OFFICIAL REPORT
AITHISG OIFIGEIL

# Meeting of the Parliament

**Tuesday 23 April 2024**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

# Tuesday 23 April 2024

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# Scottish Parliament

*Tuesday 23 April 2024*

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

## Time for Reflection

**The Presiding Officer (Alison Johnstone):** Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is the Right Rev Sally Foster-Fulton, moderator of the General Assembly of the Church of Scotland.

**The Right Rev Sally Foster-Fulton (Moderator of the General Assembly of the Church of Scotland):** Good afternoon. I am coming to the end of my term and, all year, this is the word I have shared: ubuntu. All year, this is the truth that I have seen evidenced in the everyday: ubuntu.

Every moderator is asked to choose a theme, and I chose this Zulu phrase. It is difficult to translate into English, but, as near as we can manage, it means, “I am because you are,” or, “I am because we are.” That is a deeply theological statement. It is a powerful piece of subversive wisdom. It is a word that we need to hear and heed today.

No one is an only child; we are created to be in community. No one “makes it on their own”; we all stand on the shoulders of everyday giants, people who play their part—who love, listen, learn and live their lives in an intricate web of humans being. There really is no them and us; there is only us. When we do each other down, we dilute our common humanity—and our common humanity is an extraordinary gift.

Think about it. When you pour your cereal or coffee in the morning, behind that there are growers and harvesters, producers and packagers, researchers and those marketers who convince you that this is the breakfast for you. They make your morning happen. When you read or watch or hear something that moves you in your bones, people you will never meet made that possible. They mixed and measured, wrote and reconsidered words and ways to evoke wonder in you. Do we understand that, or do we just consume and assume?

Ubuntu—I am because you are. In a world where so many struggle, unseen and ill-considered: ubuntu—I am because you are. In a world where those who have arrived do not want to move: ubuntu—I am because you are. What we do and do not do matters to siblings we may never see: ubuntu.

Over the year, I heard the word sung out in numerous projects, parties, panels and places across Scotland, with people living for each other, finding themselves completely in service to their siblings. This year, I choked that word out at a service in Dungavel as I stood with asylum seekers stuck in a system bereft of humanity, and I witnessed love alive in innumerable people and places, where there was a vibrant, relevant response to need right in front of them.

Ubuntu. It is not a foreign phrase that is difficult to interpret; it is a universal truth to transform us. Scottish Parliament, you lead us into a now and a future. I am because we are. Live that truth.

# Business Motion

14:05

**The Presiding Officer (Alison Johnstone):** The next item of business is consideration of business motion S6M-12946, in the name of George Adam, on behalf of the Parliamentary Bureau, on changes to the business programme. Any member who wishes to speak on the motion should press their request-to-speak button now. I call George Adam to move the motion.

*Motion moved,*

That the Parliament agrees to the following revisions to the programme of business for—

(a) Tuesday 23 April 2024—

after

| | |
|---|---|
| *followed by* | Topical Questions (if selected) |

insert

| | |
|---|---|
| *followed by* | Ministerial Statement: Gender Identity Healthcare for Young People |

delete

| | |
|---|---|
| 5.00 pm | Decision Time |

and insert

| | |
|---|---|
| 5.30 pm | Decision Time |

(b) Wednesday 24 April 2024—

delete

| | |
|---|---|
| 9.00 pm | Decision Time |
| *followed by* | Members' Business |

and insert

| | |
|---|---|
| 8.20 pm | Decision Time |

(c) Thursday 25 April 2024—

delete

| | |
|---|---|
| 5.00 pm | Decision Time |

and insert

| | |
|---|---|
| 3.55 pm | Decision Time—[*George Adam*] |

*Motion agreed to.*

# Topical Question Time

14:05

**The Presiding Officer (Alison Johnstone):** The next item is topical question time. I would like to get as many questions in as possible, so short and succinct questions and responses would be appreciated.

### Contracts for Difference Allocation (Climate Targets)

1. **Sarah Boyack (Lothian) (Lab):** To ask the Scottish Government what potential impact the proposed Berwick Bank offshore wind farm not being included in the contracts for difference allocation round 6 will have on achieving Scotland's climate targets. (S6T-01932)

**The Minister for Small Business, Innovation, Tourism and Trade (Richard Lochhead):** The Government's commitment to ending Scotland's contribution to global emissions as soon as possible remains unwavering, and Scotland is making progress towards our 2045 target, being about halfway to that goal already. A significant part of that success has been driven by our renewable energy industry. Scotland is becoming a renewables powerhouse, with 87.9 per cent of electricity generation coming from zero-carbon or low-carbon sources in 2022.

Scotland's decarbonisation plans and green jobs potential will be further boosted by the six projects consented by the Scottish Government in time for the contracts for difference allocation round 6 application window.

**Sarah Boyack:** The Berwick Bank offshore wind farm has the potential to create more than 4,500 jobs, from engineers and technicians to jobs at the beginning of the supply chain. What action is the Scottish Government taking to reduce consenting application timescales, and will the minister confirm when a consenting decision on Berwick Bank will be made?

**Richard Lochhead:** We have a strong record of delivering robust consents and have, to date, consented all of the offshore wind applications that we have received. Although that does not mean that every future application will be successful, it demonstrates that consents are granted when it is possible to balance the environmental and development aspects.

The Berwick Bank application is a complex project, and any decision by the Scottish ministers must fully consider the positive contribution to reaching net zero targets alongside the possible impact on the natural environment and other users of the sea. The member is right to say that the

project is of major significance for Scotland, and we will continue to work with the applicant and all those who have expressed a view.

**Sarah Boyack:** I am disappointed that the minister did not acknowledge the importance of consenting timeframes. Last month, I visited Forth Ports, where considerable private investment is already being made to ensure that our renewables infrastructure is ready to go and to attract manufacturing to Scotland. That is a great example of businesses investing in Scotland, but they need signals and support from the Government if they are to have confidence in making that investment. The consenting of projects such as Berwick Bank is a signal that industry—particularly those in the supply chain—is keeping a close eye on. Will the minister say what is being done to reduce the timescales of consenting applications, given the concern in the sector that the energy strategy is being delayed?

**Richard Lochhead:** We devote significant resources to ensuring that we deal with all applications, and the member mentioned another of the many exciting projects that are happening across the country at the moment.

None of us wants to be dragged through the courts because something was done inappropriately, certain views were not taken into account or legislation on the impact on habitats and the wider environment was not adhered to. Sarah Boyack will be aware that these are extremely important issues. We do not want to get this wrong. Every application has to be assessed properly, which is why a proper process is in place.

On signals to the industry, I said in my answer that six significant projects have just been given consent in the current application round, including two floating offshore wind projects, one of which—Green Volt—was warmly welcomed in north-east Scotland, with the developers estimating that it has a value of £3 billion. That is a major and internationally significant project that has received consent from the Scottish Government, and it is a very powerful signal that Scotland is sending out.

**Audrey Nicoll (Aberdeen South and North Kincardine) (SNP):** It is very welcome that a number of offshore renewables projects in Scotland are now secured by relevant consents and marine licences, including the Green Volt offshore wind project that the minister mentioned. Will the minister provide further information on what assessment the Scottish Government has made of the environmental and economic impacts that the projects are anticipated to have?

**Richard Lochhead:** As I indicated to Sarah Boyack in my previous answer, the Scottish Government has a robust process for offshore renewable energy project consent applications, including for the Pentland and—as Audrey Nicoll referred to—Green Volt offshore wind farms. The process includes applicants undertaking environmental impact assessments, which assess significant impacts on the environment, and it includes the habitats regulations appraisal—HRA—which assesses impacts to protected sites.

Consultation is undertaken with a range of statutory and non-statutory consultees, including NatureScot, which is the statutory nature conservation body. In the case of Green Volt, a derogation case as part of the HRA was also undertaken to secure compensation for any adverse effects on protected sites.

**Douglas Lumsden (North East Scotland) (Con):** As we have heard, consent times are a huge issue for the project. It has been 17 months so far, with no decision. Does the Scottish Government have plans to streamline the necessary regulatory and administrative processes, to expedite the approval and implementation of offshore wind programmes such as Berwick Bank? If so, by when? I ask that communities are not sidelined by any changes that are brought forward, and I ask that balance is sought.

**Richard Lochhead:** I agree with Douglas Lumsden that balance has to be sought. These are very big and complex applications in many cases, including the Berwick Bank application.

I note that other big applications have received consent, including the Green Volt application for an internationally significant floating offshore wind farm with a value of £3 billion, which Douglas Lumsden's North East Scotland constituents have warmly welcomed over the past day or two. It is a significant project for that region of the country.

We always look for ways to ensure that the consents process is more efficient and properly resourced. However, as I said, the fact that six significant projects have just been given consent sends out a powerful signal that we are taking the matter as seriously as we can and that we will continue to support an efficient and effective consents process.

**Willie Rennie (North East Fife) (LD):** The minister does not seem to be that bothered that the target consenting time of 12 months has been far exceeded and is up to 17 months. That will send quite a significant message to the industry, which is looking for confidence that the Government has the capacity to deal with that.

The ScotWind applications will be coming through soon, but we have not seen anything yet on the number of applications that will be forthcoming. One of the minister's colleagues has told me that extra staff have been recruited, but it

will clearly not be enough. How many extra staff will be recruited? Will the 12-month target date be met for the ScotWind applications?

**Richard Lochhead:** Ministers are always looking at the level of resources that are applied to the consents process, because—of course—we recognise the national significance of the projects. As I said, some projects are far more complex than other projects. We are going as fast as we can with the process, but it has to be done properly and it has to be robust. We have to avoid a situation in which we end up with further years being lost as we go through court cases due to not getting it right.

We are going through a green revolution in Scotland, particularly in offshore renewables. There are many applications in the pipeline and many have been consented. It is a national effort and it is of national importance. Willie Rennie is right that we have to keep reviewing how we do this in order to improve things as we go forward. However, as I said, the fact that we have given consent to six major projects, which will deliver billions of pounds in value, as well as jobs the length and breadth of Scotland, is a good sign that we are taking the issue seriously.

**Daniel Johnson (Edinburgh Southern) (Lab):** In emphasising the six consented projects, the minister is emphasising outcomes. The issue here is about pace and throughput. Given that we need to double our offshore wind-generating capacity, is the minister confident that we can meet the doubling that we need to achieve by 2030?

**Richard Lochhead:** We are making great progress, but the Scottish Government cannot predict how many objections or concerns will be expressed in relation to any one particular application. We have to wait and see how the process develops as it goes forward. We have to make sure that the process is robust, efficient and well resourced.

As I said before, a significant number of projects, some of which are complex, have been consented, and that will help us to achieve our net zero targets and deliver thousands of jobs for Scotland as well as, potentially, hundreds of millions—if not billions—of pounds in investment for the country.

### Ban on Plastic-containing Wet Wipes (Water and Sewerage Charges)

2. **Stuart McMillan (Greenock and Inverclyde) (SNP):** To ask the Scottish Government, in light of reported statistics indicating that wet wipes contribute to up to 94 per cent of sewer blockages, what assessment it has made of the potential impact on Scottish Water of the planned ban on wet wipes containing plastic, including whether water and sewerage charges will be reduced in the future as a result of the ban. (S6T-01937)

**The Minister for Green Skills, Circular Economy and Biodiversity (Lorna Slater):** I was pleased to announce this week that we will this year introduce regulations to ban wet wipes containing plastic. That follows a United Kingdom-wide consultation in which 95 per cent of respondents agreed with our proposals.

The member is right to point out that, as well as the positive impact on our natural environment, there are potentially wider benefits. However, significantly reducing sewer blockages would require consumers to stop flushing wet wipes—whether or not they contain plastic—into the sewers. Any savings that are made will allow our publicly owned Scottish Water to invest in its ageing infrastructure, so that it is fit for the future and can continue adapting to climate change.

**Stuart McMillan:** I agree with the minister that wet wipes are a problematic source of marine litter, as I have seen first hand when dealing with beach clean-ups in my constituency. How much plastic is the ban likely to prevent from polluting our marine environment?

**Lorna Slater:** Our previously introduced bans on single-use plastics have already been effective in reducing beach litter. Approximately 30.5 billion wet wipes are sold across the UK annually, 64 per cent of which include some plastic. Although we do not know the exact quantity of plastic in total or the proportion of those wipes that could have been incorrectly and irresponsibly flushed, potentially polluting our marine environment, we do know that, by removing approximately 19.5 billion of those products from the market, we will help to reduce the risk of the harm that is caused by plastic pollution.

**Stuart McMillan:** The ban is not only a positive step for the planet but should ensure that Scottish Water spends less of its resources on responding to the problem of blockages, which are reported to cost around £7 million of bill payers' money each year. On the assumption that the ban will help Scottish Water to save money, will there be scope to reduce water and sewerage charges or for future increases to charges to be smaller?

**Lorna Slater:** Decisions about household water charges are for the board of Scottish Water, with approval from the independent economic regulator. However, as I indicated in my earlier answer, any savings that are made will allow Scottish Water to invest in infrastructure to ensure that it can continue adapting to climate change.

### LGBT Youth Scotland (School Youth Clubs)

3. **Meghan Gallacher (Central Scotland) (Con):** To ask the Scottish Government whether it

will provide an update on the LGBT Youth Scotland pilot programme to introduce youth clubs in schools. (S6T-01938)

**The Cabinet Secretary for Education and Skills (Jenny Gilruth):** I can confirm that LGBT Youth Scotland is not undertaking a pilot programme to introduce youth clubs in schools.

**Meghan Gallacher:** It has been widely reported that Scottish primary schools are appointing children as LGBT champions and asking pupils as young as four whether they are transgender. That is part of a project that was set up by LGBT Youth Scotland and funded by the Scottish Government, using taxpayers' money. Parents are outraged by some of the materials that have been distributed by schools that have signed up to those youth clubs.

My understanding is that LGBT Youth Scotland's charitable constitution clearly states that the age range that its activities covers is from 13 to 25 years old, which is of course outwith the age of children in primary schools. Will the cabinet secretary confirm whether LGBT Youth Scotland is in breach of its charitable constitution and whether she has any grip on what is happening in our schools?

**Jenny Gilruth:** The substantive part of Meghan Gallacher's question was about whether I could provide an update on LGBT Youth Scotland piloting a programme to introduce youth clubs in schools. As I stated in my original response, that is not currently the case. I hope that that is on the record and that the member will understand that.

More broadly, we know that LGBT groups can play a really important role in schools in ensuring that LGBT young people are included in their school communities. Those groups are established by schools as part of an inclusive approach to education. I am sure that Ms Gallacher will have met some of those groups on her visits to local schools. That is aligned with ensuring that all our children and young people are included and engaged at school, which can be crucial in tackling the anti-LGBT incidents that we all know are on the increase. I hope that every member in the chamber can support that.

**Meghan Gallacher:** I mentioned in my previous question that parents are concerned by the LGBT Youth Scotland scheme. That is not coming from me; it is coming from parents who are speaking to me about those issues and who want them to be voiced in Parliament. Recent reports have outlined that a mother had to change her daughter's school after it emerged that, within months of joining an LGBT club, her daughter announced in a Christmas card to her family that she had become their trans son and signed off with the preferred name. The problem is that the school did not tell the parents that their daughter had been using a different name in school for months. The school had signed up to the charter scheme that is run by the Scottish National Party funded charity LGBT Youth Scotland.

The Government has slowly been eroding the role of parents in school settings. We need only look at the named persons act to see a prime example of that. Why will the Government not allow kids to be kids? Will the cabinet secretary review the LGBT Youth Scotland programme to ensure that young people are provided with appropriate materials and that parents are not excluded from their child's learning experience?

**Jenny Gilruth:** I thank Ms Gallacher for her supplementary question. I think that she is referring to the LGBT Youth Scotland charter for education. It is up to individual schools to decide whether they wish to undertake the LGBT Youth Scotland charter programme. However, I note for the record that, back in July 2022, Meghan Gallacher signed a motion by her parliamentary colleague Jackson Carlaw that congratulated

"Eastwood High School in Newton Mearns on receiving the LGBT Charter at Silver level",

acknowledged

"the efforts, dedication and hard work of both pupils and staff to achieve this prestigious award from LGBT Youth Scotland"

and welcomed

"the training and a review of policies, practices and resources at the school to ensure that Eastwood High strives to go beyond meeting legislative requirements".

I do not know why Meghan Gallacher has changed her mind about the charter in the interim two years. [*Interruption*.] I hear chuntering from a sedentary position, but I think that it is worth my while to put that on the record.

On the substantive point about parental contact, the guidance is clear that, if a young person does not discuss the matters with their family, the school can support the young person on how to have that conversation and when, but it should not take that decision for the young person.

**Collette Stevenson (East Kilbride) (SNP):** Does the cabinet secretary agree that the best way to combat discrimination is to tackle prejudice before it can take root? It is for that reason that Scotland's schools must be an inclusive and positive environment for LGBT+ pupils.

**Jenny Gilruth:** I absolutely agree with the points that the member makes. It is worth while to remember and put it on the record that Scottish schools were not always a safe space for LGBT young people during the days of section 28, when I was at school.

We are committed to doing everything that we can to make Scotland the best place to grow up in for the LGBTQ+ community, and education settings have a lot to contribute in that regard. It is vital that we all help to instil the values of respect and tolerance in our children and young people, which is why we have made significant progress in embedding LGBT education across the curriculum rather than in specific LGBT lessons. That will improve the learning environment for all children and young people. It is also worth my while to recall that, during the previous session of Parliament, that approach—inclusive education—was supported on a cross-party basis.

**Jamie Greene (West Scotland) (Con):** I wish that there had been LGBT youth clubs when I was at school. If there had been, perhaps I would not have had such a miserable time of it or left school so early.

I understand the importance of an inclusive environment. However, it is fair to say that all the material that children have access to should be age appropriate. Will the cabinet secretary explain how the Government is monitoring that? It is also important that parents who have concerns about material that their children have access to should have direct access to voice those concerns or indeed to exclude such material from being in front of their children. We all want to do the right thing on this, but it is also fair to raise any concerns that parents might have, to ensure that there is trust in the entire system.

**Jenny Gilruth:** Absolutely. I worked with Jamie Greene on the matter during the previous session of Parliament and I very much support the concerns that he has raised in relation to parents' rights in engaging with schools. That is why the National Parent Forum of Scotland and Connect were directly involved in development of the guidance. It is worth while to put that on the record.

In a report that was published last year, 67 per cent of participants—children and young people in schools—reported experiencing homophobic, biphobic or transphobic bullying during their time in school, which can also have an impact on their educational attainment. It is really important that we seek to work on such issues on a cross-party basis, to improve the lives of our LGBT young people for the better.

# Point of Order

14:25

**Jackson Carlaw (Eastwood) (Con):** On a point of order, Presenting Officer. It is a minor point, but I seek your guidance, because I am slightly confused.

