, what use is being made of those services, what more we need to do in relation to funding and access to rehabilitation services, and what needs to be done in other ways. As everybody recognises, rehabilitation is important, but it is not a panacea. We need to focus on many other things to ensure that people are not dying avoidably from drugs. That responsibility lies with me and with this Government, and it is one that we take extremely seriously.

Ruth Davidson: I agree about the range of interventions that need to be made, but cutting the number of fully funded rehab beds in Scotland to just 22 is not one of them.

Let me give the context. The rest of the United Kingdom and half of Europe do not have consumption rooms, which I know is a preferred policy of the Government; they also do not have this number of deaths. Drug classifications are the same everywhere in these islands. The "Trainspotting" generation theory has been busted because the number of young people dying has doubled in the past two years. The thing that is different about Scotland, because it is entirely devolved, is drug treatment and rehabilitation, and that is what this Government has cut to the bone.

People on the front line—the charities that are working with drug users—are calling for an immediate extra £20 million in ring-fenced rehab funding, just to make up for the past 13 years of cuts. Will the First Minister commit to that today, so that next year we do not see a repeat of these horrendous figures, or possibly figures that are even worse?

The First Minister: I will commit to ensuring that the resources are available for the actions that we consider to be necessary. That will include rehabilitation services.

In every year since this Government took office, apart from two years when funding for drug and alcohol services did decline, funding has increased. That is not to say that funding has

increased sufficiently or adequately, and I accept that.

However, this is about more than money; it is about the approaches that we take and, at the heart of all this, it is about everybody accepting that none of us should accept a situation in which people who use drugs are allowed to fall through the cracks and we see the deaths that we have seen in recent years. They are real people whose lives matter, and I am absolutely determined that we take actions to fix this.

I do not make comparisons with what happens elsewhere because I think that the problem in Scotland is worse than it is elsewhere. We see that in the figures, and we have to take that seriously.

I am not going to shy away from this; I am not going to deflect the criticism. Instead, working with colleagues in Government, I am going to make sure that we do what we have already started to do through the task force, which is to take the actions that are about sorting this and making sure that we do not let down people who use drugs and instead prevent, intervene early and provide the services that allow people to get the help that they need when they need it. It is also about taking action around overdoses and deaths that are avoidable. Safe consumption rooms are not the only part of this, but they are a part of it, and it is important that we also focus on them as part of the package of measures that we need to take forward.

Drug Deaths

2. **Richard Leonard (Central Scotland) (Lab):**

I will begin with a quote:

“Since Scotland’s drug death day of shame just two days ago, another six people will have died in Scotland. Three will die today. We will not have a daily briefing about these three people or any news coverage. Don’t let them be forgotten about until they come out as a statistic.”

Those are the words this morning of drugs policy activist Peter Krykant. First Minister, what are you going to do to stop Scotland’s other pandemic taking more lives?

The First Minister (Nicola Sturgeon): I think that Peter Krykant is right when he says that. I have spent almost every day this year dealing with a pandemic and trying to work out how we stop people dying from that pandemic.

People are dying through the use of drugs and their lives matter every bit as much as those whose lives we are trying to save for other reasons. The drug deaths task force has already started a programme of work looking at early intervention, at how risk is reduced and at how overdoses can be avoided so that we stop people dying.

That work is under way and I do not think that it is right that we ignore that work; the task force is doing the right things. However, we have a serious question to ask about whether that work is enough and whether it is going quickly enough. I take the issue seriously. This is not comfortable; it should not be comfortable. I am not going to stand here and try to defend the indefensible. These lives matter too much and we owe it not only to those who have lost their lives but to those whose lives can still be saved to make sure that people like me do not engage in the usual political defensiveness but accept criticism where it is due and valid and redouble our efforts to do the right things to resolve this.

That is why I am determined that that is what we will do and, as I have said a couple of times already, I will come back to the chamber before the end of January, having spoken to the drug deaths task force, to set out the work that is being done and the additional, urgent and immediate steps that we intend to take.

Richard Leonard: The problem that the First Minister has got is that, back in 2007, the Scottish National Party manifesto said:

“There are no short term fixes to the problems of drug misuse in Scotland.”

Yet, here we are, over 13 years on, with the Minister for Public Health, Sport and Wellbeing still defending the Government’s record, telling the Parliament this week that there is no short cut. People do not expect short cuts, but they do expect the Government to do its job. Instead, they have seen cuts to funding for rehabilitation beds; cuts to the funding of alcohol and drug partnerships; cuts to third sector support and rehabilitation organisations; and an abject failure to integrate mental health and substance misuse and recovery services. In that way, the Government has ignored its own 2008 road to recovery strategy, the 2013 review of opiate replacement therapy and the 2019 Dundee drug commission report.

Why has the Government ignored those repeated warnings and presided over a 178 per cent increase in drug deaths since 2007?

The First Minister: I do not believe that it is right to say that we have ignored recommendations. However, setting out what the Government has done, as the public health minister did in the chamber earlier this week, does not mean that we are standing here saying that, therefore, there is not an issue on which we merit valid criticism and scrutiny and it does not mean that there is not much more that we need to do. That is what I am seeking to set out openly and candidly today.

In every one of the years since we took office, bar two—I am not saying that those two years are not important or have not had implications—the money being invested in drug and alcohol services has increased under this Government.

We need to continue that, and we need to look not just at the totality of investment but at what that money is supporting. Rehabilitation services are part of that, but they are not the only part. It is not right or fair to ignore the work that is already under way through the drug deaths task force—that important work is looking at the three areas of earlier intervention, reducing risk and avoiding deaths for people who are at risk of overdose.

That is important work, and it is work in the right direction, but it is equally valid to say that we need to accelerate the pace of that and we need to be very critical in looking at whether what we are doing is sufficient. I undertake to do that, and we will continue to do it. We will absolutely be clear about what requires to be done.

I hope that, as we go forward, although there will be legitimate criticism of the Government, we can build consensus on the steps that have to be taken to resolve the issue and sort what is an unacceptable situation, as I think we all agree.

Richard Leonard: None of the alcohol and drug partnerships that I speak to would recognise that description of what has happened to its funding over the past 13 years. I was in the chamber for the public health minister's statement to Parliament on Tuesday, and it was woeful. I heard him say:

"We cannot change things overnight".—[*Official Report*, 15 December 2020; c 45.]

However, the Government has been in power for 13 years. He also said on Tuesday that the Scottish Government is

"doing everything in its powers",

but the exercise of the Scottish Government's powers has made things worse, not better. There are now three and a half times more deaths from drugs in Scotland than there are anywhere else in the United Kingdom, with the same legislation. We have the worst record of drug deaths in Europe. Therefore, is it not time that the First Minister exercised her power, sorted it out, got a grip and fired her public health minister?

The First Minister: I absolutely accept that the issue is for this Government to sort out. I have not mentioned any other Government or made any reference to powers that lie elsewhere. I am focused on what we need to do and what we are determined to do. I have set out the action that I personally, as First Minister, will take in the weeks to come. I will come back to the chamber and set out clearly the outcome of that exercise.

As we have canvassed in the chamber many times before, there are issues over where legal responsibility lies for things such as safe consumption rooms. That is an important part of the issue, but it is not the only part. My starting point is what powers we have right now and what the responsibility of this Government is, and that is how I intend to proceed. We will continue to have discussions about the issues that lie outwith our powers, but the starting point is what this Government is responsible for, and it is this Government's responsibility to sort out the issue.

Heathrow Airport (Third Runway)

3. Patrick Harvie (Glasgow) (Green): Even during a pandemic, we need to recognise the far longer-term emergency that we face: the climate emergency. Yesterday, in the same week as the update to the Scottish Government's climate change plan was published, the Supreme Court breathed new life into the disastrous plan for a third runway at Heathrow airport, ruling that existing climate targets simply do not need to apply to those plans. That decision flies in the face of the warning last week from the United Nations that the world is on course for 3° of warming, which is a trajectory that would be devastating for the future of all of us.

Given that the Scottish Government signed a memorandum of understanding with Heathrow in 2016 backing that third runway—a move that would hugely increase flight numbers and emissions—can the First Minister explain why building that extra runway would be good for the climate, or is she finally ready to drop her support for that deeply irresponsible project?

The First Minister (Nicola Sturgeon): That is not a decision for the Scottish Government. I am clear that we have a responsibility to meet our climate change targets. Unlike some other Governments, we include aviation emissions. I agree that there is a big question over new runways at a time when all of us are focused on ensuring that we reduce emissions and reach net zero, in our case by 2045. We will focus on making sure that we meet those targets across transport and how we heat our homes and buildings, and through the continued work that we are doing on electricity, for example.

This week, we published the updated climate change plan, which sets out the scale of the Scottish Government's ambition and the very detailed steps that we will take to meet not just the ultimate 2045 target but the interim 2030 target.

Patrick Harvie: I certainly did not say that building the new runway at Heathrow is the Scottish Government's decision, but it has entered a memorandum of understanding with Heathrow and given its support to that project, and the

decision about whether to continue that support is one for the Scottish Government to make. It is not enough to say that there are questions about new runways; it is important for the Scottish Government and the First Minister to say what their policy is.

As for the climate plan update, there are elements in it to welcome, such as the free bus travel for young people that will start next year, the increased budget for low-carbon homes and the infrastructure for cycling and walking. All those policies are ones that the Scottish Government had to be persuaded to adopt by the Greens—they were brought forward by the Government only because of the pressure that we brought to bear.

As for the rest of the plan, the Scottish Trades Union Congress has described it as “More rhetoric than action” and WWF has called it “a missed opportunity”, with big decisions over the future of farming and energy standards for homes being dodged and delayed. In addition, of course, the Scottish Government says that it wants to cut traffic, but it continues to plough billions into new roads.

In the end, it is making tough decisions and taking action that counts. I am talking about decisions such as the decision by Norway to end fossil fuel exploration now and set a date for ending extraction, or the decision by New York to commit to a huge programme of divesting public money from the fossil fuel industry. Will the Scottish Government finally be ready to back such bold steps before the global climate conference meets in Glasgow less than a year from now?

The First Minister: We will look at all the different ways in which we can ensure that we meet those targets. Some of the countries and cities that Patrick Harvie talks about already look to Scotland and consider it to be a world leader in taking action in this area. We have gone further than most other countries in the world in reducing emissions so far.

I disagree with Patrick Harvie; I think that the scale of our ambition is demonstrated in the climate plan update, which sets out across all our areas of responsibility the very specific—and, in many cases, really tough—actions that we require to take, and we will continue to focus on that.

On Heathrow, I think that there is merit in the case that Patrick Harvie makes. The memorandum of understanding is about ensuring that, if the Heathrow expansion goes ahead—that is not our decision—Scotland will benefit economically from that. However, I think that the climate emergency and the responsibility that all of us have mean that those who are responsible for that decision must think very carefully about how

that fits in with the determination to reduce emissions and become net zero.

We will continue to take a leadership position on the issue up to COP26 in Glasgow in November, and beyond that, too. As I said, we are focused very much not just on the ultimate 2045 target but on the extremely stretching target that Parliament agreed for 2030. Meeting that target will involve our taking extremely tough decisions along the way, but given that Parliament has agreed the target, it is now incumbent on the Government, with Parliament, to make sure that we take the actions that enable us to meet it.

Drug Deaths

4. Willie Rennie (North East Fife) (LD): It should not have taken this year’s record deaths for the First Minister to step up and take the lead on drug use. We have had record numbers of deaths for years, and I am particularly angry about how that situation has developed. Since I first entered Parliament, I have raised the issue repeatedly—with the First Minister’s predecessor then with her—and I offered solutions. The truth is this: for a decade, while drug deaths were on the rise, the Scottish Government’s response was to cut the funds for drug rehabilitation. I think that the First Minister knows that that was a reckless decision.

The First Minister says that she has not pointed to any other Government or to any power that she wants the Scottish Parliament to have, but her Minister for Public Health, Sport and Wellbeing has been doing that all this week. We now need real leadership. It is a huge responsibility and we need a minister who is able to drive change. Whatever his talents, Joe FitzPatrick is not that person. I ask once again: will the First Minister appoint a new drugs minister?

The First Minister: I am going to work with the drugs minister to make sure that we collectively accept that responsibility and take the actions that are required to fix the problem.

The question of where powers lie is not irrelevant, but I have not focused on it today because I think that it is right and proper that I do not stand here and try to defend a position that is indefensible. Instead, I accept candidly that we have not done enough and that, although serious work is under way, we have to ask ourselves whether it is enough and whether it is going fast enough. I am not going to shy away from that and I am not going to try to defend things that I should not stand here and defend.

However, there are issues—in particular, to do with safe consumption rooms—about where power lies and whether, if power does not lie here, we are able to work together with the UK Government

to resolve some of the issues. They will not go away, so we will continue to take that forward.

I will continue to lead; I will lead the Government's efforts on the issue over the period ahead, but I will do that with the drugs minister and with the Government as a whole. The matter is our responsibility and I will not shy away from it. Instead, I will make sure that we put in place plans to fix the situation—not only for the sakes of those who have lost their lives, and of their families who grieve those lost lives, but for the sakes of those whose lives we can save. Every single one of those lives matters; that is the most important thing for all of us.

Willie Rennie: I just wish that the First Minister had taken that determined approach 13 years ago, when she first became health minister.

I want to follow up on schools. Yesterday, the First Minister tightened the advice for Christmas, but she is still opting for many schools to stay open until Christmas eve. Teachers are not on the vaccination list and are not on the routine testing list. Those who were on the shielding list have been told to keep on working in schools. Teachers are feeling forgotten.

I understand the need for pupils not to miss out on yet more education, but the fact is that little useful learning will be done in schools next week. If there is such learning to be done, it can be switched to online provision, because we are ready for that. We should be able to make arrangements for childcare, just as before.

Spreading the virus in schools next week could spread it to vulnerable relatives at Christmas. Will the First Minister think again and close schools next week?

The First Minister: Back in the summer, or as we came out of the summer, I recall questions from Willie Rennie that actually berated me for taking such decisions and leaving parents without childcare. The decisions have to be looked at in the round.

On schools, the most important thing is education of our young people. Given that they have already had a term out of school this year, our objective and our priority should be, as far as possible, to have children in school for the remainder of the term and to have them in school again after the Christmas period. That is important.

That does not mean that teachers are “forgotten” or that we do not listen to their concerns. It is because we listen to those concerns and want to address them that Public Health Scotland has done a lot of analysis of the impact of Covid on teachers and on pupils in our schools, the latest part of which was published

yesterday. That is also why we continue to liaise with teachers. The Deputy First Minister chairs the education recovery group, on which teachers are represented.

We will put public health first at every single stage. The coronavirus advisory group's sub-committee on education gives us the public health advice that allows us right now to judge that it is better for young people to be in school than to be out of school. However, we will continue to monitor that carefully. We are, again, in a period when Covid cases are rising, so the cautious and precautionary approach will continue to guide all that we do.

We should have, as our priority, maintenance of full-time in-school education. If that means that adults—the rest of us—have to make more sacrifices and be under more restrictions, I think that that is a price that we should all be willing to pay.

Biodiversity

5. Gillian Martin (Aberdeenshire East) (SNP): To ask the First Minister how the Scottish Government's statement of intent on biodiversity will support Scotland's transition to net zero. (S5F-04674)

The First Minister (Nicola Sturgeon): The science is clear that climate change and biodiversity loss are intrinsically linked. We are determined to tackle them on that basis.

Scotland is blessed with the opportunity for nature-based solutions to climate change, such as tree planting and peatland restoration, which remove carbon from the atmosphere and secure it in natural habitats. We have already committed investment of £250 million over 10 years to peatland restoration, and an additional £150 million over the next five years to forestry.

The latest policies and proposals are outlined in the recent “Securing a Green Recovery on a Path to Net Zero: Climate Change Plan 2018–2032—update”. As well as supporting biodiversity and tackling climate change, the investments can provide good green jobs and support the economic and social wellbeing of our community, which is central to a green recovery from Covid.

Gillian Martin: I want to quote the Committee on Climate Change's “Reducing emissions in Scotland: Progress Report to Parliament”, which was published in October. It says:

“the Scottish economy has decarbonised more quickly than the rest of the UK, and faster than any G20 economy since 2008. Emissions have fallen rapidly while the economy has grown.”

Clearly, that recognises the scale of Scotland's ambition and action.

The CCC has also noted that much progress has come from success in decarbonisation of electricity, and that we should focus on rapid action outside the electricity sector. Can the First Minister outline how the climate change plan update that was published yesterday does that?

The First Minister: I very much agree with the premise of the question and welcome the Committee on Climate Change's assessment of Scotland's progress to date. Of course, it is imperative that we continue to build on that progress.

"Securing a Green Recovery on a Path to Net Zero" updates the 2018 plan with more than 100 new policies, and boosts or accelerates more than 40 more across all sectors, including transport, land use and buildings. It includes investment of £120 million in zero-emissions buses, £50 million to transform vacant and derelict land, and £70 million to improve recycling infrastructure. Actions across the board are building on the success in the electricity sector and are seeking to replicate it across the other sectors. That will be challenging, but it is absolutely vital if we are to meet the net zero target by 2025.

Blood Donations

6. **Jamie Greene (West Scotland) (Con):** To ask the First Minister whether she will provide an update on the conditions regarding blood donations. (S5F-04667)

The First Minister (Nicola Sturgeon): I begin by saying how grateful I am—as, I am sure, we all are—to everyone who donates blood. We welcome the recent research recommendations on blood donation and have asked the Scottish National Blood Transfusion Service to make changes by next summer to the questions that blood donors are asked. The changes will ensure an up-to-date individualised assessment of risk of blood-borne virus infection. It will apply to all donors, and men who have had sex with another man in the past three months will no longer be automatically deferred from donating blood.

