



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Meeting of the Parliament

**Tuesday 1 May 2018**

**Session 5**



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# Scottish Parliament

Tuesday 1 May 2018

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

## Time for Reflection

**The Presiding Officer (Ken Macintosh):** Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader is Pastor Keith Short, who is senior pastor at St John's church in Linlithgow.

**Pastor Keith Short (St John's Church, Linlithgow):** Presiding Officer, members of the Scottish Parliament, thank you for the opportunity to speak to you today.

I want to start with what might seem at first glance a silly story. A father was babysitting his daughter. His peace was interrupted by a violent thunderstorm with flashes of lightning and the noise of his daughter moving about her bedroom. He rushed into her room to find her standing at the open window with her arms open wide. He ran over to her, picked her up and asked whether she was frightened. "It's all right, Daddy," she said. "It's just God—he's taking photographs of me."

The idea that God, even if we believe that he exists, would be so interested in a little girl that he would take photographs of her might seem to us somewhat ridiculous. Yet I believe that that little girl understood something profound about the God that I have come to know and serve. As a Christian, I believe that every human being is created in the image of God and, as such, is of immense value and worth.

The Bible is full of radical challenges—to love one another and even to love our enemies. In John's first letter, we are told that we cannot say that we love God, whom we cannot see, if we do not love people whom we can see. Let us be honest: that is a challenge for us all.

Last weekend, I was in Arbroath with 30 teenagers from a variety of backgrounds. The culture that my youth leaders had created was one in which everyone was valued and respected. New friendships were forged, barriers were broken down and fears were confronted. That weekend, they found hope, strength and faith. The conflicts that all teenagers experience just did not seem important any more. They had found a new perspective.

Shortly before he died, aged 63, Henri Nouwen wrote these words:

"How much longer will I live? ... I could live another thirty years! Do I want to live that long? Or do I hope to be united

with Christ sooner? Only one thing seems clear to me. Every day should be well-lived. What a simple truth! Still, it is worth my attention. Did I offer peace today? Did I bring a smile to someone's face? Did I say words of healing? Did I let go of my anger and resentment? Did I forgive? Did I love? These are the real questions. I must trust that the little bit of love that I sow now will bear many fruits, here in this world and the life to come."

Thank you.

## Business Motion

14:04

**The Presiding Officer (Ken Macintosh):** The next item of business is consideration of business motion S5M-11996, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revised business programme for today.

*Motion moved,*

That the Parliament agrees to the following revision to the programme of business for Tuesday 1 May—

after

*followed by* Topical Questions

insert

*followed by* Ministerial Statement: Agreement of multi-year funding package for expansion of funded early learning and childcare—[Joe FitzPatrick.]

*Motion agreed to.*

## Topical Question Time

14:04

### Police Scotland (“A Force in Crisis”)

1. **Liam Kerr (North East Scotland) (Con):** To ask the Scottish Government what its response is to the BBC programme “A Force in Crisis” alleging that, in 2014, the chief constable’s office suggested edits to a critical report on culture and ethos at Police Scotland. (S5T-01064)

**The Cabinet Secretary for Justice (Michael Matheson):** Yesterday evening’s BBC documentary explored a number of issues relating to the leadership and delivery of policing in the initial period following the establishment of Police Scotland. The matters that it raised, many of which are historical legacy force issues that were inherited by the single service, are primarily for Police Scotland to address. I welcome the steps that the Scottish Police Authority has taken to seek urgent assurances from the service in relation to the issues that the BBC programme raised and note its commitment to addressing those matters through the appropriate governance and assurance routes.

The Scottish Police Authority board is due to meet next on Wednesday, when it will discuss on-going efforts to transform policing in Scotland. That transformation is delivering an increasingly outcome-focused model of policing, improved emphasis on office and staff wellbeing and a continued focus on professional standards and ethics, all of which attracted comment in yesterday’s programme. The changes that are being taken forward will allow the service to build on the significant progress that has been made in recent times, whether that be in relation to the more ethical use of stop and search as a police tactic, the strengthening of Police Scotland’s anti-corruption practices or the delivery of targeted activities to support wellbeing across the service.

It is clear that the issues that were previously encountered in each of those areas predates Police Scotland, and I am confident that the establishment of a single command structure, coupled with the enhanced oversight arrangements that have been delivered through police reform, has aided the improvements that we have seen. I welcome the continued focus that Police Scotland has placed on ethics and professional standards throughout that process. That was recently demonstrated through the establishment of a new executive portfolio of professionalism and assurance, which is headed by an assistant chief constable.

I am committed to supporting both Police Scotland and the Scottish Police Authority as they continue that important work, ensuring that public confidence in policing remains strong going forward.

**Liam Kerr:** I think that people watching this today will feel that the cabinet secretary's answers are not really good enough. This is a scandal, and I do not use that word lightly. It appears that the head of our national police force engaged in a deliberate cover-up of allegations of corruption and changed the tenses describing other problems to suggest that they were already fixed. People and their trust in their employer make our police force what it is, but it is alleged that an entire section of the report entitled "Culture of Fear" was retitled, redacted and rescripted. The issue goes to the very top, but people will want to know how far. When did the cabinet secretary first learn about the problems identified and the whitewash? If the answer is, "In the last 48 hours," does that not rather suggest that he is not on top of his brief?

**Michael Matheson:** The member will be aware that the report in question is almost four years old. It was an internal Police Scotland report that was considered internally in the police service. The member is referring to the actions not of the previous chief constable but of the chief constable before him—Sir Stephen House—when he talks about the changes that were made to that report.

With a report of this nature, I would expect there to be appropriate oversight by the Scottish Police Authority of how Police Scotland was taking forward such matters. However, it is worth picking up on some of the issues that this report highlighted. I believe that the member is referring to the part of the report about corruption in Tayside Police, which was the force that existed in Tayside before Police Scotland was created. I understand that that was investigated by the Crown Office and Procurator Fiscal Service at that point.

The member referred to the way in which the counter-corruption unit had been operating, but he is clearly not aware of the fact that Her Majesty's inspectorate of constabulary in Scotland undertook an assurance review of the counter-corruption unit in Police Scotland and published its report back in 2016. HMICS made 39 recommendations, all of which were accepted by Police Scotland. As a result, Police Scotland changed its model of dealing with anti-corruption issues. I am surprised that, as a justice spokesperson, the member is not aware that HMICS is about to produce an update review of the progress that Police Scotland has made on those issues.

Another aspect that the report highlighted was a culture of fear, particularly around targets for a

range of issues including stop and search. We set up the independent oversight group—the advisory group—to look at stop and search. The group was headed by John Scott QC and it set out a range of recommendations. As a consequence, we now have the new code of practice for stop and search, which was approved by the Justice Committee as a significant step to change the culture around the use of stop and search, and as a result we no longer have the target culture that the report referred to.

The member seems not to recognise that significant progress has been made and continues to be made in a range of areas. I am assured that the Scottish Police Authority has given Police Scotland a clear indication that it wants an urgent update on the actions that have been taken to address the matters that were highlighted in the report, and it will then take that through its appropriate assurance mechanism. The member will recognise that the Scottish Police Authority is the body that is responsible for oversight of the police service, and that is exactly what it intends to do on this particular issue.

**Liam Kerr:** The cabinet secretary seems very clear on what he thinks I am aware of, but I am not sure that we got an answer to the question of what he was aware of in relation to these issues, or when. Perhaps someone else will pick up on that.

An early draft of the report claimed that, throughout, Police Scotland conducted itself using unauthorised surveillance and that it threatened and intimidated witnesses, unlawfully detained suspects, colluded on witness statements and failed to reveal evidence. There was also a culture of fear. Is the cabinet secretary aware of whether any or all of those allegations are true? In any event, will he order a full and forensic investigation into the report and its original findings and ensure that those who created the situation—and indeed those who may have tried to hide it—are fully held to account?

**Michael Matheson:** I just mentioned how the matter is going to be taken forward. It will be taken forward by the oversight body for policing in Scotland, which is the Scottish Police Authority. It has asked for urgent assurance from Police Scotland on the issues that were highlighted in the report.

The member will be aware that it was an internal Police Scotland report. Officials have no record of it having been shared with the Scottish Government—with me or previously. On that basis, it was an internal report that was taken forward by Police Scotland. Given the outcomes, I think that it should have shared the report with the Scottish Police Authority.

The important thing here is for the service to move forward. As I mentioned, in relation to a number of the areas that were highlighted in the report, significant progress has been made. I hope that, going forward, the Scottish Police Authority will make sure that the issues that were highlighted in the report have been appropriately addressed by the Scottish police service in such a way that people can have confidence in the way in which it manages these matters.

**The Presiding Officer (Ken Macintosh):** Four more members wish to ask supplementary questions. I ask for them to be kept relatively brief, and the answers similarly.

**Daniel Johnson (Edinburgh Southern) (Lab):** I begin by expressing my disappointment that we are not having a full statement on the matter, because it is extremely serious. The cabinet secretary went to some lengths to explain how it has concluded, but he did not make any comment on the suppression of key allegations in the report. The actions were taken in the very early days of Police Scotland. What does it say about the organisation's culture and ethos that they were some of the very first acts of the then chief constable? Is the cabinet secretary confident that no such manipulation of reports or suppression of evidence of wrongdoing has taken place since then? Finally, let us return to the original question. When did he first become aware of the matter? Was it before last night? If so, why did he not bring the matter before Parliament?

**Michael Matheson:** The nature of the report was brought to my attention when the BBC published information relating to its programme and the fact that it was focusing on this particular report. As I mentioned, the report has not been shared with the Scottish Government. We do not have a record of ever having received it, and it predates my being in office.

Given the content of the report, I think that Police Scotland should have shared it with the Scottish Police Authority at the time to give it an opportunity to look at the issues. I think that it was a mistake on the part of Police Scotland not to do that.

I expect that, going forward, the Scottish Police Authority will be clear with Police Scotland that any internal reports of this nature, where issues of concern are highlighted, should be brought to the attention of the Scottish Police Authority, which is the appropriate body that has oversight of these matters. That is what I would expect to happen in the future should any report of this nature be brought forward by Police Scotland.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Does the cabinet secretary agree that the progress that Police Scotland has made since its

creation is reflected in high public confidence in the police and the lowest crime rate in 43 years?

**Michael Matheson:** Police Scotland has made significant progress. As I mentioned in my response to Liam Kerr's question, many of the issues that are highlighted in the report, including the actions of the counter-corruption unit and issues relating to the use of targets, particularly stop-and-search targets, have been addressed. On staff not feeling that their wellbeing has been addressed, for example, a significant amount of work has been done in the service to address welfare and wellbeing issues. Deputy Chief Constable Livingstone has been key and instrumental in taking forward that work in the force to ensure that such matters are appropriately and more effectively addressed. He has put in place a whole range of measures to address them.

In relation to the legacy forces, my understanding is that, where there were questions about illegal action, matters were referred to the Crown Office for it to consider.

I am sure that members will recognise that the nature and findings of the report and its title—"A Force in Crisis"—do not reflect where Police Scotland is today, and they certainly do not reflect the dedication and hard work of thousands of police officers and staff who work tirelessly to keep our communities safe. That title does a disservice to those who work hard day in, day out to keep our communities safe, and I thank them for doing so.

**John Finnie (Highlands and Islands) (Green):** I share the cabinet secretary's view that that title is a fiction.

We need to take reassurance from the fact that the Crown Office and Procurator Fiscal Service intervened in respect of serious criminal accusations relating to Tayside Police. I take some reassurance from the Scottish Police Authority continuing to have an interest in that. However, colleagues seem to have a marked unwillingness to move on on issues. A lot of what we are talking about is a rehash of things that the Justice Committee or the Justice Sub-Committee on Policing have looked at. If Mr Kerr cares to look into it, he will see that that is the case.

During the life of Police Scotland, there has not been one unsolved murder, and organised crime has been tackled. There was recently a significant conviction of very vicious people who worked on an international basis. *[Interruption.]* My Labour colleagues do not seem to want to listen to this. Victims of sexual crime have growing confidence in the police service. I have confidence in the police, and we will continue our scrutiny. Does the cabinet secretary have confidence in Police Scotland?

**Michael Matheson:** John Finnie has made a number of important points. I recognise that members did not want to listen to him, because it was good news. As ever, the Opposition parties are not here to support the police service; they are here to kick it when they can, and they take that opportunity whenever they can. That reflects the standard that we have come to expect from Opposition justice spokespeople these days.

John Finnie is correct: there have been no unsolved murders since Police Scotland was created, and significant progress has been made in tackling serious and organised crime issues. The recent conviction of nine individuals at the High Court of Justiciary in Glasgow is a clear example of the significant progress that we have been able to make, particularly with a single command structure, in giving a clear focus to tackling serious and organised crime groups that are significant not only in Scotland but internationally in the organised crime sector. That in itself is a demonstration of the real benefits that have come from the way in which the service is addressing issues.

I have absolutely no doubt that the service will continue to make improvements. There are areas in which there continue to be challenges and areas in which the service will want to continue to make improvements and address issues of concern, but I have absolutely no doubt that it is moving in the right direction. It is doing so because of the dedication and commitment of thousands of men and women—officers and staff—who do everything in their power each day to ensure that they keep our communities safe. I have every confidence in them.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I take exception to accusations that Opposition members are doing the police down. With the exception of the previous two questions, we have held the Government to account.

Until yesterday, it was clear that Police Scotland was still keeping the review secret; indeed, the police rejected a freedom of information request on the matter five weeks ago. Is it not the case that the real reason why the Scottish ministers have shown no interest in obtaining the original report is that it calls into question the effectiveness of their centralisation of power in the police and, indeed, their toothless police authority?

**Michael Matheson:** No, I do not agree with that. To a large extent, the report highlights issues relating to conduct in previous legacy forces. I am sure that the member, if he gave proper consideration to the matter, would have serious doubts about the quality of the oversight of what was going on in the legacy forces and their ability to address some of the issues, which Police Scotland has inherited and is having to deal with.

I assure the member that, as I set out my original answer, the Scottish Police Authority is clear that it wants urgent assurances from Police Scotland on the issues that were raised in the report and that they have been or are being addressed in the service.

I made reference to a number of the areas where progress has been made, including stop and search. The member's colleague, the former MSP Alison McInnes, was at the forefront of demanding that we change our approach to stop and search. She made a positive contribution to the policing debate by trying to change policing and to improve how it operated in our society, and her legacy is reflected in the changes that were made.

The report highlights the culture of targets and the culture of fear that that created. Part of that was driven by the targets on stop and search. That approach has now changed significantly.

I assure the member that progress has been made on a number of different areas, and it was for the producers to decide whether to reflect that in their programme. I have mentioned several of those areas, which were referenced in the report. I have no doubt that the Scottish Police Authority and Police Scotland will want to continue to drive forward the improvements in the months and years ahead.

### Alcohol Pricing

**2. Ash Denham (Edinburgh Eastern) (SNP):** To ask the Scottish Government what process it will use to monitor the effectiveness of the pricing per unit of alcohol. (S5T-01059)

**The Cabinet Secretary for Health and Sport (Shona Robison):** Today is a truly landmark day, as Scotland becomes the first country worldwide to introduce minimum unit pricing for alcohol. NHS Health Scotland is leading the monitoring and evaluation plan for minimum unit pricing. The plan involves an extensive portfolio of research that will examine a number of areas, including implementation and compliance, price and product range, alcohol sales and consumption, alcohol-related harm, economic impact on the industry and attitudes to minimum unit pricing. Some studies will be carried out by NHS Health Scotland and others will be commissioned.

An overarching governance board and evaluation advisory group for the individual studies have been established. For some surveys, baseline data collection has been completed. I look forward to seeing the data from the evaluation programme as we embark on the next phase of our journey to tackle Scotland's relationship with alcohol.

**Ash Denham:** Minimum unit pricing is intended to be part of a wider health policy. Will the cabinet secretary set out the number of lives that it is hoped will be saved as a result of its implementation?

**Shona Robison:** The University of Sheffield modelling estimates that, if a minimum unit price of 50p was introduced in the first year, there would be 58 fewer alcohol-related deaths and almost 1,300 fewer alcohol-related hospital admissions. Over five years, we could expect 392 fewer alcohol-related deaths and almost 8,254 fewer alcohol-related hospital admissions.

For some illnesses associated with drinking alcohol, it may take longer to see the full benefit of drinking less. We think that it will probably take 20 years for all the benefits of the policy to be realised, but substantial progress will be made over that period.

**Ash Denham:** Are other countries looking at and considering implementing the model that Scotland has introduced?

**Shona Robison:** The member may be aware that the Welsh Assembly Government introduced legislation for minimum unit pricing of alcohol in October 2017, and that Ireland is also looking at the policy. I understand that the Australian Northern Territory is considering a minimum floor price for alcohol.

Minimum unit pricing is a landmark policy that is gaining interest across the world, and other countries are watching Scotland with interest. I know that other health professionals, including the chief medical officer in England, are supporters of the policy, and I hope that there will be growing voices for other parts of the United Kingdom to follow suit.

**The Presiding Officer:** I am conscious that we are well over time, but if members are brief, I will take two front-bench questions.

**Miles Briggs (Lothian) (Con):** In the assessment process, will consideration be given to a banded approach to minimum unit pricing, as highlighted by the Centre for Economics and Business Research in its recent report? The suggestion was submitted to the Scottish Government's consultation on price.

**Shona Robison:** It is important that we establish the evidence on the basis of the 50p price, but as the evaluation goes forward, we will of course keep price under review, as I said. Price is something that we will come back to, but what is important now is that we get on with implementing the policy.

**Anas Sarwar (Glasgow) (Lab):** In monitoring the effectiveness of MUP, will the cabinet secretary commit to looking at two other areas?

First, will she consider the downward trend in investment in alcohol and drug partnerships and the impact of that on our alcohol strategy? Secondly, will she consider where the money goes and consider introducing a social responsibility levy, so that the additional resource that comes from MUP does not go towards supermarket profits but can instead be invested in our national health service and support services?

**Shona Robison:** It is good that Labour is finally supporting this important policy.

Anas Sarwar will be aware—because I have said this already—that the evaluation process will capture where revenues land, because they could land in a number of different places. That will be monitored.

I have explained why this is not the right time to introduce a public health supplement or a social responsibility levy—of course, the policy was aimed at addressing local circumstances rather than being to do with minimum unit pricing. However, we will keep the matter under review.

I would have thought that Anas Sarwar would be aware that there was £20 million of additional spend for alcohol and drug partnerships in the budget—which, unfortunately, he voted against.

## Early Learning and Childcare

**The Presiding Officer (Ken Macintosh):** The next item of business is a statement by Maree Todd on the agreement on a multi-year funding package for the expansion of funded early learning and childcare. The minister will take questions at the end of her statement.

14:27

**The Minister for Childcare and Early Years (Maree Todd):** I am delighted to update the Parliament this afternoon on the agreement that this Government has reached with Convention of Scottish Local Authorities leaders to fully fund the expansion of the early learning and childcare entitlement to 1,140 hours from August 2020.

This landmark agreement is the culmination of more than two years of hard work by the Scottish Government and local authorities to establish a robust shared understanding of the costs attached to the expansion. It is evidence of real partnership working to deliver a shared ambition to give all our children the best start in life.

Responding to the agreement on behalf of COSLA, Councillor Gail Macgregor, who joined me for a fantastic visit to Cameron House nursery school in Edinburgh this morning, said:

“Local government is fully committed to early learning and childcare expansion to 1140 hours. COSLA and Scotland’s Council Leaders are fully behind the policy.”

She went on to say that the

“agreement by Council Leaders in agreeing the multi-year funding deal is a culmination of months of hard work, negotiation and real partnership working behind the scenes. We needed to get this policy right from the start, together with the level of funding. I think we have achieved this by working together.”

Under the agreement, the Scottish Government has committed to providing local authorities with revenue funding of an additional £567 million per year by 2021-22—the first full financial year of the expansion. That will bring annual public spend on early learning and childcare to £990 million.

In addition, the Scottish Government has committed to providing local authorities with total capital funding of £476 million over four years to support building projects to create new indoor and outdoor capacity that will deliver the expansion.

Those funding allocations will, of course, be subject to parliamentary approval of the Scottish budget for the respective years, but I hope that members of all parties can support this truly transformative investment in Scotland’s children.

The agreed funding package is the product of extensive work by the Scottish Government and local authorities to prepare robust cost estimates

for the expansion. Local authorities submitted their initial expansion plans to the Scottish Government in September 2017. In March 2018, following a period of engagement, dialogue, challenge and refinement that built on the learning from an initial review of expansion plans, local authorities submitted refreshed financial estimates that form the basis of the package that was agreed on Friday. I am grateful to all those in local authorities who have worked tirelessly behind the scenes to prepare estimates and refine plans. The Scottish ministers and COSLA leaders considered the robustness of the estimates and, through negotiation, reached agreement on adjustments to be made to revenue and capital initial estimates in order to arrive at reasonable and evidence-based national funding totals.

I am confident that the joint review process and the compromises that have been made by both parties will deliver value for money. The agreed revenue funding package is the product of an intense period in which local authorities refined demand and supply estimates and associated service delivery models, which has reduced local authority estimates of the workforce requirements for the expansion.

The funding package ensures that a sustainable hourly rate will be paid to funded providers across Scotland who will deliver the funded entitlement to early learning and childcare. This landmark deal secures sustainable funding not only for local authorities but for early learning and childcare providers across the private and third sectors, including childminders, who are a critical component of our new model in which the funding follows the child. In particular, the deal bears out our commitment to provide sufficient funding to ensure that all childcare workers who deliver the funded entitlement will be paid at least the Scottish living wage from 2020. We recognise the valuable role that our early years practitioners play in shaping our children’s development, and I am proud that the funding package recognises that.

One of the most significant ways in which the expansion will contribute to closing the poverty-related attainment gap is through increasing the uptake of entitlement for eligible two-year-olds. We know that there is scope to improve on existing levels of uptake so that more children and families can benefit from the offer. The levels of revenue funding that were agreed with COSLA are sufficient to deliver a near doubling of the uptake among eligible two-year-olds, to 64 per cent. I warmly welcome local authorities’ commitment to put the resources in place to work with families to raise awareness of the entitlement and to help families to access such services.

We recognise that the funding package that was agreed last week represents our collective best

estimate of the costs that will arise from the expansion at this point in time. It is, therefore, incumbent on all of us to continue to keep the estimates under review in order that we maximise the value for Scotland's children and families from this investment. The Scottish Government and COSLA have agreed to put in place proportionate annual review arrangements to provide assurance to all parties that the funding package reflects the costs of delivery and the actual uptake of the offer. Such a review will provide us with an evidence base on which to consider whether the policy is fully funded and to take action if it appears to be overfunded or underfunded.

The expansion planning process that we undertook with local authorities was underpinned by the primary planning principle that authorities should make the best use of existing resources, consider purchasing capacity from the private and third sectors and then, finally—if there is no alternative—build new capacity. Local authorities have applied that principle in deriving their capital requirements for the expansion.

In order to promote equity and fairness in the funding that is provided to local authorities, we agreed with COSLA leaders to apply to local authority capital cost estimates standard reference rates that reflect and acknowledge the impact of rurality. Once those reference rates have been applied, the multi-year capital funding requirement for the expansion is £476 million, which will be distributed over four financial years from 2017-18 to 2020-21. That investment will deliver around 900 capital investment projects across Scotland, including more than 100 new nursery facilities.