At the start of each session of the Parliament, the political parties are furnished with a seating plan in relation to the disposition of our seating arrangements in the chamber, which we have always sought to observe. I am keen to know whether that plan is in fact just advisory or whether members are expected to observe it. If it is just advisory, that leaves open to question the possibility of political parties seeking to occupy different parts of the chamber. I would be grateful if you would confirm what the actual policy is.

**The Presiding Officer (Alison Johnstone):** Although that is not strictly a point of order, it is the case that the seating plan is advisory and is a matter for political parties and individual members.

There will be a brief pause before we move on to the next item of business.

# Gender-identity Healthcare for Young People

**The Deputy Presiding Officer (Liam McArthur):** The next item of business is a statement by Jenni Minto on gender-identity healthcare for young people. The minister will take questions at the end of her statement; there should therefore be no interruptions or interventions.

14:26

**The Minister for Public Health and Women's Health (Jenni Minto):** I start by speaking directly to our young people—in particular, our trans and non-binary young people across Scotland. I know that the past few weeks and months have been incredibly difficult, with increased media attention and toxic online commentary. I understand how shocking, upsetting and destabilising the announcements last week, and the public conversation around them, will have been for you and your families. I want to reassure you that the Scottish Government remains absolutely committed to not just ensuring that on-going support is available for you but reforming and improving gender-identity healthcare. That was a key part of the Bute house agreement, and we will not waver in that commitment.

Before I continue, I make it clear that, as a Parliament, we have a responsibility to protect and support minority groups. We are all human beings; we are all individuals; and we all deserve respect. It is vital that we lead by example in the tone of our discussions, and I hope that that will be reflected in today's session. I reiterate what the First Minister has clearly said: the Cass review is a detailed piece of work that requires thoughtful consideration.

Last Thursday, NHS Greater Glasgow and Clyde and NHS Lothian—the two health boards in Scotland that have specialist paediatric endocrinology services—issued a joint statement confirming a pause on new prescriptions for puberty hormone suppressants and cross-sex hormone medication for young people with gender dysphoria. That pause is to allow time for further evidence to be gathered to support the safety and clinical effectiveness of those medications, following the Cass review. The statement also confirmed that the small number of young people who are currently receiving those medicines will not be affected by that pause. That mirrors the position in NHS England.

As I have said consistently, it is not for politicians or civil servants to make clinical decisions about clinical pathways. Such decisions should always be made carefully, be based on the best evidence available, and be made only by the clinicians responsible for providing such healthcare. To be very clear, ministers do not make clinical decisions in any field of medicine, and that of gender-identity services is no exception. I fully support health board autonomy in clinical decision making.

The commitment of clinicians to their patients in those services, alongside their wider multidisciplinary teams, is unwavering. Their focus is always on ensuring that the treatment that they prescribe is safe. Too often, they face vitriol simply for doing their job, and it is important that they, too, are supported.

Some members have expressed disappointment that the Scottish Government did not announce the position before the health board statement. Every one of us in the chamber—indeed, every one of us across Scotland—has a right to hear first and directly from the services that care for us if our treatment for any health matter is going to change. That is why it was absolutely correct that, before making a public announcement, NHS Greater Glasgow and Clyde and NHS Lothian took the time to speak to all the young people who would be impacted by the pause, so that they understood what it meant for their care and treatment.

I am sure that everyone in the chamber will agree that, if this were happening to their loved one, that is exactly what they would want, and expect, to happen. I reiterate: those young people and their families must be at the heart of our decisions and thoughts when we discuss this issue. The NHS Greater Glasgow and Clyde young people's gender service in Scotland remains absolutely committed to providing the best quality care for patients, and referrals. The service will continue to provide holistic care and support to those accessing it and referred to it.

The Cass review is a detailed, wide-ranging report, and I welcome the opportunity to update Parliament on our approach to the recommendations and on the wider work in that field. It is important to highlight that the Cass review was commissioned by NHS England and did not review clinical services or pathways that are provided in the national health service in Scotland. Therefore, by definition, not all the recommendations may be applicable to NHS services in Scotland. That said, it is vitally important that the recommendations are carefully considered to assess the extent to which they are relevant to the approach to gender-identity healthcare in Scotland, and that we decide upon what steps might need to be taken as a result.

Time is required to fully consider all the recommendations, which NHS England also acknowledges. We already have a strategic action framework for the improvement of NHS gender-

identity services. As part of that work, the chief medical officer has agreed that the deputy chief medical officer and other senior medical officers will support careful consideration of the Cass review's clinical recommendations and engage on them with the Scottish Association of Medical Directors and other clinical leaders. A multidisciplinary clinical team within the office of the chief medical officer in the Scottish Government—including people with paediatric, pharmacy and scientific expertise—will assess the clinical recommendations and engage with the relevant clinical community and leadership in health boards in relation to the recommendations. The CMO will provide a written update to Parliament on the outcome of that clinical consideration process before the summer recess.

It is important to note that, in Scotland, we are already making progress on a number of aspects of gender-identity healthcare that are highlighted in the Cass review. Let me be clear that work has already begun, and I will remain engaged throughout. Dr Cass highlighted the need to address increased capacity in services. The Scottish Government has committed to investing £9 million to support the improvement of NHS gender-identity healthcare in Scotland. That funding will be delivered during a five-year period, so the national improvement work that is already under way will be embedded and built on. That aligns with feedback that has been received from health boards and third sector stakeholders regarding the need to support longer-term sustainability of service improvement.

Since December 2022, we have invested more than £2.8 million to support work to improve access to gender-identity healthcare in Scotland, with more than £2.2 million of that allocated directly to health boards with gender-identity clinics. We will invest a further £2 million this year and a further £2 million in each of the next two years, and we are committed to long-term sustainable funding for those services beyond that point. We are also working with NHS Greater Glasgow and Clyde and NHS National Services Scotland to establish a nationally commissioned young people's gender service, which is part of ensuring that young people's gender care in Scotland is as person centred and effective as possible.

The Cass review recommends that gender-identity healthcare must operate to the same standard as other clinical services. We agree. We have already commissioned Healthcare Improvement Scotland to develop new national standards for gender-identity healthcare, and those standards are expected to be published this summer.

A key focus throughout the review is the need for better high-quality evidence in this field, and we agree. Long before the publication of the Cass report, we provided the University of Glasgow with grant funding to establish a programme of research into the long-term health outcomes of people accessing gender-identity healthcare. That now includes six projects in which the health outcomes of adults and young people are considered, covering cardiovascular health, hypertension, sexual health, mental health and longer-term wellbeing. The outputs of those projects are expected towards the end of this year. In addition, the Scottish Government and Scottish health boards are observers to NHS England's planned study into the use of puberty blockers in young people's gender-identity healthcare, and discussions are on-going to determine what further involvement is appropriate.

It did not take the publication of the Cass review for us to start a broad programme of work to improve gender-identity healthcare. In addition to the work that I have already highlighted, we have commissioned Public Health Scotland to develop a quarterly aggregate data collection for NHS gender-identity clinic waiting times, and we are supporting NHS National Education Scotland to develop new training materials for staff. Importantly, throughout that work, we have engaged with trans and non-binary people across Scotland who have lived experience of accessing, or waiting to access, gender-identity services in order to ensure that their voices are represented in our work to improve such care.

Building on that, and in response to the understandable concern from those who are impacted both by this change and, more broadly, by the provision of gender-identity healthcare to young people, we will hold a round table with stakeholders representing those affected, and I will continue to engage directly with young people.

I understand how difficult and heartbreaking the announcement last week will have been for the small number of young people and their families who were anticipating that they would soon be able to start these treatments. Dr Cass reminds us in her report that

"a compassionate and kind society remembers that there are real children, young people, families, carers and clinicians behind the headlines".

I hope that we can all keep in mind that sentiment, today and as we move forward.

**The Deputy Presiding Officer:** The minister will now take questions on the issues that are raised in her statement. I intend to allow around 20 minutes, after which we will need to move on to the next item of business. I would be grateful if members who wish to ask a question would press

their request-to-speak buttons if they have not already done so.

**Meghan Gallacher (Central Scotland) (Con):** I thank the minister for advance sight of her statement.

I spent last week trying to secure a statement from the Government on the Cass review and puberty-suppressing hormones. Every single attempt was voted down or refused. Finally, after confirmation from the health board of a pause in puberty-suppressing hormones for new patients, we have a statement today, but I do not know why the minister bothered, because it will offer no comfort whatsoever to families who have been failed by gender care services in Scotland.

The Scottish Government's direction of travel on this vitally important issue is as clear as mud. The statement does not confirm whether the Government will implement any of the review's 32 recommendations, nor does it address the cut to gender care services. The Government claims that it supports young people who are experiencing gender distress, yet members of it have publicly dismissed the findings of an evidence-based expert report.

Today's exercise in kicking the can down the road and stalling for more time shows that the Government is more concerned about holding together its fragile pact with the dogmatic Greens than about healthcare for vulnerable young people.

When will parents and young people receive a meaningful update? Can the minister assure Parliament that all Government ministers will follow the science rather than ideology?

**Jenni Minto:** I thank Meghan Gallacher for her question. I note that the review was commissioned by the NHS in England; we have worked with the review, but Scottish pathways have not been included in it.

The Scottish Government has clearly welcomed the report from Dr Hilary Cass. It is absolutely clear that the decisions have been for clinicians, not politicians, to make, and—as I said in my statement—those decisions should always be made carefully, based on the best evidence available.

I am looking at this matter and putting the children and the families who need support at the heart of the way that I am working. I am getting the best advice that I can from clinicians and stakeholders.

**Jackie Baillie (Dumbarton) (Lab):** I thank the minister for advance sight of her statement, although I have to register my disappointment at its lack of substance. The Cass report is a four-year-long piece of work that is evidence based and informed by expert clinicians and those with lived experience, so it deserves to be treated seriously. However, this statement feels more like a sop to the Greens to keep the Bute house agreement alive.—[*Interruption*.]—Does the minister agree with Patrick Harvie when he says that he does not believe that the Cass report is a valid scientific document?

Dr Cass has been discussing her report with clinicians and the Government in Scotland since 2022. Instead of acting on it, the Scottish Government appears to be setting up yet another working group. We already have the national gender-identity healthcare reference group. Is the minister bypassing that group with something new? If so, can she explain why?

Finally, will the minister confirm that she will suspend the commissioning of the young people's gender service until the review's recommendations are fully considered?

**Jenni Minto:** I repeat: there are 32 recommendations in an almost 400-page report, and we are working through it at the right speed to ensure that we make the right decisions. As I have said, those will be made from a clinical perspective.

As I have also said, in response to Meghan Gallacher, the Scottish Government welcomed the report. I have been reading it, and I recognise that Dr Cass is an eminent paediatric physician. I am listening to my clinicians with regard to the issue and, as I have said before, to the stakeholders.

**The Deputy Presiding Officer:** Members will not be surprised to hear that there is a lot of interest in asking questions. I hope to be able to allow everybody who has pressed their button to ask a question, but that will require questions to be brief and responses likewise.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** We know how difficult the news must have been for the young people who have been affected. What is vital now is that we focus on improving the healthcare of that very small number of affected people. I note the minister's comments about the steps that have been taken in that regard. Can she say any more about that work and provide assurances to the affected young people that this issue remains a priority?

**Jenni Minto:** As I highlighted in my statement, I have agreed with the chief medical officer that the deputy chief medical officer and other senior medical officers will support careful consideration of the Cass review's clinical recommendations. They will engage with the Scottish Association of Medical Directors and other clinical leaders.

We are already doing work on some of the report's recommendations. Other

recommendations relate to specific challenges for NHS England, such as how contracts for commissioned services are managed. However, let me be clear that work on some of the recommendations has already begun. A number of the recommendations will require much more detailed consideration of their relevancy to NHS Scotland systems and processes—for instance, recommendations around data systems.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** Some members of the Scottish National Party and Green Government have questioned the integrity of the evidence in the Cass report. Given that gender-identity healthcare is a key part of the Bute house agreement and that Government spokespeople are publicly discrediting it, for the sake of young and vulnerable people, will the minister now consider ditching the Bute house agreement, the coalition of chaos?

**Jenni Minto:** I am here to speak directly to the young people and children and their families who have been impacted by the decision. I want to find the best way through for them, and that is why I am working closely with clinicians in NHS Scotland and with researchers.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** The review is clearly important and very detailed, and it requires further detailed consideration. However, we must remind ourselves, as the minister has said, that it focuses on services in NHS England, not NHS Scotland.

Does the minister agree that, regardless of anyone's position on the matter, it is essential that adequate time is taken to consider the report and that any knee-jerk reactions, one way or the other, are avoided?

**Jenni Minto:** As I have said, it is a 400-page report, and a knee-jerk reaction to a report that concerns a health system that is different to Scotland's would not, in my view, be helpful for patients or their families. That said, it is vital that the recommendations are carefully considered to assess whether and to what extent they are relevant to the approach to gender-identity healthcare in Scotland, and to consider what steps may need to be taken as a result.

**Carol Mochan (South Scotland) (Lab):** I thank the minister for her statement and agree that it is right that we proceed carefully and compassionately. Given that Dr Cass's report is founded on strong scientific evidence, and given that there were interim recommendations, we in the Parliament saw what was coming to us. Why will the Government not be clearer in outlining its position on whether it believes that all the recommendations ought to be implemented? Does the minister believe that sitting on the fence to protect the stability of the Bute house agreement is a tenable position?

**The Deputy Presiding Officer:** Minister.

**Carol Mochan:** Further to that—

**The Deputy Presiding Officer:** Minister.

**Jenni Minto:** I thank Carol Mochan for her support in recognising that we need to take time to review the contents of the report. As I have pointed out on a couple of occasions, the report was commissioned by NHS England and looked at England. Not all the recommendations link back to Scotland, which is why we are taking that time.

**Clare Haughey (Rutherglen) (SNP):** I refer members to my entry in the register of members' interests. I hold a current NHS Greater Glasgow and Clyde staff nurse bank contract. The people who should be at the front of our thoughts are the young people who are affected by this change. What steps are being taken to support the young people who have been affected—those who are accessing and those who are waiting to access services about their care—and their families?

**Jenni Minto:** I thank Clare Haughey for her question and for bringing it back to those young people who have been affected by the change. In addition to the work that I have highlighted to contact and support young patients in the Sandyford young people's gender service who are most impacted by the change that was announced last week, NHS Greater Glasgow and Clyde has engaged with people on the YPGS waiting list to identify any unmet needs. It is also working with third sector organisations to provide additional support, specifically for those who are on the waiting list for the service, as well as dedicated staff to act as conduits between those on the waiting list and expanded support.

In addition, the Scottish Government is supporting NHS Greater Glasgow and Clyde and NHS National Services Scotland to consider how best to provide national specialist young people's gender care in Scotland.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** We need to remember the young people who are at the heart of this, many of whom will be in a state of profound distress. We need to get to a space where every one of them gets access to the quality care that they need. There are aspects of the report that some will find challenging, not least the stated lack of an existing evidential base for care pathways that have now been paused. There is therefore an urgent need to commission more medical research to promote greater understanding in the field. What role does the minister foresee for NHS Research Scotland and the chief scientist office in building that timely and comprehensive evidence base, ensuring that

young people and their clinicians can make informed decisions about their care?

**Jenni Minto:** I agree that it is a challenging report. As I highlighted in my statement, we have granted the University of Glasgow funds to do some research in the field, but we also work very closely with the chief scientist office.

**Jackie Dunbar (Aberdeen Donside) (SNP):** Dr Hilary Cass highlighted that the

"increasingly toxic, ideological and polarised public debate"

does nothing to serve the young folk accessing this care, their families nor the NHS staff who care for them. Does the minister agree that it is vital that we all do everything that we can to take the heat out of the issue and to redouble our efforts to deliver the best outcomes for young folk accessing this care?

**Jenni Minto:** I absolutely agree. As the First Minister highlighted last week, the toxicity of the debate is perpetuated by adults, and that is unfair to the children who are caught in the middle.

As Hilary Cass highlights, we must remember that

"there are real children, young people, families, carers and clinicians behind the headlines."

We know that the heated debate not only impacts young people and their families but clinicians and, interestingly, even Dr Cass herself. It is the responsibility of all of us to take the heat out of the debate and to put the focus where it should be—on the young people who need this care.

**Gillian Mackay (Central Scotland) (Green):** Many young people will be concerned about the effect of last week's decision to pause the prescriptions of hormones on their healthcare journey. Our solidarity should be with them. We need to work as quickly as possible to ensure that the concerns of the clinicians are resolved so that they can provide care with confidence. Scottish Trans has suggested that we should consider setting up our own research study. Can the minister outline what steps the Government is taking to resolve the current situation and how we can ensure that lived experience is at the heart of any action going forward?

**Jenni Minto:** I thank Ms Mackay for her engagement on the issue and her shared concern for the young people who are most impacted by the change.

As I highlighted in my statement, NHS Scotland is already engaging as an observer with NHS England's research study regarding puberty blockers, and discussions are on-going among clinical stakeholders on what further involvement may be appropriate. The chief scientist office in the Scottish Government is also involved, given its expertise in clinical research. I hope that we will be able to update Parliament on the outcome of those discussions soon.

In addition to the NHS England research study, we have already provided grant funding to the University of Glasgow, as I mentioned in response to Mr Cole-Hamilton's question.

Hearing from those with lived experience of accessing or waiting to access gender-identity healthcare is vital. To support our national work to improve those services, we have put in place a lived experience co-ordinator to engage and consult with trans communities across Scotland. As I laid out in my statement, I remain absolutely committed to my own engagement with young people who are affected.

**Roz McCall (Mid Scotland and Fife) (Con):** The Cass review highlights the clear acknowledgement of detransition as a growing phenomenon that cannot be ignored; in fact, it was mentioned in the report more than 80 times. I noticed from today's statement that the chief medical officer and the Scottish Government will take time to assess the recommendations. That is yet more time in an already lengthy period in which detransitioners have largely been ignored, often victimised and repeatedly castigated. Is detransitioning included in any of the work that has already been commissioned by the Scottish Government? Will it be included in any additional commissioned work, including the round-table session that the minister mentioned in her statement? When will Parliament be updated on plans to support detransitioners?

**Jenni Minto:** As I noted, the chief medical officer has agreed to update Parliament by writing on the clinical side before the summer recess. Given that we are talking about all of what is contained in the Cass review, I think that detransitioning should be included. I will feed that back to the chief medical officer to ensure that it is.

**John Mason (Glasgow Shettleston) (SNP):** One of Dr Cass's main criticisms of the system in England was a failure to reliably collect even the most basic data. She also said that NHS adult gender services initially refused to co-operate in sharing data. Can the minister assure us that that is not the case in Scotland?

**Jenni Minto:** I cannot comment on specific data systems or collection in NHS England's commissioned services. However, we are committed to improving data collection for gender-identity healthcare in Scotland. As I mentioned, Public Health Scotland has been commissioned to develop quarterly aggregate data collection for NHS gender-identity clinic waiting times, focusing on a number of new referrals and lengths of waits from initial referral to first out-patient consultation

with a specialist. Although that is a technical commission, the detail of which is being worked through by Public Health Scotland and territorial health boards, Public Health Scotland currently intends to publish the first of that information in late summer 2024.

