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22 December 2022

Dear Joe

Follow Up to Equalities, Human Rights and Civil Justice Committee Pre-Budget Scrutiny 2023-24

I am writing to you to follow up on points raised during your letter dated 10th November 2022 on the Committee's Pre-Budget Scrutiny for 2023-24. I would like to start by thanking you and the Committee for your diligent work on assessing the budget against human rights budgeting principles. The evidence gathered by the Committee from external stakeholders has been analysed by my officials and will continue to provide useful guidance for how we can take an equality and human rights based approach to our budgetary decisions.

Your letter following Pre-Budget Scrutiny raised a number of questions on how the Scottish Government takes a human rights based approach to budgeting. I have provided a response to each of these questions in the Annex.

I would like to take this time to reaffirm our commitment to mainstreaming equality and human rights in all that the Scottish Government does, including in relation to the Budget. I have also attached this year's Equality and Fairer Scotland Budget Statement which will be of interest to the Committee. I would draw specific attention to Annex A which outlines processes used in the year's budget including in relation to Transparency, Participation and Accountability.

My thanks to yourself and the Committee again for its hard work and dedication in advancing equality, human rights and civil justice.

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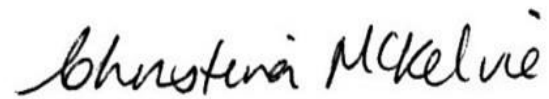
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I look forward to continuing to work together on these crucial issues for the people of Scotland in 2023 and beyond.

Yours sincerely,



CHRISTINA MCKELVIE

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Follow Up from Equalities, Human Rights and Civil Justice Committee Pre-Budget Scrutiny – Government Response

1. We ask that the Scottish Government confirm what improvements have been made in data collection in the past 15 years and provide detail on why data gaps remain.

There have been significant improvements to the equality evidence base over the past 15 years including, more recently, the launch of the Equality Evidence Finder. Analysts from around the Scottish Government routinely include equality breakdowns in their analytical outputs and these help to populate the Equality Evidence Finder. This resource is a first point of call for policy makers to inform Equality Impact Assessments (EQIAs) which ensure that policies and spending decisions do not have adverse impacts on particular groups. From January 2012 a set of 20 core questions, including equality questions, have been asked in the Scottish Household Survey (SHS), the Scottish Health Survey (SHeS) and the Scottish Crime and Justice Survey (SCJS). This has improved the utility and granularity of equality data in the years between Scotland's Censuses. The Scottish Government have developed and published guidance notes on the collection of equality data in line with the Census and the ONS. Alongside this we have published a range of case studies on good practice in collection and use of equality data.

The National Performance Framework (NPF), introduced in 2007, sets the vision for the type of nation we want to be and how we work together towards the purpose and outcomes in order to achieve this. The NPF measures Scotland's progress against the national outcomes and to do this it uses national indicators. These indicators provide a measure of national wellbeing and they include a range of economic, social and environmental measures. Scottish Government analysts provide equality breakdowns for these indicators to measure progress for equality groups.

The Scottish Government worked together with expert partners in women's organisations to produce Scotland's first Gender Equality Index which will measure progress towards gender equality in Scotland. Gender equality is measured across a range of indicators, covering Work, Money, Time, Knowledge, Power and Health. The first release, showing baseline data, was published in 2020.

Despite progress, data gaps remain. In order to work towards filling these gaps the Scottish Government launched the Equality Data Improvement Programme (EDIP) in 2021. This is a wide-ranging programme of work aimed at strengthening Scotland's equality evidence base. The EDIP project board is co-chaired by the Scottish Government's Chief Statistician and Chief Social Researcher and is supported by Ministers and analytical leaders from across the Scottish Government, including its

Analytical Leaders Group (ALG). The group also has external representation. The full membership of the Board can be found in the link above.

Analytical Services Divisions (ASDs) across Scottish Government Directorates have a strong role to play in the implementation of robust equality analysis. The ALG approved the formation of a network of internal analysts to help take forward key elements of the programme. This network drove a comprehensive internal Equality Data Audit in late 2021 - this used a RAG analysis to show which official and national statistics datasets produced statistics broken down by each of the equality characteristics. Further to this, these lead analysts also produced draft improvement plans which formed the basis of an external consultation that ran between July and October 2022. This consultation, and findings from the supporting stakeholder engagement events held throughout September 2022, will form the basis of Scotland's next Equality Evidence Strategy.