I was personally delighted to see that authorities are planning to make significant use of outdoor facilities as part of their expansion plans, which will enrich the early learning and childcare experience for our children.

As I outlined to the Parliament in March, such ambitious plans always come with challenges. I have never denied that those challenges exist, and I am absolutely committed to addressing them in partnership with local authorities and other delivery partners. One of those challenges was reaching agreement on a funding package. I am delighted that we have risen to and resolved that challenge, which has been made possible by genuine partnership working with our colleagues in local government.

Agreement of the funding package is a critical milestone in the delivery of the expansion of early learning and childcare entitlement by 2020. It marks the commencement of a delivery phase, and local authorities will now be able to progress their local expansion plans without delay.

I do not doubt that expanding the provision of funded early learning and childcare is the right policy to give all our children the best start in life. We must never forget that the fundamental purpose of the expansion is to improve our children's early years experience and equip them for a lifelong learning journey. By fully funding that commitment, we will ensure that all children receive high-quality early learning and childcare in the public, private and third sectors.

I commend this landmark funding agreement to the Parliament.

**The Presiding Officer:** The minister will now take questions. I am conscious that topical questions overran its time, so unless the questions for the minister and her answers are suitably succinct, the last couple of questioners might not get in—that is an early warning.

**Michelle Ballantyne (South Scotland) (Con):** I thank the minister for advance sight of her statement and I welcome the fact that she has worked in partnership with COSLA to achieve the funding agreement.

I want to ask questions about three areas that have jumped out at me. First, the minister made reference in her statement to her new model, in which the funding follows the child. Can she advise when the child account will be implemented?

Secondly, I note that the minister referred—twice, in fact—to a “sustainable hourly rate” to be paid to funded providers who are delivering the funded entitlement. Will that enable all ELC staff to be paid the living wage, so that we do not end up with inequality across the profession?

Thirdly, can the minister tell me what controls, if any, the Government will put in place to ensure that the capital allocation benefits nursery provision across the sector and that we do not just see local authorities expand their provision?

**Maree Todd:** I thank Michelle Ballantyne for those questions. On her first point, we have given a commitment to exploring a way to deliver the funding-follows-the-child model. We are absolutely determined that flexibility will be a cornerstone of this policy and we understand that it must work for families if we are to achieve its goals. We are exploring that at the moment, and by 2020 we will have a funding-follows-the-child model.

On the agreement with local authorities on funding for living wage entitlement, we have underpinned that with a quality standard. To achieve funded entitlement, people have to meet certain standards, one of which is that those who deliver the 1,140 hours will pay the living wage. As the member knows, that is part of our commitment

and it is part of the agreement that we have struck with COSLA.

On the question about capital expenditure, this is an agreement with COSLA, which has looked closely at its local requirements and what is required to be spent on capital expenditure, and we have agreed to fully fund it. It is a day for celebration.

**Iain Gray (East Lothian) (Lab):** I, too, thank the minister for early sight of her statement. When the Auditor General reported recently on the expansion of early years and childcare, she sounded a note of concern over the gap between local authorities' identified funding needs and what the Government was then making available. We welcome the fact that the Government has accepted that its initial proposal fell short and has moved significantly towards the councils' identified revenue funding needs.

However, the Auditor General was also clear that the funding will not deliver the policy unless we can find, recruit and train the required staffing numbers. Given the announcements on funding, can the minister now tell us how many early years workers currently work in the sector, what she expects that number to be by 2021 and how that increase will be achieved through this funding?

**Maree Todd:** Yes, I can. In December 2016, 33,430 people worked in Scotland's childcare sector. Another approximately 6,000 people worked as childminders.

We have in place, as members know, a robust recruitment programme. We have provided extra places at college. We have provided extra apprenticeship places. We have provided extra university places. We are absolutely confident that we will deliver the extra workforce required.

As members also know, we have already had a recruitment drive that aimed to recruit school leavers. We are about to have a recruitment drive that will aim to attract career changers and parents returning to work. We fully expect to deliver the workforce required for this expansion.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** How does the Government intend to improve retention rates in the early learning and childcare sector, which would allow for consistent contact time between children and practitioners?

**Maree Todd:** We recognise the importance of consistent relationships in early years. There are a number of ways in which we intend to improve recruitment and retention; one of those is delivering the living wage, and another is the quality action plan, which outlines investment in on-going training.

We are determined that early learning and childcare will be an attractive career. It is a real

opportunity for people to do work every day that makes a difference, in an environment with passionate, knowledgeable people who are excited about the future. It is a real opportunity for people to consider a change in direction for their careers, or to consider a career in early learning and childcare that they might not have considered before.

**Liz Smith (Mid Scotland and Fife) (Con):** The Audit Scotland report was critical of the Scottish Government for the lack of baseline data that was available to measure the comparative outcomes of targeting different priorities within childcare spending. Besides the helpful costings that are being made available today, what evidence has the Scottish Government identified to address those concerns and ensure that Parliament is able to see which areas of spending are delivering the best results?

**Maree Todd:** It is widely acknowledged around the world, including by the Organisation for Economic Co-operation and Development, that the provision of universally accessible and high-quality early learning and childcare helps to provide children with the skills and the confidence they need in education. It is a cornerstone for closing the poverty-related attainment gap. Some of the studies have shown that the benefits are even greater for people from disadvantaged backgrounds. That is why we are investing more money to almost double the number of eligible two-year-olds. We have also asked local authorities to phase the expansion in first in the areas that need it most.

As I said in my statement, we are building in regular checks on how the money is being spent and whether it is being spent to deliver what we have asked local authorities to do. We are confident that the system will be robust.

**Mary Fee (West Scotland) (Lab):** I thank the minister for advance sight of her statement. There is a £214 million difference between what the Scottish Government has committed in capital funding and the £690 million that councils said that they need. How will the disparity be met? Can the minister assure the chamber that local authorities will not have to find money from core budgets to provide the infrastructure needed?

**The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney):** No, there is not. It is just—

**Maree Todd:** We have an agreed funding package, which is precisely what local authorities have come to in a shared agreement with the Government. We are not imposing the financial settlement on our local authority partners; we have come to the figures in a shared agreement. We

have a shared vision for early years and childcare and we are working hard to deliver it together.

**The Presiding Officer:** I suggest that the Cabinet Secretary for Education and Skills does not answer questions unless he is giving the statement.

**James Dornan (Glasgow Cathcart) (SNP):** I am delighted with the minister's statement and I look forward to seeing the expansion of early learning and childcare entitlement.

Maree Todd will be aware that the Education and Skills Committee has been taking evidence on the impact of poverty on attainment. This morning, the committee saw some of the innovative and encouraging work that is being done in Fife schools.

There is still a great deal to do, hence the expansion. What impact does the minister expect the expansion of early learning and childcare to have on the stubborn attainment gap, which we all want to close?

**Maree Todd:** James Dornan has got right to the nub of the issue. At the absolute heart of the expansion is the delivery of high-quality early learning and childcare that will transform the lives of the children of Scotland. We want Scotland to be the best place in the world to grow up and we want every child to flourish and to fulfil their potential.

I mentioned earlier the world-wide OECD studies that show how the offering can tackle the attainment gap before it even occurs. Members have heard me mention that we aim to increase uptake among eligible two-year-olds, which is a vital part of how we aim to close the attainment gap.

Members will also be interested to hear that this morning, when I visited Cameron House nursery school, I met a knowledgeable and passionate headteacher, Chris McCormick, who has years of experience in early years provision. She spoke loudly and clearly about the difference that she can see. The nursery is already providing 1,140 hours and has been for a number of years. She and her staff have been astonished by the difference that it is making to the children who come through their nursery.

**Alison Johnstone (Lothian) (Green):** The minister referred to the efforts that she is making to almost double uptake among eligible two-year-olds. That is welcome, but what is being done to identify why take-up has been so low? How does she envisage raising awareness of the offer? Will that become part of the family financial health check and the Scottish Government's income maximisation strategy?

**Maree Todd:** We are looking at all options to raise awareness. Alison Johnstone will be well aware that I wrote to the United Kingdom Government some time ago to ask whether it would alter in Parliament regulations in order to enable us to share data between the Department for Work and Pensions and local authorities, as happens in England and Wales. I have not yet had a commitment on a timescale for that: it would make a big difference.

In the meantime, we recognise that word of mouth is one of the strongest ways to ensure that everyone who needs the support is aware of it. For many of the nurseries that I visit, word of mouth has been the main way in which people have found out about provision.

We will also increase awareness in jobcentres and among health visiting staff. The local authorities will work very hard in their communities to establish the best means to communicate in their areas. We are absolutely determined to improve uptake.

**Tavish Scott (Shetland Islands) (LD):** The Government knows how many staff in Scotland work in childcare, but how many extra staff will be needed from today, 1 May 2018, to deliver the childcare expansion?

**Maree Todd:** We estimate that up to 11,000 additional early learning and childcare workers will be required by 2020 to deliver the expansion. As I have said, we have already increased capacity for courses in colleges and universities with 650 additional higher national certificate places and 350 additional graduate places, as well as having provided local authorities with an additional £21 million to expand and train their workforces. We are working with the Scottish Further and Higher Education Funding Council to offer 1,700 additional places on a one-year HNC course in 2018-19, and more than 400 additional graduate places.

**Clare Haughey (Rutherglen) (SNP):** Can the minister confirm that local authorities' phasing in of the increased entitlement will prioritise the children and families who will benefit most from the expansion?

**Maree Todd:** Absolutely. I have already said that at the core of the policy and the expansion is our aim to close the attainment gap. Studies around the world have shown that increasing early years provision will help us to do that. Those studies also show that the biggest difference can be made to people who come from the most disadvantaged backgrounds. That is why we are so keen to improve uptake among eligible two-year-olds and why, in the phasing in of the policy, we have asked local authorities to commit to putting in place plans to use a reference to the

Scottish index of multiple deprivation or an equivalent measure in order to ensure that the children who need the provision most will benefit from it first.

**Oliver Mundell (Dumfriesshire) (Con):** What practical impact will the agreement have on the private, voluntary and independent sectors, in particular when it comes to allocation of capital funding? How will that help them to expand provision and increase flexibility, in particular in rural areas such as mine?

**Maree Todd:** I thank Oliver Mundell for his question and look forward to meeting him and his constituents immediately after my statement to discuss that issue.

The capital spending has been agreed with local authorities, which are best placed to understand needs in their communities, and what is required to deliver the policy. I am completely sure that local authorities share our vision of making a difference to children and of flexible provision, and they have absolutely accounted for what needs to go to local nurseries to do that.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** What actions are available to the Scottish Government if local authorities do not fulfil their commitments to deliver the infrastructure and staff that are required in addition to using local childminders?

**Maree Todd:** The funding will be allocated to local authorities as a specific grant so that it is protected for investment in early learning and childcare. Local authorities will be required to report to the Scottish Government on how the funding has been applied.

I cannot emphasise enough, however, that there is a clear commitment on the part of our colleagues in local government to the aims and delivery of the policy. We have a shared vision and agreement, and we are keen to move forward today.

**Johann Lamont (Glasgow) (Lab):** The minister will be aware that parents in Glasgow are facing a doubling of their childcare charges. Right now, families are making decisions to cut the number of hours for which their children access childcare, rather than increasing them. Could it be the case that the cost to families is being increased so massively to cover the gap in funding from the Scottish Government? If not, how does the minister explain Glasgow City Council's decision, and how does that decision to hurt families right now work with our shared commitment to expanding childcare?

**Maree Todd:** We have reached agreement today to fund fully an incredible expansion in investment in early learning and childcare that will

transform the early years for our children and families, and make an incredible difference to every family in the land. It means a saving of approximately £4,500 per child for each family in the land, as well as providing living-wage jobs up and down the country.

We are also providing an incredible quality offering of early education that will transform outcomes for children from the poorest backgrounds.

It is absolutely for local authorities to make decisions on how much they charge for their wraparound care. It is not for me, in central Government, to overrule, or to impose my view on, local authorities. Local authorities know best what their local needs are and are accountable to their local communities. I am quite sure that they are best placed to make those decisions.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Can the minister outline what role she expects play and outdoor learning to have when delivering the expansion to 1,140 hours?

**Maree Todd:** Fulton MacGregor will be aware that a couple of months ago I visited a forest kindergarten here in Edinburgh to make an announcement about giving £800,000 to Inspiring Scotland to work with eight local authorities on developing a how-to guide for play and outdoor delivery of education, as well as to support social enterprises.

He will also be pleased to learn that about 20 per cent of the additional capacity will be outdoor provision. This is a real opportunity to transform the quality of education in Scotland. We have the most incredible asset in our outdoor environment. Just this morning, I spent time at a nursery in Edinburgh. The children were outside in the sunshine, playing and learning about balance and communication and getting an appreciation of the natural world, as we guddled around digging for worms. Play and outdoor learning will be a key part of our offering.

## Commonwealth Games

**The Deputy Presiding Officer (Christine Grahame):** The next item of business is a debate on motion S5M-11967, in the name of Aileen Campbell, on the success of the Commonwealth games.

14:57

**The Minister for Public Health and Sport (Aileen Campbell):** I am delighted to bring this debate to the chamber, because although we often have disagreements here, on this topic—celebrating the achievements of team Scotland during the Gold Coast Commonwealth games—we are, I am sure, absolutely united.

On Tuesday 17 April, team Scotland returned home following their best ever away games, bringing back a total of 44 medals and surpassing the previous record of 29, which was set at the 2006 games in Melbourne. I congratulate all the athletes who represented team Scotland, along with the coaches, managers, nutritionists, physiotherapists, doctors, families, friends, and volunteers who travelled to the Gold Coast to support them. I would also like to thank the chair and the chief executive of Commonwealth Games Scotland, Paul Bush and Jon Doig, and all their colleagues at team Scotland for the phenomenal effort that it took to get every competitor to the start line, and in peak condition. The logistical operation alone to arrange flights, accommodation and kit for some 400 Scots was hugely complex, requiring great skill and dedication. All that work behind the scenes enabled the athletes to concentrate on their performance—and perform they did.

The team was ably led into the Carrara stadium by Eilidh Doyle, the first female flag bearer to do so. It was a fitting tribute to her achievements as an athlete, an ambassador and an inspiring figure for so many, and to her hugely professional conduct over so many years.

Marc Austin won Scotland's first medal, in the triathlon, getting team Scotland on the medal table, but the medals did not stop coming; nor did the happy memories or the stories of resilience and endurance. Duncan Scott won six medals, the most ever achieved by a Scottish athlete at a single games. John and Katie Archibald, the sibling double act, gave medal-winning performances in the velodrome, and Alex Marshall is now Scotland's most decorated Commonwealth athlete after winning medals in the pairs and the fours categories for lawn bowls.

It was not just the medal winners who achieved greatness. The women's netball team matched their Glasgow performance, and were close to

improving on it. Both beach volleyball pairs achieved great results, with the women in particular beating teams of higher ranking. I do not think that folk out in Australia truly appreciated the differences in climate. The beach that the volleyball teams in Scotland train on had been frozen, which was far from the minds of those in Australia. In basketball, the men finished an amazing fourth, going unbeaten until the semi-finals.

Diver James Heatly won bronze in the 1m springboard, which was Scotland's first diving medal in 60 years, with the previous winner, of course, being James's granddad. The list goes on, with phenomenal performances from the likes of Sammi Kinghorn and our first female boxers, who all worked so hard and so proudly for team Scotland. We are all pleased to know that Callum Hawkins is on the road back to fitness after his heroic battle in the marathon, which we witnessed.

I had the privilege of joining team Scotland, in recognition of the special role that Scotland had as the previous host and the learning that has been shared between the two nations to enable the Gold Coast to pick up the baton and carry on from where our games left off. The Gold Coast games coincided with a report that detailed the legacy of the Glasgow 2014 games, which included cementing Glasgow and Scotland's reputation for hosting world-class events, contributing £740 million to the Scottish economy, enabling Glasgow to host the European championships later this year and delivering 192 community sports hubs. The Gold Coast has equally embedded legacy into its games, and the nations of the Commonwealth remain hugely interested in Glasgow's and Scotland's efforts.

Equalities were a key theme of the Glasgow games, and they were also promoted at the Gold Coast games. As in Glasgow, the parasports were part of the main sporting programme. That is a legacy of Glasgow 2014, which was the first major sporting event to have a joint programme. Pride house in the Gold Coast was directly influenced by what was in place in Glasgow. That is a necessary presence at the Commonwealth games, because it reminds us of the journey that remains in ensuring equality for lesbian, gay, bisexual, transgender and intersex people across the Commonwealth. However, the Gold Coast was able to champion a first of its own, in that the games had an equal amount of medals for men and women, which we probably all hope will be the case at the Birmingham games in 2022.

The success of team Scotland did not happen by accident. As the motion outlines, it is due to the hard work of countless athletes, governing bodies, volunteers and the world-class system that sportscotland has in place to enable opportunities

from grass-roots level right up to performance level. Yesterday's timely publication by sportscotland of independent research demonstrates that the programmes that it supports are having a positive impact on those taking part. Adults and children report that they are more physically active since joining a sports club or participating in the active schools programme. That is helping to create a healthier lifestyle as well as helping people to integrate into their local community.

That research, along with recent research by Scottish athletics, is vital in helping us to gain a better understanding of the demographic and motivations of people who regularly take part in sport and physical exercise while highlighting those who need more assistance with achieving a more active lifestyle. It enables all of us to tell of the positive and transformative impact of sport and to endeavour to enable more people to get the chance to take part and be active. That is why we have protected the sportscotland budget this year. To help to mitigate the impact of continued reductions in sportscotland's income from the national lottery, we are providing sportscotland with a further £3.4 million. We will continue to invest in physical education in schools as well as our active schools programme, thereby providing opportunities to people to try different sports at an early age and creating pathways so that people can continue to enjoy participating in sport throughout life. No doubt, that progress will be inspired by the new heroes that were created in Australia just a few weeks ago.

During my time at the Gold Coast games, I met the chair of UK Sport, Dame Katherine Grainger. I mention that because of the constructive amendment from the Conservatives. Over the next few months, we will continue to work with UK Sport as we continue to plan for the 2018 European championships. To coincide with the European championships, Scotland will host the next meeting of the United Kingdom sports cabinet, which provides the opportunity for sports ministers from the four home nations to discuss issues of common sporting and physical activity affecting the United Kingdom and provides for a collective discussion of the most strategic priorities of UK-wide importance. That is an important gathering, and we will, I hope, see more medal successes here in Glasgow and of course in Berlin.

Although Glasgow will serve as the official host city of the championships in Scotland, many of the exciting events will be spread out across the country, which, again, underlines Scotland's ability to host great events. That is enabled by our first-class facilities, which is why we have invested heavily over the past 10 years in the sports infrastructure in Scotland. It is important to note

that, since 2007, sportscotland has invested £168 million in supporting councils, sports governing bodies and other organisations to deliver a wide range of new and upgraded sports facilities in order to continue supporting our performance athletes alongside ensuring crucial access for communities and people who want to be helped towards an active lifestyle.

Again, I offer my warmest congratulations to all our athletes and everyone who was involved with team Scotland for achieving their best away games and making the entire nation extremely proud to have them as our sporting ambassadors. I look forward to hearing from other members from around the chamber.

I move,

That the Parliament commends the incredible achievements of Team Scotland at the Commonwealth Games on the Gold Coast; recognises that this was Scotland's best ever away games and, by winning 44 medals, beat the previous medal tally of 29 in Melbourne in 2006; considers that this demonstrates that Scottish sport is growing in strength and depth, with sportscotland and governing bodies of sport working to support athletes, coaching and support staff, and believes that sustained investment and commitment in the whole sporting system is vital to enable people of all ages, backgrounds and abilities to regularly take part in sport and exercise.

**The Deputy Presiding Officer:** I call on Brian Whittle to speak to and move amendment S5M-11967.2. A strict six minutes, please, Mr Whittle. I know that you are good at timekeeping.

15:06

**Brian Whittle (South Scotland) (Con):** I am delighted to open the debate on behalf of the Scottish Conservatives. The Commonwealth games are a special event in the sporting calendar. They are the second-biggest multisport event after the Olympic games and they hold a special place in my heart—I say that as a competitor and spectator.

The games are generally the highest level in the participating sports at which competitors can wear the Scottish vest. They also give competitors the chance to step into the arena against their erstwhile teammates from the other home nations, which gives the competitions a certain edge and feel. Bragging rights live long in the memory. For example, Scotland's 4x400m relay team's defeat of the auld enemy in the 1990 Commonwealth games is still mentioned at every opportunity when in certain company—and I am delighted to take the opportunity once again.

The Commonwealth games are special in many ways, not just because they are the friendly games and the home nations get to compete in home colours. They also give an opportunity for the younger, inexperienced participants to get a taste

of a multisport event. That is not to say that winning medals at the Commonwealth games is necessarily any easier than at any other major championships, because, in certain events, Commonwealth finals are akin to Olympic finals. That is important, because behaviour is changed by experiencing how other sports are timetabled, how a busy athletes village operates and how some sports are finished before others—for example, the swimmers tend to be finished before the athletics events start.

The history of the games goes back all the way to 1930 and Hamilton in Ontario, where the Empire games started. Some 165 medals were available to 11 participating countries in six sports. Since then, the future of the Commonwealth games has been brought into question many times and people have asked whether they are viable or required. However, if we fast forward to 2014, we find some 5,000 athletes from 71 countries descending on Glasgow and competing in 261 events in 17 sports, with 824 medals on offer. There has recently been a significant rise in the numbers, with the inclusion and subsequent expansion of disability sport events, which has enhanced the spectacle of the games no end. Also, with women having been given parity in the 1980s, the games continue to give opportunity to an increasing number of athletes pulled from one third of the world's population.

That brings me to the Commonwealth games that have just finished on the Gold Coast and to the remarkable record and achievements of our athletes: 44 medals in total, as has been mentioned. Those of us who followed the games—and experienced the consequent sleep deprivation—could not help but be drawn in by the spectacle and the daily success of our sportsmen and women.

I must highlight the remarkable Alex Marshall, who won his fifth Commonwealth gold medal in lawn bowls—I watched that men's fours final. I also highlight Eilidh Doyle's continued success on the international stage. After winning a silver medal in the 400m hurdles, she is the most decorated Scottish female track and field athlete of all time. I sneak in a mention for Mark Dry, who won his bronze medal in the hammer having overcome significant injuries between Glasgow and the Gold Coast. Jake Wightman's bronze medal in the 1,500m heralds the start of an exciting career. Although Callum Hawkins's collapse close to the finish of the marathon was painful to watch, it highlighted his potential on the world stage.

I will also mention a young athlete, Zoey Clark, who is coached by a good friend of mine, Eddie McKenna, in Aberdeen. She is definitely an athlete on the rise. I have had the privilege of watching

her develop and grow from when I first met her while coaching the Scottish under-17 sprint team. The reason for mentioning her is that I want to highlight the environment and support that are required to take an athlete to the highest level.

The model that has been established in Aberdeen has reaped rewards for that area. A number of years ago, I was at the launch with Allan Wells. The Aberdeen sports village is an impressive facility that has been developed in collaboration with the University of Aberdeen, Aberdeen City Council and sportscotland. Eddie McKenna then helped to develop the Hydrasun athletics academy, which invested in the development of talented athletes, in conjunction with their coaches.

Training can be an expensive business for an athlete and a coach, especially early in an athlete's international career. That early support mechanism is important if an athlete is to reach the levels that they aspire to and which their talent allows. It must be borne in mind that that early training often takes place while they are studying at college or university—in that regard, our own Laura Muir made the hard decision to miss the Commonwealth games to sit her final veterinary exams at the University of Glasgow.