**Sue Webber (Lothian) (Con):** As the minister will be aware, the Education, Children and Young People Committee wrote to the First Minister about the Cass review last week. We called for a clear timeline to be established for a Scottish response to the review. The committee also called for a comprehensive children's rights and wellbeing impact assessment to be carried out. That is because we recognise that the Cass review raised some very complex and sometimes competing children's rights considerations. Will the minister undertake to carry out such an assessment? When will that be done? How will she ensure that that fully explores the rights of children and young people across Scotland?

**Jenni Minto:** I am aware of the letter that Sue Webber sent. I responded to her colleague Meghan Gallacher's letter this morning, and I copied my response to the Health, Social Care and Sport Committee and the Education, Children and Young People Committee. Along with my education colleagues, I will take some time to look at the contents of Sue Webber's letter before responding in writing.

**Michelle Thomson (Falkirk East) (SNP):** The Tavistock clinic, which is based in London, is facing mass legal action claims because some young people feel that they were rushed into a medical pathway. Given that the Sandyford clinic in Scotland uses the same guidelines, what assessment has the Scottish Government made of, and what discussions has it had with NHS bodies about, the possibility of similar legal action occurring in Scotland?

**Jenni Minto:** I have had no discussions on that topic, but I will bear in mind what Michelle Thomson has said and respond to her in writing.

**Pam Gosal (West Scotland) (Con):** Women's rights groups across Scotland and the rest of the United Kingdom have welcomed the Cass review's findings. However, last year, the then First Minister said that some of those opposed to her Government's gender reforms

"cloak themselves in women's rights to make it acceptable, but just as they're transphobic you'll also find that they're deeply misogynist, often homophobic, possibly some of them racist as well."

Does the First Minister agree with that assertion? Does the minister believe that those opposed to gender reform and children transitioning are misogynistic, homophobic and racist?

**Jenni Minto:** I am responding to Pam Gosal's question as the Minister for Public Health and Women's Health. I am focusing on the children and families who have been impacted by the decision last week and on ensuring that clinicians get the right support to make the right decisions and provide the best gender services that we can have in Scotland.

**Ash Regan (Edinburgh Eastern) (Alba):** Given the importance of this issue, the public would have rightly expected the First Minister or the Cabinet Secretary for NHS Recovery, Health and Social Care to have made the statement.

On 28 March, I asked the health secretary to pause the prescribing of puberty blockers in Scotland. Now, it seems that he was unaware that clinicians at the Sandyford clinic had made the decision to stop doing so in mid-March.

When will the Government schedule a full debate on the comprehensive findings of the Cass report and its many implications for health, education and law in Scotland? From listening to the minister today, it seems as though the Government has not read or absorbed Cass's conclusions. Is the Government really saying that it does not accept the report's recommendations in full?

**Jenni Minto:** As I pointed out in previous answers, the Cass report was commissioned by NHS England and looked at services in England. As a result, not all of its recommendations will fit with our pathways in Scotland.

**Rachael Hamilton:** On a point of order, Presiding Officer. In relation to the Scottish Government's dither and delay regarding the Cass review, will the minister care to correct the record about something that she said in her statement? She said:

"As I have said consistently, it is not for politicians or civil servants to make ... decisions about clinical pathways."

However, in 2018, health boards were instructed by the then health secretary, Jeane Freeman, to completely stop all transvaginal mesh procedures until new protocols were developed, so I invite the minister to correct the record with regard to the Government saying that it cannot make decisions about clinical pathways.

**The Deputy Presiding Officer:** I thank Rachael Hamilton for her point of order. As she knows, the content of members' contributions is not a matter for the chair.

There will be a brief pause to allow front-bench members to change before we move on to the next item of business.

# Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 1

**The Deputy Presiding Officer (Annabelle Ewing):** The next item of business is a debate on motion S6M-12922, in the name of Angela Constance, on the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 1.

I invite members who wish to speak in the debate to press their request-to-speak button. I call the cabinet secretary to speak to and move the motion.

15:00

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** I open the debate with my thanks to the Criminal Justice Committee for its stage 1 report on the Victims, Witnesses, and Justice Reform (Scotland) Bill. It represents comprehensive scrutiny, over many months, of an important bill that aims to improve the experience of victims while protecting the rights of the accused.

I welcome that the committee took evidence from victims and survivors, and that it did so in a way that supported them to tell their story and be part of improving the justice system. I thank everyone who gave evidence to the committee, particularly victims and survivors, who—quite rightly—are at the centre of bill and the process of reform.

I want to reflect on why the bill is needed. Scotland's justice system has evolved over centuries. Similarly, our definitions of what is criminal behaviour have changed over the years, reflecting changes in societal attitudes. Those two elements go hand in hand: our system must be capable of delivering justice for victims of all crimes and adapting where it is not serving us well. No part of the system should be exempt from scrutiny.

Although there have been positive, iterative reforms over the years, the committee has heard compelling evidence that, for many, the process of getting justice is just as traumatic as the crime itself, or, where a case results in a verdict that has no definition and cannot be explained to the victim or the accused, it can feel like there has been no justice. That is simply not good enough.

The bill proposes a package of reforms that responds to the views and concerns shared by victims and survivors. It is informed by the work of the victims task force; Lady Dorrian's review, "Improving the Management of Sexual Offence Cases"; and independent large-scale jury research.

We want to deliver a system in which victims are treated with compassion and their voices are heard; that meets the needs of survivors of sexual offences, the majority of whom are women and girls; and that is more modern and transparent, enhancing public confidence.

I am pleased that the Criminal Justice Committee supports the general principles of the bill. I welcome the committee's recognition of justice agencies' commitment to trauma-informed practice, alongside an acknowledgement that more needs to be done to embed that across the system.

The bill creates a statutory definition of trauma-informed practice and introduces a requirement for justice agencies to set standards for, and report on, trauma-informed practice.

The bill will strengthen on-going non-legislative work, including the knowledge and skills framework, which was introduced last year. The committee heard from many witnesses that legislation is key in that regard. As Lady Dorrian said,

"it will provide the ... impetus towards creating that necessary culture change."—[*Official Report*, *Criminal Justice Committee*, 10 January 2024; c 6.]

The bill recognises that civil proceedings can also cause trauma. It enhances protection for vulnerable parties and witnesses in civil cases, by extending the use of special measures and by protecting people who have suffered abuse from being cross-examined by their abuser.

The bill seeks to reduce trauma and improve experiences through the creation of two new automatic rights for victims of sexual crime.

The right to anonymity for victims of sexual and certain other offences is particularly important in today's social media age. It will help protect victims' privacy and dignity and may increase the confidence of victims to report offending.

The publicly funded right to independent legal representation for complainers when requests are made to lead evidence about their sexual history or character is a substantial change to a deeply intrusive aspect of sexual offence cases. It will mean that a complainer is recognised as a party in the proceedings in respect of such applications, helping to ensure that they understand the process and that their voice is heard.

I very much welcome the committee's view that the not proven verdict has "had its day". It is a verdict that is not defined or well understood, and which can lead to confusion and trauma for victims and stigma for the accused. The bill will abolish the not proven verdict in all criminal cases and retain the widely understood verdicts of guilty and not guilty.

I recognise that the bill raises challenging issues and that some proposals were not supported by the committee, including the jury reforms that accompanied the removal of the not proven verdict. The bill proposes reducing the number of jurors in a criminal trial from 15 to 12 and changing the size of the majority required for a conviction from a simple majority to two thirds.

The Scottish Government's position is based on evidence that suggests that moving to two verdicts while retaining a simple majority will lead to an increase in convictions in finely balanced cases. No other similar jurisdiction in the world considers it appropriate for convictions to be based on a simple majority decision. The evidence also tells us that groups of 12 deliberate more effectively than groups of 15. However, we have always recognised that a range of experts have differing views on what reforms, if any, should accompany the abolition of the not proven verdict. I respect that the committee came to a different conclusion from what is proposed in the bill and I will think carefully about the issues that the committee has raised.

**John Swinney (Perthshire North) (SNP):** I am grateful to the cabinet secretary for giving way and for the remarks that she has just placed on the record, because this is a significant issue.

In her further consideration, will the cabinet secretary take into account the Scottish jurisdiction's requirement for corroboration? That is a significant material factor in the judgment that she needs to make about the content of the proposal.

**Angela Constance:** We will of course consider the debate in and around the jury majority with sensitivity and in depth, and we will look at all the relevant issues and engage with all the relevant stakeholders. This is an area of the bill that involves finely balanced judgments. We need to proceed in a manner in which we all work together and give careful and deep consideration to the issue. I reiterate the importance of this part of the bill and I reiterate that the Government will reflect in detail on the wide range of comments that the committee has scrutinised.

The proposed victims and witnesses commissioner will provide an independent voice for victims and witnesses, champion their views and help to ensure that their interests are at the heart of the justice system. I note the committee's reservations, particularly around resource and the impact on victim support organisations. However, I believe that the role can be established in a way that is cost efficient and which will enhance the work of support organisations rather than diminish or duplicate their efforts.

During the evidence sessions, lack of accountability was an issue that kept being raised. No existing public body or organisation has the statutory power to hold justice agencies to account in relation to how the rights of victims and witnesses are met or upheld, nor can that role be given to a third sector organisation. The commissioner will provide that accountability.

I turn to parts of the bill that focus on sexual offences and where there are mixed views. Both Lady Dorrian and the Lord Advocate emphasised that we need to make seismic and structural statutory changes to ensure that victims and survivors have meaningful access to justice. The bill does that through the creation of a new national sexual offences court. Complainers' experiences will be improved through greater use of pre-recorded evidence, better judicial case management and mandatory trauma-informed training for all involved in the court. A new and distinct court will bring about the necessary shifts in culture, practice and procedure. Cases will be brought to trial more quickly through more efficient use of existing court and judicial resources, helping to reduce delay, which is a significant cause of distress and trauma for complainers.

Victims cannot afford for us to rely on the historical status and structure of the existing court system to deliver changes that we all agree are needed and which the status quo has singularly failed to deliver. If we fail to take ambitious action now, we risk consigning victims to unnecessary retraumatisation through a court system that is not sufficiently specialised or focused on improving victims' experiences. That is a risk that I am not prepared to take. I recognise that the committee has concerns about certain aspects of the court, and I will work very hard with members and justice partners to address each one.

The bill enables a time-limited pilot of single-judge rape trials. The proposal for the pilot is informed by complainers' experiences of the trial process, by numerous studies on rape myths and by the fact that the conviction rate for rape is consistently lower than the rate for other crimes. Soberingly, new data that is based on management information from the Scottish Courts and Tribunals Service, and which we have included in our response to the stage 1 report, shows that, for the kind of cases that the pilot is intended to focus on—namely, single-charge, single-complainer rape and attempted rape cases—the five-year average conviction rate is just 24 per cent.

The purpose of the pilot is to provide much-needed evidence to let us have a properly informed debate on an enduring issue that undermines confidence in our criminal justice system. I acknowledge that there are differences

of opinion on the court and the pilot. I will reflect on that, as I have already done in the response to the committee. I have intimated that I will lodge amendments at stage 2, and I will speak more about that in my closing remarks. However, it is clear that our justice system needs to change the way in which it responds to serious sexual offending.

As legislators, it is our role to determine the legal frameworks that ought to be in place, and no part of our justice system should be exempt from review and, if necessary, reconsideration.

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** The cabinet secretary already knows my position on juryless trials, so I will not reprise that. However, I would like clarification that the proposal is for a pilot of juryless trials for rape cases rather than serious sexual offence cases. I do not want the lines to be blurred. Can I have clarification on that?

**Angela Constance:** I can give clarification to Ms Grahame that the pilot, whatever form it takes, is to look at rape and attempted rape cases. I have already given commitments to the committee to put more detail in the bill on the criteria for and the operation of the pilot.

The bill has been shaped by cross-sector consideration and collaboration, and I am absolutely committed to taking the same approach as it progresses through Parliament. I will work constructively with members from across the chamber, with our stakeholders and partners and with victims and survivors to deliver the transformational change that is required. I am sure that members will approach the bill in the same spirit in which we have thus far debated and discussed it in the committee process, which I believe has been to the highest possible standard.

I know that the issues that the bill deals with are significant and complex. As parliamentarians, we are making decisions that will have far-reaching consequences, but I believe that the case for change is clear and that the time for change is now, and that it is incumbent on us to work together to deliver the justice system that our society needs and deserves.

Giving evidence to the committee, Lady Dorrian said:

> "if we do not seize the opportunity to create the culture change from the ground up ... there is every risk that, in 40 years, my successor and your successors will be in this room having the same conversation."—[*Official Report*, *Criminal Justice Committee*, 10 January 2024; c 22-23.]

I will continue to work with members, and I invite them to work with me on this landmark bill.

I move,

That the Parliament agrees to the general principles of the Victims, Witnesses, and Justice Reform (Scotland) Bill.

**The Deputy Presiding Officer:** I now call Audrey Nicoll to speak on behalf of the Criminal Justice Committee.

14:15

**Audrey Nicoll (Aberdeen South and North Kincardine) (SNP):** I am very pleased to speak in this afternoon's debate on behalf of the Criminal Justice Committee. I extend the committee's sincere thanks to the clerking team, who worked tirelessly to support members in what was a significant piece of work, and to colleagues from the Scottish Parliament information centre and the participation and communities team—PACT—who also supported the committee throughout our consideration of the bill at stage 1.

The committee's stage 1 report has been a major piece of work. From the outset, we were clear that we needed to take the necessary time to consider the bill in a thorough and balanced way. Beginning in September last year, we took 36 hours of oral evidence over 14 meetings. We received 262 responses to our call for views and heard from 64 witnesses. Our report is 200 pages long.

Not everyone will agree with all our conclusions, but we ensured that we heard all sides of the arguments on the main issues. Throughout our report, we referred to the important evidence that we heard from survivors of sexual crime, and I thank all those survivors who gave evidence. Their evidence was powerful and invaluable in helping us, as members, to shape our thinking about the bill.

The words of one of those survivors remind us all why the bill is so important:

> "when we talk about what happened, each one of us mentions the exact date that our case went to trial. We remember the date that we were raped, but we also remember the date that we went to trial, because they are as traumatic as each other."

I acknowledge the constructive way in which my fellow committee members worked together to scrutinise the bill. As a result, a great majority of our report was agreed unanimously.

I wish to highlight the main conclusions and recommendations that were reached by the committee. I will leave it to others to comment on the Scottish Government's response to our report, but I thank the Cabinet Secretary for Justice and Home Affairs for her constructive engagement with the committee throughout stage 1 and for her willingness to consider changes to the bill following our recommendations.

Turning, first, to part 1 of the bill, on the proposal for a victims and witnesses commissioner, we heard evidence about the potential benefits of establishing the commissioner post. The commissioner could champion the voices of victims and witnesses, highlight areas of concern to policy makers and promote good practice. However, the committee heard about the wider implications of creating a new commissioner post, including the costs associated with having another commissioner at a time when public finances are under significant pressure. We also heard concerns that the commissioner could be another layer of bureaucracy and could stand in the way of victims and advocacy groups engaging directly with policy makers.

Overall, we remain to be convinced that a strong case has been made for the establishment of a commissioner. Instead, better outcomes may be achieved by focusing spending on areas where there is a more direct benefit for victims and witnesses. We recommend that, if a commissioner post is established, it should be for a time-limited period to allow for an assessment to be made of the value of the role.

Part 2 of the bill proposes embedding trauma-informed practice in the criminal justice system. As a committee, we support that objective. Some of the evidence from survivors about the trauma that they experienced as a result of their treatment in the justice system was truly shocking to hear. We made several recommendations about how that part of the bill could be improved. For example, the definition of trauma-informed practice should be strengthened to bring it in line with the knowledge and skills framework created by NHS Education for Scotland.

We concluded that training in trauma-informed practice should be extended to include defence lawyers and judges participating in all court proceedings. Although we recognise the independence of the judiciary, we recommend that court rules should require that court proceedings must be conducted in line with trauma-informed practice. We noted that legislation is not necessarily required to deliver improvements, and survivors highlighted improvements that could and should be delivered now.

Part 4 of the bill proposes to remove the verdict of not proven in criminal cases and to reduce the size of juries from 15 to 12, with a majority for a guilty verdict set at eight. Those are fundamental reforms of great significance to the criminal justice system. On the basis of the evidence that we heard, we concluded that the not proven verdict has had its day and it should be abolished. We do not think that it is satisfactory to have a verdict that has no accepted legal definition and cannot be explained to a jury. Furthermore, we heard compelling evidence about the devastating impact that the verdict can have on victims and, sometimes, the accused. The proposed changes to jury size and majorities are designed to balance the system as the Scottish Government believes that abolishing the not proven verdict will make convictions more likely.

However, we received contradictory evidence about whether those balancing changes are in fact needed. Notably, the Lord Advocate told us that the proposed changes were “very concerning” and that it was her view that acquittals could increase as a result. That left us in a difficult position when it came to drawing conclusions, given those conflicting views. Ultimately, although we supported the abolition of the not proven verdict, we did not hear compelling and convincing evidence to support the balancing changes to jury size and majorities proposed by the Scottish Government in the bill. Unfortunately, we also did not hear convincing evidence in support of any specific alternatives proposed by others. As such, we agree that the not proven verdict should be abolished and that further thinking needs to be done on what else, if anything, is required.

Part 5 of the bill proposes the establishment of a new sexual offences court, which would have the power to deal with a wide range of serious sexual offences, including rape, and other charges appearing on the indictment, including murder. Its jurisdiction would extend across the whole of Scotland.

Some members support the proposal for a new sexual offences court. For those members, the model of a new sexual offences court has the potential to deliver improvements in the handling of sexual offence cases that cannot be realised using existing mechanisms. Other members do not support a stand-alone sexual offences court. Their view is that it would be possible to achieve the necessary improvements through the creation of a specialist division of the High Court and the sheriff court.

Despite that difference of views, we agreed on a series of recommendations to enhance the proposals in the bill. For example, we made recommendations about the level of legal representation that should apply in the new court. It is important that there should be no perception that a sexual offences court lacks seriousness or solemnity. We also recommended that the Scottish Government amend the bill so that any case involving murder can be tried only in the High Court, as happens now.

I turn to the proposal to pilot judge-only trials for rape cases without a jury. That is a very controversial proposal on which there has been considerable debate. In our report, we set out in detail the wide range of views that we received.

Ultimately, members of the committee reached different conclusions as to whether the pilot should go ahead and under what conditions. Those positions are set out in detail in the report. However, we made a series of recommendations, which were all agreed to by members.

We recommend that more details about the criteria for assessing the pilot should be included in the bill. Any regulations that are introduced for a pilot should be subject to more detailed consultation and parliamentary scrutiny, with time allowed for detailed consideration of draft regulations. We recommend that the Scottish Government should amend the bill to make it clear that the pilot could be run only once. Finally, we highlight the idea that an alternative to a single-judge trial would be a panel of judges.