The changes mark the adoption of the recommendations of the UK-wide FAIR—for assessment of individualised risk—group. The advisory committee on the safety of blood, tissues and organs has confirmed that the proposals will not impact on safe supply of blood.

Jamie Greene: Donating blood is one of the simplest and purest ways to help others, yet for many years many men, even if they were healthy and willing, were barred from donating blood due to archaic rules, the roots of which were in the AIDS crisis in the 1980s. I was one of those men.

The new recommendations by the FAIR group represent a pragmatic and world-leading shift in

our approach to fairness and equality, which has been a long time coming. The change, which has been achieved thanks to relentless campaigning by organisations from Freedom To Donate to the Terrence Higgins Trust, and thanks to many cross-party efforts, is welcome.

Right now, the national health service desperately needs tens of thousands more male blood donors to counter a 25 per cent drop in donations in the past five years. Will the First Minister join me in making a much wider call to those who are willing and able to donate blood to come forward and do so, safe in the knowledge that they will be treated with dignity and respect?

The First Minister: I absolutely agree with Jamie Greene. I, too, take the opportunity to thank all the organisations that have campaigned for the change. It is a change that I have long had sympathy with, although as the Government, of course, we have to be advised on such decisions by the advisory committee on the safety of blood, tissues and organs. I am very pleased that the recommendations have been made and accepted.

I completely understand the sense of iniquity, unfairness and injustice that many men have felt over the years, when they have not been able to give blood. On making a wider call, the answer is yes—I appeal to everybody who is able to donate blood to come forward and do so. It is one of the things that not all but many of us can do to help to save lives, to keep people safe and to contribute to our collective sense of wellbeing—the importance of which we have all been reminded of in recent months.

University Students (Accommodation Costs)

7. **Pauline McNeill (Glasgow) (Lab):** To ask the First Minister how the Scottish Government plans to help students who will lose out financially on their accommodation costs as a result of the staggered return to universities. (S5F-04672)

The First Minister (Nicola Sturgeon): The Scottish Government has no direct role in the provision of student accommodation, whether it is managed by universities or private sector organisations. However, we expect universities and accommodation providers to support students to come to an appropriate resolution of issues around tenancy agreements. Universities and providers must make those judgments in contact and consultation with their student community. Universities and providers should treat students sympathetically and take their circumstances into account so that they are not disadvantaged. We will continue to discuss those issues with Universities Scotland and the National Union of Students Scotland.

Any student who faces additional hardship as a result of Covid should apply for financial support from the higher education discretionary funds. Earlier this year, we provided emergency funding of £5 million for students impacted by the pandemic, and we brought forward access to more than £11 million of higher education discretionary funds.

Pauline McNeill: I welcome that answer from the First Minister. The First Minister will be aware that the National Union of Students has said that students should be given additional financial support to pay for accommodation that they are not using when they face a staggered return to university next term. Many students were encouraged back to university only to find that all their classes were online.

Today, I launched Scottish Labour's housing charter, which includes the right to form a tenants union. In principle, students should be protected from exploitative practices during the Covid pandemic. I am sure that the First Minister agrees with that sentiment, but can she continue to assure Parliament that she will keep in contact with universities when students are returning to campus to take up university accommodation, to ensure that students benefit from face-to-face teaching and are not in their accommodation unnecessarily, and that they get the financial support that they need for their rents?

The First Minister: Yes, we will do all of that. I agree that students should be protected from any exploitative practices, not just in principle but in practice. With only very limited exceptions, undergraduate students will restart their studies at home at the start of next term and return to term-time accommodation only when they are asked to do so by their university. It is therefore really important, as I said earlier, that universities and accommodation providers discuss with students how they will not be disadvantaged. We will also discuss with Universities Scotland and NUS Scotland any support that the Scottish Government can provide for that.

I have already set out the discretionary funding that is available for students who find themselves in financial hardship. Students are among the many groups in society that have been impacted severely by Covid, and it is absolutely right and proper that we do everything that we can to support them.

The Presiding Officer: We turn to supplementary questions. Clare Adamson will be followed by Finlay Carson.

Erasmus+

Clare Adamson (Motherwell and Wishaw) (SNP): The Conservative Government has failed

to broker access to the Erasmus+ programme for Scotland. That programme was instigated by Winnie Ewing, and it has, of course, been life enhancing for generations of Scots students and students from the rest of the United Kingdom and across Europe. Does the First Minister agree that that failure is an act of cultural vandalism by a floundering Conservative Government?

The First Minister (Nicola Sturgeon): We should all be really proud of Erasmus+. Winnie Ewing was, of course, the driving force behind the programme and, as Clare Adamson said, many young people not only in Scotland but across the UK and Europe have benefited in many ways from participation in it. It has also delivered real economic benefits to Scotland. Its loss is therefore deeply regrettable.

It is unfortunate that the Conservatives did not prioritise securing the future of Erasmus+. Obviously, we want to consider ways in which we can keep its benefits. What has happened is one of the many reasons why people throughout Scotland deeply regret the Brexit that has been foisted on us by the Conservative Government.

The Presiding Officer: Finlay Carson cannot join us remotely, so Miles Briggs will ask the next question.

New Eye Hospital (NHS Lothian)

Miles Briggs (Lothian) (Con): Yesterday, NHS Lothian informed local elected representatives that Scottish National Party ministers had informed it that they were withdrawing funding for the new eye hospital for Lothian. Plans for a replacement for the 50-year-old Princess Alexandra eye pavilion were at an advanced stage; indeed, contracts were awarded some two years ago. Will the First Minister personally intervene today and restore that funding for my constituents across Lothian?

The First Minister (Nicola Sturgeon): I am not sure that the situation is quite as characterised, but I undertake to look into it further and correspond with the member. As is the case for Governments across the United Kingdom, funding is constrained and we have to make difficult choices. Making sure that we have fit-for-purpose, state-of-the-art health facilities in every part of the country is a priority. However, I will come back to the member in due course.

Retail Staff (Covid Vaccinations)

Elaine Smith (Central Scotland) (Lab): I have been made aware by a constituent that a major retail company is refusing to give eligible front-line staff time off for their Covid vaccine appointments. I will not publicly name the company, because the staff are worried about getting into trouble by

alerting us to that. What message would the First Minister send to that company and to any other company that puts its staff and wider society at risk by such unreasonable behaviour?

The First Minister (Nicola Sturgeon): The vast majority of employers have acted responsibly to help to protect their workers against the risk of Covid, and facilitating the ability of workers to get vaccinated is part of that. I send a very clear message to any company that does not behave in that responsible way that they should rectify that and put concern for their workers and fair work more generally at the heart of everything that they do.

I appreciate why the member does not want to name the company publicly, but if she wants to let me know privately which company it is, I will see whether there is any dialogue that we can have to rectify the situation.

Funded Childcare

Fulton MacGregor (Coatbridge and Chryston) (SNP): Will the First Minister provide an update on changes to legislation that would entitle all four-year-old children to access funded childcare when their parents choose to defer their place for a year? Will she join me in thanking the give them time campaign, particularly its founding members Patricia Anderson and Diane Delaney—the latter is from Stepps in my constituency—for their tireless work in raising awareness of the issue and fighting for change?

The First Minister (Nicola Sturgeon): I join Fulton MacGregor in thanking the give them time campaign for its continued engagement on the matter. I know that the Minister for Children and Young People has met members of the campaign on a number of occasions, most recently on 3 December, and has found those discussions extremely helpful.

As members are aware, we laid an order before the Parliament on 7 December to extend the obligation on education authorities to provide an additional year of funded early learning and childcare to all children who defer their primary 1 start from August 2023. Yesterday, we announced that five local authorities will pilot implementation of the entitlement during 2021-22. Those pilots will help us to assess the likely uptake of the extended entitlement and will inform wider delivery.

Secondary School Grades Assessment (West Lothian)

Gordon Lindhurst (Lothian) (Con): I have been contacted by and on behalf of secondary 6 pupils in West Lothian. Their understanding is that they will be asked to sit a Scottish Qualifications Authority paper as part of their grades assessment

at a different time from other schools in their area. Their question, which I put to the First Minister, is this: how would that be an acceptable, equal or fair way of assessing them for their grades?

The First Minister (Nicola Sturgeon): Schools have to judge and assess pupils' performance, and they will use different ways to do that. The way that the member has set out may well be a way that some schools decide to use. I am happy to look into the particular issue that the member has raised and to come back to him in writing if there are issues that we want to address. However, we need to recognise that in an environment where, regrettably, exams cannot take place as normal, schools will use other ways throughout the year to assess their pupils' performance. That is right and proper.

Drive-in Entertainment (Closures)

Jackie Baillie (Dumbarton) (Lab): From this weekend and over Christmas, drive-in movies and drive-in pantos were planned for Loch Lomond Shores in West Dumbartonshire and across many areas in Scotland. However, those have had to be cancelled, with the potential loss of hundreds of creative sector jobs. Many families in my constituency are disappointed as they thought that that was a safe way to have a little enjoyment at Christmas. Can the First Minister advise why those events are not allowed, when apparently they are allowed in every other country in the United Kingdom?

The First Minister (Nicola Sturgeon): We are trying to take as many precautions as possible to stop the increase in Covid cases, and we look carefully at all those things. Drive-through events are one of the class of events that we look at carefully—I can understand why people think that they are safe. However, we are advising against car sharing at the moment because we know that the enclosed environment in cars can pose a risk of transmission. Drive-through events also have to have things such as toilet facilities, and there is often catering on those sites.

The combination of those factors has led us, regrettably, to the conclusion that it is not safe in the current circumstances for those events to go ahead. I know that that is disappointing. Everybody is bitterly disappointed that this Christmas cannot be celebrated in the normal ways and I am really sorry for that, particularly for children who cannot do all the things that children love doing at this time of year, from going to Santa's grottoes, to pantomimes and all sorts of things. We hope that by this time next year, everybody will be taking part in those activities much more normally, but I ask people, no matter how disappointed they are, to be understanding of

the reasons why those decisions are, unfortunately, essential.

Climate Change Plan Update

Angus MacDonald (Falkirk East) (SNP): I am sure that the First Minister will agree that the climate change plan update that was published yesterday and discussed earlier is an extremely ambitious action plan. It is clear that Scotland is doing everything that it can, but we are inevitably held back by the limits of devolution. What action does the United Kingdom Government need to take now to ensure that Scotland is not held back from meeting our world-leading target and ending our contribution to climate change?

The First Minister (Nicola Sturgeon): The climate change plan and the ambitions in it are world leading, as I have said already, but it is our responsibility—all of us, across the Parliament—to make sure that we are taking the actions to meet the targets in that plan. There are, of course, some powers that do not lie with us. They remain reserved to the UK Government and, therefore, we need to work with the UK Government and look to it to also take action on a number of areas. Those would include, for example, reforming the contract for difference arrangements to support wave and tidal generation and local supply chains; supporting new technologies such as carbon capture and hydrogen; and decarbonising the gas grid. The Scottish Government cannot do those things on its own and we rely on the UK Government also living up to its obligations. We hope very much that it will do exactly that.

North Lanarkshire Councillors (Pay Rise)

Graham Simpson (Central Scotland) (Con): Councillors in Labour-run North Lanarkshire have recently voted to give senior officers an average pay rise of £10,000. That leaves a yawning gap between them and the next best paid of £30,000, which is a salary that many of the people who have lost their jobs during the Covid crisis would love to have. Does the First Minister agree that giving council bosses eye-watering five-figure pay rises at this time is wholly inappropriate?

The First Minister (Nicola Sturgeon): I am not sure that support for the very highest income earners in society is the strongest ground for the Tories to be on, but we will leave that to one side. I am not aware of the particular arrangements. That is a matter for the local authority. Those of us in public sector positions, particularly at the higher end of the income scale, have a real obligation to show constraint and responsibility in these difficult times. The Scottish Government has had a pay freeze in place since—I think—2008, and that will continue. That arrangement will apply next year for members of the Scottish Parliament, as well. I

would expect all councils and bodies across the public sector to continue to have those principles in mind. We all want to make sure that we help people at the bottom end of the income scale as much as possible, but I will not comment any further on a decision that is for the council in question, not the Scottish Government.

Racist Incidents (Police Resourcing)

Sarah Boyack (Lothian) (Lab): Is the First Minister concerned about the appalling racist attack in Edinburgh last Friday and will she say what work is being done to ensure that the police are resourced to address racist incidents during the pandemic? My constituents are now extremely concerned about their personal safety.

The First Minister (Nicola Sturgeon): I condemn in the strongest possible terms any racist abuse or attack, including the one in Edinburgh. I know how seriously the police take crimes of a racist nature. Obviously, how they deal with individual incidents is an operational matter for the police. We have a responsibility, which we discharge, to make sure that the police are properly resourced and there are more police officers on our streets now, as a result of the actions that this Government has taken. It is really important that all of us stand firm, shoulder to shoulder, in complete solidarity against any racist abuse, crimes or attacks. That is not who we are and we should never, ever, show any tolerance whatsoever for it.

Northern Ireland Protocol

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): At a meeting of the Culture, Tourism, Europe and External Affairs Committee earlier this week, I asked Michael Gove whether the Northern Ireland protocol would disadvantage the Scottish economy, as Northern Ireland's being tariff free while trade from Scotland would attract tariffs would mean that there would not be a level playing field. Of course, he did not give a straight answer—just prevarication. However, I know that the First Minister will give me such an answer. What will be the impact of the Northern Ireland protocol on the Scottish economy?

The First Minister (Nicola Sturgeon): Of course it will disadvantage the Scottish economy. I do not grudge Northern Ireland the arrangements that it will have; I am pleased about those. I hope that we will have a situation whereby Northern Ireland can continue to benefit from some kind of relationship with the single market. Of course, I very much hope that a hard border between the north and south of Ireland can be avoided.

However, any “best of both worlds” arrangements for Northern Ireland will have an

impact on Scotland. We will be competing for inward investment in many situations, so I am really concerned about the impact of that on the Scottish economy, just as I am deeply concerned about the overall impact of Brexit. Let us never forget that Brexit is being done to Scotland against our will. The sooner that Scotland is not forced down paths on which we do not want to go and instead is in charge of its own future, the better for us all.

Air Discount Scheme

Liam McArthur (Orkney Islands) (LD): Since my former colleague Tavish Scott first introduced the air discount scheme in 2006, it has benefited thousands of people who live and work in communities across the Highlands and Islands. Accessing our lifeline air services remains costly, but much less so as a result of ADS support. To its credit, the Scottish Government has continued that support, albeit that it has been cut for those who travel for work. However, the current scheme is due to end in a fortnight. As yet, there has been no confirmation from the Government that ADS will continue beyond 31 December. Can the First Minister therefore assure my constituents, and others who rely on such support to enable them to access lifeline air services, that ADS will indeed continue beyond the end of this year?

The First Minister (Nicola Sturgeon): We have supported that vital scheme, as the member has noted, and we continue to recognise its importance. I will ensure that I get an answer on the detail of the timing of any development to the member later today. However, the Scottish Government's support for the scheme is well known and continuing.

Tay Cities Deal

Shona Robison (Dundee City East) (SNP): Will the First Minister join me in welcoming today's signing of the Tay cities deal? Does she agree that the deal, which includes £20 million-worth of investment by the Scottish Government in a regional skills and employability development programme, will be crucial in helping Dundee's economic recovery from the impacts of Covid-19?

The First Minister (Nicola Sturgeon): I am pleased to say that the Cabinet Secretary for Transport, Infrastructure and Connectivity this morning signed the Tay cities deal, thereby confirming our £150 million investment in the region. That is vital investment at a time of unprecedented need and will enable the deal to get under way and start to deliver real benefits for the region's people and businesses.

The commitments made with our partners will help to deliver sustainable, inclusive growth in the region. Our partners anticipate that the deal has

the potential to secure 6,000 jobs and to lever more than £400 million-worth of investment into the region, which I think everyone would agree will make a crucial contribution to economic recovery and renewal in the years to come.

Health Boards (Resources)

John Scott (Ayr) (Con): Earlier, the First Minister and Ruth Davidson spoke about two epidemics—the first of Covid-19 and the second of the drug deaths that have happened on the First Minister's watch. I want to ask about a third epidemic, which consists of people in Scotland dying because of the lack of routine scanning and treatment. For example, there are cancers that are treatable if diagnosed early, but that is no longer happening. Does the First Minister also regret that? What further resources is she giving health boards to help to resolve that third epidemic, which is causing too many unnecessary deaths now and will continue to do so in the future?

The First Minister (Nicola Sturgeon): There has been an impact on other health treatments in Scotland—as there has been across the United Kingdom and indeed across many other countries—because of the pandemic crisis that we have faced. That is deeply regrettable for us all, but over the past few months it has been unavoidable.

The Scottish Government is working to recover such services as quickly as possible. The Cabinet Secretary for Health and Sport has already set out much of the detail on services in general, but with particular reference to cancer services. The cancer recovery plan has been published and that work is being progressed. We continue to have engagement and dialogue with health boards on the subject, as we do on all matters, including appropriate resourcing. We are investing record sums in our national health service and that will continue. The importance of that investment, as we recover from the impacts of Covid, will be greater in the months and years to come.