The role of coaches, clubs and the national governing bodies cannot be underestimated. Again, it has been my privilege to watch and work with some of the most dedicated coaches that anyone could ever wish to see. However, the pathway to excellence is a tough one. As I have said, talent is not enough. Different levels of support are required as each athlete progresses. Many of the athletes whom we witnessed in Glasgow and in the more recent games in the Gold Coast will have received local support to start with from their parents and family, which will have been followed by support from local councils and arm's-length external organisations, and then national support, delivered through sportscotland, which funds elite sport to the tune of £11.9 million. If that hard work and dedication leads them to an even higher level, UK Sport finances the elite end of the sport to the tune of £12.35 million, which gives many of the athletes a wage, access to the best facilities around the world and medical backup of the very highest standard.

I should mention that Scotland is punching well above its weight, with 13 per cent of athletes on UK world-class programmes coming from Scotland, even though our population represents only 8.4 per cent of the UK.

I have outlined what it takes these days to achieve peak performance. If we look at elite sport, we will note that not many athletes train on these shores. Instead, they are funded to leave their homes and families and train abroad,

reaching for that extra percentage that makes the difference between getting a place on the podium and being an also-ran.

Success at that level is a tough and complicated game and requires years of planning on top of consistent and determined effort on the training grounds. The success of Scottish sportsmen and sportswomen will stand them in good stead as they strive for future goals and even more amazing performances.

I move amendment S5M-11967.2, to insert at end:

“; notes the role of UK Sport in funding elite sport, and believes that reducing inequality in access to participation should be a priority for the Scottish Government.”

**The Deputy Presiding Officer:** I congratulate you on your timekeeping, Mr Whittle. You are a star.

I call David Stewart. You have five minutes, Mr Stewart—take a leaf out of Mr Whittle’s book.

15:12

**David Stewart (Highlands and Islands) (Lab):**

I thank the minister for bringing this debate to the chamber. As we have heard, our Scottish athletes have excelled themselves on the Gold Coast, and it is right that we take time to recognise and celebrate their achievements.

Scotland has sent athletes to compete in the Commonwealth games since they first began in 1930. Since then, the event has evolved. At the 1998 games, team sports were added, and, at the 2002 games in Manchester, medal events for athletes with a disability were integrated into the programme. At the most recent games, in the Gold Coast—the 21st Commonwealth games—there was a focus on gender equality. As we have heard from the minister, for the first time, there was gender parity in the number of medal events for men and women and, at certain events, more than 50 per cent of the technical officials were women.

A celebration of those achievements shows that, beyond mere competition and world-class sport, the Commonwealth games have a bigger aim. The aim is to unite 71 diverse nations and territories across the world. The vision is of a family of nations sharing the core values of humanity, equality and diversity. That is a vision to which Scotland has whole-heartedly committed. The welcome that was given to visitors at the 1970 Commonwealth games in Edinburgh, which I remember, gave the event the identity of “the friendly games”, and a partnership between the games and UNICEF was launched at the 2014 Glasgow games. That partnership sought to harness the power of sport to transform children’s

lives, and has reached more than 11.7 million children in 52 countries.

Scotland has much to be proud of on the field. As the motion states, the Gold Coast games marks Scotland’s most successful overseas Commonwealth games to date, with a medal haul of 44. It was clear from the interviews that Scottish athletes gave ahead of the games that they were there to do business, and they certainly delivered. As we have heard already, there were many memorable moments, including Neil Fachie winning a second double gold in the blind and visually impaired sprint and time trials; Marc Austin securing a surprise bronze medal in the triathlon; and, in her third games, at the age of only 21, Grace Reid scooping an amazing gold medal in the diving.

One of the benefits of the Commonwealth games is that they give Scottish athletes a place to shine that restrictions on Olympic places in team GB do not always allow. Much was rightly made of Duncan Scott storming to victory in the pool in the 100-metres freestyle and winning a total of six medals. However, the strength and ability of Scottish athletes were on display across a range of events, including—but not limited to—cycling, bowls, swimming and gymnastics.

All the members of team Scotland—the athletes, coaches and wider staff—deserve congratulations for their incredible achievement. Each of the competitors has a story about how they were inspired into their sport—for many, it was watching the home-grown athletes who came before them compete on the world stage. Beyond the excitement of the games, the hope is that the achievements of Scottish athletes in the Gold Coast will inspire a whole new generation to get active and involved in sport.

However, we know that, at least in this area, aspiration is not enough—sometimes it is perspiration, too. It requires more than encouraging talk to get people excited about doing sport, rather than simply sitting on the sofa and watching sport. As the legacy report for the Glasgow 2014 Commonwealth games stated:

“legacy is not ‘automatic’ or inevitable, rather hosting major events can be used as a ‘catalyst’”.

In the aftermath of the 2014 games, much was promised as a legacy. The games were to have on-going social and economic effects for Glasgow, where the event was held, but also across the country. The legacy report on the 2014 Glasgow games was published in April, and the verdict on the long-standing impact was mixed. Thankfully, the facilities and infrastructure that were put in place for the games are, of course, still of benefit to the communities in which they are situated. Since 2009, there has been an increase in

attendance at and membership of sports facilities across Glasgow, with, on average, high levels of satisfaction with the available resources.

Although the success in the Gold Coast might suggest that high-level performance has benefited, there is clearly still much to be done to ensure that the benefit is felt equally across society. An outcome that was reported in April's legacy report was an increase in physical activity for those who are already active.

I am very conscious of time, Presiding Officer, and I want to compete well with my Tory opponent across the chamber, so I will quickly go to my conclusion.

The success for Scotland at the Gold Coast games cannot be overstated. Underneath the impressive medal haul were also stories of perseverance and personal triumph. As the American sprinter Wilma Rudolph said:

"The triumph can't be had without the struggle."

I move amendment S5M-11967.1, to insert at end:

“; recognises the importance of using sporting success to increase active participation as part of building a healthier society, and believes that this is further helped by delivering affordable and free access to sporting participation for the many.”

15:17

**Tavish Scott (Shetland Islands) (LD):** I will not join in David Stewart's perspiration, but he made a noble effort to link sport and participation. I will not repeat the list of those who were so successful, as the minister and Brian Whittle rightly did, but I very much share their sentiments. I also share David Stewart's sentiments about the success of the Gold Coast Commonwealth games and all that came from them.

Personally, I enjoyed the swimming, the hockey and the cycling—in no particular order—not least because of Chris Hoy's illustrations from the studio. He was doing the punditry back on planet earth for those of us who watched the games, as Brian Whittle rightly said, in the early hours of the morning. Chris Hoy's description of the pain that elite athletes go through in his particular discipline is something that will probably stay with me longer than anything else that I watched in the 10 days of competition. I winced through most of his description of that pain on the television.

I will, very briefly, make a couple of points on legacy. The investment that a country makes in elite sport—the minister rightly mentioned the role of sportscotland and the governing bodies—needs to be balanced by the investment that is made in participation, through encouraging people to lead healthier lifestyles and ensuring that people can

live lives that are not such a drain on our health service or on the state in other ways.

When looking back at the Glasgow 2014 games, I thought about the three athletes from Shetland who were part of team Scotland. I got in touch with all three of them the other day. Erraid Davies is a medical student—there cannot be many better professions in the sense of helping in the future.

Andrea Strachan, who swam in the final of the 100-metres breaststroke at the Glasgow games, is a sports development officer for Shetland Islands Council. She also works for sportscotland as a community hub sports officer—I think that that is right; she has so many titles to her name. At the moment, Andrea is not actively involved in swimming coaching. I get the sense that, after such an intensive period, particularly in swimming, where they start in the pool at a very young age and have to get up and go very early for many years, it probably takes a little bit to get back into it. However, to have Andrea involved in sports and active schools in my part of the world in Shetland is very welcome indeed.

Lynda Flaws, who was part of Scotland's table tennis team at the Glasgow games, is, since last month, a full-time physiotherapist at the Golden Jubilee hospital. She made the point to me the other day that she cannot wait to get back into playing table tennis—knowing her, she will certainly do that—and into coaching. She wants to put something back in, not necessarily for elite athletes, but in order to encourage people to play a game that everyone can play. That, for me, is very much part of the legacy of the games; it means that people such as Brian Whittle have a chance to put all that they have learned into future elite athletes and into encouraging people to recognise how important sport and active lives can be for their future.

**Mairi Gougeon (Angus North and Mearns) (SNP):** Does the member agree that we all, as elected members, have a role to play? His colleague Willie Rennie ran 170 miles recently, for example, and I am sorry that Liam Kerr is not in the chamber, because we are competing against each other in a triathlon in Forfar in the summer. I think—

**The Deputy Presiding Officer:** That is the trailer. I will give you a wee bit extra time, Mr Scott.

**Tavish Scott:** I kind of knew that that question was coming. It is only fair of me to recognise Mairi Gougeon's personal role and commitment. I will let you into a secret, Presiding Officer. When the Culture, Tourism, Europe and External Relations Committee was in Dublin back in the early part of the year, which member of that committee went out running first thing in the morning? Mairi

Gougeon. We were all deeply impressed by her commitment to the triathlon that she is taking part in later in the year.

The minister mentioned UK Sport. She will know that many coaches from across the country are coming to Edinburgh in June—I think—as part of a UK-wide coaching event. That is very much part of the legacy that I hope she will reflect on in her winding-up remarks.

**The Deputy Presiding Officer:** We come to the open debate, with strict four-minute speeches.

15:22

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** As well as reminding members that I am the parliamentary liaison officer to the health secretary, I can tell members that I have been out running with Mairi Gougeon—suffice to say that I will not be doing that again in a hurry.

I congratulate team Scotland on their success at the Gold Coast Commonwealth games. They really did us proud—it was another great example of what talented athletes we have representing our country. We did well enough to pick up a medal every single day and saw our best performance at an away games, picking up 44 medals in total. Every one of our athletes should be proud of that achievement.

It was great to see that, of the 224 athletes to compete in all 18 sports, 93 were women, which is the biggest Scottish female contingent at an away games. We also sent 18 para-athletes, as para-disciplines were fully integrated into the games. That means that there was no separate event or ticket for a para-sport event and that a medal won by a para-athlete in the men's wheelchair 1,500 metres contributed the same as a medal in the men's 1,500 metres, which is how it should be. We saw some really talented athletes emerging at the games, which I believe is partly down to the legacy of Glasgow 2014, where medallists Kimberley and Louise Renicks from Coatbridge won gold medals in the judo. I am pleased to say that both of them are still involved in judo and are coaching young people.

We have sustained investment in our sporting system, as sport is a way of life in Scotland. That is borne out for me by the huge interest in the cross-party group in the Scottish Parliament on the future of football in Scotland, which I started and at which we have been having open discussions on making all levels of the game accessible to all sections of society. Scottish Government investment in community sport has produced strong results, and we continue to inspire performance generally. We have seen an expansion in our active schools programme, as other speakers have said, which allows young

people to participate in sport around the school day. In the past academic year, there were nearly 300,000 distinct participants in active schools activities.

We also have 192 community sports hubs in operation throughout Scotland, which allows communities to provide welcoming environments for sports activities. In my constituency, Chryston high school and St Andrew's high school are community sports hubs and home to many talented and ambitious young sportspeople. Coatbridge high has a school of rugby that has excelled in recent times and Buchanan high school recently sent finalists to the special Olympics world winter games 2017. St Ambrose high has, among many other talented young people, a student in the national Scotland wheelchair basketball team and is set to meet the team this weekend. In my constituency alone, there is a lot of good work going on, and there are a lot of talented young people.

We have also seen a transformation in our sporting facilities across the country since we won the bid in 2007 for the Glasgow games in 2014. It has been found that the games drove the development of high-quality sports facilities, contributed £740 million to Scotland's economy, regenerated large parts of Glasgow and enhanced Scotland's international reputation. However, the media focused on the finding that the games had little impact on sports participation and activity rates.

I am pleased that plans to get rid of the tracks at Ravenscraig were scrapped recently after public pressure put paid to them.

It is important that the Scottish Government has protected the sportscotland budget and committed to increasing its core funding by £2 million in 2018-19, from £29.7 million to £31.7 million. That means that we will be able to prioritise the development of sport in Scotland.

In 2017-18, sportscotland invested more than £10 million in the governing bodies of Commonwealth games sports to ensure that they could develop all aspects of their sports, delivering both participation and performance outcomes. We also invested £163,000 directly in Commonwealth Games Scotland. That continued investment should be celebrated, as we will reap the benefits through sporting success in the future.

However, we all need to play our part in making sport accessible to everyone so that they can have the many social, physical and mental health benefits that exercise brings, which Tavish Scott outlined very well. For example—

**The Deputy Presiding Officer:** I am afraid that you do not have much time for an example. You should close.

**Fulton MacGregor:** Okay. There are some good examples locally, but I will need to leave it at that.

15:26

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** I begin by congratulating everyone who took part in the Commonwealth games, especially those from across Scotland, and I give a big shout-out to those who represented the Borders.

Some may understand that sport serves only the elite physical specimens and that it can be enjoyed by us mere mortals only with a packet of crisps and a pint of beer or a glass of wine in front of the television. How wrong those people are. Sport is for all and it can be enjoyed by all. It unites us all, whether by country, region, constituency, town or village. We can all get behind our sporting heroes—professional and amateur—and dig deep for our teams.

Sport is about so much more than sport itself. As a netball coach, I experienced that at first hand. It was not only netball that I taught; it was the values that come with it—teamwork, discipline, responsibility and respect, to name but a few. Through netball and other sports, those values can be taught to young girls and boys.

Those who read the local papers in the Scottish Borders will have seen that I recently participated in women's rugby training in Kelso. Women there spoke of the barriers that they had overcome to play rugby, but the very fact that they have come together as a team speaks volumes about how far they have got. I was pleased to see that women's rugby made its Commonwealth games debut this year. Women are defying gender stereotypes in sport. They are proving that women can play rugby and that it is not just for men. That, in itself, is a legacy created by women of determination.

I now want to see financial commitment to match that ambition. It is a while back now, but in 2013-14 help was given from the sport facilities fund to upgrade the team changing facilities at Kelso rugby club. Such investment makes sport accessible, and the more accessible we make it, the better the outcome will be.

Since the Glasgow Commonwealth games, the Borders has received investment in sport facilities, including £35,000 for community hubs. The legacy 2014 active places fund resulted in £357,000 being invested across seven facilities projects in the Borders; with partner contributions, the total that was invested in those projects was just short of £900,000. Overall, however, sportscotland investment in the Scottish Borders has remained static.

We need to look at and explore whether certain sports are being neglected and whether considerably more funding is being allocated to one sport than to others. If we ensure that all sports are accessible and that none is left behind, that will help to increase physical activity in my constituency and across Scotland.

To be frank, we need to look at ways to encourage active health, as Scotland has one of the worst obesity records among Organisation for Economic Co-operation and Development countries. More than a third of adults do not meet the guidelines for moderate and vigorous physical activity; two thirds of adults are overweight, with 29 per cent being obese; and 29 per cent of children are at risk of being overweight or obese. Those are deeply concerning statistics. Let us not forget that obesity leads to diabetes, heart disease and other illnesses, and adds to the pressure on our NHS.

An active healthy lifestyle—not one as strenuous as a professional athlete's, but one that involves just 20 minutes of activity a day, such as a lunch-time walk—is a preventative measure to help to reduce obesity.

Do I have four minutes, Presiding Officer?

**The Deputy Presiding Officer:** Yes. That was your subtle one-minute warning. It appears to have been very unsubtle. [*Laughter.*]

**Rachael Hamilton:** Okay—thank you.

Preventative measures will help to reduce obesity, encourage a lifestyle that makes one's quality of life better, and reduce the pressure on the NHS, which is a win-win for all. That is a legacy that I would like us to work more towards.

I reiterate my congratulations to Scotland's Commonwealth athletes and the 14 incredibly inspiring young people from the Scottish Borders. Sport teaches core values, and that in itself is a lesson that we should not forget.

15:30

**Alex Rowley (Mid Scotland and Fife) (Lab):** I, too, offer my congratulations to all the athletes and coaches and everyone who was involved with team Scotland on an excellent Commonwealth games.

It is right that we in the Parliament acknowledge the great achievements of the Scottish athletes at the Commonwealth games and pay tribute to everyone who competed in a great advert for sport across the Commonwealth. The two weeks of compulsive television for us spectator sportspeople was great, but it took weeks, months and years of hard work to get those who competed to their best in their chosen sport.

The briefing from sportscotland for this debate shows that real progress is being made across the country in supporting people to be involved in sport. I hope that all the athletes who competed will be able to spend some time getting out into our schools and local sports clubs to speak about their experiences.

Although I have applauded the progress that is being made to widen access to sport, there is no room for complacency. Too many young people still do not have access to facilities and coaching.

I was able to watch a fair bit of the games, and I cheered when we won medals. To be honest, I cheered on all the athletes and just enjoyed the sport. I think that my most nervous experience was watching the marathon. I thought that Callum Hawkins had done enough to take the gold, but he was overcome by the heat. I saw an interview with him later that week, in which it was clear that he was more determined than ever to achieve his goal of gold. That is the true spirit of the Commonwealth games, just as it is the true spirit of the sport that people in communities throughout Scotland take part in every weekend. We were, of course, able to celebrate Robbie Simpson taking the bronze in that marathon—I say well done to him.

I know that some people say that sport and politics should be kept apart, but a big moment for me was when Tom Daley of England won gold in the diving and used the platform to highlight LGBTI rights and the lack of them in many Commonwealth countries. As an athlete, he was brave to do that. He said:

“there are 37 countries in the Commonwealth where it’s currently illegal to be who I am, so hopefully we can reduce that number ... I feel with the Commonwealth ... we can really help push some of the other nations to relax their laws on anti-gay”

stuff. I say well done to Tom Daley and to the Commonwealth games for creating an inclusive sporting atmosphere that many of the member countries could and should learn from.

The games were the first major sporting event that achieved gender equality by having an equal number of events for male and female athletes, and they had the largest-ever fully integrated para-discipline sports programme. I say well done to Scotland’s 224 athletes and to everyone who competed in the games.

15:33

**Emma Harper (South Scotland) (SNP):** I am pleased to speak in the debate, and I support the motion.

As other members have mentioned, it is good news that we are speaking about team Scotland’s success. Many people enjoy watching sports such

as athletics, swimming, badminton, weightlifting and cycling, which are all well known to us all, but there are other, less-known sports, such as competitive shooting, which I will focus my comments on.

David McMath won a gold medal for double trap shooting. He is 21 years old and from Castle Douglas in the south-west of Scotland. He won Scotland’s 30th medal out of the total of 44 that Scotland won in the games, and his win tipped Scotland over the 29-medal mark to give it its best-ever performance in an overseas games.

Trapshooting is a game of movement, action and split-second timing. Accuracy and skill are required to repeatedly aim, fire and break the 4.25 inch discs, which are hurled through the air at a speed of 42mph. The palm-sized orange targets look large enough when placed in the hand, but they look like an aspirin tablet when they are flying through the air.

I called David McMath to give him my best wishes and to congratulate him. I found him to be humble, polite and very down to earth. Incidentally, when I spoke to my dad about David winning the gold medal, he told me that he knew David McMath senior—they compete against each other in carpet bowls, which is another lesser-known Scottish sport. My dad said that I am related to the medallist. According to him, my grampa’s brother’s first wife’s daughter’s daughter’s daughter’s son is the Commonwealth champion, which makes us kin.

Dad and I had a really interesting conversation about shooting, which led me to phone David McMath. We talked about the future of shooting as a sport in the Olympic and the Commonwealth games. David told me that he was going to have to start learning skeet instead of double trap, because double trap has been cut from the 2020 Tokyo Olympics. The future of double trap at the Olympics has been in danger for some time, and many shooters have been changing disciplines, with many switching to Olympic trap, which is different from double trap or skeet.

The recommendation to remove double trap was made to help to achieve gender equality in shooting as part of the 2020 Tokyo Olympics. In addition, it has been decided to drop all shooting events from the 2022 Commonwealth games in Birmingham. That is unfortunate. Shooting is a great sport for the small nations and countries; most small nation islands can be included in the sport of shooting. Anyone can do it. Competitive shooting is open to a wide variety of people, and many competitive shooters are older—in fact, shooter Robert Pitcairn from Canada, who competed this year, is 79 years old. He is officially the oldest athlete in the history of the Commonwealth games. There is also a wide

range of competitive shooting events in the Paralympics, and shooting is inclusive of folk with disabilities.

The motion states that the Parliament

“believes that sustained investment and commitment in the whole sporting system is vital to enable people of all ages, backgrounds and abilities to regularly take part in sport and exercise.”

I ask that the minister explores—perhaps at UK Sport’s cabinet meeting—whether there is an opportunity to preserve competitive shooting at future games, so that people of all ages, genders and abilities can continue to participate in that inclusive sport.

15:37

**Alexander Stewart (Mid Scotland and Fife) (Con):** I am delighted to be able to take part in this afternoon’s debate. The Commonwealth games have been hailed as Scotland’s finest, so I pay tribute to all those who assisted, coached, supported, attended and took part. We can enjoy their success, and today is an opportunity to celebrate it. Those individuals gave their time and their talents, and it is right that we honour them for that.

Scotland has a proud history at the Commonwealth games, and has hosted them on a number of occasions over the decades: they were held in Glasgow in 2014 and in Edinburgh in 1970 and 1986.

My pleasure in speaking today is heightened not least by the fact that my region has provided many great world-class athletes in recent years, and never more than for the most recent Commonwealth games that we have enjoyed. At this year’s games, athletes from Clackmannanshire and the adjacent city of Stirling featured highly. That is a result of the facilities that we have at the University of Stirling and other universities.

Alloa’s Duncan Scott, who is an extraordinary swimmer, won one gold, one silver and four bronze medals, which makes him Scotland’s most successful athlete at a single Commonwealth games. We should celebrate that success. He had the honour of bearing the saltire at the closing ceremony of the friendly games. Duncan is one of the University of Stirling’s many rising stars, and claimed his first individual Commonwealth games medal in the 200-metre freestyle. That young man has fought long and hard and achieved much. Stirling is very proud of his achievements.

We must acknowledge the importance of all the team members, including the coaches, as well as the families and other supporting mechanisms.

Those who have been involved are not limited to my region; they also come from other regions.

Other members have expressed their support for the individuals who give up their time to get involved in coaching, which is vital, as Rachael Hamilton said. People commit their time, thereby giving individuals the chance to develop their potential, which is most rewarding.

I am not a sportsperson, and never have been, but I can participate by watching sport and I enjoy being a member of the audience. I am surrounded today by individuals who participate regularly, and I celebrate their success.

I live in Bridge of Allan, which is very close to the University of Stirling campus. The campus has phenomenal facilities, which benefit the students and athletes who use them. I pay tribute to sportsScotland for all its work to ensure that facilities are available.

The Gold Coast can rightly be proud of its achievements in giving Australia a platform for hosting the games. The Commonwealth games continue to be relevant and are a vital fixture in the sporting calendar. They provide a backdrop that showcases the host country, as well as providing opportunities for the participants. I congratulate the Gold Coast on everything that it achieved.

I congratulate Scotland on its tremendous achievements. I look forward to the next games, which will be hosted by England in the city of Birmingham in 2022. We look forward to continuing our success and to introducing to the Commonwealth an array of new stars, who are currently coming up through the ranks. It is so important that individuals have the opportunity to progress.