2. We ask that the Scottish Government make a commitment to setting a target date by which it will be able to collate and share full, consistent, and disaggregated equalities data across all portfolio areas and keeps the committee informed about this data collection process.

Scottish Government analysts will continue to improve disaggregated and intersectional equality data collected through survey and admin sources and will present this evidence in their own analytical outputs and on the Equality Evidence Finder. These equality data improvements will be driven forward by analysts throughout the lifetime of the next Equality Evidence Strategy, which will cover the years 2023-25, by which time high quality, granular equality data from Census 2022 should be available. Equality analysts will be happy to keep the Committee informed on progress.

3. We look forward to the Minister's response following consultation with her counterparts [Minister for Mental Wellbeing and Social Care] within other portfolio areas and ask that the Minister provides us with regular updates on the development of the equality and human rights mainstreaming strategy.

We will ensure that the Committee is engaged as we progress our discussions with other Ministers on embedding equality and human rights, in particular on the issues that were discussed in the Pre-budget scrutiny.

We will, as requested, provide further engagement with the Committee on the development of an equality and human rights mainstreaming strategy. We are continuing to work with our Internal and External Drafting Groups in the new year to develop this further. These groups include representatives from a number of policy areas in Scottish Government, equality and human rights stakeholders and public sector bodies.

The strategy will be aligned with our ongoing review of the operation of the Scottish Specific Duties in delivering the Public Sector Equality Duty, our continuing capability development work in equality and human rights and the development of the Human Rights Bill.

4. We ask the Scottish Government to confirm how it ensures that a consistent and high-standard approach to equalities and human rights is maintained across all portfolio areas and budgetary decisions and how they ensure that outcomes are measurable.

Programmes, policies and services are developed through a robust policy-making process which involves Equality Impact Assessments and Fairer Scotland Duty Assessments, among other impact assessments. We have set out elsewhere in this response some of the actions we are taking to continue to develop and improve in this area. We have also laid out the alignment to outcomes and processes.

We are committed to further embedding equality and human rights within all stages of the budget process. The publication of the Equality and Fairer Scotland Budget Statement alongside the Scottish Budget is evidence of this commitment.

Throughout this exceptional year for public finances, we have remained focussed on analysing implications of budget decisions: in May we published an equality and fairer Scotland analysis of the Resource Spending Review and last month we published an equality and fairness evidence summary alongside the Emergency Budget Review.

Maintaining our approach to ensure equalities and human rights informs the budget decisions is a year round, cross government process which includes (i) analysing equality data to understand issues and barriers at individual portfolio levels; (ii) assessing budget allocations for the likely impact on outcomes for equality groups before implementation; (iii) modifying revenue collection and expenditure to promote equality and (iv) monitoring performance, including the impact of spend on the outcomes for equality groups.

As the committee will be aware, the Scottish Government is also supported in its work by the Equality and Human Rights Budget Advisory Group, chaired by Professor Angela O'Hagan. This year we have formally expanded the remit of this group previously named the Equality Budget Advisory Group to include Human Rights. The work of the Equality and Human Rights Budget Advisory Group remains extremely helpful and their constructive challenge and insight help maintain a consistent and high standard across Scottish government. The group works with the Scottish Government to:

- support a process of equality and human rights analysis to ensure the equality and human rights implications of the Scottish Government's policy processes inform budgetary decisions, and that corresponding information presented in the Scottish budget documents is clear
- contribute to mapping the pathway between evidence, policy and outcomes with the allocation and spend of public finance
- identify linkages between the Draft Budget, the National Performance Framework, Economic Strategy and policy making in general and supporting scrutiny of outcomes in relation to budget commitments
- contribute to improved awareness of and commitment to mainstreaming equality and human rights analysis into policy and budget processes.

Some of the measures that the Scottish Government has taken to enable, support and encourage effective equality and Fairer Scotland budgeting include:

- the programme of equality data improvement (referenced earlier)
- Training and development including sessions delivered by the Scottish Women's Budget Group and development sessions sponsored by the Equality and Human Rights Budget Advisory group including on International Comparators.