Drug and Alcohol Services (Budget Cuts)

Neil Findlay (Lothian) (Lab): This week, well-respected researchers at the University of the West of Scotland identified that there has been a 55 per cent cut in drug and alcohol service budgets since 2007. Will the First Minister reinstate every single penny, plus interest, of that money? Will she stop prosecuting a man with a van who is saving lives? I ask this seriously: will she please listen to the voices of members of the Scottish Parliament who believe that we need someone who is competent and capable of driving change at ministerial level?

The First Minister (Nicola Sturgeon): I accept, as I have done previously, that there are questions

about the adequacy of the funding that we are dedicating to drugs services in general, and to rehabilitation services in particular. As a matter of fact, in 2008, the funding for drugs and alcohol services was £71 million in real terms and this year's funding is £95 million. That funding has increased in most of the years in between, apart from the years that I spoke about earlier. However, I accept the general point that we have a duty to ensure that the funding supports the steps that we require to take.

I accept the genuine intent and sentiment behind Neil Findlay's question on prosecution, but he knows that I do not prosecute people. Prosecution decisions are, rightly, independent from ministers. On the provision of safe consumption facilities, I understand the desire of the individual referred to by Neil Findlay and I share that desire to see safe facilities. There is a debate about how we best do that in Scotland. I know that Neil Findlay is aware of that debate.

On the responsibility of the Government, I have made it clear that many, although perhaps not all, of the criticisms being levelled at the Government are legitimate. It is for me to take that squarely on the chin. It is my responsibility as First Minister, working with my team of ministers, to ensure that we support the task force in its work. We must ensure that the right steps are being taken and that there is sufficient pace behind those steps to fix a problem that we all believe to be unacceptable.

13:22

Meeting suspended.

14:30

On resuming—

Portfolio Question Time

Economy, Fair Work and Culture

Economy (Dumfriesshire)

1. Oliver Mundell (Dumfriesshire) (Con): To ask the Scottish Government what steps it is taking to accelerate projects that will support the economy in Dumfriesshire. (S5O-04865)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): We are investing £85 million in the borderlands deal to support projects that will accelerate economic growth across Dumfries and Galloway, and I am pleased that the United Kingdom Government has finally agreed to match our pledge to fund the borderlands deal over a 10-year period. We have established South of Scotland Enterprise to accelerate economic growth in Dumfriesshire and across the south, backed by an operating budget of £27.3 million, and we have committed more than £3.1 million to the Dumfriesshire area specifically for projects that are supported through the South of Scotland Economic Partnership. We continue to work with local partners to progress all projects as swiftly as possible.

Oliver Mundell: I really appreciate that answer. On the borderlands deal, will the cabinet secretary ensure that projects such as the proposals for Chapelcross in my constituency and the dairy research hub at the Barony campus are prioritised? Will she impress on her Cabinet colleagues that improving connectivity, particularly by improving the A75 and providing a number of new stations, is important in ensuring that the region's economy grows?

Fiona Hyslop: The member has identified a number of areas that are being looked at in different ways by some of my colleagues. I am sure that they can update him when they are able to do so.

In relation to the Chapelcross borderlands project, I understand that a business case was requested by local partners to ensure that there is a clear strategic vision and the necessary industry buy-in to secure the required private sector investment to ensure the site's long-term sustainability. Clearly, the borderlands investment is predicated on investments by the UK and Scottish Governments. The project is led locally, but with a particular eye to the fact that it should generate additionality through private investment. The initial outline business case was received in late November and is being looked at now.

Willie Coffey (Kilmarnock and Irvine Valley)

(SNP): It is important that our economic recovery is also a green recovery. Will the cabinet secretary provide an update on the steps that are being taken to ensure that Scottish Government investment delivers environmental returns?

Fiona Hyslop: A green recovery is part of the focus. That was the advice from the advisory group on economic recovery. Our programme for government sets out our investment in our green new deal, which includes a ground-breaking sum of £1.6 billion to transform how we heat our homes, £60 million to help decarbonise industry and £100 million for a green jobs fund. In our updated climate change plan, we announced another £400 million of low-carbon fund commitments, which will continue to drive a green recovery. The infrastructure investment plan will lay out different opportunities and plans to boost inclusive growth, build sustainable places and tackle the climate and nature crises.

Burntisland Fabrications

2. Dr Alasdair Allan (Na h-Eileanan an Iar)
(SNP): To ask the Scottish Government whether it will provide an update on BiFab. (S5O-04866)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): As the member will be aware, I gave evidence to the Economy, Energy and Fair Work Committee on Tuesday 15 December and made a statement on BiFab in the chamber on Wednesday 16 December.

Deloitte was appointed as the administrator on Monday 14 December. I have agreed to provide funding in the short term, if there are insufficient funds in the business to remove the immediate threat of redundancies while a sale of business process is pursued. I encourage all interested parties who share our objective of a strong future for the workforce and the sites to contact the administrator.

Dr Allan: I thank the cabinet secretary for her reply and for the helpful update that she gave to Parliament yesterday. As she will be aware, for the communities that I represent, the jobs are more important than the identity of the company. From my point of view, it is the jobs that are brought into Arnish that matter.

In seeking to be open to other potential uses for the yard, is the Scottish Government considering the potential for leasing arrangements that might enable multiple companies to use the yard?

Fiona Hyslop: That is clearly an issue for the administrator in the first instance, but we are making sure it is aware of the different proposals and ideas and, indeed, of the local aspects,

whether in Fife or the member's constituency, where the Arnish site lies.

We agree with Highlands and Islands Enterprise that a truly successful outcome for Arnish must support year-round economic activity. We are also making it clear to the BiFab administrator that the priority is sustainable long-term employment that enables the peaks and the troughs to be balanced. We want prospective tenants—whether one company or, as Dr Allan suggested, multiple companies—to demonstrate their ability to provide a pipeline of activity. We recognise that Arnish is a strategic asset to the Highlands and Islands, so we would want to ensure that, in addition to use being made of the existing fabrication shops, future tenants could benefit from forming a complementary part of the emerging blue economy cluster on the wider site.

We are mindful, too, of the wide range of economic opportunities that the Stornoway deepwater terminal—the £49 million package for which the Cabinet Secretary for Rural Economy and Tourism announced last week—can provide and are keen that the Arnish yard can benefit from that investment.

The Deputy Presiding Officer (Christine Grahame): Claire Baker has a supplementary.

Claire Baker (Mid Scotland and Fife) (Lab): Yesterday, the cabinet secretary said that the chances of the Neart na Gaoithe project coming to Scotland are “receding”. What can the Government do to support Saipem in awarding the NnG contract to the Fife yard, or does the cabinet secretary believe that time has run out for the jobs that were promised to Fife?

Fiona Hyslop: I certainly do not believe that. The opportunity is there for the NnG contract to be delivered in Scotland, but it is not in my gift to make that happen. That is Saipem's decision, and it will look at competitive tendering. I pay tribute to EDF, which was encouraging of the NnG project—or a small part of it, at least—being delivered in Scotland. If there is a company that can deliver the project under an agreement with whoever takes over the yard, or if the company itself can take over the yard, it is still possible that the project can be delivered, but that will be a challenge, so I think that we should manage expectations.

That is why, on a number of occasions, I have impressed on Saipem our belief that the project can and should be developed. There is an element of self-interest in that, particularly given that more procurement will require to be delivered by supply chains in Scotland in the future, with ScotWind and with the statement of procurement principles that we have established. As I set out on Tuesday and again yesterday, if the United Kingdom Government can change the contracts for

difference scheme, that will provide the impetus and the incentive for companies such as Saipem, and other developers, to deliver work to the yard. I think that that is one of the levers that would mean that it would be in Saipem's self-interest, and that of other players, to deliver the NnG contract. However, we must be realistic—that will be a challenge.

Newly Self-employed People (Support)

3. Fulton MacGregor (Coatbridge and Chryston) (SNP): To ask the Scottish Government what financial support is available for newly self-employed people who have not been able to access other forms of support during the Covid-19 pandemic. (S5O-04867)

The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop): I am very aware of the concern about those who have had difficulty in accessing financial support, particularly the newly self-employed. That is a group for whom the financial challenges are particularly acute because of the fact that they are excluded from support through the United Kingdom Government's self-employment income support scheme.

In recognition of that, we acted swiftly to support the newly self-employed back in April by introducing the newly self-employed hardship fund, which provided £2,000 grants to more than 5,500 people. In response to the on-going disruption caused by the Covid-19 restrictions, we have also committed to providing an additional £15 million to run a second round of the newly self-employed hardship fund, which will build on the first iteration of the fund by providing further £2,000 grants. We are working closely with local authorities to deliver the second round of the fund, and further details will be made available in the coming days.

Fulton MacGregor: I very much welcome the additional discretionary funding that has been put in place.

Because of the UK Government's actions, which the cabinet secretary mentioned, some constituents who have contacted me—they include taxi drivers—have had next to no financial support since the pandemic started. When does the Government expect that people will be able to apply for and access the discretionary funding? Can the cabinet secretary clarify whether taxi drivers will be able to apply for that funding or whether they will have access only to the separate funding stream?

Fiona Hyslop: Originally, the discretionary fund that has been made available to local authorities was seen as a possible source of funding for taxi drivers. Since then, we have identified an

additional £19 million specifically for taxi and private hire vehicle drivers. That fund will be available in January. The focus of the local authorities fund is specifically on those who have had no additional financial support. Some taxi drivers will have been able to benefit from either the furlough scheme, if they are employed, or the self-employed scheme. However, we are very cognisant of the fixed-cost issues that taxi drivers face, and that is why additional funding of £19 million has been identified to support them.

Covid-19 Pandemic (Engagement with Business Stakeholders)

4. Ruth Maguire (Cunninghame South) (SNP): To ask the Scottish Government what steps it is taking to engage with business stakeholders to inform its response to the economic impact of the Covid-19 pandemic. (S5O-04868)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Ministers have engaged extensively with business leaders, businesses and their representative organisations on the response to the Covid emergency and its impact on the economy. We have engaged with businesses or their representative organisations on more than 780 occasions since the beginning of March 2020. That includes engagement with the main business organisations, including the Confederation of British Industry, the Federation of Small Businesses, the Institute of Directors, Scottish Chambers of Commerce, the Scottish Council for Development and Industry, Scottish Financial Enterprise, the Scottish Retail Consortium, the Scottish Tourism Alliance, Scotland Food & Drink and a range of other industry groups.

We continue to engage and work with businesses to respond to the Covid emergency and its impact on the economy.

Ruth Maguire: Like many parts of our economy, the manufacturing sector has been hit hard by the pandemic. Will the minister provide an update on the steps that the Scottish Government is taking with stakeholders as it works to secure a sustainable future for the sector?

Jamie Hepburn: I acknowledge that the pandemic has been a very difficult time for the manufacturing sector in Scotland, in common with many sectors. We have worked closely with it and its workforce to ensure that it was able to operate safely throughout the pandemic period.

On recovery, the Scottish Government published "Making Scotland's Future: A Recovery Plan for Manufacturing" for consultation on 4 December. The draft plan was developed in partnership, again, with representatives from industry, along with representatives of trade

unions, the public sector and academia. Its launch creates an opportunity for wider stakeholder input. I encourage Ms Maguire and others who have an interest to take part in the consultation.

Give Key Workers a Break Campaign

5. Monica Lennon (Central Scotland) (Lab): I refer members to my entry in the register of members' interests; I am a member of the GMB union.

To ask the Scottish Government what its response is to the GMB Scotland campaign, give key workers a break. (S5O-04869)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Our shop workers have done a fantastic job in difficult times throughout the Covid pandemic. In that regard, they should be recognised by all of us and, of course, by their employers. The employers should recognise and reward staff suitably for their efforts throughout this most difficult of years; the Scottish Government encourages them to do so.

We are sympathetic to the GMB campaign so I urge retailers to consider the necessity of opening on boxing day and new year's day. I have written to all the party spokespeople to see whether we can reach a united position on that, and I will meet the Scottish Retail Consortium on Monday.

Monica Lennon: I am grateful to the minister for his response. I welcome the fact that Asda has responded positively to the campaign and will give workers a day off on boxing day—although it is, of course, disappointing that they will have to use their annual leave for that.

Last week, in response to my colleague Neil Bibby, the First Minister said that she would look at the request to use powers under the Christmas Day and New Year's Day Trading (Scotland) Act 2007 to give key workers in supermarkets and large shops the day off on new year's day. Can the minister provide an update on whether the Scottish Government will go ahead with that and give key workers a much-deserved day off? Will he also comment on the Government's position in relation to other large supermarkets and shops that have not followed Asda's lead? Will the Government say more about that?

Jamie Hepburn: On the last point, I hope that Ms Lennon heard what I had to say in response to her first question. I urge retailers to look very closely at whether it is necessary to open on those days, particularly in the light of the impact that this year has had on their workforce.

On the proposition of utilising the Christmas Day and New Year's Day Trading (Scotland) Act 2007, I spoke with Mr Bibby and the GMB about that last week and corresponded with the Public Petitions

Committee about it this morning. Utilising the 2007 act would be difficult. I have to be candid about that. Not only is there a requirement for consultation before the laying of any order to effect such a closure on new year's day, but it is necessary to publish an economic impact assessment and an assessment of the impact on family. In addition, such an order must be laid before Parliament a minimum of 40 days before new year's day. I hope that Ms Lennon can see the difficulties that would be involved in utilising that particular piece of legislation.

As I set out in my initial answer, I am seeking to speak with all parties to see whether we can establish a way forward.

Covid-19 Pandemic (Support for Businesses)

6. James Kelly (Glasgow) (Lab): To ask the Scottish Government what action it is taking to support businesses that are struggling to operate during the Covid-19 pandemic. (S5O-04870)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Since the start of the crisis, we have invested more than £2.3 billion to support businesses across Scotland. We have allocated a further £570 million of support for business and the wider economy, which includes funding for the strategic framework business fund and the recently announced £185 million targeted support to help impacted businesses and sectors through the winter. The range of business help and support that is available can be found at the findbusinesssupport.gov.scot website.

James Kelly: The reality is that the hospitality industry in Glasgow is on its knees and is suffering from the impact of the pandemic. Some businesses have not been open since March. The reality is that jobs will be lost and businesses will close. What direct discussions have taken place with representatives of the hospitality industry on support, and to consider limited lifting of some restrictions in order to avoid a wholesale loss of jobs?

Jamie Hepburn: I do not know whether Mr Kelly was listening to my answer to Ruth Maguire, in which I set out that ministers have engaged with business organisations on more than 780 occasions since March. I assure Mr Kelly that a significant amount of that activity has been dialogue with the hospitality industry, in particular. My colleague Fergus Ewing—the Cabinet Secretary for Rural Economy and Tourism—and I have led in many of those discussions. We are very cognisant of the challenges that the sector faces and will continue to meet the sector to discuss what more can be done. Of course, as was announced just last week, additional support for the sector is being deployed. We will continue

to look at what more we can do as we make our way through the pandemic.

Maurice Golden (West Scotland) (Con): Information that has been released on support grant applications, which closed in July, shows that 15,000 applications are still outstanding. With that scale of backlog, does the minister have confidence that local authorities will be able to cope with distributing the recently announced new support schemes, in order to save businesses that are struggling to survive?

The Deputy Presiding Officer: Minister, did you manage to hear that?

Jamie Hepburn: Yes, I did, and the answer is yes, I do.

The Deputy Presiding Officer: He obviously heard it.

Question 7 has not been lodged.

Covid-19 Pandemic (Supermarkets)

8. **Keith Brown (Clackmannanshire and Dunblane) (SNP):** To ask the Scottish Government what discussions it has had with the supermarket sector regarding the impact of the Covid-19 pandemic. (S5O-04872)

The Minister for Business, Fair Work and Skills (Jamie Hepburn): The Scottish ministers and Scottish Government officials have engaged regularly with supermarkets and other food retailers on a range of issues throughout the Covid-19 pandemic. In particular, we have worked closely with them to ensure continuity of supply to Scotland's islands and to provide priority delivery slots to people who were shielding during the lockdown.

Food Standards Scotland has produced guidance for all food businesses, including retailers, that supports risk assessment and risk management to help them to operate safely. That includes a self-assessment tool for food businesses to use to ensure that implementation of Covid-19 safety measures continues to be effective. During the Christmas shopping period, stores will be markedly busier, so in order to ensure the safety of staff and customers, it is vital that existing measures are followed.

Keith Brown: Does the minister expect that the Scottish Government will have any further information that it could pass on about how much money it expects to be returned by supermarkets in Scotland that have decided not to accept the rates relief that was put in place as part of the package of support for the retail sector of the economy during the pandemic? I think that I first heard about that initiative from my colleague Shona Robison. Does the minister agree that that money represents an opportunity to provide even

greater support to businesses in my constituency and across Scotland that have been hit hard by the on-going pandemic?

Jamie Hepburn: First, it is right that we commend the supermarkets that have committed to reimbursing the public finances with support that they received through rates relief. Every penny that is returned to us will be invested in our recovery from Covid-19 and will be used to support those who have been hardest hit by the pandemic.

We think that the value to Scotland of that funding could be in the region of £200 million. The Cabinet Secretary for Finance has written to the Treasury to seek urgent clarity on how the moneys from retailers will be made available. We are very clear that any revenues that are voluntarily repaid by ratepayers in Scotland should remain in Scotland and not be withheld by the United Kingdom Government.

The Deputy Presiding Officer: That concludes portfolio questions. I know that some members who have put themselves forward for the debate under the next item of business are not in the chamber. They should realise by now, in the session, that it is follow-on business.

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Christine Grahame): The next item of business is a debate on motion S5M-23707, in the name of John Swinney, on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.