The Commonwealth games are known as the friendly games, which is a testament to their outstanding success.

**The Deputy Presiding Officer:** There is nothing wrong with being a non-participant, Mr Stewart. Do not be intimidated by the athletes in the chamber.

15:41

**George Adam (Paisley) (SNP):** You and me, both, are non-participating sports fans, Deputy Presiding Officer.

I am only too pleased to take part in the debate, for a number of reasons, and to congratulate team Scotland on its great success at the Commonwealth games.

Many members are aware that sport is an important part of my life. Unfortunately, I no longer participate, due to a long-term injury. Or, is it just that I am getting older? I will share a story about

that. I was running the Paisley 10km, and as I jogged through Ferguslie Park, someone who turned out to be one of my supporters, luckily enough, said that she appreciated my work as a member of the Scottish Parliament, but then told me in no uncertain terms that I was definitely not a runner. I have cleaned that up slightly, Presiding Officer. At that point, I thought that it was time to hang up the running shoes and move on.

I have always been aware of how important sporting success is to communities. When I was young, Allan Wells was known for his sprinting exploits. His are the first successes that I remember seeing in multisports games. A bit later, during the 1986 European athletics championships, I watched a certain Brian Whittle run round the track wearing one shoe and winning a gold medal in the 4x400m relay. To this day, he blames Kriss Akabusi for standing on his shoe. One-shoe Whittle—whatever happened to him?

The performance of all our athletes can inspire and encourage young people to take up sport. They will not necessarily become elite athletes, but they will have a healthy and balanced lifestyle. Sport also teaches us to set goals and to work hard to achieve them. Those are life lessons that we can probably all use.

A number of Paisley clubs produced people who participated in the games. Kelburne Hockey Club, which is based in Paisley, provided quite a lot of players in the men's field hockey team, and Basketball Paisley had a player at the games. When it comes to the sports that are not necessarily the most exciting ones that everyone goes to see, an event such as the Commonwealth games shows what we can do.

I talked about how sport can inspire people. I talk all the time about supported programmes in my constituency that bring sports to young people. That is why I have worked with St Mirren Football Club and Renfrewshire Council to see how the club, which is based at Ferguslie Park, can deliver a sports programme in the community that enables young people to focus on what they can achieve in any sport, in school and in their community. Education does not stop at the school gate, as we all know, and for many young people sport is a fantastic way to express themselves and move forward.

Sporting excellence such as team Scotland showed inspires us all. Let us look at the medal haul that we had this year, which was 44. Those did not include any for judo, in which we were very successful at the previous games but which was not included this year. Back in the fantastic summer of 2014, team Scotland won 13 medals in judo alone.

Team Scotland's success on the Gold Coast has encouraged this middle-aged man to re-engage with his local gym. It might not show, but it is a work in progress. Is that not the point, Presiding Officer? Elite sports stars inspire all of us and encourage us to do better.

I will finish by saying "Well done" to team Scotland and to everyone who is connected with it. Let us hope that its success is something that we can build on for the future.

**The Deputy Presiding Officer:** We move to closing speeches. I call Anas Sarwar to close the debate on behalf of Labour. You have four minutes, please, Mr Sarwar.

15:45

**Anas Sarwar (Glasgow) (Lab):** I start by thanking the minister for bringing the debate to the chamber today. I join her in congratulating all our fantastic athletes, and the team behind them.

As a Glasgow boy, born and bred, I want to put on record right at the start of my speech that no matter how great this year's Commonwealth games were, the greatest-ever games were in Glasgow in 2014.

**Aileen Campbell:** Is that still the case?

**Anas Sarwar:** It is absolutely still the case.

I congratulate all the team members who did our country proud: every single one of them flew the flag for themselves, their team mates, their families and their country. I recognise their success across the board—from the pool to the velodrome, and from the boxing ring to the bowling green—in winning 44 medals. Every one of them has been an inspiration to people who might now, for the first time, be trying out a sport that they have seen on television in the past few weeks.

I also want to say how inspirational it is to have a genuine athlete among us in the chamber. Of course, I mean Mairi Gougeon, rather than One-shoe Whittle, who, last week, struggled to get to his seat for decision time. [*Laughter.*]

I also thank David Stewart and Alex Rowley for mentioning the unity of the 71 nations in the Commonwealth games. They also made a wider point about standing up for our shared values of equality and fairness against all forms of prejudice—be they gender prejudice, homophobia or any other forms—and how the games can be a great reminder not only of what we have achieved together, but of what we still have to do to fight prejudice in all its forms. My colleague David Stewart mentioned that he remembers Commonwealth games from the 1970s. I apologise, because I do not remember the 1970s—I do not believe that the minister does,

either—but I am sure that the games then were a triumph, nonetheless.

Labour's amendment today is clear on the need to use the success of Scotland's athletes in all sports to drive not only producing more medallists, but encouraging more physical activity in all of us, and to inspire participation at every level of ability.

To all the team behind team Scotland—the coaches, the physios, the sports scientists and the support crew—I say that I am pleased that we are able to come together today to congratulate them on their shared success. However, long before the medals were hung around their necks, the athletes took their first steps on a journey that ended with their final steps on to the podium. They were once beginners in their chosen sports, but they have been supported along the way by volunteer coaches, governing bodies, sports scientists and a whole crew. That is why the pathway that they travel and investment in it are so important.

We might have success in elite sport, but we must also encourage active participation. I say gently to the minister that Parliament has work to do collectively on making sure that we fund our local authorities and our national sports agencies adequately in order to encourage such active participation, in the hope that there will be more medallists along the way. The reality is that, for every athlete who stood on the podium in Australia, there are participants here at home who are seeing the impact that budget cuts have on their participation

Labour will support the Government's motion today, but we hope that, using the success of the Commonwealth games, we can work alongside the Government to inspire a generation and to put more investment into active participation so that we can build up physical activity towards our becoming the healthy nation that we want to be. The real prize will be lower levels of obesity and reduced levels of diabetes, heart disease and cancer. Let us use the inspiration of the Commonwealth games and our athletes to say, once and for all, that we will build a healthy and bright nation for the future.

**The Deputy Presiding Officer:** I call Brian Whittle to close the debate for the Conservatives. You have five minutes, Mr Whittle.

15:49

**Brian Whittle:** I say to all my fellow athletes—and to Anas Sarwar—that, as we would have expected, today's debate has been a consensual one, with members highlighting their own favourite performances while recognising that the overall result for the Scottish team was remarkable across all sports.

I confirm to George Adam that it was Kriss Akabusi who took my shoe off. I know that Mr Adam is torn, because he watched that race way back in 1986 and has already admitted that it was one of the highlights of his life. There is also the fact that I coached his beloved St Mirren Football Club—he is a torn man.

Alex Rowley mentioned how Tom Daley used his success to highlight inequalities throughout the Commonwealth. Mr Rowley said that Tom Daley was brave—and he was incredibly brave. If we look at his Facebook timeline and his Twitter account, we see that he took an incredible amount of abuse for highlighting what are continuing inequalities.

In closing for the Scottish Conservatives, I pose the question: what now? There is always a debate around the legacy of major games and whether performance in sport influences participation. However, there is no question but that sport is performance led. It is hard to argue, for example, against the tide of tennis players who are seen playing during the Wimbledon fortnight. For me, the issue is around the initial access to opportunity and the sport's ability to accommodate that influx of numbers.

I have often said that the Government has the responsibility of ensuring that opportunity is available to all, irrespective of background or personal circumstance. Furthermore—and crucially—it is also the Government's responsibility to ensure that everyone understands that opportunity and has the confidence to access it. That second part is more difficult to define; nonetheless, the inequalities that exist cannot be tackled if we do not address it.

Cost will be a significant factor. We often debate the amount of money in people's pockets, but that is only half the story—how much things cost is equally important. I would argue that it is easier and quicker to deal with that end of the wedge all the while continuing to tackle the issue of how much money is in people's pockets. David Stewart spoke particularly passionately on that point.

I am a great advocate of extracurricular activity before, during and after school. There is an old expression: "Fish where the fish are." I have never understood the situation in which schoolchildren leave a school with perfectly good facilities, go home and then have to go somewhere else to take part in activities. Let us make it easy to participate. Should we look at aligning physical education with the sports that have been represented in recent games? What about connecting that with local clubs in an area? We must make that progress easy to achieve.

Councils and arm's-length external organisations lead local facilities, and too many

community facilities are closing down—those in Dalmellington, Patna and Cumnock, along with many more in my area, are under threat. They cite a lack of numbers and, therefore, the unaffordability of the facilities. I would ask what consideration is given to the marketing and use of those facilities when they are at the planning stage. Are the local communities and third sector organisations involved in that process? Is it an ongoing process involving the ALEOs and councils? I challenged the ALEOs on that issue at their recent conference.

We cannot keep closing down local facilities and expect local people to access the central major venues, even though many of those are world class and I welcome them. Once again, the issue is accessibility and affordability. If we keep closing local facilities, we will remove a step in the process and take participation away from many people.

Scottish school sport is becoming the bastion of private education. Sport and activity in general are in danger of becoming a bastion of the so-called middle classes and out of reach for many people. If we really seek a rounded legacy, we need to make conscious decisions and a concerted effort to change the current system.

The amazing results and performances of our sportsmen and women at the Commonwealth games in Australia highlight the progress that we, as a nation, have made on the international stage. We can safely say that legacy at the performance end of sport is moving forward, and we have got much right. There are still issues to deal with, but we are moving in a positive direction.

Nevertheless, we have a lot of work to do if we are going to have a similar impact at the grass-roots participation level. Without question, we have not got that bit right, and we are not cascading that down into the councils. Sports facilities are an easy target when services have to be rationalised, but it is a false economy, as Rachael Hamilton said, because of the long-term impacts on health, attainment, the economy, justice and so on. It is not a question of one or the other; it is not about the elite or the grass roots. The reality is that the one drives and feeds the other.

The Commonwealth games will go from strength to strength, I am sure. The blue and white of Scotland will continue to be prominent and our athletes will continue to write their own stories in their arenas. It is likely that all the competitors for the 2022 games are already engaged in sports clubs and looking to our Commonwealth games athletes for inspiration. They are already following their path and recognising what is possible from the efforts of their heroes. We need to ensure that those who are not yet engaged get that

opportunity. We must redouble our efforts there, because that is what real legacy should look like.

**The Deputy Presiding Officer:** I call Aileen Campbell to close for the Government. You have six minutes, minister.

15:54

**Aileen Campbell:** I am sincerely grateful for all the positive speeches that have rightly celebrated the achievements of team Scotland—the medallists, the powerful images and the stories of courage and endurance. I agree with David Stewart's assessment that, from the get-go, the team was there to do business.

As Brian Whittle highlighted, the strong performance by our athletes was proportionately higher than Scotland's population share and gives us great encouragement as we look to the European championships in a few months' time, hopeful of further successes to celebrate and cheer this August.

Our performance a few weeks ago was all the more remarkable considering that, as George Adam highlighted, Glasgow's 53 medals included 13 medals won in judo, which was not included in the 2018 games. We won across nine sports and on each day of the competition. Our athletes deserve the plaudits that we have heard from across the chamber.

Although there was rightly praise in members' comments, a range of issues were raised on the broader issues of sport, activity, accessibility and equality. Brian Whittle, in both his opening and closing remarks, made important contributions. I do not think that any of us would dare to question his experience. In 1986, I was just a wee girl cheering him on alongside Anas Sarwar, who was an even wee-er boy.

Brian Whittle also gave us an important historical overview of the Commonwealth games when reasserting the continued relevance of the games. Members may—they may not, but I think they will—be interested in the rich sporting archive that is currently held at the University of Stirling. Alexander Stewart might be interested in that, given that he explicitly mentioned the facilities at Stirling.

Some of those artefacts were on display on the Gold Coast, including the Commonwealth games jersey of James Heatly's granddad, Sir Peter Heatly. It is also important that we recognise the importance of sporting memories and memorabilia in the work around dementia and the support that sport can provide to help people to cope with that condition.

As an aside, it took six weeks for the team to travel out to Australia for the 1938 games

compared to the 24-hour flight that we have today. There have been great strides forward.

It is important to reassert the relevance of the games. Dave Stewart's informed and considered speech reminded us that these friendly games unite 71 diverse territories from across the Commonwealth in an effort to enshrine humanity and diversity.

It is important to reflect on Alex Rowley's speech, in which he pointed out the requirement that we never cease celebrating the diversity of the 71 nations and never forget to press where progressive change is necessary. I echo Anas Sarwar's comment that we need to promote tolerance and fight prejudice.

Members may be interested to know that this Commonwealth games, which was one of firsts, was the first to have a reconciliation plan to celebrate the cultural diversity of the first nations people and to reconcile the treatment of Australia's indigenous people. It is important for the bespoke and tailored legacy of the games that they continue to work towards completing that.

Many members raised the issue of participation. Sportscotland's system endeavours to work across a broad range of outcomes to ensure that grass-roots participation and performance are equally supported. Although there are always doubts and concerns about sport being the bastion of the middle classes, 95 per cent of funding is for grass-roots sports.

A major legacy from the 2014 games was the 192 community sports hubs across the length and breadth of the country, which are now concentrating on areas of deprivation. Those create links to clubs and ensure that there are appropriate pathways to enable young people—indeed, all people—to take part in sport with access in their local community.

It is also important to reflect on the report that sportscotland published and sent out with its briefing on the role of the active schools co-ordinators. They ensure that children across all socioeconomic indicators have access to sport, and they are trying in a very strategic way to debunk the myths around who should be involved in sport. We have much to celebrate in terms of the accessibility of sport and much to build on, but we have much more to do.

Rachael Hamilton touched on the issues of women in sport. The games were good with regard to diversity and helping women, with the same medal chances for men and women. In Scotland, we need to do more to support women and girls in sport. That is why I have established a women and girls advisory board to guide us on what more we need to do. I applaud Rachael Hamilton's efforts in netball, and she would, of

course, have been cheering on Jo Pettitt from the Borders who was part of the team, along with her flatmate from Biggar, Emily Nicholl. We will take leadership from Mairi Gougeon, who seems to run all the time, to inspire others.

Presiding Officer, although you made the off-the-cuff remark that it does not matter if someone does not take part in sport, it is important that, regardless of their ability, people take part in sport. I should point out the success of walking, which has delivered the population-level increase in participation in activity that Scotland has needed. It is important to recognise that, at all ages and all stages, although taking part in sport and activity should be inspired by the heroes that we saw at the Commonwealth games a few weeks ago, sport needs to be accessible.

With all those indicators, we will continue to push for the changes that we need to make to enable our country to become more active more often.

**The Deputy Presiding Officer:** Thank you. I am duly reprimanded, although, in my defence, I was talking about activity, not sport. Some of us do not like sport but we quite like to be active. That is the last that I will say on the subject, and I will not be jovial again.

## **Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill: Stage 3**

**The Deputy Presiding Officer (Christine Grahame):** The next item of business is a debate on motion S5M-11829, in the name of Annabelle Ewing, on the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill at stage 3.

16:02

**The Minister for Community Safety and Legal Affairs (Annabelle Ewing):** I thank the members of the Justice Committee for their careful consideration of the bill. They have all become quite expert and conversant in dealing with a number of very technical civil law provisions, and I commend them for their determination to get to grips with the intricacies of Scots civil law. I thank the committee clerks for their extreme hard work—the bill was very large and dealt with a number of technical issues—and also the stakeholders who contributed views and opinions. Above all, I thank Sheriff Principal James Taylor, not only for conducting a most thorough and detailed review of the expenses and funding of civil litigation in Scotland, but for his continued involvement during the bill's progress through Parliament. I hope that he will now enjoy his retirement and feel very proud of his significant contribution to improving access to justice in civil litigation in Scotland.

The context of the review was a continuing 41 per cent decrease in civil litigation in Scotland since 2008-09, as I pointed out in the stage 1 debate. That should be a cause for concern for all those who have an interest in the health and wellbeing of Scots civil law as an independent jurisdiction and in the ability of our fellow Scots to exercise their legal rights in an affordable way. We know, as a result of Sheriff Principal Taylor's review, that the potential costs involved in civil court action can deter many people from pursuing legal action, even when they have a meritorious claim.

The fundamental aspiration of the bill is that people who contemplate litigation in the civil courts should have more certainty about what it will cost them and that it will, indeed, be possible for them to access justice. Litigants will be able to take a claim forward on a no-win, no-fee basis under damages-based agreements that solicitors will now be able to offer for the first time, as opposed to via claims management companies. Success fee agreements, including damages-based agreements, which are all types of no-win, no-fee agreements, are already very popular, because people understand how they work and, of course, they are a route to remedy that otherwise may be

unaffordable. Litigants do not pay anything in advance and the provider of the legal service will pay for all of the outlays of raising the action, including court fees in personal injury cases. In return, the provider of the legal service will be entitled to a success fee, to be deducted from the damages that are awarded or agreed, as well as the judicial expenses that are recoverable from the defender.

The level of the success fee will, as recommended by Sheriff Principal Taylor, be capped in regulations; they will be introduced for parliamentary scrutiny under the affirmative procedure.

Success fee agreements are offered by claims management companies. Although many such companies offer a service that prospective litigants can trust, there has been some concern about the operating practices of some companies. There was therefore widespread consensus that claims management companies should be fully regulated. In parallel to scrutiny of the bill, Parliament agreed by legislative consent motion that claims management companies operating in Scotland will be regulated by the Financial Conduct Authority. That is being provided for by the Financial Guidance and Claims Bill, which had its Commons report stage on 24 April. Earlier this week, HM Treasury published the draft regulations that will provide for the detail of claims management regulation. Members can therefore be confident that any apparent regulatory gap between the implementation of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill and full Financial Conduct Authority regulation will be short.

Whereas the first part of the bill is concerned with how much an individual might be liable to pay their own lawyer, part 2 is concerned with what a litigant might become liable to pay the other side if the case is lost. The most recent civil justice statistics for Scotland identified a fear of that as a possible reason for the reduction in litigation in Scotland, to which I have already referred. Part 2 of the bill will therefore introduce qualified one-way costs shifting, or QOCS, for personal injury cases.

The majority of defenders in personal injury actions are well resourced and the majority of pursuers are of limited means. Although, as a matter of practice, few claimants are pursued for expenses by successful defenders, a pursuer might be liable for considerable expenses and risk possible bankruptcy if they lose. Sheriff Principal Taylor's review confirmed that there is real fear in the minds of potential pursuers and introduced the provision for QOCS, which removes that risk as long as the pursuer and his or her legal team conduct the case appropriately.

The tests by which the benefit of QOCS can be lost by pursuers owing to their behaviour has been the subject of much discussion and refinement at stages 2 and 3, but I am satisfied that the bill, as now finalised, faithfully implements Sheriff Principal Taylor's recommendations.

Part 2 also makes provision for the potential payment of expenses by third-party funders. That is intended to ensure that venture capitalists, whose only interest in a case is commercial, will be liable to adverse awards of expenses. The Scottish Government and John Finnie lodged amendments at stage 2 to ensure that trade unions and providers of success fee agreements are excluded from that provision.

The bill has also been amended to ensure full disclosure of litigants' funding, as Sheriff Principal Taylor identified that as an aid to early settlement and thus to enhancing the efficiency of the courts.

Part 3 of the bill has been the subject of less focus, although I am sure that there has been considerable interest on the part of members. It deals with issues around auditors of court, which are to be brought within the Scottish Courts and Tribunals Service. SCTS will be required to publish annual reports on taxation.

I am pleased to say that the final part of the bill introduces group proceedings—multi-party or class actions—for the first time in Scotland. The proposition received broad support in the committee and the view was very much that the introduction of such actions to the civil law of Scotland is long overdue. As members will recall, the Government has accepted that both opt-in and opt-out models are referred to in the bill. I pay tribute to the particular tenacity of Liam McArthur and all committee members who, I could see, were quite determined from fairly near the outset of proceedings to ensure that that happened.

Finally, the bill allows for post-legislative scrutiny to take place in five years' time. That suggestion was also very much driven by the committee. It will not always be the case that such scrutiny will be the best use of resources—we do not want to devote all our resources to the post-legislative scrutiny of every single bill—but this is the kind of bill that merits such attention.

I am convinced that such a review will show in due course that the legislation has been effective and successful in its objectives of making civil litigation in Scotland more accessible and the costs more predictable to those who are contemplating seeking to exert their legal rights.

I move,

That the Parliament agrees that the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill be passed.

16:09

**Liam Kerr (North East Scotland) (Con):** At the outset, I declare an interest as a practising litigation lawyer. I hold current practising certificates with the Law Society of Scotland and the Law Society of England and Wales.

I am pleased to open for the Scottish Conservatives to speak in favour of passing the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. I thank the bill team for their assistance throughout the process, in particular for their drafting support with the many amendments that were lodged, and I thank the clerks for getting the bill to this stage. I found the evidence sessions genuinely fascinating, but they required a great deal of work behind the scenes to ensure that we all understood the background and the concepts being explained.

Finally, I thank my colleagues on the committee. I feel that this was an example of a cross-party committee working well together to achieve a result that was better than what we started with. Although, as I shall elaborate on shortly, I was not in favour of some of the amendment decisions that were taken last Thursday, I am of the view that, for example, the debate on whether to ring fence future loss awards showed Parliament and the Justice Committee at their best. Members heard the evidence, debated it, moved from an initial position, then—in response to the evidence and the debate—moved again.

The journey from the 2013 Taylor review to this point has been long but worth while. Back then, Sheriff Principal Taylor concluded that there would often be a David and Goliath relationship that prejudiced the attractiveness and prospects of litigation for those with rights and that therefore there was a denial of rights—a denial of the principle of access to justice. The Justice Committee agreed, recommending that the general principles of the bill be approved because

“on balance, the Committee considers that there are problems with access to justice in respect of civil litigation.”

Anything that ensures that those with rights are able to avail themselves of those rights must be a good thing. The bill aims to do that by introducing some of Taylor's recommendations, including the increase in funding options for success fee agreements; the ability to enter damages-based agreements; the introduction of QOCS, meaning that pursuers in personal injury cases will usually not have to pay legal costs if they lose; and the introduction of a class action procedure for the first time in Scotland.

Will the bill achieve those aims? The Law Society of Scotland certainly thinks so, stating in its evidence that the bill

“has the potential to significantly increase access to justice”.

I hope that it does.

In passing, I worry about whether there has been too easy or too quick a conflation of the phrase “access to justice” with the phrase “access to solicitors and to the courts”. I am not convinced that they are the same thing. I suggest—as I did during the committee meetings—that hiring solicitors and litigating through the courts are a means to achieve whatever “justice” means to a particular pursuer.

**Annabelle Ewing:** I note the member’s point, but I think that Sheriff Principal Taylor dealt with that when he suggested that we should perhaps be considering the phrase “access to negotiation”. Perhaps that deals with the member’s point.

**Liam Kerr:** I take the point that the minister makes. I put exactly the same question to Sheriff Principal Taylor and he did indeed deal with it. I think that there is a wider philosophical discussion to be had on that point, but this is perhaps not the time to have it.

I listened to Daniel Johnson gently suggest at stage 2 that the insurance industry might have been too influential and insufficiently questioned in this process—I am paraphrasing, so forgive me. I understand that point, but I do not accept it as a fair reflection of the considerable scrutiny that we all individually and as a committee subjected the witnesses to.