I have given a short summary of some of the committee's main recommendations, and I refer members to our conclusions on other parts of the bill.

Part 3 would expand the availability of special measures in civil cases. Part 6 would provide for independent legal representation for complainers when applications are made under rape shield provisions, and it includes provisions for automatic statutory anonymity for various sexual and related offences. In summary, we supported those provisions in principle, but we made some recommendations for improvement to the details in the bill.

Although the committee is content to agree to the general principles of the bill at stage 1, we note that further improvements can be made. Committee members did not support every proposal in the bill, but we all recognise that it has the potential to improve the justice system for victims and witnesses, and we wholly support that. For some members, the final composition of the bill at stage 3 will determine whether, ultimately, they feel able to support it. In the meantime, we stand ready to give the bill our detailed scrutiny at stage 2.

15:27

**Russell Findlay (West Scotland) (Con):** I thank the Criminal Justice Committee team for their assistance and not least for the unseen work of the eternally patient researchers and clerks. Committee members rely on witnesses sharing their insights, experiences and expertise, and particular recognition should be given to victims, including survivors of sexual violence, who waived their anonymity to deliver powerful and compelling testimony.

According to its title, the bill is ostensibly about victims. Members might not know that its working title was the "Criminal Justice Reform (Scotland) Bill". The bill is mainly about justice reform, as the original name had it. It is a vehicle to deliver some of the most profound changes to Scotland's criminal justice system for, perhaps, centuries. Some might like to describe the changes as bold and radical, but I believe that much of it is experimental and founded on wishful thinking rather than hard evidence.

It is unlikely that many members will have read our stage 1 report—all 205 pages of it—but I will attempt to summarise it. The bill is in six parts. Before I come to each part, I note that I believe that one of the most important overarching issues with the bill is that it is, frankly, far too big. The Government has a track record of bad law—clunky, confusing and unworkable. The Parliament cannot allow that to continue. In that vein, I am encouraged by media reports of some Scottish National Party members being willing to stand up and be counted today.

Part 1 of the bill would create the role of a commissioner for victims and witnesses. On the face of it, what is not to like? A commissioner would fight for the rights of victims and witnesses and be a champion for those who are afflicted by crime and justice system failures. However, the commissioner would not be able to become involved in individual cases, so what is the point? Does Scotland's public sector really need yet another hugely expensive functionary producing reams of jargon? Committee members were not persuaded by the Government's proposal for a commissioner—and that was unanimous.

Part 2 of the bill requires some criminal justice agencies to "have regard" to what is called trauma-informed practice. Having spent months talking about, and listening to people talking about, trauma-informed practice, I am still no clearer on its exact definition. Our stage 1 report raised numerous concerns, including the observation that

"legislation is not necessarily required to deliver improvements".

I believe that that is a significant understatement. Victims and witnesses have been disrespected for far too long and a lack of basic compassion, courtesy and communication often causes great distress. Look at the ordeals of the seven women who appeared in the recent BBC "Disclosure" documentary "Surviving Domestic Abuse"—they do not want legislative platitudes.

It is notable that some of the justice organisations that back trauma-informed practice have a track record of failing victims. The new report by His Majesty's Chief Inspector of Prosecution in Scotland, Laura Paton, says that many of her 27 recommendations relate to matters that are already required but that are not yet being routinely delivered by the Crown Office.

Part 3 of the bill would introduce special measures in civil court cases. Once again, on the face of it, that is largely agreeable. However, as our stage 1 report points out, legislation relating to special measures has still not come into force four years after being passed by Parliament. I raised the issue of what is known as "legal system abuse" with the cabinet secretary. That is when abusers, mostly men, who are facing criminal proceedings simultaneously weaponise the civil court system to inflict further trauma. I put a simple fix to the cabinet secretary, suggesting that the same sheriff should preside over connected criminal and civil cases. I felt that her response was lukewarm, but that practical measure could make a real difference.

Part 4 of the bill calls for the abolition of the not proven verdict.

**Christine Grahame:** Will the member accept an intervention?

**Russell Findlay:** I will.

**Christine Grahame:** I thank the member for his tone and for his thoughtful contribution. There you are.

When I was in practice as a civil practitioner many moons ago, that already happened. When one of the parties was involved in a criminal matter, the same sheriff would quite often sit in both the civil proceedings and the criminal ones, so that is nothing new.

**Russell Findlay:** I thank the member for her intervention and have dialled down my flamboyance for her today.

I agree. The member speaks to a point that is a recurring theme, which is that much of what could be done can be done without legislation.

The not proven verdict came into being entirely by accident, not by design, and does not exist in any comparable jurisdiction. It is an acquittal that is no different from a not guilty verdict but has no legal definition. Countless victims, and their surviving relatives, have been devastated by that verdict.

A guilty verdict can be returned only when the Crown Office proves its case beyond reasonable doubt. If it has not done so, an acquittal must follow. I therefore do not see how case outcomes would be altered by the removal of the not proven verdict.

That brings me to another provision in part 4, one that the Government thinks is needed alongside the abolition of not proven. The Government wants to reduce jury size from 15 to 12, which would be consistent with comparable international jurisdictions. The existing system allows for a guilty verdict on the basis of a simple majority of eight out of 15, but the Government seeks to change that to a two thirds majority—eight out of 12—for conviction.

That proposal appears to please no one. Defence lawyers say that it is inconsistent with international practice, where either unanimity or a majority of 10 or 11 out of 12 is required, while the Lord Advocate would like the bill to be amended to include provision for a retrial in the event of seven out of 12 jurors believing that the accused is guilty. The committee is not convinced that abolishing the not proven verdict necessitates changes to juries. Members agreed unanimously that the evidence is not there for that.

Part 5 seeks to create new sexual offences courts, which would be not new courts but existing courts with different signs on the door. One of the committee's concerns is that they might result in a perceived downgrading in the treatment of sex crimes, and another is that they could hear murder cases where charges of a sexual nature are also on the indictment. In response, the Government has said that it is considering stage 2 amendments. I look forward to seeing the detail of those.

Part 6 seeks to give sex crime victims automatic lifelong anonymity. It is a tribute to Scotland's news media that that right has long been respected by convention alone. However, although we support the proposal, there are unresolved issues relating to potential criminalisation of free speech. Part 6 would also give complainers in sex crime cases the right to legal representation in specifically defined circumstances. That is another proposal that instinctively seems agreeable, but there are concerns about the financial cost and fears about the unintended consequence of adding to delays for victims.

I will end on the Government's single most contentious proposal, which is to scrap juries in some rape trials. That would be a departure from the long-established right of a person who is accused of a serious crime to a trial by a jury of their peers. We believe in the value of juries, which are the cornerstone of the justice system. They reflect wider society and comprise a diverse range of views and life experiences. There is insufficient evidence to justify what would amount to an experiment with people's lives.

One argument for the proposal is that jurors—in other words, the Scottish public—are prone to believe so-called rape myths, but where is the evidence for that? Furthermore, it was only late last year that Scottish judges began to address jurors about rape myths, despite that being long-established practice elsewhere in the UK, and we really need to see what impact that will have. In addition, as much as ministers might want to wish away threats that such proceedings would be

boycotted by lawyers, they cannot do that. The Scottish Conservatives also have other concerns about juryless trials, which are set out in the stage 1 report.

We find ourselves in a difficult position today—a position that is of the Government's making. My party's Holyrood manifesto contained a real victims bill in the name of our next speaker, Jamie Greene. It also included abolition of the not proven verdict. However, the bill that is in front of us today is vast, unwieldy and complex. There is a lack of evidence, there are too many unanswered questions, and it is experimental—perhaps even dangerously so. The Government appears to be experimenting in much the same way as a mad scientist at work. Another committee member described the bill as being like a Rubik's cube in that, if you fix one side, you realise that you have messed up the rest of it.

It would be easy to vote against the bill today, but we will instead abstain to send the Government a very clear message. The bill can be fixed and it must be fixed. The Government needs to engage, to listen and to think again.

15:38

**Pauline McNeill (Glasgow) (Lab):** I sincerely thank my colleagues on the Criminal Justice Committee and the committee clerks for what is an excellent report. The convener outlined its contents earlier. It is clear that we need transformative change in our justice system for victims and complainers when it comes to rape and sexual offences. I, too, welcome the fact that we were able to engage so closely with the victims who put themselves forward to speak to the committee.

Scottish Labour supports the Government's aims and the view that it is time for change, but we believe that it needs to have a comprehensive plan to look separately at each reform in the bill. We believe that there is too much substantial reform for one bill.

We also believe that a lot can be achieved without legislation. In fact, some of that change is already beginning to happen. Examples are the giving of evidence by commission, which the cabinet secretary mentioned, and the tightened application of section 275 of the Criminal Procedure (Scotland) Act 1995 for rape trials. As we heard, the Lord Advocate has made a huge difference in ensuring that victims get more access to their lawyers, and the judge is now required to charge the jury specifically on the question of rape myths. I give all credit to all those who have been involved in that.

**Angela Constance:** I wonder whether Pauline McNeill is aware of the written evidence of the senators of the College of Justice, in which they said that, despite the new jury directions, juries were still regularly acquitting in cases in which the judge believed that there was "credible and reliable evidence" for a conviction.

**Pauline McNeill:** I acknowledge that, but I hope that the cabinet secretary agrees that some progress has been made, in that judges are now expected, in every case, to talk about rape myths. I credit Rape Crisis Scotland and other organisations for making that happen.

However, from listening to victims, it is clear that we need to break down the barriers that prevent them from telling their story in court, and to allow more access to advocate deputes. We heard from victims that they feel like bystanders at their own trial, and we absolutely must fix that. We support the embedding of trauma-informed practices, which is included in the bill, although, as the committee has said, the scope of trauma-informed practice should be extended to all practitioners, including the defence.

A whole-system approach needs to be taken in order to make the system better for victims. We talked about a single point of contact. From the pleadings of victims to the Criminal Justice Committee, it is clear to me that they want to have a single point of contact, communication with the Crown, communication with the advocate deputes in their case and an understanding of what is going on in the trial that concerns them. We can do that without legislation.

Delay is one of the biggest reasons why victims are exercised about how the criminal justice system treats them. I point out, as I have many times, that even laws that are passed by the Parliament to prevent delay, which specify that there should be a criminal trial within 140 days, are excessively exceeded, as they have been for several years.

We also support anonymity for rape victims.

However, most of the other changes that are proposed in the bill are still problematic, and I will go through them in some detail.

Scottish Labour opposes the use of juryless trials as set out in the bill. It is concerning that the proposal is described as a "pilot". Sheila Webster of the Law Society of Scotland made the point that

"It is not truly a pilot. We are talking about live cases here. People's lives will be permanently affected, and at the end of the pilot we might decide that it was not a very good idea."—[*Official Report, Criminal Justice Committee,* 24 January 2024; c 62.]

A key issue is that of what would constitute success. I acknowledge that the Government has said that it will put that in the bill, but we have been told that although it is not designing a system

specifically to increase conviction rates, it will still assess outcomes—which, we assume, will include conviction rates.

In relation to the pilot, Professor James Chalmers told the Criminal Justice Committee that

"it would be surprising if conviction rates did not factor in the decision whether to go forward with the reform"—[*Official Report, Criminal Justice Committee*, 24 January 2024; c 24.]

and, despite the Government's claims, legal professionals have voiced their concerns that conviction rates are likely to be used as a marker of success.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Does Pauline McNeill believe that a 24 per cent conviction rate in single-charge rape cases is acceptable?

**Pauline McNeill:** No, I do not. In case the member has misunderstood my point, the Government has said throughout that it is not specifically aiming to increase conviction rates, but it is unclear how the success of the pilot's outcomes will be measured. That is a particularly important point.

I come to the question of low conviction rates. Simon Brown, from the Scottish Solicitors Bar Association, pointed out to the committee:

"If we drill down to basics, the pilot is a response to a perception that the conviction rate for rape trials is too low. Therefore, by any objective test, the pilot can be a success only if it increases conviction rates. If it does not increase conviction rates, what is the point of it?"—[*Official Report, Criminal Justice Committee,* 6 February 2024; c 4.]

Clearly, we must have fair and balanced outcomes. I agree with the Government that it would be dangerous to set out to reform a criminal justice system specifically to increase conviction rates. I support Rona Mackay's assertion that the conviction rate is too low. However, a lot of evidence suggests that supporting victims in court to tell their full story will lead to better-quality evidence and more convictions. Nobody can tell me that that can be overturned.

**Christine Grahame:** Will the member take an intervention?

**Pauline McNeill:** Is there any time in hand?

**The Deputy Presiding Officer:** Yes—there is a limited amount of time in hand.

**Pauline McNeill:** I will take an intervention from Christine Grahame.

**Christine Grahame:** I am not on the committee, and I do not understand section 65(1), which says:

"The Scottish Ministers may, by regulations, provide that trials on indictment for rape or attempted rape which meet specified criteria are, for a specified period, to be conducted by the court sitting without a jury."

What are those specified criteria?

**Pauline McNeill:** That is one of the things that the Government has responded to—it will put the specified criteria into the bill. That is what I was trying to speak to, because I still have issues with that. For example, the Government has said that one of the criteria will be how single-judge trials are perceived by those people who are part of the trial process. As you can see, that is very difficult to measure.

I will make a final point on juryless trials: the fact that the Government has now said that it does not intend to bring that measure forward until 2028 is of serious concern to Scottish Labour because, if the Government thinks that there is a benefit to having juryless trials, it should really introduce them in the current parliamentary session.

We support the removal of the not proven verdict, because we believe that it has had its day, but a serious issue remains with how we balance the system to ensure that it remains fair. I think that the Government is coming from the right place in that regard, but suggesting that a jury majority would remain at a simple majority of one in order to convict is wrong. The Government's problem is that there is no consensus now on what that majority would be. One of the Government's assertions—rightly so—is that Scotland is the only jurisdiction with a not proven verdict, but we would be the only jurisdiction with a majority of eight out of 12 members.

I know that I need to wind up, Presiding Officer, but, with regard to the specialist courts, Scottish Labour has suggested that we could resolve the issue of rights of audience—which is a serious issue, especially for the accused—and get the balance right by the High Court and the sheriff court having a specific division for that. As things stand, we cannot support the proposals in the bill.

We think that there is too much reform in one bill. We need to examine at stage 2 which of the reforms can really make a difference. The Government has a lot of work to do to convince us. We will be abstaining this evening and, if we cannot resolve those issues at stage 2, we will vote against the bill. It is up to the Government to show that it can resolve some of the outstanding issues.

15:47

**Liam McArthur (Orkney Islands) (LD):** I greatly enjoyed my time on the Justice Committee in the previous session and often find myself missing it, but I do not envy Audrey Nicoll and her colleagues the task of scrutinising this wide-ranging bill. However, I sincerely thank the Criminal Justice Committee for its diligent work, and I add my tribute to the survivors of rape and

sexual assault, in particular, for sharing their experience and informing what I think is an excellent stage 1 report.

I also thank the cabinet secretary and her officials for the time that they have taken to engage with me on the many issues arising from the proposed reforms. We have not always agreed, but I am grateful for the characteristically constructive way in which the cabinet secretary has gone about that task.

This is a tricky bill to speak to, as others have alluded to. It is both expansive and complex, and its complexity is born not just of the number of provisions but of their variety. Russell Findlay made that point. The bill brings together the recommendations of Lady Dorrian's review, alongside other changes. Matters are further complicated by the fact that important changes, which have long been demanded by women's groups and victims groups, have recently been introduced not by Parliament but from the bench.

In last year's Lord Advocate's reference, by overturning Smith v Lees, the High Court appears to have overhauled the principle of corroboration as it applies to sexual offences. As a result, the situation that faces Parliament now, as it considers the bill, is very different from that which applied when the bill was introduced, let alone when Lady Dorrian came forward with her review.

Of course, there are reforms in the bill that are needed—and which, some would argue, are long overdue—and that enjoy fairly widespread support. For example, the introduction of independent legal representation for complainers is very welcome. At present, under section 275 of the Criminal Procedure (Scotland) Act 1995, complainers can be questioned about aspects of their

"sexual behaviour not forming part of the subject matter of the charge".

In reality, that has often opened up a situation in which victims have their privacy violated.

The recent legal victory by pioneering campaigner Ellie Wilson against the advocate who cross-examined her will, it is hoped, lead to real change on that front. However, we should not be placing the burden on victims to fight long and drawn-out battles just for the right to decent, fair and respectful treatment in court. They deserve the right to have someone who will fight their corner. That is what the bill gives them, and Scottish Liberal Democrats warmly welcome that reform, as well as the reform to confirm the anonymity of rape victims. Russell Findlay was right to pay tribute to the media for the way in which they have observed that in practice.

Other aspects of the bill are more concerning. Although I do not have time to go into each of those, I will touch on a few that other members have mentioned. The first relates to the introduction of a specialist sexual offences court and a pilot of juryless trials. I recognise the rationale for those proposals and the reasons why Lady Dorrian came forward with her original recommendations. Nevertheless, I still share the concerns that have been expressed by many, both within the legal profession and among colleagues across the parties, in relation to that aspect of the bill.

Overturning a key tenet of our legal system in Scotland was always likely to stir up a reaction. I know that the justice secretary has sought to respond constructively, but I think that it is fair to say that she has so far been unable to allay those concerns. Defence practitioners have made clear their outright opposition, which makes it unclear how any pilot might work, or indeed what success might look like.

Postponing the pilots until 2028 may sound like a compromise, but it raises the question of why on earth Parliament would put a provision in a bill today, rather than leaving it to a future Government and Parliament to decide, further down the line, whether it was felt to be necessary or appropriate in the light of circumstances at that time.

The Diplock standards for juryless trials elsewhere in the UK include an expanded right of appeal for the accused on matters of fact as well as law. That is a safeguard against case hardening, in which judges, who may think that they have heard it all before, begin subconsciously deciding the facts based on their experience of similar cases and not on the merits of the evidence. The UK Supreme Court has reiterated the importance of that safeguard, as did the Dorrian review itself, yet the Government's proposals include only a narrow right of appeal on matters of law. I understand that the justice secretary has indicated her willingness to make changes, but the proposal seems, at this point, to be beyond salvation.

On a more positive note, Scottish Liberal Democrats remain supportive of the proposed abolition of the not proven verdict, which—as Audrey Nicoll and others suggested—has had its day. Nonetheless, like many witnesses and members of the Criminal Justice Committee, and even the Lord Advocate, we are not convinced about the proposed changes to jury size and majority rules. That aspect may yet be salvageable, but the Government has its work cut out.

Plans to create a separate victims commissioner appear to be well meaning but are misguided.

Instead of swelling the ranks of commissioners and ombudsmen, there is a much stronger case for using any resources that are available to support existing organisations that currently do invaluable work in supporting victims, highlighting their needs and advocating on their behalf.