14:51

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): I am pleased to open this debate on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. The bill is a significant milestone in delivering a redress scheme for survivors, which many have fought relentlessly to achieve. I acknowledge their bravery and resilience, which have brought us to this point.

I also acknowledge those who are no longer with us. It is right and necessary that we remember their contribution to today's debate and their persistence in ensuring that we reached this point. I hope that we can now join collectively, as a Parliament and as a nation, to deliver a redress scheme that acknowledges the injustice and the suffering with honesty, humanity and dignity.

The work, the bill and the scheme are for survivors. I extend my sincere thanks to all the survivors who have engaged with us throughout the consultation and the bill process. Their input has been crucial in shaping the bill, and they will continue to play a central part in the development of the scheme.

I thank the Education and Skills Committee for its comprehensive stage 1 report and the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill. We responded to the Education and Skills Committee's very detailed report in a very short space of time. I hope that members of that committee and the Parliament find the Government's response of assistance in considering how we will take forward the issues that the committee raised. I am grateful for that committee's support for the general principles of the bill and its acknowledgement of the work that has been done to date with survivor communities and organisations, and I look forward to the debate, which will—I have no doubt—be open, positive, compassionate and constructive. I assure members of the Government's willingness to engage constructively on the issues that the Education and Skills Committee raised in its consideration of the bill in order that we can maximise agreement on the bill's provisions.

The bill deals with extremely complex and sensitive matters, and the development of the redress scheme has involved many difficult and balanced judgments. We have learned from schemes around the world, and we will continue to do so as we design and deliver the best redress scheme for the circumstances in Scotland.

We have excellent practice at home from which to learn. Our advance payment scheme has continued to make payments throughout the pandemic. Since April 2019, we have been able to make payments to more than 520 survivors. Financial redress and also the acknowledgement and the apology that are so important to our most elderly and ill survivors have been provided. The scheme has proven that we can deliver a scheme that works for survivors.

Scotland failed to protect its most vulnerable children. The bill is one part of our unshakeable commitment to face up to that shame and make sure that that never happens again. That must be a collective endeavour, and we believe that all those with a responsibility for the failings of the past have a responsibility to do the right thing today. I want to work with the Parliament to deliver the best possible scheme for survivors and to ensure that those who have a moral responsibility to participate do so. The scheme encourages, facilitates and recognises those that are willing to make fair financial contributions to redress payments of survivors. That is what survivors have repeatedly told us that they want to see.

I have noted the committee's emphasis on the affordability of the scheme for providers. A central element of our approach has been to link contributions to a proportion of the actual redress payments that would be made in the lifetime of the scheme. Taking an alternative approach, such as seeking a capped or fixed contribution, fails to deliver assurance that the organisation will play its part for every survivor who receives a redress payment. It also carries a risk, as seen in other redress schemes around the world, that the cap could be set too low, given the uncertainty over how many survivors will apply to the scheme. *[Interruption.]*

I will give way to Jamie Greene, first, and I will then come to Mr Johnson.

Jamie Greene (West Scotland) (Con): I hope that I do not pre-empt Mr Johnson's question, but does the cabinet secretary accept that, without a cap, the stark reality is that many contributing organisations would simply not participate and that they could not possibly recommend participation in the scheme without some form of cap? That open-ended liability would hit them financially.

John Swinney: Mr Greene makes a fair point, but we have to make judgments about the way in

which we are able to address survivors' legitimate aspiration for there to be a contribution that relates to the circumstances of their abuse. That is the mechanism that we have chosen in trying to address that issue. Obviously, if we put a cap on that, we may not be able to fulfil the commitment that survivors wish us to fulfil. We need to arrive at a balance of judgment. Fundamentally, it comes down to the workability of the scheme and how we can elicit those contributions.

I will give way to Mr Johnson.

Daniel Johnson (Edinburgh Southern) (Lab):

I am grateful to the cabinet secretary for giving way. Will he comment on the concept of sustainability being included in the bill, as is highlighted in the committee's report?

John Swinney: That is a reasonable point for us to consider, because there is a fine balance to be struck. Although there is a need for organisations to be held accountable for abuse that has taken place in the past, I do not think that anybody wants that to happen at the expense of the survivability of an organisation that is delivering vital services today to protect the wellbeing of children and young people in our society. A careful balance has to be struck. As we work our way through the detailed text of the bill, I am sure that, as a Parliament, we can come to a conclusion about that issue.

The quality of redress for many survivors comes, at least in part, in seeing their provider make a fair and meaningful contribution. That is the point that I was making to Mr Greene. I commit to continuing to work with organisations to ensure that a fair contribution is deliverable in a way that is not detrimental to vulnerable service users today.

I have listened to the concerns regarding what is in the bill about the use of charities' restricted funds—some of that relates to Mr Johnson's point. Although the provision was intended to empower organisations and to remove barriers, I accept that that has not been welcomed by organisations and I agree to remove section 15.

There is no doubt that the proposed waiver in the bill has been contentious, and I welcome the committee's consideration of that important issue. I have wrestled with how to fairly encourage contributions and to recognise the organisations that have made them while maintaining the integrity of the scheme for survivors. A scheme without contributions from other organisations would mean that survivors who sought acknowledgement and financial redress from those other than the Government would need to take civil action, and we know that there are many reasons why some survivors are unable or would choose not to pursue that route.

The committee highlighted the evidence that it heard about offsetting being a preferable way to encourage contributions. My concern is that offsetting may provide only nominal contributions to the scheme. Organisations would still require to plan for the high costs of future litigation. If offsetting led to only nominal contributions, the onus would remain on individual survivors to pursue court actions in order to compel those responsible for their care to make adequate reparation. That would exclude pre-1964 survivors, survivors who do not feel that they have the evidence to go to court, survivors who do not want to go to court and survivors who are elderly or unwell and might not live long enough for a court action to conclude.

We have looked at other redress schemes, but we do not know of any that secure contributions by using an offsetting model, nor of any scheme in which providers make contributions but receive no waiver. I have, however, listened to the concerns that have been raised about the waiver, and I will continue to listen today and beyond in order to reflect on whether that remains the right path for the proposed legislation.

To put those two points simply and in summary, I am keen to develop a scheme that secures contributions from providers and meets the needs of survivors. After careful and exhaustive consideration, I came to the conclusion that the waiver was the reliable way to do that. I recognise that that view is not shared across the board in Parliament, or even among survivors, but I am keen to air the issues in order to take an approach that means that we can secure the outcome that I have highlighted. I will engage constructively with members of Parliament in order to do that.

I appreciate the significance of the choice that the waiver asks survivors to make. I have heard the evidence on the importance of survivors making that choice only once they know the full redress payment that they would receive from the scheme, are able to access appropriate advice and know who is making a fair contribution to their payment. I will lodge an amendment to ensure that the decision has to be made only at that point.

I recognise that, for many survivors, the decision will not be easy. I have considered the evidence that the committee has heard and I commit to lodging amendments at stage 2 to increase the 12-week acceptance period to six months and the four-week review request period to eight weeks.

I also listened to the evidence that the committee heard on payment levels. I want to provide fair payments according to a fair structure, and I will revisit the level of the increase between the different payment levels. The redress scheme is an alternative remedy for survivors. It does not follow the same rules and procedures as a court

and it is not designed to achieve the same outcome. Redress payments may be lower for some than would have been awarded by the courts; for others, the opposite may be true. However, I listened to the evidence and will reflect on the maximum payment level that is available.

I understand the need for clarity and transparency in the assessment and decision-making processes, and I will reflect on calls from survivors, organisations and insurers for greater clarity as to the standard of proof that will apply in determining redress applications. It is vital that everyone has confidence in the decisions that are taken by redress Scotland and that survivors and organisations know that applications are considered carefully and supported with the right information. I am aware that, should the integrity of the scheme be called into question, the impact that that would have on survivors cannot be overstated.

Survivors have given powerful evidence on the purpose of the scheme. The scheme looks to address the widespread and systemic failures in our historical care system that led to children being abused. Those who were abused in care prior to 2004 were abused at a time when their welfare was not prioritised as it should have been and when any complaints that were made were less likely to be believed or to result in any action. Survivors from that time period have also faced a series of obstacles to accessing justice through the civil or criminal courts.

The scheme is about a particular part of our history and the particular circumstances of children in care at that time, when we collectively failed them. Now, we must collectively respond. An important part of that response is in recognising the survivors who did not live long enough to access redress. The committee heard moving evidence about the importance of recognising those deceased survivors. Today, I commit to amending the bill to change the eligibility criteria for next-of-kin payments, to extend those to the next of kin of survivors who died on or after 1 December 2004.

I welcome the committee's recognition of the importance of support, both practical and emotional, for those who apply to the scheme. I am committed to designing and delivering a trauma-informed service, working with survivors to ensure that their needs are met. A survivor forum will be in place so that continuous monitoring and feedback can lead to on-going improvements in the scheme.

We know that, on its own, a monetary payment will not deliver the redress that survivors need. For too long, survivors were not believed. As part of our collective endeavour, we must now right that additional wrong and apologise both for the abuse

and for the length of time that it has taken for it to be fully recognised and acknowledged. The redress scheme will offer individual applicants the opportunity for support and apology as well as a financial payment. On behalf of the Scottish Government, I reiterate the apology that I made in the chamber in 2018 and I say to survivors, "We believe you and we are sorry."

I hope that what I have just said demonstrates the care and compassion that have been invested in the development of the bill. Our approach represents a thoughtful and authentic desire to do the right thing, to provide survivors with the collective response that they deserve and to provide those who are facing up to the harms of the past with a fair way to do so.

The scheme is not for lawyers, insurers, providers or the Government; it is for survivors, whose interests must dictate its design and determine its delivery. We must balance the various interests to the best of our ability, and we must do so with integrity and compassion, for that collective expression of our humanity will be the measure of our nation in its response to one of the darkest chapters in our history. We owe it to the children whom we failed—and to the adults that they have become—to deliver the best possible scheme. I look forward to working with members across the chamber to make that a reality.

I move,

That the Parliament agrees to the general principles of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.

The Deputy Presiding Officer: I call Clare Adamson to open the debate on behalf of the Education and Skills Committee.

15:06

Clare Adamson (Motherwell and Wishaw) (SNP): As convener of the Education and Skills Committee, I welcome the opportunity to highlight its views on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. Before I do so, I thank everyone who took time to share with us their views on the bill, whether in evidence or privately. I also thank our adviser, Professor Andrew Kendrick of the University of Strathclyde, who so generously shared his expertise with the committee throughout the stage 1 process; the committee's clerks and the Scottish Parliament information centre staff for their endeavours; and, indeed, the committee's members, who throughout the process have approached it with sympathy, sensitivity and compassion.

I feel that I can speak for the whole committee when I say that we recognised that victims/survivors campaigned for such a bill for many years, including some who are no longer

here to see it become a reality. We know that that has involved working constructively with both the Scottish Government and care providers who were responsible for historical child abuse. In particular, we thank victims/survivors for doing so, as that has allowed us to reach the point where we believe that we have a straightforward, easy-to-access scheme that will play a vital role in helping victims/survivors to obtain the redress remedy to which they are entitled.

The bill creates a new way for victims/survivors of historical abuse to seek redress. It recognises that civil litigation is not for everyone. For many victims/survivors, making their way through an adversarial system and reliving their childhood experiences is not something that they will feel able to do. Consequently, the committee supports the bill's intention to create an accessible alternative. As the cabinet secretary highlighted, for victims/survivors of abuse that took place before 1964, the scheme creates a route to redress that would not otherwise have existed, which is particularly welcome.

I turn to some of the issues addressed in the bill. The need for dignity, respect and compassion was a theme that the committee picked up, and it was also a key theme in the evidence that we heard. We need to ensure that victims/survivors who access the redress scheme are treated with dignity, respect and compassion throughout that process. Victims/survivors themselves spoke very clearly about the dehumanising effect that abuse had on them, and of how it had impacted on their families.

In our stage 1 report, the committee asked the Scottish Government to include in the bill a statement that would recognise the need for the principles of dignity, respect and compassion to be applied across each element of the redress scheme—from the application process, through to the support provided to access care records and the issuing of apologies from care providers. We welcome the fact that the Government has gone some way towards recognising that need, and indeed has agreed to some of our recommendations being put in place.

I cannot cover the whole bill, because I will soon run out of time, but I will turn to the waiver and the fair and meaningful payments. The bill encourages care providers whose organisations were responsible for historical child abuse to make a fair and meaningful contribution to the redress scheme. A victim/survivor accepting a redress scheme payment will be required to waive their right to take future civil action against any contributing organisation. Victims/survivors viewed the waiver as restricting their rights and suggested that an offsetting payment might be a better model.

Care providers raised concerns that there is currently no way of them knowing how much their overall contribution to the scheme would be. They also pointed out that their trustees could not agree to participate where that would breach their duties to safeguard the organisation's longer-term financial viability. It was also unclear whether insurance providers would commit to making a payment on their behalf, undermining the case that the waiver would encourage organisations to contribute. In its report, the committee suggested that further work on those provisions was required ahead of stage 2. We note the Government's very detailed response to our report—in a short turnaround—and I welcome the news that a waiver will not be given unless the body is a contributor to the scheme. We look forward to discussing those issues at stage 2 and seeing how we can develop them with the cabinet secretary, as he has indicated that he is willing to do.

The committee heard from many victims/survivors that a meaningful apology was a vital element of the redress scheme.

Eligibility for the scheme is another important area. Although the committee welcomes the aims of the bill, we heard concerns from victims/survivors and other stakeholders about aspects of eligibility criteria including qualifying dates and the definitions of relevant care settings and abuse. To qualify for a payment under the proposed redress scheme, a victim/survivor must have experienced abuse in a relevant care setting before 1 December 2004. In contrast, the Scottish child abuse inquiry can consider abuse that occurred up to 14 December 2014. We could see no justification for the disparity between those two dates and suggested that they should be aligned. We take on board the cabinet secretary's comments in response to that and in the chamber today.

Some settings and circumstances are currently excluded from the definition of "relevant care setting" and we heard evidence on how that would affect eligibility for the scheme. While recognising that there was a need to clearly define the limits of the redress scheme, the committee believed that there should be scope for redress Scotland to be able to consider some cases on an exceptional basis and recommended that the Government should revisit the eligibility criteria and relevant care settings in the bill in advance of stage 2. We welcome the acknowledgement that Scotland placed some young people in care settings across the border and that that issue will be considered.

The bill clearly defines the kinds of abuse that can be considered under the scheme and stakeholders expressed concern at the apparent exclusion of corporal punishment from the definition of abuse, where it was considered lawful

at the time. The concern was that that would deter some victims/survivors from applying to the scheme. The committee was grateful for the cabinet secretary's clarification that there would be no blanket ban on including corporal punishment as a form of abuse and that, when assessing claims, corporal punishment would be considered in the full context in which it was used. I look forward to working with the cabinet secretary to understand how victims/survivors can be informed of that to the fullest possible extent, so that no one is excluded from applying to the scheme because they think that the abuse that they experienced would not be considered.

I also welcome the cabinet secretary's comments on the levels in the scheme. Currently, the bill sets out two different kinds of payment that can be made to victims/survivors: a fixed-rate payment of £10,000 and individualised payments set at £20,000, £40,000 and £80,000. There were concerns that there were large gaps between the levels. It was unclear how that would be decided by the administering panel and how fair that was. I welcome the Government's willingness to consider those levels again before stage 2.

Redress Scotland will be a new non-departmental public body—an NDPB—which will administer the scheme, and decision making will be guided by an assessment framework. As I am running out of time, I hope that some of the other areas will be picked up by my committee colleagues—

The Deputy Presiding Officer: If you have more to say, just say it. We have time.

Clare Adamson: Okay, thank you. That is slightly unusual for you, Presiding Officer.

The Deputy Presiding Officer: Excuse me! I might get piqued by that and change my mind. No, I am too big a person to do that.

Clare Adamson: I am grateful, Presiding Officer, especially as it is a very important bill and we want to give due consideration to the other areas. However, I will conclude by saying that we welcome the efforts that have been made by the Scottish Government to work with victim/survivor communities to shape many aspects of the bill. We hope that that will continue as the bill progresses through stage 2.

We would also like to thank the bill team for its constructive engagement with the committee throughout stage 1. Although there are fundamental issues with the bill's waiver provisions that we are unclear about, we absolutely support the bill's principles. Therefore, on behalf of the Education and Skills Committee, I am pleased to commend the general principles of the Redress for Survivors (Historical Child Abuse

in Care) (Scotland) Bill to the Parliament and recommend that they be agreed. Thank you.

The Deputy Presiding Officer: Thank you, convener. I call Jamie Greene to open for the Conservatives.

15:16

Jamie Greene (West Scotland) (Con): Thank you, Presiding Officer. I look forward to your generosity in equal measure to members on these benches.

The Deputy Presiding Officer: We do not want to set a trend.

Jamie Greene: The stark and sad reality is that there is little that we can do to fully compensate victims of abuse in care. Words, pounds, letters and payments are the physical manifestations of compensation schemes such as this. They are tokens of apology. They are an acceptance of our modern-day endeavours to right the wrongs of the past. However, no apology will ever right the wrongdoings of others, no legislation will bury memories of horrific abuse and no compensation scheme will replace traumatic memories of unhappy childhoods with happy ones.

Yet we have to start somewhere. That somewhere started in December 2004, when the then First Minister, Jack McConnell, told the Parliament:

"Now that we know what has happened, it falls to us, as representatives of the Scottish people, to acknowledge it."—[*Official Report*, 1 December 2004; c 12389.]