5. We ask the Scottish Government what it is doing to make sure that people have a full understanding of their own equalities and human rights, and to establish and articulate minimum core standards.

As part of the UK, Scotland has legal obligations under a range of international human rights treaties. Indeed, the Scottish Government champions international human rights standards and works to respect, protect and fulfil and believes that the UK Government should do the same. We believe that a rules-based international order, grounded in a respect for human rights, democracy and the rule of law, creates the best conditions for success for countries in the international system.

The National Taskforce for Human Rights Leadership Report recommended that there be a participatory process to define the core minimum obligations of incorporated economic, social and cultural rights. It also recommended that the Scottish Government should adopt an innovative and human rights-based approach towards engaging the public in developing the framework, including the guidance and its implementation, as well as develop a large scale public awareness campaign about the new framework. We are actively considering this recommendation and will consult on a new Human Rights Bill in the first half of 2023. The Bill will give effect to a wide range of internationally recognised human rights and strengthen domestic legal protections by making these rights enforceable in Scots law.

6. The Committee recommends that the Scottish Government consider demonstrating adherence to the three principles of human rights budgeting within its Budget documentation, across all portfolio areas. This might mean policy statements which explain, for instance, how data and lived experience has been used to inform decision-making and should indicate where engagement and impact assessments have resulted in changes to the budget with detail on how the process has upheld the Scottish Government's human rights obligations.

We agree with the recommendation to adhere to these principles as part of the approach to increasingly taking a human rights approach to budgeting. We have used the principles (transparency, participation and accountability) referenced by the committee in the development of this Budget and specifically the Equality and Fairer Scotland Budget Statement. Within Annex A of the Statement we have set out, in-depth, our alignment to these principles.

In Annex D of the Equality and Fairer Scotland Budget Statement we have provided the detailed analysis for each portfolio. The development of these portfolio templates asked for additional information, this year, on how the analysis has impacted budget Decisions alongside how changes to spending, compared to last year, have affected equality and fairer Scotland issues.

Additionally, the Equality and Fairer Scotland Budget Statement illustrates alignment of the Scottish Government's spending plans in relation to the advancement of human rights as part of the portfolio breakdown provided in the primary document and within the detailed analysis in Annex D.

Also, earlier this year, the Scottish Government published an Equality and Fairer Scotland Statement to supplement the Resource Spending Review (RSR). This document sets out how we have considered human rights throughout the RSR process. In terms of the participation principle in particular, it is worth noting that the RSR was also informed by a written consultation and series of stakeholder engagements which are detailed in our analysis of consultation responses and engagement publication.

We are continuing to develop our approach and our data to support human rights budgeting and we note with interest the responses to the committee's questions to stakeholders around this issue.

7. The Committee recommends that the Scottish Government consider how it can better produce measurable outcomes and ensure that enough data is collected to determine whether those outcomes are being met.

The National Performance Framework (NPF) measures Scotland's progress against the National Outcomes. To do this, it uses National Indicators.

These indicators provide a measure of national wellbeing. They include a range of economic, social and environmental measures. The 81 National Indicators for the NPF were approved by the expert Technical Advisory Group after robust consultation to best represent the broad wellbeing of the whole population. This sought to balance what data was already available with what data would be needed to start measuring effectively the progress towards the National Outcomes.

We have been undertaking work to improve equalities data and reporting for the National Indicators. As part of the Equality Data Improvement Programme, and the Equality Evidence Strategy to follow, analysts will be encouraged to continue to develop these and provide equality breakdowns where possible. The equality analysis team has a prominent role to play in promoting and coordinating robust intersectional gender analysis to build a strong evidence base, however most of the analysis and measurement of outcomes within local policy portfolios has to be carried out within the Analytical Services Divisions across the organisation.

We will examine reporting through the National Indicators as part of the Review of National Outcomes, to ensure that this continues to effectively assess progress in a meaningful and accessible way. We will consider carefully the lessons learned from developing the current set of indicators for any future indicator development.

8. Following concerns raised about the lack of connection between spending, outcomes, data, and the decision-making process, we ask that the Scottish Government consider how Budget documents can better outline these links to increase transparency.