With this bill, the cabinet secretary appears to be adopting the kitchen-sink approach to justice reform. I appreciate the attraction of doing so when it comes to the interests of victims and witnesses, but I worry that the Government may be biting off more than it can chew in a single piece of legislation. For that reason, while I will certainly be happy to take up the cabinet secretary's offer of continued engagement, as I will with the committee, I find myself very much in the same position as Pauline McNeill in not being able to support the bill at stage 1.

**The Deputy Presiding Officer:** We move to the open debate.

15:54

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Getting the Victims, Witnesses, and Justice Reform (Scotland) Bill to this stage has been a marathon. As a member of the Criminal Justice Committee, I too thank our wonderful team of clerks and researchers, and our convener, Audrey Nicoll, for steering us through so skilfully to get us to where we are today.

The committee is agreed on the aim of the bill, which is to improve the justice journey for victims and witnesses and to ensure that victims of sexual and gender-based abuse are supported in a trauma-informed way when they are at their most vulnerable.

The testimony that we heard from survivors of sexual abuse was shocking and disturbing. At its outset, our stage 1 report highlights quotations that powerfully illustrate the need for the bill. Hannah McLaughlan said:

"Survivors endure trauma as a result of the abuse that they go through, but, having come through the justice system, I would say that I endured trauma not only from my abuser but from the system that is supposed to provide me with justice. That is not acceptable".

Ellie Wilson said:

"Survivors of sexual abuse have already had their agency stripped from them, yet they partake in a criminal justice system that further strips it from them. We are treated like outsiders throughout the process."

Another witness said that she felt as if she was "missing" during the process. Another said that she was so traumatised that she could not remember her name in the witness box. I could fill my contribution with quotes such as those, each one powerful and heartbreaking.

Last week, a report by HM Inspectorate of Prosecution in Scotland claimed that Scotland's prosecution service is failing victims in domestic abuse cases. The report concluded that better communication with survivors is needed and recommended a more victim-centred approach. The Crown Office and Procurator Fiscal Service has said that it "profoundly regrets" that it has not always got communication with victims right.

The aim is clear, and doing nothing is not an option. That is the view of the Lord Advocate and of the Lord Justice Clerk, Lady Dorrian, whose review initiated the bill.

As we have heard, the bill is split into several parts. It is hard to do justice to all these huge issues in a short speech, therefore much detail will inevitably be missed in my contribution, but it can be found in our stage 1 report.

**Russell Findlay:** Does the member share the concerns that others have expressed about there being too much in one bill?

**Rona Mackay:** There is no doubt that it is a big bill, but we have taken a long time to scrutinise it and have heard a great deal of evidence. I agree that it is huge, but we have taken a lot of time over it.

Our committee, despite some differences of opinion—which are natural to have in relation to a bill of this stature—worked constructively from the start. That is why I am disappointed to hear that the Opposition parties intend to abstain on the vote today. What a missed opportunity.

On the proposal for a victims commissioner, we heard mixed evidence, and the committee was not convinced that the money could not be better spent on front-line services. However, the Government has highlighted that victim support organisations wish to see accountability and independent scrutiny of the system, and a time-limited period for assessment will be considered. I agree with that.

Trauma-informed practice cannot be a tick-box exercise. A requirement for it has to be embedded in the bill to deliver the pace of improvement that is needed, and that requirement must also apply to defence lawyers, who are currently excluded, for obvious reasons.

Abolition of the not proven verdict is, in my view and the committee's view, essential to the reform of the justice system. It is outdated, it serves neither the accused nor the complainer, and it has to go. However, we did not hear convincing evidence that jury size or the size of majority should be changed. I am pleased that the Government will give consideration to the way forward at stage 2.

I whole-heartedly support the creation of a sexual offences court. The committee was concerned, however, that that would mean a downgrading of the seriousness of rape and sexual crimes, but I am reassured that that will not happen. Bringing sexual offences into a single forum with specialism in trauma-informed practice is long overdue, given that those crimes have doubled in the past 10 years. However, we believe that the same level of legal representation must apply, and I am pleased that the cabinet secretary will consider how that principle could be embedded at stage 2. Similar consideration will be given to where murder cases with a sexual element will be dealt with. The status of the new court is crucial, and I am glad that that issue will also be looked into at stage 2.

The conviction rate for rape is consistently lower than that for other crimes. Of course, that is partly due to the corroboration requirement, but a 24 per cent conviction rate for single rape case complainers is unacceptable. The Lord Advocate told the committee that, in order to improve the justice system for women, radical reform was needed. I accept that a rape trial pilot with a single judge, a judge with two lay members or a panel of judges is radical, but I believe that it is necessary if we are to improve the justice experience for women. Evaluation criteria and assessment of such a pilot are crucial, and that is the task of the current working group. The pilot would provide an invaluable opportunity to gather evidence on rape myths, which undoubtedly exist, as survivors know only too well. It would also create the opportunity to have written judgments from a judge, which would be a huge step forward for victims.

It is true that the committee was split on the issue of juryless trials. It is a bold proposal that I believe we should not shy away from if we truly believe in reform.

Today we vote on the general principles of the bill. The Government is committed to working with those who have concerns at stage 2. Over the past eight months, the committee has heard evidence from people who have been brave enough to speak out about their experiences. This is our chance to improve our ailing justice system and make it fit for the future. We would be failing in our duty to the people of Scotland if we did not pass the bill today.

I urge members to ask themselves whether our current system is working for those who find themselves on a traumatic justice journey and whether we could do better, and to vote to pass the general principles of the bill at decision time.

16:00

**Jamie Greene (West Scotland) (Con):** I thank members for their valuable contributions thus far. It is fair to say that the bill has been on a bit of a journey, perhaps much like my own from the front to the back benches over the past year and a bit. It is one of the largest pieces of legislation that I have come across in this Parliament, in terms not just of its length but its content and perhaps even its controversy. Many of its proposals have split opinion. Thank goodness that this is a stage 1 debate. Of course, members will do what they have to as we go through the process.

The fundamental point is correct: the bill is simply too big. It is trying to do too much in one place. It has also fallen into the trap that we often see in this place of a bill that has good intentions and contains many worthwhile proposals but also has major and controversial changes buried within it. That forces members to make a black-and-white decision at the end of the process on whether we support all of it or none of it. That is regrettable, and I think that many members will find ourselves in that situation in the months to come.

Not since 1707 has such a vast statement of intent about the future of Scots law been so publicly made. I commend some of the proposals in the bill. Many of them echo my proposals in the victims bill that I consulted on almost two years before the Government produced its proposals.

However, there are things in the bill that make me and others quite nervous, and I will focus on those. Some of the bill's proposals raised judicial eyebrows. I do not think that they can be ignored, and much of that is well reflected in the excellent committee report. We have talked a little about the issue of juryless trials. It is fair to say that, if we were having this debate back in 1680, in the first iteration of this Parliament, people such as Sir George Mackenzie, the then Lord Advocate, would be relishing the conversation. Scots law is evolving—it has not stayed still over the centuries. It is right that we debate reform, but it is also right that that debate is an academic and informed one. I am afraid that the very short debates that we are prone to having in this Parliament is where we let legislation down. The bill needs hours and hours of scrutiny in this chamber.

Last year, when I had the justice spokesperson role, I raised concerns from the industry. I raised them not to be difficult, but because that is what people said to me when I consulted stakeholders. I said back then that pretty much every defence lawyer in Scotland would boycott a pilot for juryless trials, and that transpired to be the case. I also said back then—this is an important point—that, if the accused has no solicitor, it begs the question how on earth the trial could even be a trial, never mind a fair one. It is that issue of

fairness that sits at the heart of my comments today.

It is not just me and not just defence solicitors, who of course are standing up for their clients, who have concerns, but Lady Hale, Lord Uist, Lord Sumption, the Law Society of Scotland, the Scottish Solicitors Bar Association and even the Lord Advocate and the Crown Office. They gave what I thought were very stark warnings to the committee and have been vocal about their concerns. I urge the Scottish Government to proceed with caution and to listen to those learned voices as it follows through on any changes such as the introduction of juryless trials.

There has been talk about comparisons with European systems, but let us not forget that Scotland has a fundamentally different legal system. We have an adversarial system not an inquisitorial one, and because of that important distinction, we cannot make comparisons of that nature.

Part 4 of the bill is the big part that is controversial. The argument against removing the archaic not proven verdict is an important one. Many of us have campaigned for the abolishment of that verdict for many years, and it has featured in our respective manifestos. It has been a key component of my proposals, and I am pleased to see it reflected in the Government's proposals.

**Keith Brown (Clackmannanshire and Dunblane) (SNP):** Will the member give way?

**Jamie Greene:** I do not have time. I wish that I had an extra few minutes to do so. However, I am happy to discuss any of these matters after the debate.

We always knew that, although the not proven verdict had a historical place, in today's context, there was a clear lack of understanding of its use. It is for that reason that the committee has rightly said that it must be removed. However, I do not understand why the Government felt the need for the removal of the not proven verdict to go hand in hand with direct proposals to reduce the jury size and to move from a simple majority to a two-thirds majority. Those things have been around since the 16th century, and it is really unclear where the ideas for those changes have come from and what evidence underpins the proposals. The most important issue is what happens to outcomes. We have heard very little evidence of substance on modelling in that regard. Very unusually, the Lord Advocate herself intervened in that respect, and, as she sits as a member of the Government, she should be listened to. She had profound concerns that the proposals may lead to an increased number of acquittals. That would be a perverse outcome of a bill that purports to be all about victims.

In the short time that I have left, I want to make two final pleas to the cabinet secretary about two elements that are not in the bill but should be, despite my having complained that the bill is too big. We have missed an important opportunity. It will come as no surprise to the cabinet secretary that I am campaigning for the inclusion of elements of Michelle's law and Suzanne's law. Elements of Michelle's law have, of course, been improved in recent years. When Humza Yousaf was the Cabinet Secretary for Justice, he said to the BBC in an extraordinary interview that he was surprised that the Stewart family felt that he had not delivered on his own promise of making progress and that it was somehow their interpretation of what progress had been made that was the problem and not the lack of progress itself. I hope that that is a mistake that the current cabinet secretary will not repeat.

Suzanne's law has, of course, been brought back into focus. Last October, there was a very sad development, in that Edward Cairney, who was the convicted murderer of Margaret Fleming, died in prison, taking his abominable secrets to the grave. To this day, Margaret's family still do not know where she is, and too many parents will go to the grave without closure. We have to fix that, and I will work with the cabinet secretary on that if she has the willingness to do so.

As I said at the beginning, and as my proposed victims bill intended, victims must rightly be at the heart of changes to our justice system, but that must not happen at the expense of fair justice and the rights of every citizen of Scotland, which are the cornerstone of our democracy and our legal system.

16:07

**John Swinney (Perthshire North) (SNP):** The purpose of the bill is to address some of the long-standing concerns raised by victims and witnesses surrounding their experiences in the criminal justice system and to act to improve the outcomes for those who are the victims of sexual crime. I do not doubt that every member of the Scottish Parliament wishes to see the purpose of the bill succeed, although I also recognise that members will have different views on how best to achieve that purpose.

One of the problems with which we wrestle as a Parliament is that, in our current discourse, we often exaggerate the scale and nature of those differences of opinion. The Criminal Justice Committee's stage 1 report is a very good example of how to openly air differences of opinion and try to find a way to reconcile those differences in a coherent and respectful fashion.

I welcome the fact that all members of the committee supported the general principles of the bill, with some important caveats that the Scottish Government must consider should the bill proceed beyond stage 1. That is surely the correct way to proceed. We all want to see action to improve outcomes in the criminal justice system for victims of sexual violence, but we need to focus on how to get that right at stages 2 and 3.

I also welcome the tone and substance of the Scottish Government's response to the committee's report. The Cabinet Secretary for Justice and Home Affairs is demonstrating a clear willingness to listen to different views, and she should be commended for doing so on such a difficult set of issues.

There is much to welcome in the bill and to merit our support. The provision to mandate trauma-informed practice in all the work of the criminal justice system is a welcome step to improve the experience of victims and witnesses in the criminal justice system. If that was all very straightforward, surely that would be happening now, but the fact that it is not means that we need to legislate to make sure that it happens.

The proposal to establish a sexual offences court will create the opportunity to ensure that sexual crimes are tried in a more appropriate environment that will embed trauma-informed practice and that has been specifically established to improve handling in such cases.

I accept the argument that a new court is required to ensure that that can be done, because I do not believe that the adaptation of existing structures—which the legal profession has argued for and could happen today if there was the impetus for it, but that has not happened—will provide the appropriate environment in which that objective can be achieved.

The most controversial aspect of the bill is the concept of the juryless trial pilot. Given the opportunity to conduct trials without the performative approach to jury persuasion, the concern about the existence of rape myths and the requirement for written judgments to be delivered, I believe that the trial would be a valuable intervention to explore how best to try such cases. I recognise that, in the Scottish Government's response to the committee, the cabinet secretary said that she is willing to consider measures that might address concerns about the proposal. The approach that she has taken is welcome.

**Pauline McNeill:** Given that the Government has responded with the criteria for what would constitute success for the juryless trial pilot, does the member accept that, if the Government thought that the trial was successful, that would indicate that we would not have juries for rape cases in the future?

**John Swinney:** During the committee's transactions, I very much agreed with Pauline McNeill on the importance of there being open and transparent criteria for the evaluation of the pilot. That is essential before we go any further. That detail must be in the bill, because it will give the Parliament the confidence that there is an established basis for evaluating the performance of that measure. We should consider the evidence because, as the committee has wrestled with, there is not always an abundance of evidence on many of these questions.

**Michael Marra (North East Scotland) (Lab):** Will the member take an intervention?

**John Swinney:** If Mr Marra will forgive me, I will not. I do not have much time, and I want to make another substantial point.

I am wholly supportive of the proposal to abolish the not proven verdict, which is, in essence, a not guilty verdict, but it does not always come across as that. For an accused, the verdict can leave a stain on their character. For a victim, it can leave the impression that they have not been believed in court. We heard in evidence the unsatisfactory nature of the verdict's application, so I support its abolition.

However, I have serious concerns about how the abolition of the not proven verdict has been linked to proposals to change the size of the jury in such trials and to increase the threshold to deliver a guilty verdict. I am concerned that such changes will make it more difficult to obtain convictions in sexual assault cases. The Parliament would do well to consider with care what the Lord Advocate told the committee on that question on 31 January 2024:

> "Fundamentally, however, if we are going to increase the percentage of individuals that we require to vote for a guilty verdict, we will make it far more challenging to secure a guilty verdict in a system that requires corroboration."—[*Official Report, Criminal Justice Committee,* 31 January 2024; c 15.]

The Parliament needs to consider carefully that serious warning, given the significance of corroboration in such judgments.

I understand the conclusion that the Government reached after studying evidence from mock jury research that having a two-verdict system is more likely to lead to a tendency to convict, but I am profoundly concerned that we might undermine the bill's purpose if we establish a connection between the abolition of the not proven verdict and the changes to jury size and composition. I recognise that many people have long campaigned for the abolition of the not proven verdict, for entirely understandable

reasons and invariably because of tremendous personal suffering and anguish, but if it is considered that changes to jury size and composition are necessary to go along with the abolition of the not proven verdict, I would withdraw the proposal to abolish that verdict.

This debate has been advanced due to the courage of victims in speaking up. In the committee, we benefited from hearing that evidence. Their testimony is profound and should shape the approach that is taken by the Parliament. This is the moment for the Parliament to undertake fundamental reform to ensure that our criminal justice system addresses the legitimate concerns of victims and witnesses. They deserve nothing less.

16:14

**Claire Baker (Mid Scotland and Fife) (Lab):** I thank the committee for its report and for the amount of scrutiny that it has given to the proposals. The bill covers several areas of justice policy, the policies proposed are substantial reforms and, although the committee has been diligent, the bill is intricate and complex. There are three or four bills worth in it, and had the Government approached it in that way, there would have been the time to build more consensus in Parliament and across society.

I will focus on issues to do with rape and sexual assault cases, including a pilot for juryless trials. As a precursor to those issues, I highlight the committee's consideration of ending the not proven verdict and of the size of a jury. The nub of the debate is determining what the impact will be and being clear about the impact that is sought.

I agree with Rape Crisis Scotland that the conviction rate does not reflect the reality of victims of rape and sexual assault. First, that is because those are unreported crimes—feelings of shame, being in a coercive relationship and a fear that the victim will not be believed means that, too often, those crimes are hidden or suppressed.

Secondly, that is because of the low conviction rate. Recent figures show that, of the 2,176 rapes and attempted rapes that were reported to the police, only 152 reached prosecution and there were just 78 convictions. In evidence to the committee, the Lord Advocate stated that, in acquaintance rapes—in which there is one complainer and one accused—conviction rates are at about 20 to 25 per cent. In Scotland, there is a high probability of someone getting away with that crime. Too often, it is a crime without consequences for the perpetrator but with a lifetime of hurt for the victim.

If we accept that rape and sexual assault are underreported crimes, and we accept that, to take a case to court, there is sufficient evidence to proceed, we must accept that the conviction rate does not reflect the reality of victims.

It is extremely difficult for a victim of rape or sexual assault to report that crime, to bring a case to court and to relive that ordeal through a court case. Organisations such as Rape Crisis Scotland work hard to support victims, but the decision to report rape or sexual violence is never one that individuals take lightly. The not proven verdict is unclear, it is often misunderstood by juries and it is confusing for those who are involved in the case. In rape and sexual assault cases, that can leave the complainer feeling as though they have been believed but that there is not enough evidence, and the accused being left with the stigma of an unclear determination, neither of which is accurate or satisfactory.

Like the committee, I am not convinced by the need to reduce the size of a jury to compensate for removing the not proven verdict. Some of the evidence to the committee cited a judge being dismayed at juries' decisions to acquit, which did not reflect the evidence.

That brings me to the consideration of rape myths and jury attitudes. Although we may be familiar with preconceptions about how a victim should act and respond, the committee heard some evidence that it was difficult to definitively say how that influenced juries. I was interested in the suggestion that juries are risk averse in their approach, particularly when convicting those accused of rape. That attitude is really difficult to change. Jurors know that convicting someone of a sexual offence has a significant impact on that person and on their family. The complex nature of rape cases—there is less reliance on witnesses and proof of consent is an issue—presents huge responsibility for jurors and can lead to risk aversion. The lack of evidence from jurors means that we are reliant on the mock trials, which the committee took time to scrutinise, and it has expressed concerns about overreliance on that research.

For some time, I have been interested in different models of prosecution for rape and sexual assault cases. I have been supportive of specialist courts for drugs and domestic violence. The bill proposes a specialist sexual offences court and a pilot for judge-only trials, which are both recommendations from Lady Dorrian.

The stage 1 report goes into detail about the proposal for specialist courts and alternatives. A parallel court, as proposed by Lady Dorrian, retains the solemnity of a High Court and recognises the severity of the crime. That would retain the rights of audience and the severity of the crime that that represents. However, I note that the cabinet secretary has indicated that she will

lodge amendments at stage 2 to address some of those issues.