Today, we do our bit here, by acknowledging that a redress scheme such as this has been a long time coming. It is an acceptance by the Government of the day that Governments of old failed thousands of young children in state care. The weight of that responsibility lies heavily on our shoulders—on the shoulders of the committee and of the cabinet secretary, who will guide the bill to completion before the Parliament dissolves.

At the end of that journey, it must be a bill that we are proud of. The journey will not be easy, because, as those who sit on the committee have learned, the subject is one of great sensitivity and debate, with uncomfortable substance. Despite our nuanced and differing approaches to the bill, I am pleased that we came to consensus. I record my thanks to my colleagues on the committee, the convener, her adviser and the clerks for putting together the report.

Today we debate the key recommendations, which are based on the evidence that we took. Our biggest thanks must go to those who took the time to enable us to come to those conclusions: the survivors who spoke frankly and honestly with us. I cannot even begin to imagine what some of

them have lived through. It still lives with them. As one survivor put it,

“Abuse never leaves a person. It is like a human shadow”.—[*Official Report, Education and Skills Committee*, 28 October 2020; c 29.]

The debate is for them. The bill is technical, with technical problems that will require technical solutions, but at its heart lie brave people.

I turn to those technical issues now, because although the committee endorses the general principles of the bill, it also raised a number of difficult issues that the Government must contend with. I welcome that the cabinet secretary has already indicated that he will give way on some of those issues. I hope that that is a sign of things to come. We acknowledge in the report, right from the outset, that the scheme will not cater for or work for everyone. It is intended to offer an alternative to civil court proceedings and an easier route to redress. However, that alternative must be fair and affordable. The scheme has limitations, and we must be honest with people about what they are.

There are also flaws and assumptions that we think require revisiting. The first of those is the waiver, which is the biggest of those hurdles and the most contentious area of the bill. There remain large differences between its intended purpose and the reality of what its presence in the scheme would mean. Absolutely nobody had anything positive to say about the waiver, which should serve as a warning to us as we go through the bill process. In the committee, I said from the beginning that I would like to give the Government the benefit of the doubt on the issue, but I will be honest and say that I do not think that evidence in favour of a waiver has been strongly given—a conclusion that I came to reluctantly.

We also talked about what is fair and meaningful, and the words themselves provide a clue here; the bill must be fair and meaningful. The concerns about the waiver, for example, would potentially discourage some survivors from applying because it could prevent them from opting in to civil litigation in future. Many have expressed discomfort and have said that they might feel compelled to sign the waiver because of their current financial hardship.

Such victims need to be fully aware of the implications of their decision, and that leads on to what is fair and meaningful. The point of the waiver is apparently to encourage participation, but we heard openly and directly from organisations that are potential contributors that they would not recommend to the trustees of their respective charities participation in the scheme as proposed. That is not because they do not want to participate but because they feel that the open-ended nature of participation and the large sums

of money being asked of them would entirely jeopardise their abilities as current, on-going concerns. Nobody wants that—not least the survivors.

That, plus the absence of ensured participation, means that it is likely that organisations will need to meet the commitments in the scheme through their own funds—their working capital. That will provide a disincentive to participate. I think that the organisations want to do the right thing; the ones that I have spoken to absolutely do. They feel the moral obligation that we know exists. However, those contributions must be fair, and not least, fair to the users of existing services, which is why the concept of sustainability that the committee talked about is so important and must be taken into account.

I must also touch on the difficult issue of money, which is not an easy subject when we talk about abuse, but we must give clarity on it. The Government has already said that it will cover compensation up to £10,000 per application, which covers the lowest level with the lowest evidential threshold, but that could result in public funds having an open-ended liability and covering massive proportions of the payments, even with contributions.

John Swinney: I am grateful to Mr Greene for giving way. He has just made the point that contributions are necessary to limit the impact on the public purse. That is one of the arguments that I would marshal as to why the waiver is important: to elicit those contributions in the first place. I ask Jamie Greene to consider the relationship between the concept of contributions from providers and the necessity of providing a waiver in a fashion that gets those contributions but restricts liability on providers. That was the point of the intervention that Jamie Greene made on me earlier in the debate. There is a relationship between the two that I invite him to reflect on.

Jamie Greene: I understand and accept that relationship. We all want maximum participation in the scheme for the benefit of everyone: contributing organisations, the taxpayer and so on. We must make the pot as large as it can be, but there has been no evidence—the committee took none—of the link between the concept of the waiver and participation. The real problem for the contributing organisations was the open-ended liability that would be placed upon them. The sums of money that they would have to pay up front have not been quantified to the committee, but those huge sums of money would come out of organisations’ working cash reserves and would directly affect their abilities to be on-going concerns. It was nothing to do with the waiver. I do not make that link in the way that the cabinet secretary does.

There is a conundrum there that needs to be resolved. Linked to that are the payment levels, which create a hierarchy of abuse. That makes some people incredibly uneasy, but is it necessary to compensate at higher levels with higher evidence thresholds? Again, the Government will have to contend with that. I do not think that the pound and pence value needs to be in the bill, because value changes over time, and I hope that the cabinet secretary will reflect on that.

I have limited time, but there are two other areas that I want to briefly touch on. One is the application process and who can apply. We want a survivor-centric approach to be at the heart of the bill's operation. This must be an easy-to-navigate, inclusive process. That leads me to an important discussion about who should be eligible to apply to the scheme. There is a serious moral question about whether making a payment from the public purse to someone who has been convicted of the most heinous acts of violence, sexual violence or harm to children is fair or in the public interest. The committee rightly recognises that some offending behaviours can be rooted in trauma caused by abuse. Any survivor of abuse should therefore be eligible to participate in the scheme, but the bill itself cannot be the moral arbiter. My view is that it is right and fair that the awarding panel should make those decisions based on clear guidance and parameters and on individual evidence. That is a fair compromise, and one on which the committee reached consensus.

The final issue is that of an apology. "Sorry" is the hardest word, but an apology will go a long way. Helen Holland told the committee that, for some victims,

"an apology is the most sacred thing that could come out of this".—[*Official Report, Education and Skills Committee*, 28 October 2020; c 10.]

Some victims even said that they would forgo money in favour of an apology.

There are other ways to support victims. The committee encourages those. We also encourage the Government to look at other countries' schemes and I hope that the cabinet secretary will reflect on those asks.

This is a short debate on a big report. I end knowing that those who engaged with the committee have done themselves proud. It is not an easy bill. There is debate about what should be included in it and there are warnings from all sides about possible barriers to participation. There is much work to do: the cabinet secretary and the Government have a difficult task ahead of them.

My offer is that Conservative members are open to discussion, debate and amendment. We will go into stages 2 and 3 constructively. We will work across parties, with the Government, stakeholders

and, not least, with survivors. We all want this to work, because it must. The work of the committee will continue, but the word of apology must now be translated into action.

The Deputy Presiding Officer: There is some time in hand. Members may expand a little in this sensitive and important debate.

15:26

Iain Gray (East Lothian) (Lab): Today has been a long time coming: too long in many ways. It is the latest, and perhaps last, link in a chain of recognition, regret and now, hopefully, redress—as far as that is possible.

We are once again called on to face up to and acknowledge our collective guilt regarding one of the darkest and most shameful chapters in our recent past. The most vulnerable of children were taken into our care, looking to us for love and nurture, only to face abuse—sometimes for years on end—while we looked the other way.

The process of facing up to what was allowed to happen, and to the lifelong consequences that that has had for so many survivors, has taken us from Jack McConnell's apology 16 years ago, as referred to by Jamie Greene, through to the agreement to a public inquiry, the removal of the time bar and the creation of the advance payment scheme, and we have now come a bill that will provide redress to survivors and their families.

None of that would have happened without the determination of survivors themselves, who had the courage to relive their abuse by speaking out and the persistence to make themselves heard at last.

Governments and ministers of all parties, including mine, were too slow to listen and respond. So, we should take the opportunity to add our apologies to that given by the Deputy First Minister. We are sorry that the abuse was ever allowed to happen, that survivors were not listened to or believed for so long and that we have been so slow to act.

However, we are here today and I give Mr Swinney credit for that. Since he took on this responsibility, he has delivered the inquiry, the advance payment scheme and now the bill. His desire to get this done at last is clear and sincere.

What must we do to get the bill right? Above all, it must create a scheme that survivors believe is fair and in which they can have confidence. They must know that they will be believed as part of a process that, unlike civil or criminal justice proceedings, is not confrontational.

Survivors want to see both the state and the organisations in whose care they were abused make a contribution to their redress.

To achieve all that, there are some difficult circles to be squared, but square them we must. Although the bill sets out to achieve all that, the committee was clear that some changes are required. I am pleased to see from the Government's response that it accepts that in a number of areas.

First, the overall level of payment and the proposed bands need to be reconsidered. The bands are too far apart, particularly the jump from £40,000 to £80,000, which is too big a jump. However, it was also clear from the evidence that survivors feel that the maximum payment is not enough, especially when they look at other schemes, such as that in Ireland. This is not really about the money, of course, but about the seriousness with which we take the matter now. As I have said, I believe that the Deputy First Minister is serious about it, so I am sure that he will consider the payment aspect again.

Secondly, the burden of proof that will be required is critical to the success of the scheme. It must be enough to provide confidence for survivors and contributors but not be so burdensome as to be simply a civil court by a different name or to discourage applications. The committee understood how difficult that is, but we felt that more clarity was required.

However, it is on the question of the waiver that perhaps the bill will succeed or fail. The evidence of survivors was clear. They see the requirement to give up their right to civil justice to benefit from the redress scheme as an abrogation of their rights that would compromise their confidence in the scheme. Their concerns were echoed by those who support survivors and, indeed, those who represent them, including the Faculty of Advocates. All recommended some form of offsetting and all opposed the waiver.

The committee report reflects that and, appropriately, does so in a way that tries to offer the Deputy First Minister the space to respond. However, I want to be clear. Our view is that the waiver compromises the integrity of the bill. It cannot stand; it must go. That is not a party-political position; indeed, I think that it is shared across the Parliament.

The Deputy First Minister has explained that the waiver is there to incentivise contributions from care providers, and it is true that survivors want those contributions. However, the evidence heard by the committee was that the waiver will not work as an incentive. Some providers expressed initial support for the waiver, but as scrutiny proceeded, it became clear that because their insurers are

unlikely to support their contributions to the scheme—although they would support them in legal action were they engaged in it—the waiver was no incentive. In fact, arguably, it is a disincentive to the organisations to take part in the scheme.

John Swinney: I understand the argument that Mr Gray is marshalling. However, the waiver point is critical, because it hinges on the question of how we enable contributions to be made to the scheme by providers. That is the question that we are all trying to answer. In the judgment that I have come to, the point that Mr Gray makes about the relationship to insurers is adequately dealt with if the waiver is there, because it provides an alternative to court action. In marshalling his argument, Mr Gray acknowledged that an insurer might stand behind a provider in a court action. What I am trying to do with the bill is to find a means whereby the insurer will stand behind the provider for the alternative route. Without that, I cannot see how we elicit the contributions that we all want to see made by providers to a scheme of this type.

Iain Gray: I take the point and I appreciate that that is the Deputy First Minister's intention. However, all the evidence that we heard from providers and, indeed, from the Association of British Insurers was that insurers would not stand behind providers in making contributions to the redress scheme. That is partly because of the level of contestability of the evidence given in the scheme. However, we cannot compromise that because we want the scheme to be easy, or as easy as possible. We do need an incentive, though, and we need the contributions.

Providers also told us that the calculation of contribution that was being developed and the requirement for future unspecified contributions once in the scheme meant that their participation would jeopardise their continued existence and that trustees would not be able in law to agree to participate.

Providers are saying that they will be unlikely to be able to participate with the waiver in place. I think that the incentive that they need is a contribution formula that takes account of affordability, sustainability and the legal position of their trustees. I agree with Jamie Greene—they are not looking for a way out of the scheme; they are looking for a way into it, because they accept that they have a moral responsibility to take part in it.

The danger that we face is having a scheme that asks survivors to give up their rights to justice but fails to attract the contributions from providers that survivors want. That is the circle that must be squared. That is not easy, but my concern is that the Deputy First Minister's response—in his letter

to the committee and today—shows that he is still not seized of the need to find an alternative to the waiver or to change the contribution scheme.

I ask him to do that now, because time is so short, and if we are to get it right, he and his officials need to be working now with stakeholders to introduce those changes.

I will be honest: if need be, we will consider introducing amendments at stage 2 to remove the waiver and establish the principle of affordability in contributions. However, it would be much better if the Government were to start on that work immediately and do that itself.

Time is short. It has taken so long to get here, and we all want to get to the same place, so let us get it right. That is what we all want.

15:36

Ross Greer (West Scotland) (Green): The introduction and the passage of the bill were always going to be a painful experience for many survivors. I pay tribute to the survivor groups and individuals who have fought so hard and for so long to bring us to this point, and to those who have shared their experiences and relived their trauma in the process of explaining why redress is necessary. Their bravery and dignity over many years has been astonishing, and their contribution to the Education and Skills Committee's scrutiny of the bill has had a profound impact on the conclusions that we have arrived at collectively and individually.

We all support the general principles of the bill, and we all acknowledge that survivors deserve redress for the abuse that they suffered. It is the responsibility of the state to ensure that that redress is delivered. However, the clearest message received during the committee's scrutiny—from survivors, lawyers and the organisations that would be expected to participate in the scheme—is that the model that is proposed in the bill simply would not achieve its intended goals.

The committee's recommendations for change are extensive, covering almost every section of the bill. I will pick up just a couple of those, the first of which is the proposed waiver, which others have already mentioned and which I expect will be discussed extensively this afternoon.

The waiver is the most contentious provision in the bill, particularly for survivors. Many survivors are understandably extremely distrustful of the state and other authorities. To be blunt, they see the waiver as a way to silence them. Organisations that are likely to be involved in the scheme certainly do not all appear to support the waiver either, although that is for different reasons.

The argument for the waiver is based in part on the premise that organisations and insurers will not pay out without it, but the committee did not consider that the evidence submitted supported that claim, as Iain Gray has highlighted.

The technical argument about whether a waiver would allow organisations to contribute fully to the scheme is a secondary one. The primary reason to oppose the inclusion of the waiver is that it violates the right of survivors to pursue justice at a later date. It is extremely common in cases of abuse for an individual to have insufficient evidence of their abuse to pursue civil action, only for that evidence to later emerge through others coming forward or records being found.

If a survivor were to take financial redress through the scheme, because sufficient evidence was not available to them at the time, but that evidence was to emerge later, they should not be restricted from then pursuing action.

The committee does not support the waiver, and I struggle to see how the bill could achieve majority support at its final stage if it were to remain. That would be a source of profound regret.

The bill also contains provisions for a survivor's next of kin to apply for and receive the payment, provided that the survivor made a statement prior to their death that they suffered abuse. The Greens certainly welcome that, but the bill proposes an odd hierarchy for the next of kin. By default, the next of kin is the spouse or the civil partner of a survivor, and after them, it is the survivor's children, which is relatively normal. The exception to that in the bill is for cohabiting partners. A cohabitant must have lived with a survivor for at least six months to be eligible ahead of a spouse. That would indicate *de facto* separation. There is no time period required for the cohabitant to come ahead of the survivor's children. The moment that the cohabitant moves in, they come ahead of the children. That is inconsistent and it could cause unnecessary conflict. I am grateful that the committee agreed and recommended that the six-month cohabiting requirement should apply before a cohabitant is eligible ahead of a survivor's children, equalising that with the position for a spouse or civil partner.

The final issue is one about which I harbour a personal concern, although Jamie Greene also partly raised it earlier. Although my concern was shared by other committee members, it was not quite a feature of the report. It is about the viability of delivering a just system of tiered payments. The committee made a number of recommendations on payment levels, but I would like to go a bit further and question whether the system should be tiered at all. Although we might all recognise that, however uncomfortable it sounds, some abuse is

of such severity that a larger financial payment might seem appropriate, I struggle to see how that can be codified in such a manner that it would not result in a great deal of upset and even further trauma for some survivors. Any tiered system would unavoidably create a hierarchy of abuse, as Jamie Greene said.

The survivors who have spoken to me—people whose experience of abuse was very different, as they would collectively recognise—do not support such a system. They would prefer to see a system of flat payments. Not only would that avoid the morally questionable creation of such a hierarchy of abuse; it would dramatically simplify the system. I am inclined to agree with such a position.

I recognise that there will be a diversity of opinion among individual survivors and different survivors groups. I can speak only for those who came forward to engage with me during the process—people who had different experiences of abuse, but who collectively agreed that a flat payment system would be the most effective way of ensuring a just form of redress for them all.

As with the waiver, I came to agree with that position for practical and ethical reasons. We all want the scheme to work. I have no doubt that the Government and the cabinet secretary are committed to that. However, as I said, the bill will require substantial changes if the cabinet secretary is to be confident that it will command the support of Parliament and, more importantly, that it will have the confidence of survivors and provide them with the redress that they deserve.

15:42

Beatrice Wishart (Shetland Islands) (LD): I, too, am pleased to be speaking in the stage 1 debate on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill; the bill has been described as technical, but it is also complex.

At its heart, the bill is about vulnerable children who were abused while in residential care settings and who have had to live with the consequences of that abuse. I thank all the victims/survivors who engaged with and gave evidence to the committee, either in person or by writing to us. As other members have done, I add my thanks to the unseen but important committee support team that has enabled us to reach this stage.