If that charge sticks, the same accusation might plausibly be levelled in relation to representations made by some of the legal fraternity. For example, last week, we heard a great deal about how we should not ring fence future loss awards because to do so might lead solicitors to wind back from offering damages-based agreements. We will never know whether that would have been the case, but, as I said last week, it worries me that we reduce any element of what are ultimately future care costs, and thus potentially prejudice the amount that is available to the pursuer for care and support, in order to incentivise pursuer solicitors.

There is a risk that the courts will, over time—gently and perhaps understandably—increase such awards to ensure that the full costs of care are recovered after the solicitors have taken their fee. I think that that is a realistic possibility, but if I am wrong, I will be happy to admit it to this chamber.

On the flipside, I was pleased to see Parliament, at stage 2, vote to ensure that the benefit of QOCS should be lost where a pursuer

“has acted fraudulently in connection with the claim or proceedings, or makes a fraudulent representation”.

That is important, as unintended consequences could arise from a significant increase in court actions, such as insurers picking up the cost of more court cases. Thinking purely commercially, that would presumably increase overheads, and I remain concerned that increased overheads could be loaded on to people’s premiums. I feel therefore that the full protection against unmeritorious or fraudulent claims that went through at stage 2 should help to prevent a rise in such claims.

The implementation of the act must be closely reviewed, to ensure that consumers, taxpayers and pursuers do not lose out. Earlier in the process, I flagged up the fact that witnesses from several national health service boards suggested that the anticipated increase in claims for clinical negligence would be difficult to cover. That will have an attendant impact on healthcare delivery, as NHS resources will be taken up with defending unsuccessful claims rather than the delivery of services to patients. That is a concern.

For a second time, I refer to the Law Society of Scotland’s submission, in which it noted:

“It is difficult to gauge the full impact of the Bill, as many of the details of the provisions will be made at a later stage, through regulations”.

To that end, like the minister, I was pleased that Margaret Mitchell’s amendments requiring a report after five years were agreed to last week. Again, that is a better outcome as a function of the process.

The bill aims to increase access to justice. Through a comprehensive process in which all parties and viewpoints were engaged and debated, we have arrived at a bill that I hope will do just that. My colleagues and I shall vote for its passing this evening and I look forward to the future that I am sure it will deliver.

16:15

**Daniel Johnson (Edinburgh Southern) (Lab):** Many members may be wondering whether, after Thursday’s lengthy and detailed stage 3 debate on amendments, there is anything left to say about the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. However, I assure members that I have plenty left to say and I intend to use my full five minutes. I am just surprised that there are not more members in the chamber, although I am sure that they are all watching on their televisions.

As the minister said, many of us seem to have become experts and very impassioned on the topic. Civil litigation is dry and technical, but there is a reason why so many of us have become impassioned. We hope never to use civil litigation proceedings and to have to pursue compensation

in that way, but, when people have to do that, they really have to. The proposals will make it easier for people to bring cases and will give them more certainty in doing so. People who have experienced catastrophic life changes through injury will have a distinct and very real improvement to their prospects of getting redress and compensation. I hope that the bill addresses the decline in civil litigation cases that the minister mentioned.

Scottish Labour fully supports the bill and the positive reforms that it will put in place. I, too, record my thanks to Sheriff Principal James Taylor, whose balanced and well-thought-through recommendations are at the heart of the bill. Today marks the concluding stage of many years of work for him, with the report having been published in 2013. I also add my thanks to the bill team and the clerks, whose work has enabled the detailed and thorough debate and inquiry.

I am perhaps in danger of repeating what others have said, but it is worth remarking on what I see as the three key propositions in the bill. The first is the introduction of qualified one-way costs shifting, or QOCS, which can sound a little bizarre to the uninitiated but is hugely important in increasing certainty for many people in relation to costs. It is also important that we properly enshrine in law the already popular no-win, no-fee agreements, so that solicitors as well as claims management companies can offer them. It is a mark of the balance in the bill that ministers will be able to bring forward secondary legislation to cap success fees, along with a sliding scale, so that any unintended consequences can be addressed. The introduction of group proceedings is also a welcome step, especially for those who have experienced a small loss and who may feel that it is not worth while bringing a case individually but for whom acting collectively would make bringing a case more of a possibility.

The thoroughness of the stage 3 amendment debate is a mark of the seriousness with which the bill has been taken. Indeed, I think that, throughout the process, I ended up being on the opposing side to just about every combination of parties, which is a mark of how thoroughly everyone approached the bill. Other members have mentioned the amendments, but I will briefly set out the ways in which I think that the bill has been genuinely improved.

The first is the introduction of an opt-out approach in relation to group actions, which was spearheaded by Liam McArthur. That is a welcome addition that will hugely strengthen the possibility of group actions. I thank John Finnie for the collaboration that he and I participated in to ensure protections for trade unions. It would have been an absurdity if the bodies that seek to help

people to pursue litigation and support them when they experience injury in the workplace were prevented from doing so.

The amendments that we agreed to at stage 3 to protect no-win, no-fee agreements were important. Sheriff Principal Taylor's involvement right the way through the process in highlighting the potential dangers of leaving the bill as it had been left at stage 2 was extremely helpful. I understand and acknowledge the concerns that many members have highlighted, but one important aspect of the bill is that there is a possibility of introducing instruments to improve and amend the provisions on claims against future losses that solicitors can make.

The five-year review, introduced and stewarded by Margaret Mitchell, is an incredibly important improvement to the bill. Although I note the minister's caution about overuse of that approach in future legislation, we should look at whether it is a right and proper way to consider legislation in the future to ensure that it does not have unintended consequences and has the proposed effect.

The bill is strong and I look forward to supporting it at decision time.

16:21

**John Finnie (Highlands and Islands) (Green):**

The bill is the important document, but I often look to the policy memorandum for more lay guidance on the policy objectives. It says:

"The principal policy objective of this Bill is to increase access to justice"—

I heard what my colleague Liam Kerr said about that, but that is a debate for another day—

"by creating a more accessible, affordable and equitable civil justice system. The Scottish Government aims to make the costs of court action more predictable, increase the funding options for pursuers of civil actions and introduce a greater level of equality to the funding relationship between pursuers and defenders in personal injury actions."

That is intended to satisfy a number of national outcomes, not least

"National Outcome 11 on resilient communities by increasing public confidence in justice institutions and processes."

That is important.

The bill has been referred to as long-awaited legislation. As many other people are, I am certainly grateful to Sheriff Principal Taylor for not only his work on the report but, as the minister said, his continuing involvement and wise counsel, which had us all reflect at stage 3. That showed maturity in how we deal with legislation.

As Daniel Johnson and other colleagues said, there was a lot of collaborative working. There was a genuine effort on the committee's part to improve the bill. I am grateful, as others are, to the witnesses, staff, the bill team and the minister for how we went about that.

The minister said that she understood that Justice Committee members got to grips with the terms. I will own up and say that I did my very best. When I look at the policy memorandum, I find a three-page glossary of terms. The one that jumps out at me is "One way costs shifting". As we now all know, that is

"A regime under which the defender pays the pursuer's expenses if the action is successful, but the pursuer does not pay the opponent's expenses if the action is unsuccessful."

That became QOCS. Anyone who casually dropped in on a debate must have found that term peculiar.

There has been a lot of support for the bill from within and outwith the legal profession. At the outset, the Law Society of Scotland said:

"the basic terms are good and will help provide certainty which is the priority for solicitors."

Since then, with the combined efforts of the committee, improvements have been made. As is the way, a lot of effort was made to persuade colleagues about things that were not successful, such as the issue relating to trade unions and staff associations and fees. That was about whether the bill would frustrate what were referred to as difficult but nonetheless meritorious cases.

The bill has been improved. It is important that that has happened for a number of reasons, not least the one to which the minister alluded when she rightly flagged up concerns about the 41 per cent drop in the level of civil litigation. Civil litigation is vital. Daniel Johnson remarked on the importance of the trade union movement and staff associations.

Patrick McGuire, of Thompson's Solicitors, said:

"I have absolutely no doubt that the provisions that are in the bill will enhance access to justice ... Equally important, it will also do what Sheriff Principal Taylor said was his prime focus and what I see as the mischief of the bill, which is redressing the imbalance in the asymmetrical relationship ... between pursuers of personal injury claims and the extremely large, powerful and wealthy insurers".— [*Official Report, Justice Committee*, 19 September 2017; c 5.]

That concerns that level playing field that we are all keen to bring about.

I could say a lot more, but I will stop there. The Scottish Green Party will support the bill at decision time tonight.

16:25

**Tavish Scott (Shetland Islands) (LD):** I will start with an apology on behalf of Liam McArthur, whose tenacity has not extended to his being here today. It says in my speech notes that he has an important engagement in his constituency this afternoon. I think that means that he is opening something, but I cannot remember what it is. He has been unable to get down to Edinburgh this afternoon. Loganair schedules achieve many things, but not whisking one to Edinburgh in time for 4 o'clock on a Tuesday afternoon. He would certainly wish me to pass on his thanks to his committee colleagues, the clerks, the Scottish Parliament information centre and, of course, the people who gave evidence to the Justice Committee, including the minister and her colleagues, for the work that has been done in relation to the bill.

I also pay particular tribute to Sheriff Principal James Taylor, in recognition of his work in laying the foundations for the legislation. As he made clear to the committee, the recommendations in his report in 2013 were about improving access to justice through addressing the expense and funding of civil litigation in Scotland. The bill does that in a number of important ways, which is why Liberal Democrat members will be happy to support it at decision time.

In the brief time that is available, I want to make a few observations about the legislation—recognising, of course, that, unlike some colleagues in the chamber, I have not had the benefit of living and breathing qualified one-way costs shifting over recent months. In that regard, I say that I was taken with Daniel Johnson's masterful pronunciation of the acronym for that, which I am certainly not going to attempt. I recognise that that system is the centrepiece of the changes that are set to be introduced through the bill, and that it strikes at the heart of the problem that was identified by Sheriff Principal Taylor; namely, that a lack of certainty about the likely costs in bringing a case, and the prospect of having to bear the legal costs of a defendant, can act as significant deterrents.

I should just say that the past couple of minutes represent one of the few occasions when I have learned something while reading my speech notes.

I acknowledge concerns that have arisen about the risk of creating a so-called compensation culture. However, the regulation of claims management companies in Scotland that is being taken forward elsewhere will help to address some of those fears.

The issue that arose most in the debate on amendments last week, and earlier, during stage

2, was the question whether damages for future loss should be ring fenced in success fees. I appreciate the inherent sensitivities. No one would wish individuals who have suffered the most grievous loss or harm to face the prospect of not receiving the full amount of the compensation that is awarded to them. However, on balance, the Scottish Liberal Democrats are persuaded that, in ring fencing lump-sum damages, we run the risk of diminishing the chances of cases being taken on. A consequence of that would be to reduce the prospect of individuals accessing the justice that they so desperately need and richly deserve.

Finally, I mention the bill's proposals in relation to group proceedings. As with damages-based agreements, the bill's introduction of group proceedings to Scots law is welcome, and reinforces its overarching objective of improving access to justice. Although the Government was initially minded only to allow for an opt-in approach, I am pleased that the committee backed Liam McArthur's amendment to include, too, an opt-out approach in the bill. I am grateful for colleagues' observations on Liam McArthur's work in that regard. Obviously, that provision will take a little longer to introduce, but having the option available is essential if we are to deal with breaches of consumer law. Inevitably, those will have a relatively small impact on a large number of people, so the cumulative impact will be high. However, the incentive for any one individual to participate in court action is low. Thanks to the efforts of Which? and the amendments that were successfully promoted by Liam McArthur, we have a bill that offers the prospect of access to justice in such cases, as well.

Obviously, there is a lot more that I could say about Q-O-C-S, but in the interests of brevity, and owing to my lack of knowledge, I will leave it there, save for my confirmation that the Liberal Democrats will be happy to support the bill at decision time.

16:29

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Access to justice is the hallmark of a civilised society and it is at the heart of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. Last Thursday, the stage 3 amendments were, for the most part, passed consensually, and I believe that the changes that have been made since stage 2 have strengthened the bill and closed possible loopholes. As deputy convener of the Justice Committee I, too, thank all the stakeholders who gave evidence, and I thank the clerks for their excellent work. They did a great job of simplifying the key points of the bill to help the committee's understanding.

The bill will create a more affordable and equitable civil justice system. How many times have we heard about people being put off bringing actions because they cannot afford it? As the minister said, there has been a 41 per cent decrease in civil litigation cases since 2008. Despite the Justice Committee's having heard conflicting views from witnesses on the matter, I believe that that fact proves that there has been a problem. Now, costs in civil litigation will be more predictable. Therefore, the bill will provide crucial access to justice.

The bill provides the legal framework to implement a number of key recommendations from Sheriff Principal Taylor's balanced review of the expenses and funding of civil litigation, which was published in 2013. Although the bill might seem to be a little technical—or, as Daniel Johnson said, “dry”—it will have a significant impact on the public and on anyone who gets involved in civil litigation, the background to which usually results in a stressful situation.

Approximately half the report's recommendations do not require primary legislation and will be implemented mostly by rules of court to be drafted by the Scottish Civil Justice Council, and the recommendations regarding sanction for counsel in personal injury actions were provided for in the Courts Reform (Scotland) Act 2014. Most of the recommendations that require primary legislation will be implemented through the bill. The main exceptions are, as we heard, regulation of the claims management industry and referral fees, which will be the subjects of forthcoming legislation.

Specifically, the bill includes provisions for Scottish ministers to introduce caps for success fee agreements—which are commonly known as no-win, no-fee agreements—speculative fee agreements and damages-based agreements in personal injury and other civil actions. The bill will also allow solicitors to use DBAs in Scotland.

As we have heard, the bill will introduce QOCS when a pursuer is not liable for the defender's expenses if they lose, but can still claim their own expenses from the defender if they win. That would apply in personal injury cases and appeals, including those involving clinical negligence, for example. The bill will allow for new court rules in respect of third party and pro bono funded litigation, and for legal representatives to bear the cost when their conduct in a civil action has caused needless cost.

The bill will enable the auditor of the Court of Session and sheriff court auditors to become salaried posts in the Scottish Courts and Tribunals Service, and it will allow for the introduction of a group procedure. The group procedure element, which is being introduced for the first time in

Scotland, is an important part of the bill, and the Justice Committee welcomes it. The Scottish Government has been persuaded that having opt-in and opt-out systems is the best way forward, and I believe that that is an improvement on the stage 2 position. It is also a clear example of how consensual the bill's passage has been. All factors have been considered carefully, as my colleague Liam Kerr stressed.

Another aspect of the bill is that litigants will now be aware of every funding option in as clear and comprehensive a way as possible—which will, again, improve access to justice.

The bill will facilitate access to justice and create a more affordable and equitable civil justice system. For those very important reasons, I am happy to support the bill at stage 3 and for it to go on the statute books.

16:33

**Gordon Lindhurst (Lothian) (Con):** I open by referring members to my entry in the register of members' interests, as I am a practising advocate.

The stated aim of the bill is to provide greater access to justice in civil cases. Who could disagree with such a proposition? QOCS is the tool through which that access is to be opened up, but getting the balance right—a bit like getting the pronunciation of QOCS right, perhaps—is slightly more difficult. We want to ensure that the number of unmeritorious claims does not spiral out of control, which is one of the main concerns about the possible effects of the bill. Indeed, it is questionable whether allowing actions to be brought without a party having to weigh up the most important factor in litigation—court expenses—is, in principle, a good idea. As those who are involved in litigation know all too well, cases are sometimes settled on grounds that relate but little to their merit, simply because of the spiralling costs of an action.

The wording of the bill, which was debated in the chamber last week, is important, and the fraud test has, at least, been strengthened rather than diluted.

Equally important, however, is that in the future an assessment of the number of unmeritorious claims should be made, in order to enable accurate assessment of the bill's impact on justice for everyone. For that to happen, it will be required that a variety of accurate information be gathered and collated. I suggest, because it is critical that justice be properly served, that among the things that need to be looked at are the number of cases that are settled without proof, and the number that are taken to a full hearing and are unsuccessful. If damages for future loss are not to be ring fenced,

that will require particularly careful review, in due course.

Strong evidence-based arguments were made on both sides during consideration of the bill. Insurers have real concerns that high-value claims could lead to significant sums for critical care and support later in life being lost. We heard from my colleague Margaret Mitchell that a simple comparison with what has gone before in other parts of the UK does not take into account differences in the Scottish system.

Measurement of the success or failure of the decisions that are made in the chamber should be an important part of the policy-making process. We are meant to be here to make people's lives better, which must include ensuring that unintended consequences do not produce results that are different from what was expected. That is why the part of the bill that allows for review is so important; it will ensure that the bill can, in the future, be assessed on whether it has increased access to justice for the people who need it and, indeed, whether they have been fairly compensated when they have accessed justice.

The UK Parliament's Financial Guidance and Claims Bill will, as members will be aware, regulate claims management companies and use of cold calling. Everyone here will be familiar with the frustrating practices that are used by certain companies in that regard. I am pleased that the Scottish Government has finally agreed to the UK Government's standards on the issue. However, as colleagues will know from stage 2, I would like to have seen the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill being delayed until the Westminster legislation had come into force. I hope that the regulatory void that will be created by the other parties in Parliament does not lead to negative consequences for the most vulnerable people in our society.

16:37

**Mary Fee (West Scotland) (Lab):** I am pleased to have the opportunity to speak in this debate on the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. During the early stages of the bill, I was a member of the Justice Committee and heard evidence from a range of individuals during the early evidence sessions. I take this opportunity to commend the current members of the Justice Committee and the committee's clerks for all their work on the bill throughout the legislative process.

The bill will remove the considerable uncertainty that exists around the legal costs of civil litigation and will work to redress the notable imbalance that has existed between individual litigants, including those supported by their trade union, and large

insurance firms. Scottish Labour supports both the core principle of the bill, which is to widen access to justice, and the numerous detailed sections that have been strengthened by amendments at stages 2 and 3. At stage 2, the most significant amendments were to section 10. Those amendments were crucial, as they clarified the wording of section 10 to make it explicit that the power to award expenses against third-party funders does not apply in trade union-funded litigation.

Further amendments to the bill were agreed to in the chamber at stage 3 last week. I was pleased that there was cross-party support from the Greens, the Liberal Democrats and the Scottish National Party for the Scottish Labour amendments in the name of my colleague Daniel Johnson, which served to provide a guarantee and protection for the status of no-win, no-fee cases. It is important to note that, without those Scottish Labour amendments, the bill could have severely limited access to damages-based agreements for accident victims, including in high-value cases, which regularly involve individuals who have suffered very serious injury at work.

The bill in its final, amended form protects the legal rights of individuals who have experienced serious injury in the workplace to pursue a fair and just compensation settlement without any concern about or fear of being burdened with significant financial debt. Scottish Labour's amendments to the bill at both stage 2 and stage 3 have been vital in ensuring that the bill upholds its fundamental principle of improving and widening access to justice.

The Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill is a vital piece of legislation. It serves a strategic purpose and it will have a positive impact on the thousands of individuals in Scotland each year who become involved in civil litigation, first by helping to redress the imbalance that existed for individual litigants, and secondly by providing a cast-iron guarantee and protection for the status of no-win, no-fee cases. Along with my colleagues on the Labour benches, I will be happy to support the bill at decision time tonight.

16:41

**Mairi Gougeon (Angus North and Mearns) (SNP):** The minister was being very kind to us earlier when she claimed that we are now all experts on the bill, because it has been very difficult to get our heads around the subject matter. Tavish Scott passed on Liam McArthur's thanks to the committee clerks and other members of the committee, and I am sure that Tavish also passed on his own thanks to Liam McArthur for allowing him to take part in the debate. However,

we could tell that he is relatively new to the subject, as he has not quite got his head around the fancy acronyms that we have, or how to articulate them.

Daniel Johnson highlighted some of the reasons why the bill is vital. At its heart, it is about widening access to justice, and today I intend to focus on two elements that I believe will do that—the introduction of qualified one-way costs shifting, or QOCS, which we have heard a lot about this afternoon, and group proceedings.

Essentially, QOCS removes any financial risk to the pursuer who brings forward a claim, even if they are unsuccessful. I found that area particularly interesting in committee. Initially, what concerned me were cases that are brought forward where the defender is an individual as opposed to a large insured firm or organisation. Initially, I wondered whether it was fair to expect them to foot the cost of litigation even if they are successful in defending a claim that is brought against them. There was also a fear that, if QOCS was introduced, it would lead to a rise in spurious claims.

At stage 2, we considered amendments that would impose certain restrictions on who should be able to benefit from QOCS, including an amendment that would provide protection for defenders who were uninsured but remove protection for third-party funders. However, there was concern, as Liam McArthur rightly pointed out during the committee's considerations, that that would provide an incentive for people not to take out insurance so that they could then escape that liability. That concern was also raised by Sheriff Principal Taylor during our evidence sessions when he stated:

“you could end up with parties not bothering to insure themselves when they ought to or with parties taking on a much higher excess in order to pay a much lower premium and thereby making themselves ... self-insured.”

It is also important to note that QOCS is in operation elsewhere. Sheriff Principal Taylor went on to say:

“We can look to England and Wales, where the rules of court are the same as what is proposed here, to find out what has happened there. We have heard of no difficulties with qualified one-way costs shifting being operated as it is proposed to be operated here.”—[*Official Report, Justice Committee*, 31 October 2017; c 10.]

It is important that a balance is struck that ensures that there is fairness and that access to justice is delivered. I believe that, following the stage 3 consideration of amendments, we now have that in place with the current, amended QOCS provisions.

The bill will also introduce group proceedings for the first time—a move that has been widely welcomed by insurers, unions and law firms. The

main point of contention was about whether there should be an opt-in system, as the Scottish Government originally proposed, or an opt-out system. The consumer group Which? was in favour of an opt-out system in which, after the claim had been won and the defender had been ordered to pay compensation, affected consumers could come forward and claim the proportion of the compensation that was rightfully theirs. Which? felt that that removed the administrative burden of gathering together affected consumers before proceedings are commenced, when the incentive is low for consumers to get involved because the outcome of the action is uncertain.

During our discussions at the committee, the concern was raised that the opt-out mechanism might take a considerable time to put into practice. Paul Brown from the Legal Services Agency stated:

“It has taken an inordinate amount of time to get to where we are ... It would be a pity if one went for the most ambitious arrangement and that resulted in further delay.”—[*Official Report, Justice Committee*, 14 November 2017; c 31-2.]

At stage 3, we have managed to strike the correct balance, in which it is at the court’s discretion which system will be used—whether that is the opt-in system, the opt-out system, or the choice of either.

As I said, the bill is about increasing access to justice. I believe that, following the committee’s consideration, all the different stages of the bill and the consequent amendments that have been agreed to, we have got the balance just about right, and I gladly support the bill.

16:45

**Daniel Johnson:** The debate has continued the theme that has proceeded with the bill. There has been engaged discussion about very technical and potentially dry items.

I thank Mary Fee and other members for acknowledging the broad sweep of the committee’s work. The committee has done an excellent job, and I thank my fellow committee members. I took up work on the bill around halfway through its consideration, at stage 2, after stage 1 had been concluded. I thank everyone for the work that they have done.

The debate was best summed up by Mairi Gougeon. She opened by pretending that none of us is an expert, but she gave the game away by giving a comprehensive speech in which she went through technical details, explained why they are important and talked about the balance that the original proposals sought to strike and the balance that we as a committee sought to strike throughout the process. I thank her for her contribution.