The argument is made that a separate specialist court would deliver on the other proposals for trauma-informed practice more effectively, but I am not convinced that that is the only way that change can be delivered and would urge the cabinet secretary to reflect on the evidence heard.

I will close on the issue of judge-only trials. Prior to the introduction of the bill, I have previously raised the cases of Denise Clair and Miss M. In both cases, the women involved ended up resorting to the civil courts system to pursue justice. The civil justice system is not where women should have to turn—that Denise Clair and Miss M had to pursue that route only demonstrates that the criminal justice system is not working as it should.

The committee's split position on juryless trials reflects the lack of consensus that has emerged throughout evidence sessions, and underlines that the lack of detail for the plans has made it difficult to reach a fully formed conclusion.

In last year's debate on a trauma-informed approach to justice, I spoke about particular concerns around rape trials—the difficulties in bringing forward cases, as well as in securing a conviction—and I asked how changing to a single-judge trial would improve that situation. I asked what success would look like when it came to the pilot—would it involve an increased conviction rate? I appreciate that the cabinet secretary has, in recent days, said that more information on that point will be given at stage 2. What are we trying to deliver here? Is it an increase in the conviction rate? Is it a more effective approach to cases? Is it a reduction in delays, with quicker decisions? The questions about what will be gained from a pilot must be addressed at stage 2, but there will be disappointment from supporters of this approach that the pilot will now be delayed until 2028.

16:20

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** It is a great privilege to speak in this debate. As other members have done, I pay tribute to my colleagues from all parties on the Criminal Justice Committee and, of course, the clerks for the work that has already been done. Members in the chamber who are not members of the committee can have faith in the level of scrutiny and in the committee's stage 1 report.

As others have said, parts 1 to 3 of the bill are relatively straightforward. That is not to say for a minute that there were no issues, but I think that our stage 1 report was able to pull out the main themes that were raised, and we have made some recommendations ahead of stage 2. For example, questions have been raised about whether the proposed victims commissioner role is the best use of public money and I know that there is currently a wider discussion in the Parliament around the role of commissioners more generally.

Trauma-informed practice is something that all services should continue to strive for and although we heard some examples of where it is working well, there is clearly more to do. We heard that embedding it in legislation should help to significantly speed up the direction of travel.

Perhaps unsurprisingly, I would like to focus my remarks on parts 4, 5 and 6 of the bill. On part 4, as we have heard, the committee concluded that the not proven verdict can cause confusion and that, to quote the report, it has "had its day". On that point, I would like to highlight the evidence of Joe Duffy, who has campaigned for the abolition of the verdict for more than 30 years.

However, the committee is, as a whole, concerned about the counterbalancing proposal to change jury sizes and majorities. We were just not sure where the evidence for that has come from and therefore we could not agree to it in our report.

We have real concerns over the possibility of decisions being made on a 7 to 5 basis and the possibility that it may become even harder to secure convictions, which John Swinney articulated really well. One solution might be for the Government to consider the Lord Advocate's suggestion of a retrial in such circumstances. We acknowledge that that would be a big change and would require a lot of further work and scrutiny. However, if the Government feels that there needs to be a counterbalancing mechanism to the removal of the not proven verdict, that suggestion may—I stress, "may"—offer a potential solution. I acknowledge that the Government agreed in its response to the committee that significant work would be required in relation to that proposal.

On part 5, I feel that the proposed sexual offences court is generally a good idea; it could help to deliver justice for victims and witnesses and make the process more trauma informed. However, Pauline McNeill has consistently raised a good point about the perceived downgrading of offences by taking such cases out of the High Court. We must do all that we can to avoid that perception, even if it is only a perception rather than a legal reality.

The most contentious part of the bill has probably been the proposal for a pilot of juryless trials in rape cases. I am quite disappointed by the polarisation of the debate on that, as the committee has worked hard to find a path through that very complex proposal. Although I am one of the four members who agreed that the proposal

should proceed to stage 2, that agreement did not come without major recommendations to the Government. We must reflect that not all survivors agreed with the proposal, and some said that they would continue to prefer a jury. Speaking for myself, I found that surprising and unexpected; we must continue to take those views into account.

We asked for much more information on the pilot to be made available at stage 2 and the Government agreed to that in its response. We require information on operational data, the timescales involved and how the pilot will be evaluated.

We also encourage the Government to attempt to take every stakeholder with it as the provisions are developed and progressed. I encourage all members who have concerns about the provisions to read the committee report and to vote for the general principles of the bill tonight to give the opportunity for many of the concerns that we all share to be ironed out through stage 2 amendments.

I will conclude by speaking about the experiences of my constituent Anna-Cristina Seaver, who came to my surgery a couple of weeks ago to discuss the bill. She is happy to be named today and hopes that her experiences can help change things for others. Anna-Cristina was a victim of a sexual assault. The case was heard at the High Court, with the accused being found by jury to be guilty of one sexual offence against her, but he received an absolute discharge. After going through all the various stages of the court process, she was surprised to learn that the accused would not even be subject to sex offender registration. She has asked me to raise that with the cabinet secretary, who may be aware that I did so last week by letter.

More broadly, Anna-Cristina has been following the progress of the bill, and has the following thoughts that I want to put on the record.

On the not proven verdict, Anna-Cristina would like that verdict to be removed, as she feels that juries do not understand what it means, with many people frequently thinking that it means that an individual can be charged with the same offence at a later date or that there could be a retrial for the same offence. We have heard that a lot from people who gave evidence to the committee.

On the introduction of a sexual offences court, my constituent is in agreement with that and feels that it would allow for more focus on the victim of the alleged crime.

On juryless trials, Anna-Cristina feels that juries can come to courts with preconceived ideas about how a victim of a sexual offence acts or has acted, and she feels that that influences opinion and therefore verdicts, so a pilot might be useful to try to compare a different approach.

It has been a massive undertaking for the committee to produce the stage 1 report and to get to this point. The aim of the bill is to make things better for victims and witnesses, which is something that every one of us here should support. Is the bill perfect at this time? No. However, is it a start for people such as my constituent and many other people across the country? I think that it is. Therefore, I urge members to vote for the general principles at stage 1 to allow us to make the necessary changes at stage 2.

16:27

**Maggie Chapman (North East Scotland) (Green):** Doing justice is about the process as well as the outcome. As a society, we lay a heavy burden on those who have experienced serious crime as victims, survivors or witnesses. We call on them to recount their experiences—often again and again—in the face of trauma, disbelief and outright hostility. It is a burden that most are more than willing to shoulder, not for revenge or gain but to prevent others from suffering in the same way. They do a precious service to their community by telling their stories and doing so with truth, grace and courage, so one would think that the very least that the community and the agencies that represent it can do is to treat them with respect and humanity but, far too often, that is not the case.

We have an adversarial justice system but, in criminal cases, the opponents are supposed to be the prosecution, representing the state, and the defence. Survivors and witnesses are not adversarial actors and yet look at how they are treated: as though they themselves are on trial, with the trauma of their original experience intensified, even overshadowed, by the trauma of the court process. They are central to the facts of the case, yet are the last to know what is happening and why. They are treated as pawns in courtroom games and collateral damage in performative conflicts.

It is no coincidence that all that is overwhelmingly true of one type of crime—a type that I know of all too well from my previous work in the rape crisis network. I refer colleagues to that previous employment, which is set out in my entry in the register of interests. The survivors who are supported by my former colleagues not only carry the direct consequences of their experience but struggle through a toxic morass of misogyny, structural violence and a male impunity that is embedded in tradition, assumption and myth.

The bill that is before us today is part of a long process of examination, research, consideration and consultation about those issues, and I pay tribute to all who have been part of that work, in whatever capacity, and all who will continue to take it forward. Yes, the provisions are challenging, not least to long-standing tradition, but the changes that the bill proposes are not made on a whim for the sake of change itself or necessarily to follow other jurisdictions; they are made because the evidence suggests that justice—both process and outcome—urgently requires it.

It is not just to have a verdict that judges cannot explain, that leaves defendants stigmatised and survivors traumatised, and that serves only to excuse juries from the hardest decision—for it is hard, we know, to convict men for doing what, deep down, many still expect real men to do. It is not just for courts, offices and police stations to be staffed with people who still do not know—who perhaps choose not to know—the effects of trauma and the need to act appropriately. It is not just to have juries so large that not all members need fully to participate.

It is not just that abusers in many civil cases should still be able to personally cross-examine those they have abused, and that vulnerable witnesses should be denied the protections that they would receive in other proceedings. It is not just that rape survivors should be questioned about their most intimate lives and relationships without the benefit of independent legal advice, or that they should be named against their will on social media. It is not just that women should undergo all that—all the horror of reliving their trauma, explaining their pain and postponing their hopes of resolution, perhaps for years—only to have their truth denied by the stubborn persistence of rape myths, which are old lies of inappropriate response, invisible emotion, delayed reporting and false accusations.

It is perhaps encouraging that the proposal for a pilot judge-only court is the most controversial and contested part of the bill. While the Tory Government in England does its best to suppress even the knowledge that juries can acquit a defendant such as a climate protector when it is equitable to do so, it is a relief to hear that the Tories' Scottish colleagues have such affection for juries. Juries matter, and it matters that they hear the truth, the whole truth and nothing but the truth.

I firmly believe that any pilot established under those provisions must be created and implemented with sensitivity, with the active participation of all relevant stakeholders, with strict time limits and in conjunction with serious and urgent work to address the prevalence of rape myths, not only in jury rooms but everywhere.

I will be voting for the bill today, not in triumph or challenge but in quiet remembrance of all those for whom it has come too late. Let us do justice for them, for those who wait now and for those who might thank us in the future.

16:32

**Clare Haughey (Rutherglen) (SNP):** I want to focus on one of the specific proposals in the Victims, Witnesses, and Justice Reform (Scotland) Bill, which I hope has broad support across Parliament, the justice sector, support organisations, survivors and the wider public: that of trauma-informed practice. Members will be aware of my background as a mental health nurse, and at this point I refer members to my entry in the register of members' interests, in that I hold a bank nurse contact with NHS Greater Glasgow and Clyde.

Victims and witnesses of crime need to be treated with compassion. The lasting effects of trauma can stay with people for decades, affecting their day-to-day functioning, their relationships and their ability to effectively participate in society. I am sure that all of us across the chamber will have heard from numerous constituents over the years about their traumatic experiences in the justice system.

Of course, we cannot remove all risk of traumatisation from the justice system. There is an unavoidable risk that people will be negatively impacted by having to recall traumatic experiences. However, we must take all necessary steps to improve victims' experience of the justice system so that they can have confidence in it. Doing so has the potential to improve the quality of the justice process for everyone involved.

"Trauma-informed practice" describes a way of working with people that recognises the impact that traumatic experiences may have had on them, and it tries to avoid causing them more trauma. It is based around five core principles: safety, which involves helping people to feel physically and emotionally safe; choice, which involves giving people meaningful choices and a voice in decisions that affect them; collaboration, which involves asking people what they need and involving them in considering how their needs can be met; trust, which involves being clear so that people know what to expect and people doing what they say they will; and empowerment, which involves validating people's feelings and supporting people to take decisions.

The bill creates a framework to embed trauma-informed practice across the justice system and support a cultural shift towards trauma-informed ways of working. The provisions in the bill include a legal definition of trauma-informed practice for

the justice sector to help to provide clarity and consistency. It requires criminal justice agencies to have regard to trauma-informed practice in their work with victims and witnesses of crime. It requires that the Lord President and certain other members of the judiciary have a legal responsibility to take trauma-informed practice into account in court scheduling. It also has new rules for how court business is conducted, to try to improve victims' experiences, given that they often describe the way in which a defence is conducted as one of the most distressing aspects of the criminal justice process and say that it can contribute to their retraumatisation.

The bill has been shaped by survivors, victims and their families, and we owe it to them to listen and act on their experiences and concerns. In evidence that was given to the Criminal Justice Committee, a committee witness, Hannah McLaughlan, said:

"Survivors endure trauma as a result of the abuse that they go through, but, having come through the justice system, I would say that I endured trauma not only from my abuser but from the system that is supposed to provide me with justice. That is not acceptable, and it needs to change."

Similar views have been raised with me by several constituents over the years. A couple of months ago, I met the Minister for Victims and Community Safety to discuss one of my constituents' experiences in the justice system. I am also to meet the Cabinet Secretary for Justice and Home Affairs with that constituent next month, and I want to place on the record my gratitude to the cabinet secretary and the minister.

One of the issues that my constituent raised was the standard of communication throughout the court process. My constituent's attacker faced 11 charges, but to avoid going to court, they pled guilty to a reduced number of four charges. My constituent, as a victim, was not consulted on that by the Procurator Fiscal Service. I note that, in its stage 1 scrutiny, the committee looked at the standard of communication in justice agencies. It is clear that communication must improve, and I welcome the Lord Advocate's acknowledgement that she agrees with the importance of improving communication.

The committee's report also says that legislation is not necessarily required to deliver some improvements. That is echoed by the Law Society of Scotland's response to the committee's call for written evidence, in which it said:

"Achieving a properly trauma-informed system requires much more than legislative change."

During the past few weeks, we have seen steps such as the introduction of the pilot to increase access to court transcripts. Victims of serious sexual assault can understandably find it difficult to hear and process what is said in court at the time. Victims being able to obtain transcripts and review exactly what was said in court in their own time can help with recovery.

In addition, as the report refers to, some organisations are already working to make their processes trauma-informed. For example, Police Scotland has indicated that trauma-informed practice is already embedded in some aspects of its work. The Crown Office has developed trauma-informed training, which has been used by 2,000 employees and 70 advocate deputes. However, part 2 of the Victims, Witnesses, and Justice Reform (Scotland) Bill will complement that work and accelerate change in the criminal justice system.

The bill will put victims and witnesses at the heart of the justice system. Building on their experiences, key reforms will make justice services more sensitive to the trauma that they can cause. For too long, some victims and survivors have been let down and ignored by the justice system. Let us make sure that they do not feel the same way about the political system by voting in favour of the reforms today.

16:38

**Pam Gosal (West Scotland) (Con):** I welcome the opportunity to contribute to today's stage 1 debate on the Victims, Witnesses, and Justice Reform (Scotland) Bill. In Scotland, as in all parts of the world, the impact of trauma on individuals can be profound and far reaching. As a proud advocate of putting victims at the heart of Scotland's justice system, I have had the opportunity to listen to the horrifying testimonies and harrowing ordeals that many survivors of sexual assault and domestic abuse have had to go through. Navigating the legal process can be difficult and retraumatising and, in many cases, it can discourage victims from seeking the justice that they deserve.

The system has left complainers feeling isolated, uninformed and as though they were the ones on trial. That experience is prolonged by cumbersome court backlogs, which are the direct result of an underresourced and neglected legal system. They are no longer just victims of crime but victims of a complex justice system. Scotland's justice system should protect victims and not add further trauma to their lives.

There are long-overdue measures in the bill that we support, including the abolition of the not proven verdict, which the Scottish Conservatives have long called for, and anonymity for sexual offence victims. I am also supportive of other measures in the bill, including those that ensure that complainers are better supported.

I see merit in independent legal representation to support the victim when an application is made to introduce evidence about their sexual history or character. On that measure, the Law Society of Scotland noted that, although it is supportive, there are questions of resourcing and practicalities. The senators of the College of Justice foresee a surge in the workload of the judiciary, prosecutors and defence lawyers under the proposed changes, and they warn of potential delays and pre-trial hearing backlogs without adequate staffing and resources. Further delays might only serve to cause additional distress, so, ahead of stage 2, I would welcome more clarity on how the proposals will be resourced.

I have similar reservations about the proposals to introduce a sexual offences court. The number of recorded sexual crimes rose to nearly 14,900 in the year ending December 2023, so I completely agree that there is a need to deliver targeted, meaningful and enduring improvements in a consistent manner to cases involving serious sexual offences.

However, I share concerns with Simon Di Rollo KC, who commented that creating a new court

"would be just a bit of window dressing".

The Faculty of Advocates and the Law Society of Scotland favour an approach of establishing a specialist sexual offences division of the existing courts. I understand that that approach could reduce delays, increase consistency and encourage resolution. On that, Tony Lenehan KC said:

"It is a struggle to resource the courts that are currently sitting."—[*Official Report*, *Criminal Justice Committee*, 24 January 2024; c 39, 48.]

I therefore appreciate that it could be possible to achieve the necessary improvements, and address the concerns that have been raised, through the creation of specialist divisions of the High Court and the sheriff court rather than through the creation of a stand-alone court.

I have concerns about the proposals to abolish jury trials, and I do not support plans for the pilot. Research has found that jurors do not fall for rape myths and, when it comes to unconscious bias, as the Law Society rightly points out, everyone is subject to a risk of unconscious bias. With groups such as jurors, the hope is that biases cancel one another out. With a single judge, that cannot happen.

The Law Society argues that tackling rape myths has more to do with education than criminal justice reform. I am simply not convinced that there is evidence to justify what would amount to an experiment with people's lives.

**The Minister for Victims and Community Safety (Siobhian Brown):** Does Pam Gosal accept that the European Court of Human Rights explicitly ruled in 2013 that a fair trial can be delivered without a jury?

**Pam Gosal:** Although I hear what the minister has said, it is important to deliver good legislation, and we have seen too much bad legislation come out of here. I do not even sit on the Criminal Justice Committee, yet I have heard the concerns from around the chamber. It would be great if the cabinet secretary and the minister listened to the voices in the chamber and those from outside the Parliament to ensure that we get the bill right.

I welcome the opportunity to debate any proposals that seek to improve the justice system for victims and witnesses. Although the legislation includes some commendable measures, there are key elements, not limited to the introduction of juryless trials, about which I harbour significant concerns. Adequate resources and changes to impacts will be key to improving victims' and witnesses' experiences of the justice system. The Scottish Conservatives will always be on the side of victims, but significant amendments will be required at stage 2 if this bill is to embed meaningful change.

16:45

**Karen Adam (Banffshire and Buchan Coast) (SNP):** The famous quote

"How society treats its most vulnerable is always the measure of its humanity"

could not be more true than when we speak about the vulnerability of the victims and survivors of sexual offences. How we in Scotland treat the victims of sexual offences is a true measure of our society and humanity, so we must go above and beyond to ensure that any process is as sensitive and safe for them as possible.

We owe that to survivors who have spoken their truth, often at great personal cost, and who have sought justice and paved the way for others to do so. We owe it to the survivors who are seeking justice right now for the heinous acts of others and certainly to the survivors who, for myriad reasons, are unable to get the justice that they deserve. We owe it to them to deliver reform that will put victims and witnesses at the heart of the justice system while continuing to safeguard the key principles that underpin it.

As we have heard, much of the Victims, Witnesses, and Justice Reform (Scotland) Bill has been informed by the work of the victims task force, by Lady Dorrian's independent and cross-sector review of the management of sexual offence cases and by the landmark jury research that was published in 2019. I place on record my

gratitude for the work that has been done to ensure that today's debate is guided not only by our own ethical considerations but by victims themselves and by reputable actors in the legal sector.