I also thank colleagues on the Education and Skills Committee and convener Clare Adamson for her leadership. The committee worked in a spirit of co-operation with the aim of meeting the needs of victims/survivors, and ensuring that it did so with dignity, respect and compassion. The responsibility weighs heavily on me, as I am sure it weighs on all of us.

The bill aims for a trauma-informed, non-adversarial process that acknowledges the abuse and provides redress through a fast financial payment. It should be noted that, for some victims/survivors, meaningful and individual non-financial redress is as important—perhaps more important in some cases—as receiving any payment.

As we have heard this afternoon, there are continuing concerns about the waiver in the bill. The Scottish Government has suggested that the waiver is necessary to incentivise contributions to the redress fund from organisations that were responsible for the care of children, but the evidence from some care providers and survivors indicates that it will not function in the way that the Government intends. By signing a waiver, survivors will give up the right to pursue civil justice. As the stage 1 report indicates, the evidence heard by the committee from the victims/survivors is that the waiver would restrict their choices and should be removed.

The cabinet secretary has suggested that no other redress scheme anywhere in the world has been identified in which providers make contributions but receive no waiver. That is not a reason not to establish an alternative method that is suitable for this redress scheme. The Scottish Human Rights Commission suggested a different approach by proposing an offsetting option rather than a waiver.

It is clear that survivors do not seek double payments by accessing both the redress scheme and civil action. Obviously, that would not be equitable. In the written evidence that she provided to the committee, Dr Maeve O'Rourke from the National University of Ireland Galway stated:

“In forcing survivors to choose between a guaranteed financial payment and accountability, the waiver arguably emits a message to survivors themselves and to the general public about survivors that they are interested in money above all else. This is simply untrue and degrading to survivors.”

I remain unconvinced that the waiver scheme is appropriate. In fact, it goes against natural justice and it will not work.

Beyond the waiver, views differed about the payment levels and tension exists in relation to institutions and their financial contributions. Institutions and charities want to contribute and they are committed to the survivors and the important process of national healing and reconciliation. However, some have said that they cannot sign up to an open-ended chequebook and the estimated figures.

The modelling of the overall cost of £408 million is on the basis of 11,000 payments to

victims/survivors, with a further 1,000 payments to next of kin. It is in nobody's interests to lose institutions or charities that are carrying out good work now because contributions for past wrongs become unsustainable. Financial risk has to be managed and charity law has a role to play in that, too.

Viv Dickenson of the Church of Scotland social care council said that the level of contributions being asked for was predicated on contributions being backed up by insurance. That may be a dangerous assumption to make. Charities have said that they do not have spare cash lying around. The scheme has value only if it works. There needs to be clarity about what institutions are being asked to contribute and about the process, if it is to be affordable for them.

Another issue that must be ironed out is the qualifying age. The qualifying age for the advance payment scheme was 70 years old; it has been brought down to 68, but a written submission asked for it to be reduced to the state pension age.

Finally, the bill must be properly trauma informed. In that light, the way in which the scheme deals with applicants with criminal convictions must reflect what we know about the impact of adverse childhood experiences. Some evidence has shown that those with significant ACEs can be 20 times more likely to be incarcerated at some point in their lives. The scheme cannot be ignorant of the relationship between its subject and the impact of that trauma.

There is work to be done, but today I and the other Scottish Liberal Democrats are happy to support the principles of the bill.

The Deputy Presiding Officer (Linda Fabiani): Before we move to the open debate, I remind members that, if they are taking part in the debate, they should be in for all the opening speeches and that, even if previous business finishes earlier than expected, business items run on one from the other.

We have a little time in hand, so I can give a bit of space for interventions. Speeches can be up to six minutes long.

15:49

Kenneth Gibson (Cunninghame North) (SNP): As we know—and to our collective shame—over several generations, many Scottish children who were placed in the care of organisations or boarded out by the state were victims of widespread, serious, systemic and societal failings. Those trusted organisations badly let down many of our most vulnerable children in their basic duty of care.

Because of the systemic nature of the abuse and the lack of accountability, survivors were betrayed by those who should have protected them. The Scottish Government has a moral obligation to those children, who are now in their adulthood. The bill aims to fulfil that responsibility by attempting to address, in modest financial terms, the damage that was caused to survivors of historical child abuse in Scottish care institutions.

The committee heard a range of views from stakeholders regarding the value at which recompense should be set. The bill currently sets out two types of payment under the scheme: a fixed payment of £10,000 and individualised payments dependent on the scale of the abuse experienced. Those are dependent on the provision of evidence and are set at £20,000, £40,000 and £80,000.

The committee heard concerns from survivors that those sums are significantly lower than could be gained through civil litigation. That is designed to reflect the fact that the scheme will have lower evidential requirements than courts have. However, the proposed payments are considerably lower than those for similar schemes in other countries. The £10,000 fixed-rate payment was particularly unpopular among survivors. My view is that the gap between where evidence is required and where it is not is too narrow, given the need to provide evidence for an increase just from £10,000 to £20,000.

It is vital that we remain open to considering the appropriateness of all levels as the bill proceeds. Some stakeholders suggested that, rather than have set amounts, the panel should have powers to make payments within bandings. The broad levels in the bill create uncomfortable lines, and survivors with very similar experiences might fall either side of those. One survivor could conceivably receive £40,000 less than another because they spent one month less, or even one week less, in care.

However, there are also difficulties with wholly individualised sums. As the bill's policy memorandum states, there is a risk that that would "further individualise payments and distinguish the experiences of survivors".

Different levels allow for different payments without necessitating overly detailed and highly individualised assessments.

It is not easy to create an assessment framework that avoids a so-called hierarchy of abuse and recognises that some experiences may have been more severe than others. Nevertheless, there might be scope to retain levels as envisaged in the bill while making the differences between them less stark. The decision on that must be reached in consultation with stakeholders to

ensure that an appropriate balance is struck. As much detail as possible must be provided to make the process as transparent as possible.

The on-going Scottish child abuse inquiry seeks to understand the scope of the abuse of children in care and is investigating the type of abuse, the effects on children and their families and the extent to which organisations failed in their duty of care. The inquiry is also examining whether legislative changes are necessary to protect children who are currently in care.

To encourage organisations to contribute to the scheme, the bill states that those who make a fair and meaningful contribution will benefit from a waiver. We have heard extensively about that particularly contentious issue. The committee heard that the waiver is unpopular with survivors, as many view it as restricting their right to pursue future civil litigation. For many survivors, acknowledgement of culpability is as important as financial redress. As Jamie Greene said, for some people, an apology is worth more even than the money.

The issue of a waiver is emotive, so we must take into account the views of survivors. Above all, we have to recognise the role that must be played in the scheme by the organisations that ran the institutions where abuse took place. However we proceed, maximising care providers' participation is a pivotal part of ensuring meaningful redress.

It would not be appropriate for applicants for redress to have to contribute to associated legal fees, and nor is that expected. However, legal fees are an important consideration when assessing the cost of redress, and a cap on the legal fees paid by the Scottish Government is necessary. Other redress schemes—for example, that in Ireland—found that the overall cost escalated due to spiralling fees. By 31 December 2015, the Irish Residential Institutions Redress Board had approved fees of €192.9 million to 991 legal firms, with 17 paid between €1 million and €5 million each and seven paid between €5 million and €19 million each. That was certainly an unanticipated aspect of the scheme and an example from which we can learn. By ensuring that fees are subject to an appropriate cap, we can ensure that the money in the scheme goes where it should go: to survivors of historical abuse.

Currently, the scheme is intended to redress abuse that took place before 1 December 2004, which was when the then First Minister, Jack McConnell, issued an apology on behalf of the Scottish Government to victims and survivors of historical abuse in care. That acknowledgement is often considered to be Scotland's first step in coming to terms with systemic abuse in its institutions. However, the evidence suggested that

the date should be reconsidered. Abuse in care did not end on 1 December 2004.

The inquiry can consider abuse that took place up to 14 December 2014. The committee heard in evidence that the qualifying date for redress payments should be aligned with that date. As the bill stands, survivors of abuse in care that happened between 1 December 2004 and 14 December 2014 could contribute to the inquiry but would not be eligible for redress.

The bill also permits a survivor's next of kin to apply on their behalf after their death, provided that the death was after 17 November 2016. I am pleased that the cabinet secretary has said that that date will be changed to 1 December 2004. While partners and spouses can claim redress, the children of survivors should also be considered, in line with existing Scots law.

Scotland's reckoning with our legacy of historical child abuse has been a long process, and we are by no means nearing the end of that journey. That said, the bill is vital for demonstrating Scotland's commitment to delivering justice for survivors. We have listened carefully to their experiences and heard the lessons of previous redress schemes, and we must continue to do so as the bill progresses. If we do, we can create a bill that will work for Scotland's survivors, who were let down so badly.

I know that the cabinet secretary will give further consideration to improving the bill, and I am pleased to support it at stage 1 today.

15:55

Oliver Mundell (Dumfriesshire) (Con): I am pleased to follow a number of thoughtful speeches.

I start by making it clear that, for victims and survivors, no amount of money nor any apology can take away or make good what has happened to them. Although, as others do, I believe that the bill is right and necessary, we must never fall into the trap of believing that we are somehow righting any wrongs or doing something good to make up for the actions of others.

For a start, despite the Deputy First Minister's significant efforts on the issue, which Iain Gray rightly referenced, we have collectively come to the matter far too late, so—as the Deputy First Minister acknowledged—some people have not lived to see the legislation coming before Parliament. I could fill many speeches with the how, when, where and why of what has gone wrong over the years, but I would rather focus in the time that is available on a few practical concerns that relate to the bill.

First, I will raise two general points; I will then highlight a specific constituency example that has come to my attention that shows why those points are important, and which continues to give me cause for concern when I look at the bill.

I know that the cabinet secretary takes very seriously his responsibility for making the bill as robust and effective as possible, and I know that he has responded at length to the committee's report. I know that he cannot please or help everyone, and I know that that fact will weigh heavily on him. However, from the point of view of expectation management and in the interests of clarity, I think that it is important that we understand the limitations of the proposed scheme and how it will work in practice.

The first issue that I want to understand better is the evidential threshold that will be required and the principles that will guide that. I note that the cabinet secretary has said that the tests that will be used will be lower than those for civil proceedings, but I am not clear what that will mean in practice. I would like to be included in the bill a provision that would put in place a presumption throughout the process that the people who come forward will be telling the truth. That sounds obvious, and it is the position that everyone here starts from, but I think that including that in the bill would be symbolic and would help the scheme in the future.

I also think that it is important that the process should recognise where individuals have made all reasonable endeavours and have exhausted inquiries when trying to produce evidence. I hope that that will be a factor that can be taken into account when decisions are made about whether, and at what level, to make an award.

The second issue on which further clarity is needed is the related issue of how the quality and availability of evidence will interact with the different levels of payment. Ross Greer made a number of important points on that. Evidence could become available at a later stage, after people might have signed a waiver, and if they had had that evidence at the time, they might have been eligible for a different award.

There is a more fundamental challenge. I find it very difficult even to say that there are different levels of harm. However, as a Parliament, we must recognise that that is an existing concept in the Scottish legal system; in many difficult areas, it is already accepted that there are different levels of harm. It is right to recognise that people who have experienced very serious abuse might legitimately expect the system to take that into account—albeit that I would not like to try to work out where the different thresholds should sit.

We really need to understand what evidence will be required and how the testimony of individuals who come forward will be looked at. I, for one, do not want people to be taken through a process that asks them to set out a great deal of detail, which will often be difficult and personal to them, only for them to be knocked back from a higher payment. Again, I would be grateful if the cabinet secretary could say more about that, so that I can understand his thinking on it.

Partly to illustrate the points that I have just made, I will highlight a constituency example. Over a number of years, the local authority whose area my constituency is in was in the habit of paying bursaries for young people to attend St Joseph's college. I am aware of individuals who can prove that they were there because they have photos and certificates, and former teachers remember them. Those teachers also remember or believe that those individuals were on bursaries. It is well known and accepted that the bursaries were a common practice that the council adopted at the time.

Some of these individuals were abused—or, rather, some individuals who attended the school were abused; I do not want to mix up the two. However, those individuals cannot show that they were in receipt of a bursary, because the records no longer exist. My problem is that, when I look at the criteria that are set out for the redress scheme, I cannot be sure whether those individuals will be successful in seeking redress and, if they are successful, at what level. That illustrates how complicated the scheme is, and it is why it is so important that we understand what the evidential thresholds will be, what people will need to prove and when they will simply be taken at their word.

16:01

Rona Mackay (Strathkelvin and Bearsden) (SNP): The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill has been shaped and is owned by the many people who suffered abuse by people who were supposed to be caring for them.

In 2004, former First Minister Jack McConnell apologised on behalf of the Scottish people, and in 2018 the Deputy First Minister, John Swinney, apologised on behalf of the Scottish Government. The bill is the next step on that journey for the many survivors who are haunted by those terrible experiences. Money alone could never erase the memories and hurt, but for some people, whose life chances have been severely affected by what happened to them, it is a tangible way for society to say that it is sorry.

I, too, thank the many survivors who bravely gave evidence to the Education and Skills

Committee. It was not an easy thing for them to do, but their views have been invaluable in shaping the bill, which is their bill.

Of course, not all survivors will want to take the route that is set out in the bill. That is understandable and it is their right. However, for some survivors, it just might make a difference in helping them to get on with their lives. The organisations that failed them will be asked to make fair and meaningful contributions: to me, that seems to be entirely right.

The bill is complex and the committee struggled with many aspects during its scrutiny. As the convener outlined, we have sought to ensure that our recommendations reflect the desire that victims/survivors be treated with dignity, respect and compassion. That is the least that we can do.

The bill will allow applicants to choose whether to apply for a fixed-rate redress payment of £10,000 or an individually assessed redress payment of £20,000, £40,000 or £80,000. An independent non-departmental public body—redress Scotland—will make the decisions on applications for financial redress.

The most contested element of the bill is the waiver that would mean that a person who chooses the redress scheme would be unable also to choose civil litigation. The waiver would allow survivors to access justice without the implications of taking court action, and to receive compensation from the organisation that was responsible for the abuse. It would mean that the survivor would choose the path that they take. They would have a choice.

However, the overwhelming view that victims/survivors conveyed to the committee was that the waiver would restrict their choices, so it should be removed. The committee also spoke to many care providers at stage 1 and heard no evidence to suggest that the waiver would incentivise them to participate in the redress scheme. To be clear, I note that a survivor would not have to waive their right to pursue litigation where a provider did not contribute. The waiver would apply only where organisations made a fair and meaningful contribution. The committee has determined that the waiver provision as drafted would not function in the way that the Scottish Government hopes.

There are issues about the sustainability of charities and organisations and about restricted funds, and there is doubt about whether insurers would pay out in relation to the scheme. I am pleased that the Government has committed to considering that aspect before stage 2.

The time period around the waiver is also a problem, but the Government has listened to the evidence that was taken by the committee and will

lodge amendments at stage 2 to increase the 12-week extension period to six months, and the four-week review request period to eight weeks.

There is also an issue with survivors who are more than 70 years of age whose records have been destroyed and who therefore cannot access redress. I hope that that can be considered before stage 2.

Another crucial issue is relevant care settings, and the disappointment that was expressed by some survivors that their abuse will not be recognised because they were placed in a care setting by a parent or guardian. Many children found themselves in care due to having a disability, through a scholarship or for religious reasons. Their abuse was no less than that which was suffered by children who were placed in care by the state. However, the Government believes that if the eligibility criteria are open ended, that could undermine the scheme, and it is content that there is

“an appropriate limit to set.”

I am pleased that there is, however, some flexibility in the regulation-making power, should the position change.

I turn to the definition of abuse. The Government decided that an exhaustive, rather than inclusive, definition was better for legal certainty, but it conceded that an amendment to align it with previous legislation would be considered. In addition, the on-going drafting of the assessment framework will reflect the evidence that was heard at stage 1. In that regard, corporal punishment that was legal at the time when it took place, for example, would be considered to be abuse if it was excessive. That is the right course of action.

The issue of cross-border placements will also be addressed in an amendment at stage 2.

Qualifying dates for the scheme are contentious, so the Government has committed to considering its position on them in advance of stage 2.

Evidential thresholds and payment level thresholds are matters on which there are strong views. As others have said, this is a very sensitive area in which it is important to avoid a hierarchy of abuse. How could we say what level of cruelty traumatised one person more than it did another? It is certainly not for the committee to recommend payment bands, but we believe that the assessment framework is integral to the scheme. I am pleased that the Government has committed to looking at the issue and to adopting flexibility where necessary.

The bill deals with issues that are understandably sensitive and complex; those that I have highlighted are just some of many that were

considered during scrutiny. I am extremely pleased that all the issues that were highlighted by the committee are being carefully considered by the Government. I am also encouraged that every part of the process, should a survivor take the redress route, will be led by trauma-informed practitioners, and that wellbeing support will be available for survivors.

People who have not been abused as a child will never know the lifetime of trauma that it causes survivors. A meaningful apology might make a huge difference. The redress scheme is not a magic bullet, but it offers something tangible—it offers choice to survivors.

I will be pleased to agree to the bill's general principles at decision time.

16:08

Jackie Baillie (Dumbarton) (Lab): I thank the Scottish Government and the Education and Skills Committee for their work on the bill, and I thank all the survivors who helped to shape it.

The bill is incredibly important and significant, because the provisions that it seeks to create for survivors of child abuse have been a long time coming. For many survivors, providing redress signifies a step forward in their on-going recovery. The redress payment signifies far more than just the giving and receiving of compensation. It represents the justice that survivors have been seeking for decades.