The National Performance Framework (NPF) brings a whole-of-government approach to improving outcomes including through budget. It provides a clear long-term purpose and set of outcomes for Scotland's wellbeing beyond important but narrow economic measures of success.

The Scottish Budget is driven by our commitment to contributing to the delivery of the National Outcomes. The budget describes the key primary and secondary National Outcomes supported by the Government's investment. To maximise impact across the National Outcomes, our priorities do not look to one outcome in isolation. The Budget and the Equality and Fairer Scotland statement shows, as detailed in the portfolio chapters (Annex D), the key primary and secondary National Outcomes supported by the Government's planned investment. This links spending to National Outcomes with specific reference to equality implications.

As we improve equality and human rights analysis of spend this will include improving alignment to national outcomes. It is important we make improvements in a structured and planned manner especially given in recent years a number of recommendations and proposals relating to budget analysis have been made to the

Scottish Government, covering interests that include gender, human rights and children's rights, as well as cross-cutting strategic issues such as climate change. We are intending to publish our response to recommendations provided by the Equality and Human Rights Budget Advisory group early next year and this response will lay out further how we plan to continue to improve alignment and accountability in this area building on prior work and we will update the committee in this area further at this stage.

9. The Committee asks that the Scottish Government reflect stakeholders' requests for accessible Budget documentation in time for the publication of the Scottish Budget 2023-24, including information which helps individuals to better understand the impact of the Budget on their own lives.

We agree that government should provide Parliament, civil society and the public with accessible information about budget decisions. We are continuing to build on this within our budget processes. Current activity in this area includes:

- We have, continuing an approach introduced last year, developed the Equality and Fairer Scotland Budget Statement to be a deliberately accessible. This approach received positive feedback last year and we would welcome the committee views of this year's report.
- developing and publishing documents which provide an assessment of the impact of budgetary decisions alongside the key public finance publications this year, including the Resource Spending Review, Emergency Budget Review and the 2023-24 Budget.
- Our involvement in the Open Government Partnership and commitment to Fiscal Transparency and Openness, which can be found in the 2021-2025 Open Government Action Plan. It commits to improving the accessibility and usability of our data and information about public finances, to enable better understanding and scrutiny for a wide range of users, including citizens. This means continuously working to improve how open and transparent we are in Scotland, benchmarked alongside other countries and approaches, about the status, processes, and direction of our public finances.
- Our work to improve the accessibility and timeliness of Your Scotland, Your Finances. This provides an accessible overview of the Scottish Budget, the wider system of public finances in Scotland and how this system is changing.

More broadly as part of our current review of the operation of the Public Sector Equality Duty in Scotland, we are proposing a new Scottish Specific Duty that seeks to ensure inclusive communication is embedded across the public sector in Scotland.

10. We ask the Scottish Government to explore how this level of support [for participation] and engagement can be replicated elsewhere and with other minority groups, including through faith-based settings. We also ask that the

Scottish Government's budget decisions reflect the importance of the voluntary sector in supporting Scotland's most marginalised people.

The Scottish Government Open Government Action Plan 2021-2025 reflects our belief that Open Government and participation plays a key role in creating an open, transparent and accountable government; strengthening public trust in our institutions, producing better public service outcomes, and a better quality of life for everyone. We welcome the continued focus on Financial Transparency, Participation and Open Data as part of this.

Participation and engagement are one of the core principles for human rights based budgeting that we are keen to improve on. One area where we are doing this is through the Scottish Government's [Framework for Tax](#). This document was consulted on and the views of stakeholders, including the general public, were considered when finalising the drafting. This led to engagement being embedded in a refreshed approach to tax, underpinning our commitment to hearing the views of stakeholders.

As part of our pre-Budget engagement period, several roundtables are held on tax policy. These comprise of organisations from a range of sectors, including civil society, think tanks and academics, business representative bodies, and tax professionals and accountancy firms, who shared their views directly with Ministers for consideration into final decisions on tax policy.

The views of stakeholders on the accessibility of tax content online was also considered as part of a project to improve the content for a wider audience. This work included working with a stakeholder steering group on a tax animated video, '[Raised in Scotland. Spent in Scotland.](#)', and the redesign of our [tax policy pages](#) on gov.scot to ensure all the relevant information for the people of Scotland is clear, concise and understandable.