As has been said, the bill is ambitious in its reforms to modernise processes and improve the experience of victims and witnesses, but I have limited time and will focus on three areas: the introduction of a sexual offences court, the abolition of the not proven verdict and the extension of the use of special measures to protect those who have suffered abuse from being cross-examined by their abusers.

I welcome the introduction of a new criminal court for Scotland to permit rape and other serious sexual offences to be heard within the same specialised court, which is not always the case today. Sexual offences are among the most serious crimes that are dealt with by our courts and a sexual offences court with Scotland-wide jurisdiction could embed specialism from the outset, supporting complainers to proffer their best evidence and requiring specialist trauma-informed training for all personnel, judges and legal professionals appearing in that court. It would also allow for a more flexible use of the available resources, which might, in turn, reduce delay and increase efficiency in those cases. That is vital, because a delay to justice is an injustice in itself.

I note the concerns that any such specialised court must possess a solemnity that reflects the seriousness of those offences. It is crucial that any new court is given due gravitas and that every effort is made to avoid any perception of the downgrading of seriousness once cases are indicted to the sexual offences courts rather than to the High Court.

I stood for election to this Parliament on a manifesto that recognised the strong case for the abolition of the three-verdict system and made a commitment to consult on the removal of the not proven verdict. My SNP colleagues and I were not alone, because removal of that verdict was supported in the manifestos of almost all parties in the chamber. What is more, 62 per cent of respondents to the consultation supported changing to a two-verdict system.

There is clear and compelling evidence—including from independent Scottish jury research that was the largest study of its kind ever undertaken in the UK—that the not proven verdict is not well understood by jurors and that it can cause stigma for the acquitted and trauma for complainers. The verdict does not serve justice, so I welcome the plans to abolish it. I have listened to what colleagues have said today about the technicalities of doing so and hope, for the sake of all and because of what I have just mentioned, that a solution will be found to bring us to a final conclusion and to abolish that verdict.

Special measures in court cases exist to protect vulnerable people. The taking of evidence by a commissioner and the use of a live television link or a screen to create a boundary between the complainer and the accused can alleviate the stress that is associated with giving evidence and ensure that witnesses and victims can give their very best evidence in a way that retraumatises them as little as possible.

The award-winning one-woman play "Prima Facie" was based on how the legal system treats victims of sexual assault. In the final moments, actress Jodie Comer concluded by breaking the fourth wall, speaking directly to the audience and drawing our attention to the statistics. She said:

"Look to your left, look to your right. It's one of us."

One in six men will experience an unwanted or abusive sexual experience in their lifetime, and an obscene statistic tells us that the majority of Scottish women have been sexually harassed or assaulted. We cannot delay justice any longer. As a survivor myself, I ask members to please vote for the bill.

16:51

**Michael Marra (North East Scotland) (Lab):** The Cabinet Secretary for Justice and Home Affairs began this debate by describing the gradual evolution of the Scottish law and justice system, and she then identified a range of dinosaurs that are in need of consignment to the past. We agree with the premise that there is a real need for careful reform. Victims' experiences of our justice system can be traumatic, and all too often it does not deliver the justice that they deserve. The woefully low conviction rates for rape and the plight of rape victims more broadly tell a story of the endemic misogyny that continues to plague Scotland. It is right that we consider all means by which we can address that culture and its consequences.

However, we on the Labour benches believe that this moon-sized meteor of a bill is unlikely to provide the deliberate excising of outmoded provisions. It is too big and too broad, and professionals believe that it may threaten an extinction-level event for much of the principle and practice of a system that remains in need of modernisation. It makes little sense to undertake the reforms all at once, and as yet we have insufficient evidence. The committee has clearly been unable to dedicate sufficient time and attention to a variety of issues in the bill. I fear that this may be yet another case of this Government legislating in haste and repenting in crisis, which is an all-too-familiar story. Talk of the Government's

inability to write coherent legislation is now widespread. To put it simply, there is far too much in the bill.

On the substance of the bill, the committee is as yet unconvinced about the idea of juryless trials, and I agree with the committee. There is a fundamental governing principle that the system should be tampered with only on the basis of significant evidence, clear academic analysis and a set of governing principles and protections. A pilot must be based on clear terms, timings, composition and, crucially, the theory of change. What is it that the Government is actually trying to achieve?

The Government's tone and associated policy make it clear that it is, very understandably, attempting to increase conviction rates, but it appears simultaneously to believe that that cannot be made overt either on the face of the bill or in the direct purposes of the laws. Does it believe that doing that might prejudice the consideration of cases or that engineering outcomes is itself an infringement of justice? Those are valid questions, but that makes it pretty much impossible to effectively construct and then evaluate the outcomes of a pilot of juryless trials. At its heart, I find it difficult to see why one man—or woman, but it is much more likely to be a man—would be much less susceptible to performative persuasion than four people in a jury of 12. I also note the comments from a range of sources that the term "pilot" is a misnomer, because it will involve real trials and real cases, and real people's lives will be affected by the outcomes.

Scottish Labour does not support the pilot of juryless rape trials. The legal profession has been clear in its opposition, including the Law Society and the Faculty of Advocates. The Government cannot expect such a significant change to the legal system in Scotland to pass without genuine engagement with the profession and, crucially, without public confidence being built.

Like the Criminal Justice Committee, Scottish Labour remains to be convinced about the creation of a victims and witnesses commissioner. We question whether that represents best use of the scarce public finances that are available to us at present. The Finance and Public Administration Committee, of which I am deputy convener, is undertaking an inquiry into the role of commissioners in Scotland. We have seen a proliferation of commissioners in recent years, with more seemingly on the way, but as yet no significant analysis has been made available of the value or impact of those roles. What do they achieve? What outcomes do they deliver for the people of Scotland? How do they relate to the work of Parliament? Scottish Labour believes that the resource in question could be far more effectively targeted at further expanding the scope of independent legal representation.

I turn to the not proven verdict and changes to juries. Scottish Labour supports the abolition of the not proven verdict. That has been our long-standing policy, and we continue to support abolition. However, the Government must recognise that there will be consequences for the justice system. The proposed change to jury majorities, from a simple majority to two thirds, indicates some form of recognition of the impact that the abolition of that verdict could have.

The case is yet to be made on the changes to juries, which include a requirement for a two-thirds majority and a reduction in the number of jurors from 15 to 12. Crucially, we have to ask whether public confidence will be retained when a jury votes by seven to five for a guilty verdict but the accused walks free. The Criminal Justice Committee said that it had heard

"no compelling or definitive evidence"

that would lead it to support such changes. The Faculty of Advocates said that the proposals were

"rash"

and could have

"a detrimental impact on the overall administration of justice."

This legislation tries to do everything but, in the process, it risks achieving very little. Given the insufficient detail to date from the Government, insufficient evidence from stakeholders and insufficient scrutiny by the Parliament on some of the key issues, the bill is not currently worthy of the Parliament's support.

16:56

**Keith Brown (Clackmannanshire and Dunblane) (SNP):** Sometimes, when we have debates like this, we should remind ourselves why we are debating such changes in the first place. We had a powerful reminder of that from Karen Adam a short time ago.

It is also worth mentioning again—particularly for the victims of sexual offences—that the latest figures show that only 24 per cent of those who are accused of rape in single-complainer cases are convicted. That is a shockingly low figure. Aside from the Government's proposals, I do not hear any others. It cannot be the case that we do nothing.

I have also heard a fair bit of criticism about the size of the bill. I say to members that they should look at the system and see what bit they can pick out without affecting other bits. The bill has to be comprehensive—it has to address a number of

different things at the same time. Perhaps that accounts for both its complexity and its size.

We have known about the discrepancy in convictions for sexual offences for a long time, and this is a chance to do something about that. We cannot forget the many women, in particular, to whom many members have spoken, who have come forward in recent years with their testimonies, waiving the right to anonymity for the public good, to share with the public their experience of the legal system and its shortcomings. Those women have also helped to create an awareness campaign that has successfully highlighted the many shortcomings of the legal system and what can be done differently. As I have said for a number of years, the system is failing women in particular.

A couple of points have been raised. I heard the Tories saying that it has taken a while to get round to abolishing the not proven verdict. Well, we have not taken the decades or centuries that the Tory party took. We came forward with the proposal in the past and it was rejected by the Parliament. This time, it looks as though it will be accepted by the Parliament. The most compelling reason for it, to my mind, is simply the fact that a judge is not allowed to explain to a jury the effect of the not proven verdict. That cannot be good in any system that is meant to be based on lay understanding.

There are those who argue—we heard one statement to this effect—that we must listen to the Lord Advocate on some things but not on others. We must listen to her about the size of juries, but we should not listen to her in her compelling support for juryless trials. Another argument is that the judiciary is against us. It is not. Lady Dorrian is not. Many in the senior judiciary are in favour of many of the proposals. All that that says is that it is divided—as the rest of us are. There are different points of opinion, but let us at least acknowledge that.

I do not agree with the vast bulk of the points that Michael Marra made, but the point that he made about commissioners was quite a good one. I supported the establishment of a commissioner. If the position is to be established for its own sake, we should not have it, but if there is a definite role for it, we should have it, for the reasons that have been mentioned. It has previously been supported by the Conservatives. Almost three years into this Parliament, I am still waiting to see the victims bill for which support has been demanded from me and others, or the domestic abuse registration system bill that we have been asked to support. We should really see those things. They were manifesto commitments. If we will not see them until after we take this bill through, what is the point? They could affect the impact of the bill. In the summing up, it would be useful to hear where the Tories are with the two bills that they were committed to bringing forward.

It is also perverse of the Conservatives not to support the general principles of the bill. I have to be perfectly honest and say that I do not think that there is even a slight chance of the Conservatives voting for the bill at any stage. We heard a demolition of each of the six sections of the bill from its spokesperson—the party's position is not going to change. We know the approach that the Tories are taking on the bill.

However, the cabinet secretary should do as she has been doing and continue to listen to others and take on board the points and genuine concerns that people have. Having shown a willingness not just to listen but to adapt her proposals, she has shown that this is a genuine debate. It would be so much more powerful if we could get to a position in which the whole Parliament spoke with one voice, but we have to be realistic about the prospect of that. We will not get support from the Conservatives, and, given what Michael Marra said, I doubt that we will get support from the Labour Party either. Nevertheless, it is always worth listening to Pauline McNeill and Katy Clark about the concerns that people have. It is important that the bill proceeds, because it has been wanted for a long time and it will make a difference.

We should remember that juryless trials are part of a pilot. If we are not going make a bold change, what should we do? If we do not think that a bold change is required for the appalling situation that we are now in with regard to the treatment of women and victims of sexual offences, what is the big idea that others have? Should we not try it? The Scottish legal system has a very proud history of being innovative and willing to embrace change, and it very often leads other systems to do so. Many systems around the world have taken inspiration from our system, and this is the chance for us to do likewise. If it does not work—I do not dispute the point that was made about having properly set out and transparent criteria for displaying that it has worked—then it should not continue.

**Christine Grahame:** Will the member take an intervention?

**Keith Brown:** No. I apologise, but I am in my last minute.

I cannot remember disagreeing with my good friend and colleague John Swinney before the discussion about jury sizes. However, the point that he made about corroboration is important. If that change is not to take place until 2028, perhaps it is time to take another big chunk. Corroboration on judgments is a huge issue that affects lots of different elements of the bill. If that

was dealt with to the satisfaction of the legal system and Parliament, perhaps it should drive what we do on jury size. It is worth bearing in mind that all College of Justice senators and many people in the judiciary are supportive of further reforms to corroboration, notwithstanding the very effective reforms that have already taken place.

Let us be honest about what we support. We require change, and if parties do not support the change that the Government proposes, they should at least come forward with something else.

**The Presiding Officer:** We move to winding up speeches. I call Katy Clark, who has up to seven minutes.

17:02

**Katy Clark (West Scotland) (Lab):** I am pleased to close the debate on behalf of Scottish Labour. I thank all who have worked on the substantial stage 1 report, particularly the clerks and staff who were involved in the drafting.

As has been said, we need transformative change in the justice system for complainers, victims and witnesses. We believe that the status quo is failing women and the victims of sexual offences, who repeatedly describe their experiences as retraumatising. The cabinet secretary said that the bill is needed. It is clear that significant change is needed, but it is less clear that the bill will deliver the change that is needed.

Labour believes that it was unwise of the Scottish Government to come forward with so many changes to the system in one bill, often without sufficient detail. For example, the proposals on anonymity are important but have not been given sufficient scrutiny. One of the main concerns of complainers was the impact that delays have on the criminal justice system, but the provisions in the bill are unlikely to have an impact on that.

The bill also does not introduce measures such as having a single point of contact, which is significant and could make a big difference. Many parts of the public sector are already very aware of trauma-informed practice, so legislation is not needed to drive that further. In many other countries, complainers and rape victims have access to independent legal representation, often from before they report an incident to the police until after the conclusion of their trial and after any compensation is paid. The provisions in the bill are narrow and relate only to legal representation in relation to medical evidence. We welcome those provisions, but we believe that there is a strong case for further independent legal representation, particularly for rape victims.

We are particularly concerned about the provisions on change of jury size and jury majority relating to the abolition of the not proven verdict. As has been mentioned a number of times in the chamber, the Lord Advocate gave evidence to the committee that the proposals as they stand could risk fewer convictions. That is obviously of particular significance with regard to rape and other sexual offences cases, for which there are already very low conviction rates. As a representative of survivors said to the committee, that is like

"giving with one hand and taking away with the other."—[*Official Report, Criminal Justice Committee,* 6 December 2023; c 17.]

We are disappointed that the Government did not address some of those concerns in more detail in its response to the stage 1 report. We believe that it was unfortunate that the Government sought, in its response, to rely so heavily on the mock jury research. We appreciate that the Scottish Government has said that it

"will give careful consideration to the issues"

that are raised in the committee's report. However, we would have found it helpful if we had received more substantial responses before the debate today.

We believe that substantial changes are necessary, and we were therefore very interested in the arguments that were put forward in relation to the creation of sexual offences courts. However, we are concerned about the lack of detail in the proposals and about a major reorganisation taking place.

We are particularly concerned, partly because of our experience of previous legislation, about the lack of protections in the text of the bill, such as those relating to rights of audience. We support the creation of specialist divisions in the sheriff courts and High Court to strengthen trauma-informed practice. We support specialisation, and we believe that the rules of court need to be redrafted to take into account the needs and interests of complainers, victims and witnesses. Of course, that does not require legislation.

We believe that, without protections in the text of the bill on issues such as the right to representation by an advocate, we cannot support the provisions. We hope that the Government will come forward with further detail on that aspect as the bill progresses.

**Angela Constance:** I put on record that I agree entirely that an accused person whose case is heard in the proposed new sexual offences court should be able to access the same level of legal representation to which they are currently entitled.

**Katy Clark:** I thank the cabinet secretary for that intervention, and I look forward to the Scottish Government bringing forward proposals for provisions in the text of the bill that would enable that to be a reality not just over the current or subsequent session of Parliament but as the decades unfold.

We welcome the Scottish Government's willingness to consider the idea of having a panel of three judges rather than a single judge. That was raised by the committee in respect of the rape trial pilot. However, we are concerned that we still do not have criteria for such a pilot. I know that the cabinet secretary has said that those criteria will come forward, but it would have been helpful if the committee had had that information during its extensive consideration of the legislation over many months.

**Christine Grahame:** Does the member think that there are, in principle, human rights issues with having a pilot in which someone could be at risk of incarceration when, months later, in similar circumstances, there would be a jury trial?

**Katy Clark:** I understand the point that Christine Grahame makes about comparative justice. My concerns are focused more on the bill as it is currently drafted, as it creates permanent provisions rather than a time-limited pilot, after which we could assess how that pilot had operated.

The Scottish Government has said that conviction rates will not be the criteria that are used—the cabinet secretary was pressed on that point in committee—but it has not indicated what the criteria will be.

Given that I am coming to the end of my allotted time, I will just say clearly that Scottish Labour has listened carefully to the proposals that have been put forward. We are very aware of the need for transformative change in the justice system. We await the Scottish Government's amendments with interest, and we will lodge amendments to strengthen the bill as it proceeds.

17:10

**Sharon Dowey (South Scotland) (Con):** It is tough to sum up today's debate in the time that is available. It has been tough for MSPs of every party to discuss all the various elements of the bill in the time that is available; it has been tough for the committee to scrutinise the legislation fully in the time that has been available; and it has been tough for the Government to provide all the necessary details and answers for all the pertinent questions. As we have heard throughout the debate, there are a lot of them.

I thank the clerks and the research team for all their work in compiling the extensive report.

The size and scope of the bill are vast. The bill is ambitious, which is welcome, but it must be deliverable, it must be effective and it must achieve the right outcomes. It cannot just be ambitious law—it has to be good law. We have seen, with climate change targets and with the national health service treatment time guarantee, that ambition alone is not enough: the law has to be achievable.

During the debate, the bill has been described by Russell Findlay as "experimental". He said that the bill is

"far too big ... clunky, confusing and unworkable".

Pauline McNeill also said that it is "too much" in one bill. Liam McArthur said that it is a very "wide-ranging" bill and he described the bill as taking a "kitchen-sink approach" and the Government as

"biting off more than it can chew".

Jamie Greene also described the bill as "too big" and said that it is

"trying to do too much in one place".

He mentioned the missed opportunity of not including in it Michelle's law and Suzanne's law. He also said that victims must be at the heart of the system, but that that cannot happen at the expense of having a fair system. Claire Baker described the bill having enough in it for three or four bills, and Michael Marra said that it is a

"moon-sized meteor of a bill"

and that it "makes little sense" to do it all "at once" with little evidence.

The intentions of the bill are worthy. My party has long argued for the justice system to be stacked in favour of victims, not criminals. The underlying principles of the bill are reasonable. We agree with the purpose of the bill, even when we disagree on the approach or the proposals.

That brings me to our concerns about the bill as a whole. As I have mentioned, the time for scrutiny and debate is short, considering the scope of the bill. We are deciding on legislation that will be historic: it will make sweeping fundamental changes to our justice system. There is no room for error.

**Rona Mackay:** Does Sharon Dowey acknowledge that we have taken eight months to scrutinise and take evidence on the bill, which is unprecedented?

**Sharon Dowey:** I have only recently joined the Criminal Justice Committee. However, as has been said in descriptions of the bill, there is a lot in it, so maybe it would have been better to have split it into smaller bills.

I am also concerned about the response that some parts of the bill will not be implemented until 2027 and 2028. That leads me to wonder why we are passing the bill now. Why not take our time to do it in the next session of Parliament? Why is it being forced through now?

Mistakes could have profound consequences. Any one of the many changes that are proposed in the bill could overhaul the operation of justice in Scotland. We should be ambitious for victims, but we should also proceed with some caution, given the potential ramifications. If so many aspects of the justice system are changed all at once, the unintended consequences could be severe. The consequences could also be difficult to pinpoint and attribute if so much is overhauled in one motion.