Since I was first elected as MSP for Dumbarton, back in 1999—I was young then, Presiding Officer—I have been working with an incredibly brave woman, who has already been mentioned in the chamber today, called Helen Holland. Helen is a constituent of mine who, throughout the 1960s and 1970s, faced unimaginable abuse and neglect at the hands of nuns and other care workers at Nazareth house in Kilmarnock. The stories that Helen has shared over the years about her time in care are harrowing, and she still suffers the lasting effects of her experiences each and every day. For many survivors, simple daily tasks are difficult, and some are still affected by the deep trauma of their past. Over the past 20 years, Helen has spent her time fighting to ensure that no child in care ever goes through what she and so many others did.

In 2000, Helen worked with others to found INCAS—In Care Abuse Survivors—which supports survivors of in-care abuse. The organisation was set up because there was nowhere that survivors could turn to for practical support and help at the time. More than 120 survivors went to INCAS's first gathering. Since then, the organisation has grown and grown, and it continues to provide support and therapy for

people who are still struggling to cope. It also campaigns for justice for survivors. It has been at the forefront of the fight for redress, and its continued efforts will result in many survivors receiving long-overdue justice and recognition.

When I spoke to Helen a couple of days ago about today's debate, she told me that, although the bill is very welcome, amendments are needed if it is to truly support survivors. Therefore, I welcome the cabinet secretary's indication that he is listening and willing to lodge amendments.

As Iain Gray has already explained, the waiver in the bill presents a number of problems. By signing the waiver, survivors would be agreeing not to start or continue any civil legal action on their abuse against the Scottish Government or, indeed, any other care provider. I understand that the Scottish Government is trying to incentivise care provider participation, but the waiver as it stands perhaps does the opposite of what we want it to do. It is wrong to deny survivors an informed choice. Surely that could be easily resolved if the bill was amended so that the courts were directed to deduct from any future damages awarded the amount already paid to the survivor by the Scottish Government or the relevant care provider.

Many survivors simply cannot cope with going to court and being forced to relive their unbearable levels of suffering. Because of the historical nature of the abuse, many survivors are now elderly and have long-term mental health problems; indeed, some of them have terminal illnesses. It is right that they should receive a redress payment while they are still able to do so, but it is not right that they should be forced to sign away their right to pursue the matter in the courts. Allowing survivors to seek informed advice from a legal representative on any future action that they may wish to take is probably the most straightforward and obvious way of ensuring that justice is truly served for them.

The second area of concern that Helen raised with me is the payment amounts that are set out in the bill. Helen and, indeed, all the survivors whom I have met will say that it is not about the money. No amount of money will ever be adequate compensation for what they went through, but there are significant inconsistencies between the maximum amount that Scottish survivors can receive and the amount that Irish survivors, for example, receive. They are different countries with different legislative systems, but abuse is abuse, and abuse should not be of less importance because of the country, especially if the abusers were the same people.

Helen told me about two sisters. One was sent to a home in Ireland and the other went to a home in Scotland. Both were in Nazareth house homes, and they were abused by the same individual over

a number of years. However, the sister in Ireland has received 200 per cent more in compensation than the sister in Scotland is likely to receive. That is because the block payments in Ireland range from €50,000 to €350,000, whereas the range in Scotland starts at £10,000 and rises to a maximum of £80,000. Given that the only difference in many cases is the country in which the child was abused, it is vital that more consistency is created in the amounts that are paid out.

As we have heard from colleagues in the chamber, there is also an issue to do with the structure of the block payments. The payments, which are set in blocks of £10,000, £20,000, £40,000 and £80,000, are decided according to the severity of the case. However, as others have said, the level of proof that is required is not clear, and there appears to be no flexibility in the level of award. That is unfortunate, and I hope that it will be addressed at stage 2.

It is 21 years since I met Helen Holland. It has taken a very long time to get to this stage. As Iain Gray said, there was an apology to survivors from Jack McConnell in 2004. We have had the removal of the time bar and the public inquiry, but it would be another 16 years before a redress scheme was before the Parliament. Today is very welcome, and I commend John Swinney for his efforts in ensuring that that has happened. It is time for justice for survivors, and I urge support for the bill.

16:14

Alex Neil (Airdrie and Shotts) (SNP): I very much welcome the bill. As other members have said—in particular, people such as Jackie Baillie, who, like me, have been in the Parliament since day 1—we have lessons to learn for the future. The bill should have come to the Parliament many years ago—probably 20 years ago—rather than now.

However, we now have the bill at long last. As a Parliament, we have two duties to survivors. The first is to make sure that the bill is enacted as legislation and gets royal assent before the election next year. We cannot afford to delay any longer and we need to do all that we can to get it right. This is not a party-political issue. We all accept that it is a good bill, but we—and that includes John Swinney—also accept that there are one or two areas where we can improve it to make it an even better bill, which we should do over the next couple of months.

Like others, I will start with the waiver. The first thing to understand is that the waiver is the totemic issue for survivors. Survivors are not happy with it, because whether the law says so or

not, they are of the view that it undermines their human rights. With the horrendous experiences that those people have already been through—and I commend the cabinet secretary for listening to what survivors have been saying—we have to listen to what survivors are saying about the waiver.

Survivors have two fundamental concerns. I have already referred to the first, which is that they believe that it is a waiver of their human rights and that they should have the right to go to court if they feel that they should, even if they have been paid the maximum amount, or indeed any amount, under the redress scheme.

Secondly, and this has been mentioned briefly in passing by a previous speaker in the debate, the waiver could be a disincentive to some survivors to apply for the redress scheme. That is absolutely not what any of us wants. We have to take the survivor community's views seriously about the waiver. I welcome John Swinney's open response to the committee's recommendations on that issue.

On the other side, as it were, providers are not happy with the waiver either. They indicated that had they been consulted a bit more—and they believe that they were not consulted enough pre-legislatively—they would have pointed out that the waiver as it is currently constituted will not act as an incentive. The incentives will come from handling the contribution scheme in a different way. Neither the survivors nor the providers are happy with the waiver scheme.

In the committee's evidence, we heard about an issue with the legal enforceability of the waiver in Ireland, which has not been mentioned in the debate so far. The Irish had a waiver that was subject to legal challenge under the United Nations convention against torture. The legal point that was made in that challenge was that, despite the fact that the waiver—the Ireland Residential Institutions Redress Board scheme—had been legislated for and established in Irish statute, it was still open to challenge by international law on the basis of rights that are given to and exercised by people under the convention against torture. There is still a big question mark over the enforceability and legality of the waiver from a human rights point of view, which is a point that was also expressed by the Scottish Human Rights Commission.

I do not think that it is black and white, but there are serious question marks. Looking at the Irish experience also suggests that the offset route, whereby courts are directed to take any settlement in any court action into account, might be a better way to do it. Other halfway measures may be possible and, obviously, the Government will be

looking at that. I welcome the fact that the Government is looking at that issue again.

I come to the contribution scheme. Most of the providers whose organisations have been responsible for historical abuse want, in principle, to contribute to the scheme. Anybody with any feeling of moral responsibility who is running those organisations would, obviously and correctly, feel that they should contribute. However, there are a number of issues that could incentivise and facilitate contributions from the providers, if they were added to the bill.

At the moment, the bill establishes, rightly, the principle that those organisations' contributions should be fair and meaningful, and there is a clear message from Parliament about the moral obligation on all those providers to participate in the contributory element of the legislation. However, there are three areas of concern.

The first is that levels of compensation should not be such that they undermine the financial viability of the organisations. That point was supported by the survivors in their evidence to the committee. They do not want to ruin the providers financially, because, although they are critical of the providers' history, they are often very supportive of the work that the providers are doing now. The second issue is that survivors do not want levels of compensation to be so high that they could endanger the quality or level of services provided by organisations to the people who need those services today.

I absolutely support John Swinney's point about not putting a cap on contributions—that would send out completely the wrong message—so the way to handle those concerns is to add to the bill the principles that, as well as being fair and meaningful, compensation levels must not in any way be threatening to the financial viability of the providers or threaten the services that are provided by them. Including those principles would help us to incentivise people to contribute. Organisations are worried about what they perceive to be the open-ended nature of the commitment that they might be signing up to, but if those principles are established in the bill, those worries should disappear.

Let us not forget that many of the organisations are charities. Under charity law, the directors of a charity cannot sign up to any scheme that has the potential to threaten the financial viability of the organisation. Establishing those two principles, in addition to having fair and meaningful payments, would strike the right balance and allow us to ensure that we get contributions from those organisations.

The Deputy Presiding Officer: Come to a close, please.

Alex Neil: We should look at what we can do in respect of organisations that should be contributing but do not do so, albeit probably not on a statutory basis. By making those changes relating to the waiver and the contribution scheme, the cabinet secretary could achieve his very worthwhile objectives.

16:23

Brian Whittle (South Scotland) (Con): I am pleased to speak in the stage 1 debate on what is a very important bill. I commend the Education and Skills Committee for its in-depth and comprehensive report and John Swinney and the Scottish Government for their swift response to that report. In the limited time that I have, I will cover some specific points where I think that the bill needs strengthening.

As I said in last week's debate on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill, this type of bill demonstrates that Parliament is prepared to tackle a difficult topic and to bring the issues out of the shadows and into the light. Sexual abuse—specifically, child sexual abuse—has been swept under the carpet for far too long, with victims left without the support that they so desperately need.

As many of my colleagues will be aware, I have been working on such an issue on behalf of a constituent. It is fair to say that, over the prolonged period of time during which she has been seeking justice and redress, as my understanding of the trauma that she has suffered has increased, so have my discomfort and disquiet about how the ways in which victims are retraumatised and left open to suffering secondary abuse have continued to rise. The organisations that have been brought into question in my constituent's case include local government bodies, an education authority, the police, the church, support services and the Scottish Government. We should not shy away from scrutinising the actions of any such organisations that might be involved in such cases.

The redress scheme is designed so that it is easier to access it than it is to take a case through the civil courts. However, the Criminal Injuries Compensation Authority already has a similar scheme in which decisions are based on the balance of probabilities. That is a different standard from that which is employed by a criminal court, which decides whether a case has been proved beyond reasonable doubt. The victim does not need to wait for the outcome of any criminal trial if enough information is already available for a decision to be made on their case.

Crucially, though—and contrary to the bill's intention that the victim should waive their right to

future civil action—should any subsequent payment be made arising from a civil action on a CICA compensation payment, the CICA payment should be reimbursed, which other members have said should be an option. I contend that, in that respect, the bill is flawed. It should not impose a ban on future civil action, otherwise why would a victim not just approach the CICA instead?

Furthermore, I contend that many of the support organisations for survivors are too close to the Government and receive funding directly from central Government, which potentially impacts their ability to act autonomously.

Another issue that has been raised in the debate is record keeping, which is currently woefully inadequate. As I said in last week's debate, that is especially the case among local authorities, where there does not seem to be any requirement that they record potential cases of abuse within facilities that are run by them. Oliver Mundell also made that point.

Most importantly, the bill is currently designed specifically to provide financial redress for survivors of historical sexual abuse in care in Scotland. Of course, that is welcome, but in my view that aim is too narrow in scope. When I questioned the cabinet secretary on the eligibility criteria and urged that victims of sexual abuse in school settings should also be included, he responded that the scheme was designed to compensate those in relation to whom the state had undertaken parental responsibilities, by which he meant those in care homes. However, the bill that led to the Education (Scotland) Act 1980 used the term "in loco parentis", which has the effect of transferring parental responsibilities to schools temporarily. That would also be true in other instances. That being the case, the bill as it is currently drafted could leave the Government open to potential challenge in the European Court of Human Rights or by the Equality and Human Rights Commission because of the inequality in its approach to victims of crime, and especially such a heinous crime. Alex Neil was hinting at that in his contribution.

The cabinet secretary may be aware of a related case in which a judge found that the Irish Government had misrepresented a ruling by the European Court of Human Rights by excluding from its redress scheme children who had been abused in Irish schools. I accept that the issues that were dealt with in that ruling were not exactly the same as those that we are debating, but that situation suggests that the bill that is before us could be open to a similar legal challenge.

As is the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill, which was passed last week, the bill that is before us is very welcome and long overdue. In developing it,

though, it will be incumbent on us all to ensure that it is the very best that it can be for all those who have been victims of such horrendous crimes and who have to carry that burden throughout their lives. Financial redress will never heal their wounds, but it might at least give them comfort that their voices have been heard and there is an acceptance that they have been victims.

However, so much can be and needs to be done. Understanding the journeys of victims—both those who speak out and those who initially cannot—and the repeated trauma caused by having to retell their stories to multiple agencies, and tackling the lack of accessible, adequate support must all become part of the jigsaw. I have absolutely no doubt about Mr Swinney's commitment to those who have suffered such crimes. However, I ask him to be a bit braver—to look beyond the limitations created by the way in which the bill is currently drafted and towards those who have suffered in similar ways but who are currently excluded. If we do not do so, it will only require more legislation further down the line. I urge him to make the bill everything that it can be.

The Deputy Presiding Officer (Lewis Macdonald): The last member to speak in the open debate will be Annabelle Ewing.

I am sorry, but we cannot hear Annabelle Ewing because there is a problem with the sound. As we have some time in hand, I will suspend for a few moments to see whether we can connect Annabelle Ewing.

16:30

Meeting suspended.

16:32

On resuming—

The Deputy Presiding Officer: We can now hear you loud and clear, Ms Ewing.

Annabelle Ewing (Cowdenbeath) (SNP): Perfect—I am very pleased to be called to speak in the debate.

Although I am not a member of the Education and Skills Committee, which is the lead committee, I have a particular interest in the subject matter because I was the Scottish Government minister tasked with steering through the Limitation (Childhood Abuse) (Scotland) Bill. In the stage 3 debate on the bill in June 2017, I considered it of the utmost importance to recognise the bravery and perseverance of survivors, who have had such a long and arduous fight to set right the terrible injustices that they have suffered.

The Limitation (Childhood Abuse) (Scotland) Act 2017 was passed unanimously by the Scottish Parliament. It was just one element of a suite of actions that the Scottish Government undertook to carry out following on from the recommendations set forth further to the Scottish Human Rights Commission's interaction process. Further to that process, the Scottish Government has taken several actions, including setting up a national confidential forum, the establishment of the Future Pathways support fund, the support for Margaret Mitchell's member's bill, which became the Apologies (Scotland) Act 2016, the establishment of the Scottish child abuse inquiry and the undertaking to propose a redress scheme. We have heard about the advance payments that have already been made under that scheme. It has evidently been a long journey for the Scottish Parliament, and importantly, for the survivors.

It is important to recall the backdrop to the bill, because it puts several key issues in context. The key issue that the bill must address is the most efficacious way in which to set up the non-adversarial redress scheme. It will have to have the means to pay out the contributions from the providers of care concerns. I understand that that is a key issue for the survivors because, quite rightly, they feel that those providers of care have a moral responsibility. I agree entirely with that sentiment. Seeing society recognise the harm that was done to those individuals and doing right by them is part of the important task that we are engaged in. That has been a persistent ask of survivors over many years.

As to the mechanics proposed, I know—and we have heard this afternoon—that the most controversial issue is the waiver. I note that the Law Society of Scotland, for example, has raised particular legal issues with it. As a member of the Law Society of Scotland, I understand the rationale for those concerns but I feel that they could be overcome, certainly from a legal perspective.

In considering the issue, it is always important that we keep two particular issues in mind. The first is the role of the redress scheme. The scheme is to be a non-adversarial alternative to court, offering a faster and more straightforward process. It is intended to be less traumatic for survivors, in particular, because of the in-built support that it entails. Also, it will encompass within its scope the pre-1964 survivors, which was an issue that we simply could not square under limitation legislation, in the light of the prescription law of Scotland. The second important issue to keep in mind is that not all survivors want to go down the court route. They might find that it is not for them, or they might not be able to do so successfully given the very significant procedural and evidential hurdles that remain. In that regard, I note that the

limitation legislation did not remove all barriers to a successful action. It removed one barrier—the three-year time bar, which applied de facto in all cases that were brought. Those two key issues are important as the backdrop.

The cabinet secretary has said that he will continue his reflections on this important subject, and I welcome that approach. I think that it is recognised that the cabinet secretary has a deep and personal commitment to securing access to justice for survivors. In the instant case, that means finding a redress system that is workable in practice. It is not good enough for Parliament simply to come up with something on paper that will not work in practice and that does not take account of what are perhaps unrealistic expectations of the role of the redress scheme and, in some instances, of the role of civil litigation with regard to this issue, because of the immense hurdles that survivors will face in the civil courts in terms of evidential and procedural rules.

It is fair to say that the cabinet secretary made the point in his response to the stage 1 report—I think quite fairly—that there is no evidence of any international redress scheme with no form of waiver in place. It is also fair to say that we can come up with something different. However, the international evidence suggests that the issue has been wrestled with by many people in many places and no workable alternative has been found. That is important to bear in mind in future considerations.

I understand that some care providers, in their written submissions to the committee, suggested that the waiver was important to the making of financial contributions. Those care providers included Aberlour Child Care Trust, Quarriers and the Church of Scotland's CrossReach organisation. That issue has to be weighed significantly in the further deliberations on the bill, and I am sure that it will be. It is fair to say that, without financial contributions, there will not be a redress scheme—that is the stark reality, and I believe that, if that happened, it would be a failure on the part of the Parliament in its duty to survivors.