Liam Kerr brought up on-going concerns about specific provisions in the bill and some general points. The point about access to justice not being the same as access to courts and solicitors was well made. We can sometimes blur the distinction between those two things, but they are not one and the same.

The bill broadly gets the balance right. The minister pointed to proposals from Sheriff Principal James Taylor that sought to strike that balance. That is a principle that we should continue to uphold, examine and challenge ourselves with. Indeed, I would go further. Although I think that the bill is a step forward on access to justice and that it will improve people’s ability to bring forward cases, it is certainly not the last word on access to justice. We have been able to strike a balance between the awards that people might be able to achieve through the courts and offsetting the costs against them. There is a broad range of actions that one might bring to court or that one might be involved in at court in which that sort of mechanism is not available. It is an on-going concern of mine and of Scottish Labour members more broadly that justice is increasingly becoming something that people can access if they can afford it. We must continue to examine that thoroughly and challenge it robustly.

I want to deal with some of Gordon Lindhurst’s points. We have an important opportunity with the five-year review, which is an important mechanism. Gordon Lindhurst very fairly identified some things that will need to be tested and challenged at that point. We will need a very clear assessment of what is happening in respect of the numbers of cases, how they are concluding, and how the legislation is operating. There may well be unintended consequences, and it is important that we capture them. I include future losses in that. I recognise that the changes that we have made at stage 3 are not uncontroversial and that it is important that we challenge so that there are no unintended consequences.

Other things should be examined, including the fraud arrangements. It is obvious that we must prevent those involved in fraudulent actions from receiving the benefit of QOCS, but the STUC and others argued that overregulating that aspect would lead to people losing QOCS unfairly. We must look at whether that happens and whether it is an unintended consequence of the provisions.

I lodged amendments at stage 2 and stage 3 on pay-as-you-go arrangements. Trade unions face issues when funding court actions, and I would very much like that issue to be examined in the five-year review.

I have raised before the question whether environmental cases could be included in actions,

especially group actions. There are good reasons why that should be examined.

This has been a good debate; it has continued the approach that has been taken as the bill has passed through the Parliament. We should all be very pleased with the end result. It is a good piece of legislation, and I look forward to voting on it. I am disappointed to conclude the debate without hearing Tavish Scott say the word “QOCS”, but that is my only regret this afternoon.

16:50

**Margaret Mitchell (Central Scotland) (Con):** The Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill is complex and, as Daniel Johnson stated, very technical. Based on the Taylor review and the previous Gill review recommendations, the bill seeks to address a David-and-Goliath scenario whereby there is an imbalance in the relationship between pursuers and defenders. The former tend to be individuals with little experience of the legal system who have limited resources; the latter tend to be insurance bodies or large companies who have substantial resources. The legislation makes provision to redress that imbalance by introducing qualified one-way costs shifting, which overturns the established principle that the loser pays the winning side’s expenses.

The bill also allows group proceedings, or multi-party actions, to be brought in Scotland for the first time through an opt-in process. Prompted by evidence from Which?, the UK’s largest consumer organisation, which argued for the introduction of an opt-out mechanism to be included alongside the opt-in provision, Liam McArthur lodged an amendment to that effect, which was agreed to at stage 2. Stage 3 amendments were lodged to permit the Scottish Civil Justice Council to develop the rules for both opt-in and opt-out procedures. Crucially, both of those procedures are now in the bill.

The legislation allows for damages-based agreements to be enforced as part of success fee agreements, which means that solicitors can claim a percentage of the compensation awarded to their client, if the case is won.

As Liam Kerr pointed out, the future loss provision, on which concerns have been raised from the outset, has been one of the most contentious issues in the bill. However, let us be clear: future loss can include money that is awarded to an injured pursuer specifically to cover, for example, essential and expensive medical equipment and the cost of future care.

On the issue of ring fencing, witnesses’ evidence was diametrically opposed. Personal injury lawyers argued for future loss to be included

as part of lawyers’ fees, while insurance company representatives, as well as the Equality and Human Rights Commission, argued for that to be protected by ring fencing. The committee considered both sides of the argument, and ultimately decided at stage 2 to ring fence the future loss element, so that it cannot be claimed as part of lawyers’ fees. However, following that stage 2 decision, Sheriff Principal Taylor wrote to the committee outlining his personal concerns and opposition to the approach. Consequently, the decision to ring fence was reversed at stage 3.

Having carefully considered Sheriff Principal Taylor’s letter, I remain unconvinced by his arguments. For example, he says that ring fencing future loss in England and Wales has meant that it is not worth solicitors taking on such cases. However, that fails to recognise that the situation in Scotland is different. Scottish solicitors, unlike their counterparts in England and Wales, can enter into DBAs, claim a percentage of their fees from a lump-sum settlement and, in addition, be awarded judicial expenses for all their outlays and costs, with the possibility of an additional uplift for complex cases. In other words, I maintain that the comparison is not analogous.

I am disappointed that the amendments that were lodged that would have required lawyers to be open and transparent about the future loss element in settled claims were rejected.

Post-legislative scrutiny of the bill is crucial. The bill might have unintended consequences, given some of the controversial provisions. I thank the minister for improving on the amendment that I lodged at stage 2 in that regard.

I thank everyone who gave evidence, written or oral. I also thank my fellow committee members and the bill team and I pay tribute to the stalwart work of the Justice Committee clerks in helping the committee to scrutinise the bill.

The bill seeks to increase access to justice for individual consumers and the general public, in civil litigation cases. The Scottish Conservatives will be pleased to support it this evening.

16:55

**Annabelle Ewing:** I refer members to my entry in the register of members’ interests. I declared an interest at the beginning of consideration of amendments at stage 3; I hope that the declaration carries forward to the debate.

I have listened with interest to members’ speeches in this final part of our consideration of the bill and I very much welcome the support for the bill that has been expressed by members of parties across the chamber. In closing the debate, I will pick up on a few issues about the bill, which

will improve access to civil justice in Scotland and thereby increase the possibility of negotiating a settlement.

The power to cap success fees, in section 4, is important. I remind members that the Government will lay draft regulations on caps, which will be subject to the affirmative procedure. Our intention is to follow the recommendations of Sheriff Principal Taylor, which he thought would permit solicitors and claims management companies a reasonable return on their work and the outlay involved in the pursuit of claims under success fee agreements.

Sheriff Principal Taylor thought that his carefully considered proposals struck a balance between the needs of individuals and the incentivisation of their legal advisers. As he said, an individual is much more likely to welcome 80 to 85 per cent of their damages claim than 100 per cent of nothing, if they cannot pursue a claim because they have no means of funding. In the context of the sliding cap on success fees, it should be borne in mind that the percentages are maxima and competition among providers will drive down deductions, in practice.

Although practitioners were clear that people would not have to pay more than one success fee, amendments to the bill at stage 2 made that clear and put it beyond doubt.

On the future loss element of damages, which is important, we had a good debate during consideration of amendments at stage 3 last Thursday. In light of the concerns that were raised at stage 2, I and other members were happy to support the amendment in Daniel Johnson's name that means that future loss in cases in which the award is paid as a lump sum is not ring fenced—subject of course to certain important safeguards, which are set out in the bill.

As I said to Liam Kerr during earlier stages of the bill, there is no evidence that the approach will lead to inflationary damages awards. Judges make awards according to the law as it stands. I think that Sheriff Principal Taylor said that the chance of such a direct correlation was zero. *[Interruption.]*

**The Presiding Officer (Ken Macintosh):** I ask members who are coming into the chamber to keep the noise down, please.

**Annabelle Ewing:** On the important issue of QOCS—I agree that we want to hear Tavish Scott pronounce that; he can always intervene—I do not think that the approach will lead to unmeritorious claims, as has been suggested. A number of important factors will discourage spurious court actions.

First, as Sheriff Principal Taylor said, solicitors are unlikely to run cases that have little chance of success on a no-win, no-fee basis, because they are unlikely to be paid. Secondly, the regulation of claims management companies in Scotland will discourage unscrupulous companies from operating north of the border. Thirdly, the compulsory pre-action protocol that was introduced in the sheriff court for personal injury actions that involve claims of under £25,000 will enable the identification at an early stage of claims that have no merit. Finally, section 8(4) provides that the benefit of QOCS may be lost if the pursuer behaves inappropriately, which will also discourage the raising of vexatious claims.

In its plan of work for the coming year, the Scottish Civil Justice Council has confirmed that it will prioritise implementation of the bill. It will therefore look at the important issues of what happens in circumstances in which a case is summarily dismissed or abandoned or the pursuer fails to beat a tender, all of which were raised during consideration of amendments.

On the important issue of third-party funding, it was never the intention to see trade unions facing awards of expenses against them when they act as funders and amendments have put that absolutely beyond doubt.

On auditors of court, we will see changes to the system, but we also anticipate transitional arrangements to deal with those who are currently in post.

The Government's amendments at stage 3 on procedure in group proceedings will permit the Scottish Civil Justice Council, if it so wishes, to prioritise rules on opt-in procedure. In so doing, it might wish to look at the draft act of sederunt that was produced by the Scottish Law Commission some time ago. The Government will also provide the council with a policy note on what it considers is required for rules on opt-in. It is to be hoped that that will facilitate expeditious action.

In summary, the bill will directly enhance the ability of people in Scotland who have meritorious civil claims to pursue such cases in the courts. It seeks to remove some of the barriers that, in the past, have deterred individuals from accessing justice in the civil courts. It extends the funding options for individuals and clarifies how much it will cost to enter into a success fee agreement. It makes it clear that a pursuer will not become liable for the costs of the defender if a personal injury case is lost. The bill also addresses concerns about transparency of the work of auditors of court, who currently derive a private income from what is, in effect, a public office. Finally, the bill will lead to the introduction of group proceedings in Scotland for the first time.

I repeat my thanks to all those who gave evidence to help improve the bill during its parliamentary process, and I commend the motion in my name.

## Decision Time

17:01

**The Presiding Officer (Ken Macintosh):** We come to decision time. The first question is, that amendment S5M-11967.2, in the name of Brian Whittle, which seeks to amend motion S5M-11967, in the name of Aileen Campbell, on the success of the Commonwealth games, be agreed to.

*Amendment agreed to.*

**The Presiding Officer:** The second question is, that amendment S5M-11967.1, in the name of David Stewart, which seeks to amend motion S5M-11967, in the name of Aileen Campbell, on the success of the Commonwealth games, be agreed to.

*Amendment agreed to.*

**The Presiding Officer:** The third question is, that motion S5M-11967, in the name of Aileen Campbell, as amended, on the success of the Commonwealth games, be agreed to.

*Motion, as amended, agreed to,*

That the Parliament commends the incredible achievements of Team Scotland at the Commonwealth Games on the Gold Coast; recognises that this was Scotland's best ever away games and, by winning 44 medals, beat the previous medal tally of 29 in Melbourne in 2006; considers that this demonstrates that Scottish sport is growing in strength and depth, with sportsScotland and governing bodies of sport working to support athletes, coaching and support staff; believes that sustained investment and commitment in the whole sporting system is vital to enable people of all ages, backgrounds and abilities to regularly take part in sport and exercise; notes the role of UK Sport in funding elite sport; believes that reducing inequality in access to participation should be a priority for the Scottish Government; recognises the importance of using sporting success to increase active participation as part of building a healthier society, and believes that this is further helped by delivering affordable and free access to sporting participation for the many.

**The Presiding Officer:** The fourth question is on stage 3 of a bill, so we will formally cast our votes. The question is, that motion S5M-11829, in the name of Annabelle Ewing, on stage 3 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill, be agreed to. Members should cast their votes now.

### For

Adam, George (Paisley) (SNP)  
 Adamson, Clare (Motherwell and Wishaw) (SNP)  
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)  
 Arthur, Tom (Renfrewshire South) (SNP)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Balfour, Jeremy (Lothian) (Con)  
 Ballantyne, Michelle (South Scotland) (Con)  
 Beamish, Claudia (South Scotland) (Lab)  
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)

Bibby, Neil (West Scotland) (Lab)  
 Bowman, Bill (North East Scotland) (Con)  
 Briggs, Miles (Lothian) (Con)  
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
 Burnett, Alexander (Aberdeenshire West) (Con)  
 Campbell, Aileen (Clydesdale) (SNP)  
 Carlaw, Jackson (Eastwood) (Con)  
 Carson, Finlay (Galloway and West Dumfries) (Con)  
 Chapman, Peter (North East Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
 Cole-Hamilton, Alex (Edinburgh Western) (LD)  
 Constance, Angela (Almond Valley) (SNP)  
 Corry, Maurice (West Scotland) (Con)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
 Davidson, Ruth (Edinburgh Central) (Con)  
 Denham, Ash (Edinburgh Eastern) (SNP)  
 Dey, Graeme (Angus South) (SNP)  
 Dornan, James (Glasgow Cathcart) (SNP)  
 Dugdale, Kezia (Lothian) (Lab)  
 Ewing, Annabelle (Cowdenbeath) (SNP)  
 Ewing, Fergus (Inverness and Nairn) (SNP)  
 Fee, Mary (West Scotland) (Lab)  
 Findlay, Neil (Lothian) (Lab)  
 Finnie, John (Highlands and Islands) (Green)  
 FitzPatrick, Joe (Dundee City West) (SNP)  
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)  
 Golden, Maurice (West Scotland) (Con)  
 Gougeon, Mairi (Angus North and Mearns) (SNP)  
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Greene, Jamie (West Scotland) (Con)  
 Greer, Ross (West Scotland) (Green)  
 Griffin, Mark (Central Scotland) (Lab)  
 Halcro Johnston, Jamie (Highlands and Islands) (Con)  
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)  
 Harper, Emma (South Scotland) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Haughey, Clare (Rutherglen) (SNP)  
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
 Hyslop, Fiona (Linlithgow) (SNP)  
 Johnson, Daniel (Edinburgh Southern) (Lab)  
 Johnstone, Alison (Lothian) (Green)  
 Kelly, James (Glasgow) (Lab)  
 Kerr, Liam (North East Scotland) (Con)  
 Kidd, Bill (Glasgow Anniesland) (SNP)  
 Lamont, Johann (Glasgow) (Lab)  
 Lennon, Monica (Central Scotland) (Lab)  
 Lindhurst, Gordon (Lothian) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 Lockhart, Dean (Mid Scotland and Fife) (Con)  
 Lyle, Richard (Uddingston and Bellshill) (SNP)  
 MacDonald, Angus (Falkirk East) (SNP)  
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
 Macdonald, Lewis (North East Scotland) (Lab)  
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)  
 Mackay, Derek (Renfrewshire North and West) (SNP)  
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)  
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 Martin, Gillian (Aberdeenshire East) (SNP)  
 Mason, John (Glasgow Shettleston) (SNP)  
 Mason, Tom (North East Scotland) (Con)

Matheson, Michael (Falkirk West) (SNP)  
 McAlpine, Joan (South Scotland) (SNP)  
 McDonald, Mark (Aberdeen Donside) (Ind)  
 McKee, Ivan (Glasgow Provan) (SNP)  
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
 McMillan, Stuart (Greenock and Inverclyde) (SNP)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Mountain, Edward (Highlands and Islands) (Con)  
 Mundell, Oliver (Dumfriesshire) (Con)  
 Neil, Alex (Airdrie and Shotts) (SNP)  
 Robison, Shona (Dundee City East) (SNP)  
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)  
 Rumbles, Mike (North East Scotland) (LD)  
 Ruskell, Mark (Mid Scotland and Fife) (Green)  
 Russell, Michael (Argyll and Bute) (SNP)  
 Sarwar, Anas (Glasgow) (Lab)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland Islands) (LD)  
 Simpson, Graham (Central Scotland) (Con)  
 Smith, Liz (Mid Scotland and Fife) (Con)  
 Smyth, Colin (South Scotland) (Lab)  
 Somerville, Shirley-Anne (Dunfermline) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Stewart, Alexander (Mid Scotland and Fife) (Con)  
 Stewart, David (Highlands and Islands) (Lab)  
 Stewart, Kevin (Aberdeen Central) (SNP)  
 Swinney, John (Perthshire North) (SNP)  
 Todd, Maree (Highlands and Islands) (SNP)  
 Tomkins, Adam (Glasgow) (Con)  
 Torrance, David (Kirkcaldy) (SNP)  
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
 Wells, Annie (Glasgow) (Con)  
 Wheelhouse, Paul (South Scotland) (SNP)  
 White, Sandra (Glasgow Kelvin) (SNP)  
 Whittle, Brian (South Scotland) (Con)  
 Wightman, Andy (Lothian) (Green)  
 Yousaf, Humza (Glasgow Pollok) (SNP)

**The Presiding Officer:** The result of the division is: For 115, Against 0, Abstentions 0.

*Motion agreed to,*

That the Parliament agrees that the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill be passed.

**The Presiding Officer:** The vote was unanimous. The motion is therefore agreed to, and the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill is passed. [*Applause.*]

## Rape Crisis Centres and Prosecutions

**The Deputy Presiding Officer (Christine Grahame):** The next item of business is a members' business debate on motion S5M-11217, in the name of Kezia Dugdale, on support for rape crisis centres and prosecutions. The debate will be concluded without any question being put.

### *Motion debated,*

That the Parliament welcomes what it sees as the Scottish Government's broad commitment to addressing violence against women and girls, which it set out in the strategy, Equally Safe; recognises the specific work that it has carried out to date to improve the justice system for victim-survivors of gender-based violence and the emphasis on ensuring that survivors of sexual violence are responded to sensitively and appropriately by the justice agencies; notes the recent change of policy by the Crown Office and Procurator Fiscal Service (COPFS) on compelling reluctant complainers in rape cases to give evidence and what it sees as the significant opposition that this has attracted from charities that work directly with survivors; recognises the concerns of people who state that this change in policy could jeopardise both the wellbeing of survivors and their access to justice; notes the calls for the Lord Advocate to reconsider this policy and to engage with Rape Crisis Scotland to ensure that COPFS's approach is informed by the needs and experiences of rape complainers, and further notes the calls for Police Scotland, COPFS and the Scottish Courts and Tribunals Service to work with the Scottish Government and stakeholders to redouble their efforts in addressing the reasons that complainers feel unable to continue with the justice process and for the Scottish Government to ensure that all rape crisis centres in Lothian and across Scotland receive adequate and sustainable funding to facilitate survivor engagement with the criminal justice system and meet their support needs.

17:05

**Kezia Dugdale (Lothian) (Lab):** I thank colleagues for staying for this debate on what I think is a critical issue.

The motion before us has four key themes. The first recognises that there is broad commitment across parties for the equally safe strategy and that much good work has taken place to improve the justice system. The second theme is that the Crown's recent change in policy on compelling complainers is a retrograde step that is heavily opposed by campaigners, who believe that it will jeopardise both the wellbeing of survivors and their access to justice.

Thirdly, there is an alternative plan, and it shines a spotlight on the system rather than on the victims of sexual offences. Tonight, I will detail a five-point plan that Rape Crisis Scotland has prepared. Together, we are calling on the Solicitor General for Scotland and the Government to pause their plans to compel witnesses and to implement that plan first.

The final section of the motion addresses the desperate reality that rape crisis services are under immense pressure and need adequate and sustainable funding. I know that many colleagues in the chamber who are due to speak will talk about the equally safe strategy and the funding position of services in their own areas, but I will focus my speech on the problem and the alternative solution.

I am delighted to see the Solicitor General in her place, as I have a huge amount of respect for her and the job that she does. I approach the debate in the full knowledge that she has spent a large part of her professional life working in the field of sexual offences. She is an impressive lawyer and a formidable prosecutor, but I believe that she is wrong on this issue.

The roots of my belief are based in the work of Rape Crisis Scotland, which has for 40 years, in front of politicians and Parliaments and by the sides of victims in our courts, advocated on behalf of survivors of rape. In addition, I have read thoroughly the "Thematic Review of the Investigation and Prosecution of Sexual Crimes" by the Inspectorate of Prosecution in Scotland, which was published by the Scottish Government in November. The report tells us that victims believe that the court process is utterly humiliating. One woman said:

"It was the most degrading experience I have been through".

Another said:

"Court was absolutely horrendous, it was worse than being raped."

The first key finding of the report is that there is too little information and support available to victims for them to have any confidence in the system. It goes on to state that communication with victims fell below expected standards in 47 per cent of cases; that the Crown has an unrealistic expectation of victims' understanding of the system; and that there is too much of an onus on victims to seek updates on their cases, to find support, to deal with shifts and uncertainties in the scheduling of trials and to understand an environment over which they have no control. That is just a handful of the findings in the 85-page report, and those are things that we should be compelled to change.

Rape Crisis Scotland has provided me with a personal testimony from a woman whom they are currently working with. It is a live case, but I have checked the testimony with the Presiding Officers in advance and there is nothing in this statement that could be considered sub judice. Speaking for the first time about her rape, the woman said:

"When it happened, the police were called for me, it was not a decision I made for myself. I ended up speaking to

them in my house at 5am then spent the whole next day giving a full statement and having forensics taken.

I was awake for nearly 48 hours and felt in shock as I spoke to them. I hadn't really had time to process anything or to think about what would happen next but I was called a day later and told the perpetrator had been released on bail and someone would be in touch about a trial.

That was when the reality of the situation hit me and I have thought about the possibility of giving evidence at a trial every day since then.

What will it be like to give evidence? How long will it take? How will I be strong enough to answer questions? How can I cope with being cross-examined by a defence lawyer?

I first met with my Rape Crisis advocacy worker shortly after the attack happened, she told me it would be possible to withdraw from the process if I needed to and I wouldn't be forced into giving evidence.

When she told me that, I felt a sense of relief that I had some control over the process.

When my advocacy worker called to tell me about the change I immediately panicked and thought 'this can't be happening'.

I am faced with the reality that there is a possibility they might force me to give evidence. Living every day with that possibility is terrible. I know it may be unlikely but I cannot help but think of the worst case scenario.

If I was able to go back and have the choice to report, knowing that there was no guarantee I could withdraw if it became too much to cope with, there is a good chance I would make the decision not to report at all."

That is the testimony of a rape victim dealing with the justice system as it is today. However, if members prefer hard facts to the raw emotion contained in that testimony, they should look again at the inspectorate's report. It contains an indicted case review of cases that took over 10 months to get to court. It says that, in just under half the cases,

"There was no obvious justification for the length of time taken by the prosecutor to progress the investigation."

The delays were caused by the disengagement of the victim in just two cases.

I am at a complete loss as to how anyone could read the report and conclude that the answer is to increase the burden on the victim rather than to seek to fix the broken system. The report itself even concludes:

"If the victim is unable to give evidence or their ability is impaired by anxiety, fear, intimidation or a sense of isolation, it is likely to have a significant impact on the outcome of the trial"—

and that is what we will be doing if we compel victims to give evidence.

Here is what we should do instead. First, rape complainers should not have to give evidence in court. Evidence and cross-examination should be pre-recorded. I was delighted to hear Lord

Carloway, Scotland's most senior judge, call for that approach on the radio this morning.

Secondly, a concerted effort must be put into reducing the delays and changes to court dates. Thirdly, the Scottish Government should commission further research into the complainers' experience of the court process and their reasons for wishing to withdraw. Fourthly, the rules over an individual's sexual history and character being used in court, which are now over 10 years old, should be independently reviewed and updated. Finally—and crucially—rape crisis services must be properly and sustainably funded. No longer can we ask them to do more with less.

In conclusion, I do not doubt the Crown's intentions. We all want to see rape conviction rates vastly improved. However, it is the belief of campaigners—and the evidence that is presented shows this—that the policy will likely have the opposite effect. I urge the Government and the Crown to think again.