In relation to specific participation with faith and belief stakeholders across government, we are developing a new Faith and Belief Engagement Strategy which will be published in 2023. It will set out our vision for engagement with Scotland's diverse faith and belief communities; the aims and outcomes of improved engagement; and the principles such engagement is based on. The strategy aims to improve knowledge and understanding about faith and belief communities within Scottish Government; broaden the range of communities engaged with; enable fairer representation for minority groups; support diversity of faith and belief voices within policy development; and encourage interfaith collaboration so that community cohesion is enhanced.

Finally on the importance of our voluntary sector, the Scottish Government provides around £500 million to fund a broad range of programmes including those

supporting community empowerment, mental health and wellbeing, children and families and health and social care. The Scottish Government also supports many small grassroots charities through a number of funds such as the Communities Mental Health and Wellbeing Fund, Strengthening Communities and the Community Capacity and Resilience Fund.

Scottish Government is committed to fairer funding principles for the sector which include multi-year funding arrangements for third sector organisations where appropriate. This is part of our long term ambition to embed systemic change and to create conditions for the third sector to thrive as part of a mixed economy.

11. The Committee asks the Scottish Government to provide further detail on examples where the Equality and Fairer Scotland Duty is reflected in policy and funding decisions, with a clear demonstration of the links in documentation.

Policies are impact assessed throughout their development, implementation and execution. All Scottish Government assessments under the Fairer Scotland Duty and Equality Impact Assessments are now accessible via the [Publications page](#) of the Scottish Government website.

To continue to develop in this area a project to drive an overall improvement in policy impact assessments is currently in progress. This project is focussing on identifying best practice in impact assessments to date; opportunities for improvement, and practical means to implement these improvements in support of policy making; guidance and training; and measures to strengthen accountability and oversight and ensure quality.

In October 2021, the Scottish Government published its refreshed [Guidance for Public Bodies](#) to reflect learning and practice over the first three years of the Fairer Scotland Duty in an improved resource for public bodies. Key revisions included the addition of two detailed case studies of Fairer Scotland Duty assessments (FSDAs) that shaped Scottish Government decisions, those for the Scottish National Investment Bank Bill and The Deposit and Return Scheme for Scotland.

A project to drive an overall improvement in Policy Impact Assessments has also been established. This will focus on identifying best practice in impact assessments to date; opportunities for improvement, and practical means to implement them in support of policy making; guidance and training; and measures to strengthen accountability and oversight and ensure quality. Alongside this, we are developing and piloting a human rights impact assessment framework for all policy and legislative work. We are developing organisational capacity to improve Equality Impact Assessments with updated guidance, tools and training launching in Spring 2023.

The Scottish Government is also reviewing the operation of the Public Sector Equality Duty in Scotland. A public consultation ran until April this year and the analysis of this consultation was published in November. In the consultation we proposed strengthening the duty to assess and review policies and practices, seeking to emphasise that assessments must be undertaken as early as possible in the policy development process. We also proposed strengthening the duty to require the involvement of people with lived experience, or organisations who represent them, in certain circumstances, like where the policy being assessed is a strategic level decision.

With regards to budget and funding, the vast majority of the programmes, policies and services that the budget funds are not generated and announced at the point at which the budget is introduced. All policies, regardless of date of announcement, are subject to a full policy development process including a range of impact assessment (as above). For the allocation of resources against 'existing' policies we provide evidence of considerations of the impact of changes to funding envelopes as part of the Equality and Fairer Scotland Budget Statement. For decision making which happens during the budget process (and despite the limited timescale in developing the Equality and Fairer Scotland Budget Statement) Scottish Government works hard to build the analysis into decision making:

- by encouraging drafts of analysis to be used in decision making in policy areas, including in potential mitigations of any negative effects both at official and Ministerial levels
- by providing draft, high-level cumulative analysis for consideration at a cross-government level

To strengthen the visibility of how this has influenced budget decision evidence, in the Detailed Analysis of Equalities and Fairer Scotland Issues by Portfolio (Annex D) the templates include evidence of how the analysis has impacted budget Decisions and links to relevant impact assessment have been included in the further evidence column.

12. We ask the Scottish Government to consider how its standard populations surveys such as the Scottish Household Survey can be improved to provide disaggregated data within protected groups.