Parliament has had an honourable track record in recent years. It has shown that it recognises the state's failure in its duty of care to some of our most vulnerable children. It has also shown that it is really determined to see justice done. Therefore I feel confident that, after further scrutiny has taken place, we will see, in due course, the bill pass at stage 3.

The Deputy Presiding Officer: We move to closing speeches. We have a little time in hand, so speakers have a generous six minutes.

16:39

Daniel Johnson (Edinburgh Southern) (Lab):

I begin by expressing a hope that, collectively, we live up to survivors' expectations and that we meet their needs.

It is difficult to articulate the injustice and suffering that the bill seeks to address. Over generations, countless children were placed in the care of authorities and organisations where they were supposed to be kept safe, looked after and cared for. Instead, they were abused, exploited and preyed upon. Not only was that not prevented, but in many cases it was ignored and covered up.

As many speakers in this afternoon's debate have commented, we have been on a very long—perhaps too long—journey. We heard apologies from the former First Minister, Jack McConnell, and they were repeated by the Deputy First Minister. We have also seen the creation of the independent child abuse inquiry. The debate is an opportunity for us to repeat those apologies and acknowledge the seriousness of what occurred in the past.

The debate also provides us with an opportunity to collectively take an important further and, I hope, final step. We must go beyond simply acknowledging the abuse and the wrongs that were done in their generality. We must seek to ensure that survivors have their personal experiences acknowledged and receive an apology and justice for the wrongs that were done to them as individuals. I will reflect and reiterate the Deputy First Minister's comments, because I think that it is vital that we treat this as a genuine, collective endeavour and responsibility. There is a duty on all of us—not on any particular party—to live up to the expectations that so many survivors quite rightly have.

The creation of redress Scotland aims to create the means for survivors to seek justice in a way that is more straightforward and less burdensome than that of pursuing a claim through the civil courts. Its creation also recognises that many might find it difficult to evidence their experience to the level that would be required in the courts. It is the right approach.

Experience in other countries tells us that we must avoid adversarial processes such as those that might occur in the courts. It also tells us that it is important to ensure that survivors are helped to make their claims, rather than having to fight for recognition, particularly given that so many have been fighting all their adult life for recognition and redress.

Labour will support the bill at stage 1. However, it is important that we highlight the areas that must be improved so that the bill achieves its aims as

effectively as possible and provides justice to survivors.

As many speakers—Iain Gray, Jamie Greene, Rona Mackay, Beatrice Wishart, Alex Neil and Kenny Gibson—have noted, the waiver is the central issue that we must address. It is fair to say that we understand the intent behind the waiver, which is to incentivise organisations and maximise the number that participate by protecting them from further claims in the civil courts. However, the provision is deeply problematic for two reasons.

First, as Ross Greer, among others, set out, in the eyes of many survivors, at best, the waiver provides them with an invidious choice between compensation through the scheme or going through the courts; at worst, it is a removal of their rights.

Furthermore, and perhaps more fundamentally, I do not believe—nor do most members—that the provision does what it sets out to do. It does not provide an incentive for participation, because it is likely that participating organisations will not be assisted by their insurers in making payments, whereas they would get that assistance if they were taken to court. Bluntly, based on crude financial calculations, providers will be worse off if they participate in the scheme than they would be if they were sued. That is the blunt and simple reality that many of the providers will face, and it is the basis of their concerns.

John Swinney: I am grateful to Mr Johnson for giving way. I follow the rationale behind his argument. However, does he accept that, if that were to be the case, the provisions in the bill would run the risk of not requiring providers to make contributions to the scheme if they thought that it was more in their financial interests to rely on court action being taken against them?

Daniel Johnson: I accept the point that the waiver cannot simply be additional to any potential liability that providers might find themselves facing. However, that is why it is incumbent on all of us to find alternative mechanisms to provide incentives. I think that the waiver sets out to provide an incentive, but it ultimately fails because it does not establish liability, and therefore the policies that providers have in place will not cover them. It also fails because uncapped liability might mean that trustees are simply unable to allow their organisations to participate, which is the point that Jamie Greene made. For both those reasons, the waiver is deeply flawed, although I understand the predicament and the challenge that the Deputy First Minister set forth.

There are also issues with the calculation of fair payments. It is essential that the concept of sustainability is included in the bill as a guarantee

to organisations that participation will not put them, or the important services that they provide, at risk.

The issues concerning individual assessment have been made clear by Kenneth Gibson, Oliver Mundell and Ross Greer. It is the most delicate area of the work that redress Scotland will undertake. We are asking the organisation to listen to survivors, determine the veracity of their claims, assess the severity of that experience and then award a compensation payment commensurate with that.

Although I understand Ross Greer's suggestion that a single payment should be made, I disagree with him. However, we must set out clearer principles on which the assessments can be made and on the evidence that is required to establish proof. Those principles should be in the bill with further detail in regulations. The only way to provide justice for survivors is to have a clear process so that any decisions made by redress Scotland will be beyond reproach.

The bill is complex. There are other areas that I could and should give attention to, but I do not have time.

I thank my colleagues on the committee and note the collegiate and constructive way in which everyone has approached the bill. I thank the clerks for their work. I have no doubt that we can address the issues that have been identified and that we can make sure that the bill does what survivors require of it.

16:47

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): In closing for the Scottish Conservatives, I record my gratitude to the survivors who gave evidence to the committee and bravely came forward to tell their stories.

Members from all parties have made excellent, poignant and thoughtful contributions to the debate. As my colleague Brian Whittle pointed out, this is a difficult subject for some of us who have constituents who have been affected.

I thank the Education and Skills Committee for its work on this important step in redressing historical child abuse. Jamie Greene rightly said that no compensation can make up for the dark times experienced by survivors. However, members have acknowledged that we are taking a positive step for victims who suffered years of abuse that was largely ignored and swept under the carpet.

I am also pleased to hear the Government's commitment to work with Parliament to get the bill right for those who were failed as children. Scottish Conservatives will work with the Government as the bill progresses.

Not only will the bill deliver fair and accessible forms of financial and non-financial redress for survivors, but it marks our recognition of the abuse and harm caused to the youngest in society, which should never have been tolerated.

The detailed text of the bill will be set out in the coming months. It is encouraging that we have much common ground to work on. First and foremost, we feel that we must do what is right and appropriate for victims and survivors. That is why Scottish Conservatives will support the bill.

The choices to be made by victims and survivors must be at the heart of the support mechanisms that the bill creates. I am glad that the committee noted that victims and survivors should

"be treated with dignity, respect and compassion".

Those words should form the foundations of the bill.

We also welcome the Government's commitment to establishing the survivor forum that John Swinney mentioned in his opening speech. Given the difficult circumstances that many survivors have faced for many years, it would be wrong not to make that a driving force behind the bill.

Support must be better tailored to what victims and survivors would find most helpful. We welcome the redress scheme that is set out in the bill, as it is designed to be far more accessible than the process of taking a case through the civil courts. We know that civil and criminal court cases can cause survivors harmful memories. As many speakers have said, it is vital that we ensure that the process is less arduous and damaging for survivors of abuse.

We welcome the inclusion of next of kin in the redress scheme. There seems to be unanimous agreement that, in certain cases, even if the requirement to take a case to the civil courts is removed, it is difficult for an individual to access support. The Law Society made an important recommendation in that regard, particularly for those who might find it difficult to seek redress, such as adults with incapacity.

That issue has not been mentioned in the debate as much as I thought that it would be. Adults with incapacity might have difficulties in relation to some aspects of making and processing an application for a payment, but they should not be excluded as a result. One way to address that issue would be to appoint a guardian or intervener under the Adults with Incapacity (Scotland) Act 2000, to allow an application to the redress scheme to be made on someone's behalf.

I turn to what is included in the bill's definition of abuse, which is another point that has not been

mentioned in the debate as much as I expected it to be. Probably because I am not a member of the Education and Skills Committee, that caught my attention more than some of the other points that members have made, which I will summarise at the end of my speech.

Many stakeholders have expressed concerns about the omission of certain terms from the definition, but the one that has come to the forefront is the omission of corporal punishment, which in days past was commonplace in many settings, such as schools and children's care homes, with teachers and care staff abusing their power. Because corporal punishment was permitted at the time, people who experienced it being used in an abusive way might feel discouraged from coming forward.

I understand that the cabinet secretary has given assurances regarding the redress Scotland panel taking a one-size-fits-all approach, and that it will consider whether corporal punishment should constitute abuse and whether redress should be considered for that. However, I agree with the committee that it is vital that the Government reflects on the wealth of compelling evidence on that point and addresses stakeholders' views in forming a robust and encompassing definition.

Many members have spoken about the importance of the waiver and of the balance that must be achieved for the future viability of organisations. I am sure that that will continue to be a subject of debate, but we are here to encourage, not discourage, debate and participation. That is the approach of not only survivors but of members to the bill.

Jackie Baillie, Iain Gray and my colleague Jamie Greene are concerned that the waiver is a disincentive and said that they had heard evidence to that effect. The key issues of affordability and sustainability have also been raised. We must be able to attract contributions from organisations, and it has been suggested that the Government must look at that issue carefully if it is to get cross-party support on it at stage 2.

My colleague Oliver Mundell expressed his wish to see all evidence being taken at face value, which is an important point. There should be a presumption that those who come forward are telling the truth.

The committee suggested that, instead of fixed payments, payments should be made in bandings. As Jackie Baillie said, abuse is abuse, and there should be more consistency in payments, as well as in relation to the level of proof required.

Many members raised the requirement on survivors to make key decisions regarding offers of redress in a short timescale.

There is a lot to work on with the bill, but the Conservatives will vote to support its general principles at stage 1. John Swinney deserves grateful thanks for his pursuit of the bill, as everyone who has spoken in the debate has mentioned. We take our hats off to him.

We echo the calls in the committee's recommendations and we look forward to making amendments to the bill at stage 2.

The Deputy Presiding Officer: I call John Swinney to wind up the debate. Cabinet secretary, you have until 5 past 5.

16:54

John Swinney: I thank colleagues from all political parties for their thoughtful and substantial contributions to the debate, which I think will help us significantly in advancing the development of the bill and in the resolution of the issues on which there is not yet agreement.

The only place that I can start in closing the debate is with Jackie Baillie's contribution—not because of the quiet banter that was going on during the suspension, which happened before Annabelle Ewing's wise and thoughtful speech, but because of her comments about Helen Holland.

Helen Holland is one of the most remarkable people I have met in my life. I cannot begin to imagine the suffering that she has endured in her life; I cannot begin to fathom and understand any of it. However, she has devoted the past 20 years of her life to making sure that the world is a better place as a consequence of all the terrible suffering that she has endured. If there was ever an example to any of us as to how we should live our lives, it is how she has devoted the past 20 years of her life to the pursuit of justice, which is not really for herself at all but for everyone else. It has been the privilege of my life to get to know her and to be motivated by the spirit that motivates her.

Members have been generous in their comments about my personal commitment to the bill. My very high personal commitment to the bill, which is traced back to Helen Holland, is to make sure that I complete a task that she has been determined to complete. I pay warm public tribute to the many survivors who I have had the privilege to meet, but particularly to Helen for her determination in that endeavour.

Annabelle Ewing talked about the journey that we have been on. A few weeks ago, I gave evidence to the Scottish child abuse inquiry. I accepted—indeed, I offered this up to the inquiry—that I felt that we are getting to a place in which we are completing the addressing of the historical wrongs that have afflicted our society on

these issues, with the Limitation (Childhood Abuse) (Scotland) Act 2017, for which Annabelle Ewing was responsible; the apology that the former First Minister Jack McConnell made; the Apologies (Scotland) Act 2016; the establishment of the Scottish child abuse inquiry; the establishment of the advance payment scheme; and now the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.

It has taken us too long to get here—I accept that point in front of Parliament today as I accepted it in front of the Scottish child abuse inquiry when I gave evidence to Lady Smith—but we are here and I am absolutely determined to ensure that we get it right now that we have arrived at this point.

One of the strong points that Annabelle Ewing made—Jamie Greene, Daniel Johnson and Iain Gray made it, too—is that the purpose of the waiver scheme is to provide an alternative to court. It is to provide a reliable, dependable route that saves survivors going through the ordeal of providing evidence in a court case in an adversarial setting where it may be difficult to address the issues and find the evidence to successfully win a court action. As it is an alternative to court, it does not require the same burden of proof that a court requires. I will come back to that point in a moment.

Crucially, Annabelle Ewing also made the point that the scheme must work in practice. In that respect, Iain Gray's comments are important. We all want to achieve the same objectives through the bill. The heart of the matter is that we want survivors to have an alternative to court that secures a dependable outcome for them and we want organisations—providers—to make a contribution. We are all agreed on those points. However, we are not quite agreed on the mechanism by which we can enable those two things at the same time.

In the spirit of the fair contribution that Daniel Johnson made to the debate, in which he called on us all to live up to the hopes of survivors to do it properly—I am completely committed to doing that—I invite members to go into the next stage of the process with an open mind and to try to address the question that I have posed: how do we design a mechanism that enables us to secure contributions from providers and delivers an outcome for survivors? That is the spirit in which I am going into the discussion.

I have proposed that the way to do that is through a waiver scheme, but if there is a better idea, I am prepared to contemplate it.

Iain Gray: An important element of this is the discussions that have taken place and of which the committee has some awareness—although

perhaps not a great awareness of the detail—between Mr Swinney's officials and the organisations about how the calculation would work and what the contribution would be. Will Mr Swinney go back into those discussions and revisit some of that because he clearly feels that there was a problem with where they had got to?

John Swinney: I am absolutely committed to doing that. I would also welcome some cross-party discussions before we get too far into stage 2 so that we can air openly the evidence and assumptions that underpin the Government's position and hear what underlies other opinions. I am very open to that so that we can focus on answering the question how we design a mechanism that secures contributions and enables us to make payments to survivors. I have put a model on the table, but I would welcome a commitment to open cross-party conversations before we get to stage 2 amendments that will enable us to hear some of the detail that underlies that. I commit to that today.

Jamie Greene: I appreciate the cabinet secretary giving up his time in this short debate. I welcome his openness, and Conservative members will, as I am sure that other members will, fully participate in those discussions with transparency and an earnest intention to get to the root of it. However, the stage 1 report is based on evidence that the committee took. Paragraph 510 notes that the care providers that we spoke to said that there was no suggestion that the waiver would incentivise them to participate. The answer therefore lies in the contributing organisations. What do they say to us and what do they say to the Government? If they come forward with a suggestion that works, of course we will look at it, but ultimately it will be those organisations that pay the money. What do they say to you, cabinet secretary?

John Swinney: As I said to the committee, I have in my briefing the point that various organisations have welcomed the proposal for a waiver provision, including the Aberlour Child Care Trust, Quarriers, and Church of Scotland CrossReach. These are the issues that we have to explore. I want to answer Mr Greene's question and I want these organisations to provide, because I want to address the issue that Helen Holland raises—she wants to make sure that these organisations are accountable to many survivors.

On the issue of the burden of proof, which Daniel Johnson raised, one of the important opportunities of the scheme that we are providing is that we do not have to have the same standard of proof as would be required in a court setting. We have set out that we are attracted by a standard of proof that is something equivalent to a

civil standard, where the balance of probability is essentially assumed to be on the side of the victim and that something is more likely than not to have happened.

Crucially, in the advance payment scheme, 520 cases have been fulfilled and not one of them has, to date, been rejected on the basis of a lack of evidence. My officials are working hand in hand with survivors in some cases to find proof to substantiate the claims that are being made, but it is important to reassure Parliament that, in the approach that we have taken on the advance payment scheme, we have not rejected any cases on the basis of a lack of evidence so far.

Daniel Johnson: On the point about helping claimants to find the evidence, could that be put in the bill? That was something that I did not manage to say when I spoke earlier.

John Swinney: Without a doubt. That might also help to define in more detail, perhaps to the reassurance of Parliament, what is envisaged in terms of the standard of proof that might be required to address these questions.

Oliver Mundell: Does the cabinet secretary accept that the point that he is making becomes more complicated when it comes to determining the different levels or does he just not envisage a problem there? I worry that, to get the higher-end payments, the balance of probabilities might be interpreted differently.

John Swinney: I meant to mention Mr Mundell in relation to the burden of proof question, because his speech was dominated by that point. However, his intervention leads us to one of the other issues, which was covered in Ross Greer's contribution. Another question that we have to resolve is whether we believe that a flat-rate payment is more appropriate than a range of payments.

I suspect that going down the route of having a range of payments would require more evidence to be marshalled, whereas a flat-rate payment—which is what the advance payment scheme is based on—would perhaps make it more straightforward to enable payments to be made without it becoming a traumatic and arduous process for survivors.

There are choices to be made about the payments; in relation to that question, again, I am not wedded to a particular approach. I will listen carefully to where Parliament is on those questions and I will listen to survivors because, fundamentally, we want to secure a scheme that meets the needs of survivors and does not add to their trauma.

I hope that I have helped to reassure Parliament this evening that the Government will engage

constructively on those questions. The bill has to be workable, because we have to be able to look survivors in the eye after the bill has passed and give them confidence that it delivers what they expect of us. I commit myself to that and I am greatly encouraged by the response of members this afternoon as to the commitment that is shared across the political spectrum.

The Deputy Presiding Officer: That concludes the debate on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.

Decision Time

The Deputy Presiding Officer: That concludes decision time.

17:06

Meeting closed at 17:07.

The Deputy Presiding Officer (Lewis Macdonald): The next item of business is decision time. There is one question to be put as a result of today's business. The question is, that motion S5M-23707, in the name of John Swinney, on the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill at stage 1, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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