17:13

**Rhoda Grant (Highlands and Islands) (Lab):**

It is difficult for me to believe that we are having this debate.

We know it is difficult enough for someone to report a rape. We also know that the earlier it is reported the better the chance of collecting evidence. We also know, however, that it can be days, weeks or even years before the survivor feels strong enough to come forward.

People feel shame, and wonder whether they are in some way to blame. They fear the process of providing evidence to the police. They are uncertain whether they will be believed and afraid of having to face an intrusive examination.

Then there is giving evidence in court. What used to be a comfort to a survivor was that they were in control. They could withdraw from the process at any time that they felt unable to cope. They could take it one step at a time. That control was not just a comfort. It was healing. Rape is fundamentally disempowering. It is when someone else takes control of you, and forces you to have sex against your will. That not only hurts your body, but impacts on your confidence and self-esteem. Taking back control is a big part of the healing process.

Yet this policy flies in the face of that. Instead of supporting restoration, it further demeans those already at a low ebb. The rape and sexual abuse service in Highland wrote to me about this, and they said:

"The judicial process can threaten a survivor's recovery process and indeed reinforce trauma. Survivors therefore

need to have confidence in their control over the situation and their ability to withdraw should it prove too difficult.”

Sadly, reports of rapes are low, and they will be lower still because of this policy. If the Crown Office wants to increase prosecutions, it will not do it by victim blaming. Rather, it needs to give survivors reassurance, to treat them with dignity and respect and, indeed, to protect them. More than that, it must protect them from vicious lawyers who stop at nothing to get their clients off. We have seen that all too often, although in any other walk of life such aggressive behaviour and language would not be tolerated.

We have to turn our method of prosecuting rape cases on its head. In order to allow survivors to come forward, we must act, but this is not the way to do it. The rape and sexual abuse service in Highland told me that the time between the reporting of an offence and its prosecution is still far too long. Survivors from the Highlands and Islands need to go to Glasgow, Edinburgh or Aberdeen to access a High Court, which means long journeys and overnight stays away from family and friends. The service told me that survivors have travelled to Glasgow, only to be told that their case has been postponed. Others have been given less than 24 hours’ notice that their case will be heard in Glasgow. They need to book travel, accommodation, time off and, often, childcare, which is almost impossible in that timescale. Would a woman be prosecuted if she was unable to turn up for any of those reasons?

If the Crown Office will not budge on this policy, the Scottish Government must step in and legislate to stop this travesty taking place. It is unbelievable that someone could report that they have been raped and could end up in jail themselves because they are overwhelmed by the assault and by the prosecution process. This policy could lead people to break down or even to take their own lives. We have seen such tragedies in the past as a direct result of rape victims’ treatment in court, yet the law did not change. Who is responsible for that? Who will be prosecuted for the consequential damage or loss of life?

This policy must be scrapped. The Solicitor General must engage with specialists who can support women and she needs to find ways to improve survivors’ experience and to encourage more people to come forward and to stay with the process. We must also have well-funded support services to help survivors through the process. This policy is unacceptable and we need to stop it now.

**The Deputy Presiding Officer:** I remind all members who wish to speak that they are required to press the request-to-speak button. I am looking at a member who has not pressed the button. I do

not want to name them. I call Ruth Maguire, followed by Margaret Mitchell.

17:17

**Ruth Maguire (Cunninghame South) (SNP):** I thank Kezia Dugdale for bringing this important topic to the chamber. When I first read in the press about this change of policy, I was shocked. Frankly, I thought that it sounded awful.

Sexual violence is a challenging and difficult issue. It is challenging even to talk about, never mind to report and to obtain justice when a person has survived it. I acknowledge that there is a careful balancing act between the needs and views of survivors and the issue of wider public safety—an issue that the state has a duty to uphold.

I and other members who are in the chamber attended the briefing that was given by the Lord Advocate and the Solicitor General, which provided some reassurance. I was left in no doubt that the Solicitor General comes at this matter from a position of extensive experience and that the safety and wellbeing of women are at the forefront of her decision making. I fully appreciate the Crown Office’s desire—and, indeed, duty—to see more rape cases prosecuted and more rapists brought to justice, in the interests of justice, public safety and women’s safety. The Solicitor General made it clear when she spoke in the chamber last week that the focus of the revised policy is not to compel rape complainants to testify but to ensure that the decision and, crucially, the responsibility about whether or not to prosecute lies with the Crown. The public safety case for the Crown on prosecuting a dangerous, violent, repeat offender is obvious. However, it must only ever be in exceptional circumstances that a witness warrant is sought. It is crucial that the survivor’s views, welfare and interest remain at the heart of the Crown’s prosecution policy and, to quote the Crown Office,

“will always be a ... significant factor in the decision”.

Failure to live up to that and demonstrate those words in practice would, quite simply, be unacceptable.

Although I might not agree with the motion that the policy needs to be reconsidered, I do agree that we must all redouble our efforts to address the reasons why survivors so often feel unable to continue with the criminal justice process. Confidence in our justice system must be improved.

In November 2017, the Inspectorate of Prosecution in Scotland published its “Thematic Review of the Investigation and Prosecution of Sexual Crimes.” It noted that, although there has

been an increase in the reporting of sexual crimes, a high rate of attrition along with a low conviction rate, particularly for offences of rape and attempted rape, remains concerning. It also noted that secondary victimisation, experienced as a result of the trauma of the criminal justice process, is a feature associated with crimes of sexual violence.

I am glad to hear in particular that there will be on-going work with Rape Crisis Scotland on how the change in policy will work in practice and how victims will be supported. We in Parliament can play a part in that by highlighting the issues, challenging the system, and in making sure that our words and actions do not cause more harm. Victims or survivors of sexual crime must be treated sensitively and appropriately by the justice agencies at all levels, at all times.

The policy might be the right thing to do, but if it does not go hand in hand with ensuring greater support for survivors of sexual violence throughout the criminal justice process, it will not succeed in achieving what we all want: justice.

**The Deputy Presiding Officer:** I have 11 members still wishing to speak. I am therefore minded to accept a motion without notice, under rule 8.14.3, to extend the debate by up to 30 minutes. I invite Kezia Dugdale to move such a motion.

*Motion moved,*

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[Kezia Dugdale]

*Motion agreed to.*

17:21

**Margaret Mitchell (Central Scotland) (Con):** I welcome the opportunity to speak in this debate on support for Rape Crisis centres and prosecutions. I thank Kezia Dugdale for lodging the motion, which begins by welcoming the Scottish Government's broad commitment to addressing violence against women and girls.

Under the equally safe strategy, significant work has indeed been done in the Parliament, including passing legislation such as the Human Trafficking and Exploitation (Scotland) Act 2015, the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, and the Domestic Abuse (Scotland) Act 2018; and setting up a dedicated unit within the Crown Office and Procurator Fiscal Service to deal sensitively and effectively with rape, serious assault and domestic abuse cases. Domestic abuse is now an aggravated offence.

In establishing that dedicated unit, not only is the COPFS finely attuned to the trauma that rape victims experience and the sensitivity that is required in dealing with their cases, but Scotland

is acknowledged as leading the way in tackling domestic abuse and violence against women. Furthermore, it is essential that the independence of our COPFS is protected, along with its ability to use prosecutorial discretion to prosecute in the public interest.

Although the COPFS's ability to issue a witness warrant to compel witnesses to give evidence is a long-standing capability, it is the first time that the policy as it applies to rape cases has been put into formal COPFS documentation.

As Ruth Maguire stated, the COPFS has emphasised that the focus of the revised policy is not on compelling rape complainers to testify, but on ensuring that the burden of prosecutorial decision-making lies with the COPFS, and on ensuring that decisions are made after the most careful consideration of all the relevant circumstances.

There is, of course, a balance to be struck between the interests of the complainer, who is after all a member of the public, and the wider public interest. Equally, the reasons why complainers do not come forward require further examination and research, and we need to ensure that the necessary support is in place to give victims the confidence to give evidence. Organisations such as Rape Crisis Scotland are ideally placed to offer their experience of helping and supporting victims, but it and other charities who offer support must be adequately resourced.

Unfortunately, the experience of the Lanarkshire Rape Crisis Centre is not encouraging. Although the Scottish Government has provided funding over the past few years, it has been

“without increase, increment or consideration for the amount and type of work being carried out with survivors of sexual violence across the two local authority areas of North and South Lanarkshire.”

Consequently, the staff are uncertain about their future employment and service users are uncertain whether they will be able to access support in the long term. That is particularly concerning, given that some cases can take up to two years to progress through the criminal justice system.

I therefore welcome the commitment of the Lord Advocate and the Solicitor General to continue working closely with support agencies, including Rape Crisis Scotland, to resolve those vexing issues.

17:26

**Daniel Johnson (Edinburgh Southern) (Lab):** I rise to my feet with a considerable amount of trepidation. I am mindful, as I speak, that I do not have experience in two critical ways. I have not

been a victim of rape; I have not endured that most horrific of crimes. I can only imagine what it must be like not only to suffer the disempowerment that Rhoda Grant described very well, but then to have to go through that again in a court of law. I can only imagine how traumatising that must be; how difficult it must be to face and what a person must do to in order bring themselves to go through that—to relive those experiences just to ensure that justice is served. Nor am I a lawyer, so I have not had to prosecute such cases. I am mindful of the difficulties that the authorities face, as they seek to prosecute.

With that in mind, I am supportive of and fully aligned with my colleague Kezia Dugdale's earlier comments. I have huge concerns about the policy both in terms of how it has been framed and in principle, so I support Kezia Dugdale's calls for the policy to be paused and for implementation of her five-step plan.

Before I set out why, I will say clearly where I am in absolute lockstep with what both the law officers are trying to achieve and what everyone in the chamber is trying to achieve.

There have to be three clear priorities when it comes to dealing with cases of rape. First, we have to ensure that more victims come forward. That seems to be happening anyway, but we need to go much further; we need to give victims—the survivors—confidence about coming forward, so that we can ensure that people get access to justice and that the people who perpetrate these vile acts are brought to justice.

We must also ensure that giving evidence becomes a better experience for victims of rape. I think that Lord Carloway's intervention today is hugely useful, and that the steps in Kezia Dugdale's plan are hugely important.

Above all else, when victims come forward—when survivors come forward—in addition to improvements that we make to their experience, we need ultimately to make sure that we improve the conviction rate. It must be a priority that when cases are brought, we see successful convictions.

I will turn to why I have issues with the policy as it has been articulated so far. First, I have huge concerns about when reluctance turns to refusal. We have heard the issues that have been set out by the law officers; actions must be given up when witnesses are reluctant to give evidence. We have heard that there would never be circumstances in which a victim would be brought to court in the back of police car.

However, what I have yet to hear is how that is framed—an articulation of when a person goes from simply being reluctant to refusing. The policy has to set out clearly how that would be understood, how it would be assessed, and

whether individuals who are reluctant are genuinely giving consent, because they have to consent to giving evidence in court. That has to be a fundamental principle if we are not going to simply disempower individuals further—but where is it set out in the policy?

Secondly, there is the classic utilitarian argument about the public interest versus the individual interest. I understand the overarching desire to ensure that we protect the wider public while balancing the interests of the individual against that, but we have to do so with huge sensitivity and caution. It is a fundamental principle, not just of the courts of justice, but of democracy, that wider interests cannot simply trump the rights of the individual. There is a balance to be struck, but there needs to be articulation of how that balance is understood and how it is to be struck.

Fundamentally, the issue is about trust versus policy. It is vital that any policy has trust and that individuals who come forward trust the system and the process. I do not understand how we can expect individuals to trust the system if they feel that they will be compelled to give evidence when they no longer wish to do so. Ultimately, the issue is about witnesses coming forward. If they perceive that they will be compelled to give evidence when they no longer wish to do so, I cannot see how that will be anything other than a detriment to the principles that I set out at the beginning of my speech about ensuring that more people come forward and that they have a better experience of the justice system.

**The Deputy Presiding Officer:** I am sorry, but you must conclude.

**Daniel Johnson:** I will conclude, then—

**The Deputy Presiding Officer:** No. You really must conclude, and I will tell you why if you sit down, please, Mr Johnson.

We cannot extend the meeting further so, if everybody goes over their time by one minute, I will not get everyone in to speak. I have extended the debate by 30 minutes, and that is it. I realise that it is a very serious debate, and I am reluctant to do it, but I must ask members to keep to four minutes, or I will not get everybody in. That is a fact. I apologise to Mr Johnson, but that is just the way it is.

17:31

**John Finnie (Highlands and Islands) (Green):** You are quite right, Presiding Officer, that this is a very important debate, and it is on a very emotional subject. It is some time since my police days, but I can say that there has been an outstanding change and improvement in attitude

and response from the service in relation to the issue. I mentioned earlier this afternoon the confidence in Police Scotland about handling many issues to do not just with sexual crime but with domestic violence. The link with the prosecution service—the Crown Office and Procurator Fiscal Service—and the more humane handling of cases are key to that.

Part of the weakness is in our courts. Like others, I was heartened to hear Lord Carloway speak this morning about the opportunities that may exist for recording testimony and cross-examination. My colleague Margaret Mitchell mentioned legislation that has been dealt with in Parliament in recent times. During the passage of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and the Domestic Abuse (Scotland) Act 2018 I was privileged to hear the private testimony of individuals, and I have to say that it was harrowing. The state's way of helping an individual should not inflict more grief on them.

Terminology is very important. The public interest is absolutely fundamental. I attended the recent briefing by the Lord Advocate and the Solicitor General, who made compelling arguments. There is an obligation on us to act collectively and in the public interest. Of course, key to that is the role of the complainer. That is the correct term—the person is the complainer. The term “survivor” is appropriate, but in the legal context the term is “complainer”. The wellbeing of the complainer is key, because we want good-quality evidence, which we would not get were we to compel people. However, there is a very fine balance to be struck, as a couple of members have said.

As I understand it, victims of sexual abuse and rape are already treated uniquely by being given a say that is not necessarily given to victims of assault or housebreaking. It is important that there is already recognition of the significance of the issue.

The question of disengagement and the humane response to it was touched on in the briefing that I attended. Disengagement can happen for a number of reasons. Kezia Dugdale mentioned a report, but there is a lot of other information on the issue. All the requests are reasonable, but a crucial one that I think everyone would go along with is for more research, in order that we can understand what is involved.

If I have one disappointment, it is that although this is a well-attended members' business debate, it would have been good if there had been a minister here who has responsibility for dishing out money, because the support mechanisms that are put in place are key. It might be that there are other pressing engagements.

Today, I met Rape Crisis Scotland. Having met Ms Brindley, and having met the Solicitor General and the Lord Advocate last week, I do not think that they are poles apart. However, I say as gently as possible that the situation is a bit of a public relations disaster. We all want to increase the number of successful sexual crime prosecutions. The key to that is the quality of the evidence; there are opportunities that will come with Lord Carloway's proposals.

I am sure that the Lord Advocate will reflect on the points that have been made. I ask that there be further engagement with Rape Crisis Scotland, because I imagine that members are as one on where we should be going.

17:35

**Tavish Scott (Shetland Islands) (LD):** I endorse and agree with Kezia Dugdale's opening speech and the five points that she powerfully made. There are not many times that a sensitive, tricky, difficult but intensely robust issue is introduced in that way. The speech was very powerful and important.

I acknowledge the fact that the Solicitor General and the Lord Advocate are here. Kezia Dugdale was right about the Solicitor General's track record on the matter. Parliament should not in any way ignore that, but I am sure that our law officers will want to reflect on, and consider carefully how to react to, what Parliament is saying, and the power of the argument that has been presented to us by many constituents and the organisations that have been named.

I entirely associate myself with John Finnie's and Daniel Johnson's remarks about being just members. John Finnie reflected on his previous professional life, but there are not many more harrowing things one experiences as a member of Parliament than meeting people who have been subjected—that is the word, at times—to the pressure of the process that victims are asked to go through. We cannot experience that and yet not believe that considerable change is needed. Kezia Dugdale set out five strong arguments for that.

I also associate myself with Lord Carloway's observations from this morning. Some of the observations that he made were very powerful, particularly the point about the length of time that can be involved. A case that I have dealt with at home in Shetland concerns that point. Those of us who represent far-flung parts of the country recognise Rhoda Grant's geographical observation about how far people have to travel and what that does. The issue in the case that I referred to was the length of time for which a person had to deal mentally, never mind physically, with the trauma and ordeals that she

had been through. That makes me think that many of the proposals that Lord Carloway set out this morning are right, that they need to be implemented and that that should happen as a matter of urgency.

I am incredibly grateful to Shetland Rape Crisis and Shetland Women's Aid for their candour in telling me in no uncertain terms things that I should be aware of as a legislator and as a representative. Shetland does not need to lose solicitors who have specialist rape and sexual assault abilities. That is one of the dangers that we face. The two organisations were clear about that. The firm that we might lose from Shetland is, to be frank, the only one providing legal-aid assistance to women who are in such circumstances, and we will lose it because of legal aid fees.

John Finnie was right about ministers. Michael Matheson was here earlier, for which I am grateful. However, I hope that the Government hears us loud and clear. There are no two ways about it: legal aid fees mean the difference between having a firm in Lerwick providing a service for women who have been subjected to rape or sexual assault and not having one. If we do not have one, the points that Rhoda Grant made about geography become even worse. I hope that the Government, if not the law officers, will reflect on that.

From the perspective of a different location in Scotland, Margaret Mitchell reflected on why the services of rape crisis organisations are so important. In 2017-18, Shetland Rape Crisis supported 52 survivors of sexual violence between the ages of 13 and 70, including a number of men and members of the lesbian, gay, bisexual and transgender community, along with women and girls.

Shetland Women's Aid made two points to me. First, women do not have confidence in the system, so non-reporting needs to become reporting, investigation and prosecution. Secondly, the organisation asked me to think what the trauma would do to my body and brain. It told me that, naturally, the body wants to block it out, go away and disappear. For that reason, and many others, we need to do a whole lot more.

17:39

**Jackie Baillie (Dumbarton) (Lab):** I congratulate Kezia Dugdale on securing time for this debate and on her powerful contribution this evening. It is good to see cross-party unity in this chamber on tackling the issue of violence against women and addressing the flaws in our justice system with regard to how it deals with reported cases. I also welcome the Government's commitment to the issue through the equally safe

strategy, because the physical and mental wellbeing of rape complainers should, without exception, be our number 1 priority. However, for too many rape complainers, their experience of the justice system itself is traumatic, and the insensitivity with which some survivors of rape, domestic abuse and sexual violence have been dealt with is, quite simply, inexcusable.

Up to 8 March this year, rape complainers could not be compelled to give evidence in court. Of course, that has now changed, and the Crown Office can compel reluctant rape complainers to give evidence through warrant or arrest. I accept that it might not wish to do that, but it can do so. The personal testimonies of women who have battled in the justice system to have the despicable things that they have gone through recognised is beyond heartbreaking, and Rape Crisis Scotland has issued warnings of the consequences that could result from the change in policy. I note my disappointment that the offer from Rape Crisis Scotland to work with the Crown Office on the issue, following the consultation meeting on 30 August 2017, was not taken up.

Rape victims already find it difficult enough to present the evidence for the case, and many find the hostility of the criminal justice process to be a key factor in their reluctance to come forward. As Kezia Dugdale has already said—it is worth repeating—one victim found her experience of the justice system to be

“worse than the rape itself.”

That surely cannot be tolerated any longer.

Whether we like it or not, we live in a society in which rape complainers are not naturally believed. Their character comes under intense scrutiny, their story is pulled apart—usually far more than is the case in relation to a non-sexual crime—and their willingness to continue the fight is often lost among the negativity of the system. Studies that have been carried out by Rape Crisis Scotland have found that, with the new policy, there is likely to be an increase in women falsely admitting to having made up their testimonies, because they see that as the only way out of their distressing ordeal.

It is clear that, under the new policy, Rape Crisis Scotland will not be able to reassure clients that they will not be prosecuted for not appearing in court—something that it had previously found crucial to keeping women in the system. The fact that the process is so traumatic that women feel compelled to deny their own rape should make us all feel utterly ashamed.

An additional issue within the criminal justice process with regard to how it tackles rape complainers is the lack of consistency. Rape complainers are often left for long periods before

their cases are brought to court, and there is a distinct lack of communication surrounding the locations and timings of hearings, both of which are often subject to a number of changes. That simply adds anxiety to what is already a traumatic experience.

Rape complainers deserve better. They have been given a voice by organisations such as Rape Crisis Scotland, but far more needs to be done. I suggest that, instead of pursuing the flawed approach that has been outlined, the Crown Office considers the five asks of Rape Crisis Scotland, which I commend. For current and future rape complainers, we must ensure that the justice system provides closure to trauma, not the continuation of it. This policy must be scrapped.

17:43

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** I commend Kezia Dugdale on bringing forward this motion, which I know reflects her personal conviction and political commitment. I would like to focus my contribution on the final section of the motion, which calls for adequate funding for rape crisis centres.

More than five months ago, I raised the plight of Fife Rape and Sexual Assault Centre directly with the First Minister. Three weeks before Christmas, the organisation was unequivocal in its assertion that the 2.5 per cent funding cut from Fife's health and social care partnership was to blame for the closure of its waiting list. The closure of that list was not a decision that the organisation took lightly. The First Minister was equally unequivocal in her response. She said that such services

"are absolutely vital in protecting the most vulnerable women and children in our country."—[*Official Report*, 7 December 2017; c 16.]

I hope that all of us, no matter what political disagreements we might have across the chamber, can come together and support the work that organisations such as the Fife Rape and Sexual Assault Centre do for the benefit of Scotland.

Exactly a month ago, I was delighted to hear that FRASAC had reopened its waiting lists, and I got in touch with Jan Swan, the centre manager, who is based in Kirkcaldy. The waiting lists had been reopened, so surely Fife's health and social care partnership had seen the light. Alas, it had not. Despite the additional funding from the Government, which is helping to support FRASAC's advocacy service, local cuts to the core funding that is provided by the partnership continue to affect service provision.

We are not talking about huge sums of money—2.5 per cent of FRASAC's core funds equates to just £977. Rape Crisis Scotland's research reveals

what that cut means for victims of rape who live in Fife, the third largest local authority in the country. On Monday 8 October, 83 people in Fife were waiting to access a support service, which was the third largest number in the country. However, the wait time for support does not match up, because rape victims in Fife can expect to wait up to 10 months for support, which is the longest waiting time in Scotland. It is completely unacceptable.

However, numbers mask personal stories, which tell of suffering and pain. We should consider the eightfold increase between 2014 and 2018 in the number of those presenting to the service who are aged between 13 and 15, or the fact that since 2014 the total number of cases that have been recorded each year by the service has increased from 213 to 280. The upward trajectory in the number of women who present to services across the country needs attention. We need to give such women encouragement and financial support, so that we foster a culture whereby women feel able to report rape or sexual assault when it occurs, and not because the system compels them to do so. It has to be about a cultural shift.

I appreciate that the Solicitor General has responded to questions on the Crown Office changes on compelling reluctant complainers to give evidence previously in Parliament. However, Sandy Brindley of Rape Crisis Scotland said:

"Our view, having supported survivors the length and breadth of Scotland"

for years,

"is that the route to improving justice for rape survivors is not by forcing them to engage with a broken system, but to fix the issues inherent within the system."