We continuously explore and advance our practice in how we provide data. This includes producing additional breakdowns of population survey data where the subgroup sample sizes are large enough and there is a clear user need.

In addition to the results published for individual surveys, some breakdowns by protected characteristic are available from the Scottish Surveys Core Questions dataset. Introduced in 2012, the Scottish Surveys Core Questions are asked in the

Scottish Household Survey, the Scottish Health Survey and the Scottish Crime and Justice Survey. The pooled dataset therefore has a larger sample size than the individual surveys, and more detailed breakdowns can be produced.

It should be noted that general population surveys (such as the Scottish Household Survey, Scottish Health Survey and Scottish Crime and Justice Survey) may not be the most cost effective way to collect useful data on relatively small population subgroups. Targeted research may be more suitable.

13. The Committee would specifically appreciate an update on the consultation process for the forthcoming legislation on learning disability, autism and neurodivergence, and some assurance that concerns raised by People First are being addressed.

Scoping work on the Learning Disability, Autism and Neurodiversity Bill took place between May and July 2022. As part of this the Scottish Government ran a series of events to consider how people with lived experience view the Bill and to discuss potential key elements, including the role of a commissioner. We carried out 30 events with 18 different organisations. The Scottish Government intends to launch a public consultation on the Bill in the second half of 2023. We will confirm the exact dates of the consultation in due course.

The consultation will provide an opportunity for people across Scotland to express their views on policy options that could be included in the draft Bill, as well as on whether the Bill should establish a Learning Disability, Autism and Neurodiversity Commissioner.

As regards the concerns raised by People First, the Scottish Government aims to adopt a human rights-based approach to ensure that the Learning Disability, Autism and Neurodiversity Bill is fully co-designed with people with lived experience. Our approach will involve Disabled People-led Organisations and charities representing the views of a wide range of people who come under the Learning Disability, Autism and Neurodiversity umbrella from the outset.

To this end, and to ensure that policy options presented during the consultation stage are representative of the full range of neurodivergent communities across Scotland, we will establish three advisory panels: a Lived Experience Advisory Panel, a Professional Panel, and a Stakeholder Panel.

The **Lived Experience Advisory Panel** will assist officials in co-designing consultation documents and the approach to the public consultation. They will also play a key role in helping to clarify and refine policy options proposed during scoping work. These roles will be advertised on the Scottish Government website (including Easy Read and video versions), and we will encourage participation from people from diverse backgrounds and socioeconomic groups.

The **Professional Panel** will draw upon their professional knowledge and experience, assisting officials to transform the scoping work into more detailed policy options. Additionally, they will advise on the implications of specific policy options on operational practice.

The **Stakeholder Panel** will include office holders of charity and advocacy organisations with an interest in the Bill and will provide a sounding board for the policy options being developed.

Input from and interaction between the panels throughout the development of the Bill will ensure that provisions are thoroughly tested from different perspectives, ensuring high quality legislation that reflects a range of experience.

14. The Committee asks the Scottish Government for further detail on how stakeholders' concerns around transparency, accountability and measurability are being considered during the review of the National Performance Framework.

The Scottish Government will undertake a statutory review of the National Outcomes in coming months, the result of which will be laid in Parliament in Term 3 2023. Further detail on plans for the review of the National Outcomes will be published in the coming weeks. As we work towards publishing a reviewed NPF, we will progress a communication plan which will aim to raise awareness of the framework and its approach.

We acknowledge the considerable work conducted by the Finance and Public Administration Committee on the issues affecting better implementation of the NPF and we have carefully considered the points raised by the Committee. A detailed response was issued on 13 December 2022 and is available via [the Parliamentary website](#) in due course. The Committee's inquiry report has provided a useful assessment of the view of Parliament and stakeholders on progress with the NPF both within Government and beyond.

Whilst the Scottish Government will meet the necessary statutory requirement to review the National Outcomes, we will also focus on drawing upon a number of helpful recommendations made by the Committee to strengthen and further integrate the NPF into the systems and processes of government.

The Leadership, Collective Ownership and Delivering the National Outcomes report by the Scottish Leaders Forum's action group on Accountability and Incentives will also provide important evidence. It is vital that everyone works towards achieving the National Outcomes, and that incentives and accountability support this.