Scotland has one of the highest rates of imprisonment for women in northern Europe. I remain unconvinced that the Crown's actions will tackle that inequality—rather, I fear that compelling reluctant complainers to give evidence in rape cases will compound a culture in Scotland's legal system that too often makes female victims feel like criminals. I understand the rationale behind the Crown's actions. None of us would agree that a 5 per cent conviction rate is evidence of a system that works. However, pushing women who have already been through horrendous trauma into giving evidence is surely not the answer.

I hope that the Crown Office and Procurator Fiscal Service will now think again and listen to the views of women who have been through the system, because, in the Inspectorate of Prosecution in Scotland's thematic review, which has been mentioned, we were told:

“On opening the letter the first thing I saw was the name of the person who attacked me in black bold letters. It was very distressing.”

We were also told:

“In our court system, you are totally humiliated. It was the most degrading experience I have been through.”

Jackie Baillie is right; this is worth repeating:

“Court was absolutely horrendous, it was worse than being raped”.

Let us listen to those women’s voices, let us listen to the experts at Rape Crisis Scotland and let us ensure that Scotland’s legal system works to support all victims of rape and sexual assault.

17:48

**Maurice Corry (West Scotland) (Con):** I thank Kezia Dugdale for bringing forward today’s debate on a very important subject. I want to take this opportunity to note the work of the rape crisis centres that work with people in my region, although the centres are not located in my region specifically. I have heard the amazing work that they are doing to support rape victims in the west of Scotland.

Among others, the Glasgow and Clyde rape crisis centre, which does outreach work in East Dunbartonshire and West Dunbartonshire, the Argyll and Bute rape crisis centre, which is based in Dunoon, and the Star Centre, which is located in Kilmarnock, are doing amazing work in the west of Scotland. I am sure that they have the gratitude of everyone in the chamber for their work.

The question of compelling reluctant complainers in rape cases to give evidence in courts is a very difficult topic, and I have had to spend a lot of time thinking about it in the run-up to this evening’s debate. I think that we can all agree that the area is one in which we need to strike the right balance. We have come up against the difficult task of attempting to juggle the needs of rape victims and their welfare; the needs of prosecutors, who do their best to protect the public from serious sexual offenders; and the needs of the courts to have enough information and evidence to find someone guilty beyond reasonable doubt.

The balance that the Government and the Crown Office and Procurator Fiscal Service have sought needs to ensure that rape victims are not put off from coming forward, and that they feel supported. The reason for doing that is obvious: the latest official statistics show that just 39 per cent of those taken to court were found guilty, which is down from 49 per cent in the previous year and the lowest conviction rate since 2008-09, when it was 37 per cent. That drop came despite

the number of in-court proceedings last year rising by 13 per cent.

We all know that this is a massive issue that we need to address, but I fear that going about it by compelling witnesses to appear and give evidence against their wishes will not help the overall situation but make it worse, because it will reduce the number of women coming forward to the police in the first place to tell them that they have been raped. In an interview with the BBC, Sandy Brindley of Rape Crisis Scotland said:

“One of the key reassurances that we are currently able to give people is that if they don’t feel able to proceed, that their wishes will be respected, but this will be gone.”

I am concerned that the unintended consequence of the policy will be that women will not seek help from the police or charities because they will be concerned about being forced to give evidence in court. I know that that will concern the Government as well. Kezia Dugdale’s motion speaks admirably of the need to reconsider the current policy, which I think would be the most appropriate course of action. When we have charities such as Rape Crisis Scotland telling the Government that the Crown Office is going about something in the wrong way, it is important that the Government listens to that advice.

We need to create an environment in which it is easier for women to come forward and tell their own story in court. By supporting them in that process before, during and after the hearings, we can ensure that the conviction rate goes up, proper justice is delivered and victims receive the care and support that they deserve.

17:51

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I add my thanks and congratulations to my friend and colleague Kez Dugdale for bringing this hugely important motion before us this evening.

Until very recently, public discourse around rape and sexual assault was shrouded in false assumptions and stigma. Much of that still exists and endures. I am ashamed to say that I carried some of those assumptions myself, but I am very glad to say that joining the task force on violence against women, as I did some three years before I was elected to the Scottish Parliament, helped me to understand the profound and dehumanising impact that rape and sexual assault can have on not just women but men, although the impact is predominantly on women. It was in that group that I was proud to play some role in shaping the equally safe strategy, which has been referenced a number of times in the debate.

My work in that group was underpinned by my membership of the task force on child sexual exploitation. I make that point because many of

the themes that we discussed in that task force were apposite to some of the solution around changing the culture, by which I mean a change to our understanding of safe relationships, consent and respect. We need to germinate that understanding and grow it in our children and young people so that they understand the environment of relationships and what healthy relationships look like.

Our response to rape has to be a whole-system response, but I am glad that Kez Dugdale has focused her motion on our criminal justice system's response. It is very easy for us to use members' business debates as a forum in which to bemoan a situation and to wail, gnash teeth and cry "Foul!" about the many things that are wrong. However, Kez Dugdale's five-point plan represents a very powerful index of positive action that we and our criminal justice colleagues can take forward to make things better. Like others, I welcome the response this morning of the Lord President of the Court of Session, Lord Carloway—I think that it was partly in response to the debate happening—with regard to making it easier for people to come forward and give evidence outside of court. I would certainly lend my support to that proposal.

I will touch on something that Daniel Johnson articulated very well, which is the dichotomy between the utilitarian need to have more rape cases brought to justice and the needs of the individual complainant. That issue came up in our Equalities and Human Rights Committee inquiry into human rights, in that we have competing human rights: we have the metanarrative of human rights in our society with regard to rape not continuing and the rights of the individual to be protected from being retraumatised. That is why I am compelled to say that the advice and policies of the Crown Office and Procurator Fiscal Service in compelling reluctant complainers, which come from the best of intentions, will have profound and unintended human consequences for the individual.

It is not hard to understand how the Crown Office got to that position. It is scandalous that some 1,800 rapes have been reported in the past year, yet only 270 have been brought to prosecution. That is a terrible statistic. However, part of the reason is not people's reluctance to come forward but their lack of confidence in the system. The fact that those 270 cases resulted in only 125 convictions would undermine anybody's confidence in the system. In addition—my friend Tavish Scott made this point very well, I think—people have a colossal amount of time to wait before they have their day in court and that moment to tell their story, and at many points along that journey they are being retraumatised.

I thank Kez Dugdale once again for bringing this important debate to the Parliament tonight, and I assure her of our continuing support on the matter. Her five-point plan represents a really positive and progressive step in taking the debate forward.

17:55

**Claire Baker (Mid Scotland and Fife) (Lab):** I, too, thank Kezia Dugdale for bringing this important debate to the Parliament. I think that there is a strong recognition in the chamber this evening that we must do all that we can to dramatically improve the situation that victims of rape are experiencing, from the support that is provided to them and the public perception and understanding of the crime to the way in which our criminal justice system deals with these heinous crimes.

It is hugely frustrating that the conviction rate for rape, including cases that have the required corroboration, remains significantly lower than the rates for other crimes. Research is being undertaken on jury decision making, and it is important that that includes the role of the jury in rape cases in order to help to inform any future reforms.

I recognise the commitment of the Crown Office and the Solicitor General, who has spent her career fighting for justice for victims of rape and sexual assault, but the recent change in policy is very concerning. Rape Crisis Scotland remains concerned that it will lead to victims retracting their complaint and that the policy does not recognise that the criminal justice process itself is causing the problem.

I attended the Crown Office briefing in Parliament the other week, and what struck me as the Solicitor General talked about the experience of supporting a reluctant rape complainer was the degree of experience, expertise, empathy, judgment and commitment that is required to convince a victim who does not want to present evidence in court to continue with the trial. In the chamber last week, the Solicitor General said that she had not come across a case where the policy would be used in the past 10 years. A situation where the victim would be arrested or even imprisoned seems so unlikely and so against everything that the Crown Office wants to achieve that it appears unnecessary, unless it is to act as a threat or a warning to the victim, which is not justifiable as a way to treat victims of rape.

As Jenny Gilruth described, Fife Rape And Sexual Assault Centre had to close its waiting list in December after being overwhelmed by rising demand for its service. In Fife, 893 sexual crimes were reported last year, but we know that the real figure will be higher. The Rape and Sexual Abuse

Centre Perth and Kinross contacted me yesterday, and between April 2017 and March 2018 its support service saw an 8 per cent increase in demand. As it becomes increasingly challenging to secure funding, the centre has had to cut a support post, and its waiting times are increasing.

I raised the situation in Fife with Angela Constance, and in a reply to me she said that “Equally Safe—A Delivery Plan for Scotland’s Strategy to Prevent Violence Against Women and Girls” commits to a review of funding and commissioning. That review must fully recognise the need to address waiting times, funding pressures and staffing difficulties.

The manager of the Fife centre, Jan Swan, spoke to me about the difficulty that the centre has with recruiting support workers, volunteers and fundraisers. The field is not an easy one to work in. Fife has well-supported charities with many volunteers working in food banks, with children and family groups and with older people, but it is more challenging for rape crisis centres to recruit volunteers for what can be difficult work. We need to think about how we can support their efforts.

However, what we really need to think about is how we can stop the crime, which is only on the increase. Last year, I visited the Perth rape crisis centre’s 10-year exhibition, which was an exhibition to make people angry, emotional and uplifted. There were messages of hope and recovery, but also a clear demonstration of the injustice of sexual assault and rape. The centre does outreach work in local high schools, challenging young people’s ideas and encouraging them to interrogate their views on sex. It is speaking to the next generation to try to change their prejudices and behaviour. That work is not core funded, but it is essential if we are to see change.

One of the most affecting displays in the exhibition was a rail of women’s clothes, representing the clothes that women were wearing when they were raped. There was a flannel nightie, a pair of jeans and a wedding dress, and clothes that reflected women of all ages and all social classes. The crime reaches all parts of our society. It is one that we must confront and one for which victims need to have justice.

17:59

**Kenneth Gibson (Cunninghame North) (SNP):** I, too, congratulate Kezia Dugdale on securing time to bring this vital issue to the chamber.

The issue is complex and emotive. The Crown Office and Procurator Fiscal Service’s recent change of policy on compelling reluctant victims in rape cases has clearly been met with opposition

and concern from charities, individuals and MSPs alike.

As members will be aware, on 25 April, my colleague Christina McKelvie sought an assurance from the Solicitor General for Scotland that victims would not face potential prosecution for ignoring a witness warrant if one was sought by the Crown. However, the Solicitor General was unable to give that assurance. I understand that that would and could happen only in the most exceptional cases and that any decision would be taken only after careful assessment and consideration of all the circumstances.

The Crown states that the victim’s interests, welfare and views are at the heart of prosecution policy in relation to victims who are reluctant to complain, and that the policy underlines the importance of exploring the reasons for such reluctance. However, it is vital that we in no way alienate, discourage or traumatise women with the bravery to come forward and reveal what has happened to them.

In 2016-17, 1,755 rapes and 123 attempted rapes were reported to Police Scotland. However, those figures are undoubtedly the tip of the iceberg. It is understandable that many women feel scared and unwilling to report an attack. There is a host of reasons for that. It is therefore vital that women who report rape or sexual assault and intend to proceed through the criminal justice process are supported; they must feel that their case will be dealt with appropriately and with understanding.

The criminal justice system itself is a major reason why many victims choose not to report rape. For those who choose to do so, lengthy delays in cases going to court and a lack of meaningful communication often lead to those women feeling that they can no longer cope, and they lose heart and have to withdraw. It is inherently wrong that people who have already been through such a traumatic experience and have shown the resolution and resilience to report rape may face the possibility of being presented with a warrant. Such a policy could mean that such women would be punished by the very system that is supposed to protect them.

Figures for many crimes in Scotland are going down, but the number of reported sexual offences continues to rise. Reported sexual offences have been on a long-term upward trend since 1974 and have increased every year since 2008-09. Sexual crimes are now at their highest level since 1971, which is the first year for which figures for comparable crime groups are available. That, of course, is due in large part to the fact that, increasingly and rightly, women feel better able to report the crime and feel supported, should they do so, in taking it forward through the justice

system. Consequently, we have a responsibility to ensure that women feel safe, that they have confidence that their case will be dealt with sensitively should they wish to report what has happened to them, and that they should not fear prosecution should they later wish to withdraw.

The Scottish Government's equally safe strategy clearly sets out that violence against women and girls in any way, shape or form has no place in Scotland. For over a decade, the Scottish Government has helped to form a justice system for survivors of gender-based violence that ensures that they are responded to appropriately and with sensitivity and understanding. I welcome Lord Carloway's deliberations this morning. We must continue that approach in order to build a safe and successful Scotland for everyone.

I understand that the Crown is committed to continuing to work closely with Rape Crisis Scotland and other agencies to improve the experience of victims. I welcome that on-going work with Rape Crisis Scotland and hope that the Crown takes on board the important discussions and points that have been made across the chamber in order to ensure that every woman in Scotland feels supported, particularly by the very system that is designed to protect them, should the worst ever come to pass.

18:03

**Monica Lennon (Central Scotland) (Lab):** I, too, thank Kezia Dugdale for taking urgent action to secure cross-party support to allow this important debate to go ahead. I pay tribute to her tireless work in giving a voice to women everywhere—especially to survivors of sexual violence—and associate myself with the remarks that acknowledged the Solicitor General's accomplishments. The debate is not an easy one to take part in, but it is timely. It is taking place against the background of a wider social movement around the #MeToo and I believe her campaigns.

Women's experience of sexual harassment and sexual violence is being spoken about more than ever before—from Hollywood to Holyrood and in every school, workplace and community in between. It feels as though, as a society, we are taking tentative steps towards a culture change, and I am optimistic about the pace of the progress that we are making. Therefore, it was with anger and disbelief that I reacted to the news that the Crown Office and Procurator Fiscal Service had made a policy shift towards compelling so-called reluctant complainers of sexual violence to give evidence.

I, too, attended the briefing about the policy change that was delivered by the Lord Advocate

and the Solicitor General. None of us doubts the commitment to put dangerous perpetrators of sexual violence behind bars in order to protect women and to deliver justice, but few reported rape cases make it to prosecution and conviction. I understand the desire to see justice done and to protect women from harm but, as colleagues have said, in doing so we cannot neglect the wishes and the wellbeing of survivors of sexual violence.

We know that sexual crimes are underreported. A main barrier to rape survivors accessing justice is the justice process itself, which is often lengthy and insensitive to rape survivors' feelings. We have heard, and we know, that rape survivors worry that they will not be believed. They worry that they will somehow be blamed, such as for what they are wearing—we heard a powerful message from Claire Baker about women's clothing: it does not matter what a person is wearing, because it is never the victim's fault—and they worry that they will be compelled to relay the most intimate details about their lives in court. The system is brutal. We see one high-profile example after another, in the United Kingdom and beyond, of rape survivors being subjected to a hostile court environment and perpetrators being acquitted or given a sentence that does not seem to reflect the seriousness of the crime.

I listened very carefully to the Solicitor General a few weeks ago. I wanted to be persuaded, and she was very persuasive. She talked about how women can feel empowered by giving evidence, and she said that engaging and re-engaging women is approached in an emotionally intelligent way. I consider that people in the legal profession and in the judiciary believe that that is how they are approaching the issue, but we must listen to Rape Crisis Scotland and to the voices of the women who are not being listened to. I am concerned that we have reached a disconnect, because Rape Crisis Scotland, which wanted to engage and be part of a consultation, considers that that has not happened.

I am the last member to speak in the open debate and I will not go over time. However, before closing, I have to say that we must press "pause". Rape Crisis Scotland and Kezia Dugdale have developed a five-point plan. The confidence of rape survivors is at an all-time low, and we must press "pause" in order to get the policy right.

**The Deputy Presiding Officer:** I call the Solicitor General to close the debate. You have up to seven minutes, or thereabouts.

18:08

**The Solicitor General for Scotland (Alison Di Rollo):** I, too, thank Kezia Dugdale for bringing the matter to the chamber and for giving me an

opportunity, which I consider to be very important, to clarify what the policy is and what it is not. I say again—I said this in the question that I answered last week; I also said it in the briefing—that it is not a policy to compel rape victims to come to court.

I add that it is also not a policy of the Scottish Government, but a policy of the Lord Advocate, as head of the independent system of prosecution in Scotland, and at whose side I stand four-square. For as long as I have breath in my body, and as a law officer, I will continue to do all that I can to uphold the rights of victims of rape and to pursue justice against those who perpetrate that crime.

The change in prosecution policy is not about compelling victims of rape to give evidence; it is about being clear and honest with complainers, and those who support them, that the decision on whether a case is to be prosecuted is for the Crown Office and Procurator Fiscal Service. That is and has to be the case—not because I want it or I think that it is a good idea, but because law and ethics tell me that it is necessary.

It is then about making sure and making clear that the views, interests, welfare and wellbeing of the victim are at the heart of decision making by the Crown, whether the person is being supported by Rape Crisis or not, because, of course, not all the victims and witnesses with whom we deal have advocacy workers.

We deal with a wide range of victims, who have a wide range of issues that might lead to reluctance. If a witness or victim becomes reluctant because they cannot cope, because they have mental health issues, or because giving evidence will harm their wellbeing, that is of course massively important.

As, I think, Maurice Corry said, there is a balancing exercise that we have to undertake in the public interest. It involves, on one hand, bringing perpetrators to justice and protecting women—me, the women in the chamber, our daughters, our sisters, our mothers—from future victimisation and, on the other, considering the impact of giving evidence on the victim. That balancing exercise is one that we need to undertake independently in the public interest. It is the right thing to do, and the policy is all about doing the right thing.

Before the policy change, complainers of all kinds, whether or not they were supported by advocacy workers, in effect had a veto on the prosecution of serious sexual offenders. If they stated that they were reluctant, that was an end of the matter, and it was treated as decisive. Often, given that understanding, the reasons for the complainer's reluctance were not explored. In that context, we had a situation in which very, very difficult decisions had to be made.

**Kezia Dugdale:** I am listening very carefully to what the Solicitor General has to say. I invite her to respond to the reality of the testimony that I have put forward, which is that for women who have been raped, knowing in advance that they could be compelled might mean that they do not report at all, so she will have no such cases to prosecute.

**The Solicitor General:** We have discussed that with Rape Crisis and will work with it and Police Scotland, because in dealing with victims and encouraging them to come forward and supporting them in the process, it is absolutely essential that they do not feel threatened by a risk of compulsion or imprisonment. It would be wholly inappropriate if victims felt threatened in that way, and we do not want there to be any chilling effect on the willingness of victims to come forward.

The fact of the matter is that responsibility for decisions on prosecution lies with the Crown and for all other cases—murder, serious organised crime, child cases—the end option involves the power, in appropriate cases, to compel a witness and to seek a warrant and enforce it. I repeat that that will happen in the most exceptional and rare circumstances.

**Daniel Johnson** rose—

**The Solicitor General:** The work that we are doing with Rape Crisis is about saying to victims, “Although it is our decision to prosecute, nevertheless we will engage with you. We want to hear from you and know why you are reluctant.” We are saying that we want to take steps to re-engage with and support victims—or to take the decision not to carry on with the prosecution, which is a decision that I have taken in the past few weeks since 12 March. That approach will continue.

Does Daniel Johnson want to intervene?

**The Deputy Presiding Officer:** He does. He has been on his feet for a wee while. Will you take the intervention, Solicitor General?

**The Solicitor General:** Yes.

**Daniel Johnson:** Although the Solicitor General says that the policy is not about compelling witnesses, she also says that the court reserves the right to do so. Those are exactly the words that have a chilling effect on victims who are considering coming forward. Will she consider giving witnesses and victims the right to refuse to give evidence? I understand that she wants to explore the possibility of continuing a case when a person expresses reluctance, but surely she agrees that a victim of rape must ultimately have the right to refuse to give evidence.

**The Solicitor General:** No, I cannot agree with that. The difficulty with it is legal and ethical, and

comes down to positive obligations and convention rights to which we are subject. We have a responsibility to take positive action to protect the rights of those who are subjected to rape and serious sexual violence.

**John Finnie:** Will the Solicitor General take an intervention on that point?

**The Solicitor General:** I am running out of time.

**The Deputy Presiding Officer:** I can give you a little extra time. We must conclude by 6.20, but I think that it is important to let the debate run. However, I appreciate that response from the Solicitor General.

**John Finnie:** I am grateful to the Solicitor General for taking my intervention. How would she view the quality of evidence that would be obtained in such circumstances, with that level of compulsion?

**The Solicitor General:** I cannot envisage a situation in which we would compel a witness whose evidence would be of such quality that there would be no prospect of a conviction and, indeed, no public interest in requiring her to come to court.

Mr Finnie is right to identify the quality of evidence as an issue that we will take into account in looking at all the factors. However, if we have a serious serial sexual offender who is a risk to others, has previous convictions and might get out on parole if we do not prosecute, we have to balance the risk of not proceeding against that of doing so.

**Johann Lamont (Glasgow) (Lab):** All my adult life, I have worked with organisations such as Rape Crisis, and the strongest message from them has been that the system makes things worse. To assist people who are not so expert in the law, can the Solicitor General explain to me how the message that we have low conviction rates because of the victim, and not the system, will help?

**The Solicitor General:** That is not the message that we have given or that we intend, and it is not the message that our friends and supporters at Rape Crisis and the police will give.

I entirely agree that part of the solution is to improve the system. We are working very hard with our colleagues to address the parts of the process that lead to reluctance and cause pressures for victims. I, too, welcome Lord Carloway's ambitious statement this morning on pre-recording of evidence, which would be a worthy and very useful goal.

However, in the meantime, we have to work with the system that we have. As prosecutors, we have to protect women and children in our society, and

we have to take the right decisions—for the right reasons—on whether to require complainers to give evidence. It is not a policy of compelling complainers but of re-taking the decision-making power in relation to rape and serious sexual offences. As far as the European convention on human rights and our positive obligations are concerned, it should not—and cannot—be a decision for the complainer. That is all.

**Jackie Baillie:** I wonder whether the Solicitor General would take a brief intervention.

**The Deputy Presiding Officer:** It is up to you, Solicitor General.

**The Solicitor General:** Yes.

**Jackie Baillie:** I have no experience in the law, so it would be helpful if she could clarify what has changed between the period before 12 March—when she could not compel witnesses—and now. Have previous Solicitors General or Lords Advocate been operating the law inappropriately?

**The Deputy Presiding Officer:** Although that is a very important question, I am afraid that we must conclude at 6.20 on the button, so may we have your concluding remarks on that, please, Solicitor General?

**The Solicitor General:** The date of 12 March was when we got the policy together, having consulted widely with Rape Crisis, other agencies, senior prosecutors and so on. What had happened, and what we took into account, were developments in the European Court of Human Rights, which clearly found that where a state and its prosecutors did not take action in relation to offenders who were at risk of causing further harm, and lack of engagement by the complainer was the reason, the state had failed in its positive obligations. The man in that case later went on to kill the complainer's mother and to rape the complainer. That is the legal context, from a European dimension.

I will say that this is a policy and a practice of our colleagues south of the border and of many other European jurisdictions. It is about doing the right thing and about supporting complainers. It is about supporting victims. The last thing we want is for a message to go out that chills their willingness to come forward.

I would be very happy to continue this conversation. I am sorry that some members were not able to come to the briefing, although that in itself was too short for MSPs.

Thank you.

**The Deputy Presiding Officer:** I thank all members and the Solicitor General. It is such an important matter, and members might consider

speaking to their business managers about another debate.

*Meeting closed at 18:20.*

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