My party also believes that the scope of the bill has contributed to the lack of answers from the Government to many necessary questions. The lack of detail on some points and the limited evidence base on others could be improved as the bill progresses, but we are concerned by the number of gaps and potential problems at this stage.

I will move on to our specific concerns about aspects of the bill. Clearly, it will not be possible to go through every element of the bill, so I will focus on the parts about which we have the strongest concerns that must be addressed. On part 1, the allocation of resources must be considered more fully. At the moment, not enough funding goes to supporting victims during and after the court process. The cost of a commissioner could be substantial and we believe that resources might be better spent on direct services for victims. Katy Clark mentioned the one point of contact approach.

We also note evidence that says that the commissioner role might be limited in what it could achieve. Russell Findlay commented that it would be hugely expensive and would provide “reams of jargon”. Liam McArthur said that the plans were “well-meaning” but “misguided”. Michael Marra asked what outcomes the role would achieve and what it would deliver. Some members in the chamber would be hard pressed to tell us who all the commissioners are, what they do and whether they are accountable to Parliament. I have never seen them in the chamber. We have cabinet secretaries and ministers who are accountable to Parliament.

We are supportive of part 2, but—

**Christine Grahame:** On a point of information, I note that commissioners would not come to the chamber. Only MSPs, the Lord Advocate and the Solicitor General sit here. Commissioners can be called before committees.

**Sharon Dowey:** I thank Christine Grahame for that. Cabinet secretaries and ministers are accountable to Parliament, so I do not know whether we need to finance another commissioner.

We are concerned that the bill’s financial memorandum does not entirely outline the cost of implementing part 2. It seems to be likely that further resources would be necessary for the bill to achieve its goals in that area. As was stated by the Lord Advocate in her evidence to the Criminal Justice Committee, the most significant improvement that we can make is to prepare victims better for the trial process.

On part 3, my party agrees with the approach that is outlined on special measures. However, that part of the bill would supersede provisions of the Children (Scotland) Act 2020 that have not been implemented. We consider that to be a missed opportunity to improve the experience for victims, and we hope that that will not be repeated.

I go back to Keith Brown’s point about bills: I would prefer time being spent on taking bills through Parliament properly to what happened with, for example, the Children (Scotland) Act 2020, which was passed in the previous session of Parliament but now appears to have been rewritten and repealed in this session. If we go by the response from the Scottish Government to our report, it appears that the bill will not be implemented until 2027, which is in the next session of Parliament. I have concerns about that.

It is not surprising that part 4 is the subject of a lot of debate and disagreement. The changes in it would be radical and historic. My party agrees that it is time to leave the unique not proven verdict in the past.

Although we can sympathise with the apparent justifications for changing the size of jury trials and majorities, we are very concerned about the lack of evidence to support the changes. We are also worried that the changes might overstep what is necessary, because other changes might have the desired impact of convicting more guilty people. A change of that magnitude, if making it becomes more compelling in the future, might be better made in isolation, when its consequences could be seen more clearly.

On part 5, we believe that the current system is right: a crime that is as abhorrent as rape should sit under the High Court alongside murder. That treats rape with the appropriate seriousness. We appreciate the intentions behind a sexual offences court, but we have practical concerns that it will not be a sufficient improvement and that it might even delay the process. One of the most common issues that victims of sexual crime raise is the lengthy process that they go through to receive

justice. We strongly caution against doing anything that would increase the length of time the process takes.

Do I have time to continue, Presiding Officer, or do you want me to conclude?

**The Presiding Officer (Alison Johnstone):** You have a little time.

**Sharon Dowey:** Part 6 of the bill deals with several points. Our principal concern about part 6 is the proposed pilot of juryless trials. It is a long-established principle that people who are accused of serious crimes have a right to trial by a jury of their peers. Moving away from that could have severe unintended consequences.

As I stated at the outset, we are concerned that implementing the many seismic changes in the bill at once could make individual changes impossible to evaluate. We also do not consider that there has been enough time to assess the impact of directing juries about rape myths, which began only late last year.

In conclusion, I say that my party has sought changes that would improve the justice system for victims. Several parts of the bill could make a difference, but although we agree with the intention behind the bill, we have some serious concerns that it is light on detail, that it might have unintended consequences, that it fails to outline the full financial implications and that some proposals could actually hinder the administration of justice. We will work to improve the bill and we will take a constructive approach to amendments, but a great many changes are needed if the aims of the bill are to be achieved.

17:20

**Angela Constance:** The bill was introduced almost a year ago, and it certainly has been a long journey to get us here to today's stage 1 proceedings. Of course, we still have some hard miles ahead of us.

I reiterate my thanks to members of the Criminal Justice Committee, the Delegated Powers and Law Reform Committee and the Finance and Public Administration Committee for their scrutiny, and I thank all members for their participation in today's debate.

Throughout the debate, I have heard it said repeatedly that the bill is too big. It is somewhat unusual for a Government minister to be challenged on trying to do too much too soon—we usually hear the reverse. I gently point out to members that the bill is 68 pages long and has 71 sections, and that there is currently a criminal justice bill with the Westminster Parliament that is 184 pages long. In the Scottish Parliament, we have had three previous criminal justice bills that have been far longer—in particular, the 2010 Criminal Justice and Licensing (Scotland) Bill.

**Katy Clark:** Surely the point is not the length of the bill but the number of system changes that are proposed in it.

**Angela Constance:** I appreciate Ms Clark's point, because fundamental reform is needed and, to achieve fundamental reform, we have to be focused on significant reforms that get to the heart of the needs and rights of victims, particularly victims of sexual offences. We need to consider all those issues together rather than in a piecemeal ad hoc reform fashion. That was the point that Keith Brown made. We can tinker at the edges, but that will do little to change the status quo. I am very clear that victims and witnesses deserve an ambitious approach that can truly impact on outcomes.

Whether in the representations that I have received or in the evidence that has been given to the committee, victims have often talked about accountability or, indeed, lack of accountability. We have heard that repeatedly. That is what led to the calls for a victims and witnesses commissioner. The commissioner will have an important role to play in holding justice agencies to account. That does not mean that we do not also have a role to play in holding ourselves and one another to account, but I will lodge amendments to strengthen the role of the commissioner in that regard.

I want to quote from correspondence that I received from Mr Woodburn this week—I am sure that he will not mind me quoting him. He said:

> "we have all taken part and pushed for this role in particular because we have not had the role to turn to in the past, and have suffered because of that, all of our efforts have not been for ourselves, it is too late for us, but everything we have done, and will continue to do, is for those that come after us in order to help them navigate an easier path through what is an extremely traumatic time".

**Russell Findlay:** Obviously, Mr Woodburn has a very good point, but has the cabinet secretary explained to him and others that the victims commissioner will not be able to make representation on behalf of victims?

**Angela Constance:** Perhaps I could reassure Mr Findlay by saying that our proposals for a victims and witnesses commissioner came from our engagement with victims and witnesses, and in particular through the victims task force. I have a manifesto commitment to deliver in that area, and I gently point out that there is at least one other party in the chamber that also has a manifesto commitment in that area.

We all want to deliver a system in which victims are treated with compassion and their voices are heard, while the rights of the accused continue to

be protected. As a former criminal justice social worker, I have spent decades upholding the rights of the accused and of offenders while fighting tooth and nail for the rights of victims. Surely we can continue to do both.

We need to have a more modern and transparent system that provides public confidence. The package of reforms in the bill will help to achieve that, notwithstanding that there will be changes to the bill as it progresses.

Our Parliament has long invested in tackling violence against women and girls. The bill is part of that agenda, but it is not the only part. I assure members that we have listened to all voices and have looked at all the evidence. There has been no cherry picking of arguments and evidence that suit my narrative; we have endeavoured to look at everything in the round. It is naive in the extreme to dismiss the existence of rape myths, given the 50 studies involving 15,000 participants over a decade. Our jury research is not the only such research, but it is one of the biggest of its kind in the UK.

Across the chamber, we all recognise the particular challenges with sexual offence cases. It is simply not good enough for us to shrug our shoulders and observe that it is just too hard for us to press for justice for such crimes. This is our world, and it is our country's system. It is our responsibility to ensure that our system works for all crimes and for all women and girls, and to ensure that there is fairness and integrity in that system.

**Liam McArthur:** The cabinet secretary will recall that, in my speech, I mentioned the impact of the Smith v Lees ruling being overturned. What assessment has been made of the impact of that on the way in which corroboration is dealt with in such cases and, in turn, the impact on rape and sexual assault prosecutions?

**Angela Constance:** As I said to another member earlier, we are looking at all that in the round, because the point that Mr McArthur has raised is a substantive one.

It is a wee bit regrettable that some people have spoken about experimenting. Last week, some members were waxing lyrical about the inquiring minds of the Scottish enlightenment. I want to avoid us all sitting on a shelf, stuck by good old-fashioned Scottish exceptionalism.

The pilot will, of course, be time limited. I have spoken about the range of amendments that will be lodged.

**Jamie Greene:** Will the cabinet secretary take an intervention?

**Angela Constance:** I am really sorry, but I do not have time. I am on the clock.

It is important to recognise that the pilot does not represent a button that we can press to change conviction rates. Each case in the pilot will be decided based on the evidence. It is about having confidence in the conviction rates and that justice is being served. The written reasons that will be produced will explain why cases have resulted in convictions or acquittals. The biggest reason why I am in favour of a pilot relates to the strength of the written reasons in providing transparency and giving assurance to the complainer and the accused.

I take this opportunity to once again reaffirm my commitment to working constructively across the chamber and the sector to secure the many improvements that can be made to the bill. The Government has published an indicative timeline for the bill's implementation, with the vast majority of its provisions being implemented in year 1, which will be 2025.

Many of the issues that the bill looks to address are long standing. We cannot afford to kick the can down the road. If we do not act, we will pass the problem on to our successors and will lose the opportunity to bring about real change for victims who are going through the system now and those who will go through it in the future.

I have asked this before of those who disagree with reforms in the bill, and I make no apologies for asking it again: if not this, what? If not now, when? It is time for us to take action and work together to ensure that we do not have a justice system that harms, distresses and retraumatises victims and witnesses but have one that serves them and is fit for a modern Scotland.

# Victims, Witnesses, and Justice Reform (Scotland) Bill: Financial Resolution

17:30

**The Presiding Officer (Alison Johnstone):** The next item of business is consideration of motion S6M-12560, in the name of Shona Robison, on a financial resolution for the Victims, Witnesses, and Justice Reform (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Victims, Witnesses, and Justice Reform (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3A of the Parliament's Standing Orders arising in consequence of the Act.—[*Angela Constance*]

**The Presiding Officer:** The question on the motion will be put at decision time.

# Appointment of Members of the Standards Commission for Scotland

**The Presiding Officer (Alison Johnstone):** The next item of business is consideration of motion S6M-12910, on the appointment of members of the Standards Commission for Scotland. I call Maggie Chapman to speak to and move the motion on behalf of the Scottish Parliamentary Corporate Body.

17:31

**Maggie Chapman (North East Scotland) (Green):** I am delighted to be speaking to the motion in my name as a member of the corporate body appointment panel, and invite members of the Parliament to agree to the appointment of Morag Ferguson and Lezley Stewart as members of the Standards Commission for Scotland.

The standards commission is part of the ethical standards framework, and its role is to encourage high ethical standards in public life by promoting and enforcing the codes of conduct for councillors and members of devolved public bodies. It issues guidance to councils and public bodies, and adjudicates on alleged contraventions of the codes referred to it by the Commissioner for Ethical Standards in Public Life in Scotland.

I turn to our nominees. Morag Ferguson has been a solicitor for more than 30 years, spending most of her career in the public sector, both in the NHS National Services Scotland central legal office and in a number of local authorities. Latterly, she was head of corporate support at East Lothian Council, with responsibility for governance, people services, human resources and corporate communications.

Lezley Stewart has worked for the Church of Scotland for more than 25 years in Dundee and Edinburgh, serving as an ordained office-holder. Most recently, she was employed as the recruitment and support secretary, and ministry support manager, for the Church of Scotland.

I am also delighted to announce that, following an open recruitment exercise, the corporate body will appoint Suzanne Vestri, an existing member of the Standards Commission, as the new convener, with effect from 7 May 2024.

I am sure that the Parliament will want to wish them all every success in their new roles.

I thank the outgoing convener, Paul Walker, and Anne-Marie O'Hara, who was a member for a while. I wish them all the best for their future.

I move,

That the Parliament agrees, under section 8 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to appoint Morag Ferguson and Lezley Stewart as Members of the Standards Commission for Scotland.

**The Presiding Officer:** The question on the motion will be put at decision time.

# Decision Time

17:33

**The Presiding Officer (Alison Johnstone):** There are three questions to be put as a result of today's business. The first is, that motion S6M-12922, in the name of Angela Constance, on the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 1, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

There will be a short suspension to allow members to access the digital voting system.

17:33

*Meeting suspended.*

17:36

*On resuming—*

**The Presiding Officer:** We move to the vote on motion S6M-12922, in the name of Angela Constance, on the Victims, Witnesses, and Justice Reform (Scotland) Bill.

**For**

Adam, George (Paisley) (SNP)
Adam, Karen (Banffshire and Buchan Coast) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Arthur, Tom (Renfrewshire South) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Brown, Siobhian (Ayr) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Chapman, Maggie (North East Scotland) (Green)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Natalie (Renfrewshire North and West) (SNP)
Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Fairlie, Jim (Perthshire South and Kinross-shire) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
Gray, Neil (Airdrie and Shotts) (SNP)
Greer, Ross (West Scotland) (Green)
Harper, Emma (South Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Haughey, Clare (Rutherglen) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Gillian (Central Scotland) (Green)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)

Martin, Gillian (Aberdeenshire East) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McAllan, Màiri (Clydesdale) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLennan, Paul (East Lothian) (SNP)
McMillan, Stuart (Greenock and Inverclyde) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
Minto, Jenni (Argyll and Bute) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)
Robertson, Angus (Edinburgh Central) (SNP)
Robison, Shona (Dundee City East) (SNP)
Slater, Lorna (Lothian) (Green)
Somerville, Shirley-Anne (Dunfermline) (SNP)
Stevenson, Collette (East Kilbride) (SNP)
Stewart, Kaukab (Glasgow Kelvin) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Todd, Maree (Caithness, Sutherland and Ross) (SNP)
Tweed, Evelyn (Stirling) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Yousaf, Humza (Glasgow Pollok) (SNP)

**Abstentions**

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Balfour, Jeremy (Lothian) (Con)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Briggs, Miles (Lothian) (Con)
Burnett, Alexander (Aberdeenshire West) (Con)
Carlaw, Jackson (Eastwood) (Con)
Carson, Finlay (Galloway and West Dumfries) (Con)
Choudhury, Foysol (Lothian) (Lab)
Clark, Katy (West Scotland) (Lab)
Cole-Hamilton, Alex (Edinburgh Western) (LD)
Dowey, Sharon (South Scotland) (Con)
Duncan-Glancy, Pam (Glasgow) (Lab)
Eagle, Tim (Highlands and Islands) (Con)
Ewing, Annabelle (Cowdenbeath) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Findlay, Russell (West Scotland) (Con)
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallacher, Meghan (Central Scotland) (Con)
Golden, Maurice (North East Scotland) (Con)
Gosal, Pam (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Greene, Jamie (West Scotland) (Con)
Griffin, Mark (Central Scotland) (Lab)
Gulhane, Sandesh (Glasgow) (Con)
Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
Hoy, Craig (South Scotland) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Kerr, Liam (North East Scotland) (Con)
Kerr, Stephen (Central Scotland) (Con)
Lennon, Monica (Central Scotland) (Lab)
Leonard, Richard (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Marra, Michael (North East Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCall, Roz (Mid Scotland and Fife) (Con)
McKee, Ivan (Glasgow Provan) (SNP)
McNeill, Pauline (Glasgow) (Lab)
Mochan, Carol (South Scotland) (Lab)
Mountain, Edward (Highlands and Islands) (Con)
Mundell, Oliver (Dumfriesshire) (Con)
O'Kane, Paul (West Scotland) (Lab)
Regan, Ash (Edinburgh Eastern) (Alba)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Sarwar, Anas (Glasgow) (Lab)
Simpson, Graham (Central Scotland) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Smyth, Colin (South Scotland) (Lab)
Stewart, Alexander (Mid Scotland and Fife) (Con)
Sweeney, Paul (Glasgow) (Lab)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)
Wells, Annie (Glasgow) (Con)
Whitfield, Martin (South Scotland) (Lab)
Whittle, Brian (South Scotland) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

**The Presiding Officer:** The result of the division on motion S6M-12922, in the name of Angela Constance, is: For 60, Against 0, Abstentions 62.

*Motion agreed to,*

That the Parliament agrees to the general principles of the Victims, Witnesses, and Justice Reform (Scotland) Bill.

**The Presiding Officer:** The next question is, that motion S6M-12560, in the name of Shona Robison, on a financial resolution for the Victims, Witnesses, and Justice Reform (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Victims, Witnesses, and Justice Reform (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3A of the Parliament's Standing Orders arising in consequence of the Act.

**The Presiding Officer:** The final question is, that motion S6M-12910, in the name of Maggie Chapman, on the appointment of members of the Standards Commission for Scotland, be agreed to.

*Motion agreed to,*

That the Parliament agrees, under section 8 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to appoint Morag Ferguson and Lezley Stewart as Members of the Standards Commission for Scotland.

**The Presiding Officer:** That concludes decision time.

# Two-child Benefit Cap

**The Deputy Presiding Officer (Liam McArthur):** The final item of business is a members' business debate on motion S6M-12841, in the name of Clare Haughey, on the seventh anniversary of the two-child benefit cap.

The debate will be concluded without any question being put. I would be grateful if members who wish to participate could press their request-to-speak buttons.

*Motion debated,*

That the Parliament regrets to mark the seventh anniversary of the introduction by the UK Government of the twochild benefit cap, and the associated so-called rape clause; notes with alarm reports that over 87,000 children across Scotland are affected by the cap, including 3,610 in South Lanarkshire; further notes the work of the Joseph Rowntree Foundation, which reports that the poverty rate for children in families with three or more children was almost twice as high as the poverty rate for children in one- or two-child families in 2021-22, at 43% compared with 23% and 22% respectively, as a result of UK welfare policies such as the two-child benefit limit; highlights what it considers to be the contrast between the inhumane practices of the UK Government's Department for Work and Pensions and the compassionate approach of the Scottish Government's Social Security Scotland; understands that the Scottish Government has already spent more than £733 million over the last five financial years to mitigate UK Government welfare policies, despite what it sees as a remarkably challenging financial environment and the fiscal limitations of devolution; notes that the Scottish Child Payment and other devolved policies are forecast to keep up to 100,000 children in Scotland out of relative poverty in this financial year; further notes the view that Scotland should continue to build a social security system that is founded on dignity, fairness and respect, and notes the calls urging the UK Government to reverse the two-child benefit cap and what it regards as the other abhorrent and ineffective welfare reforms that have been implemented over more than a decade of austerity.

17:40

**Clare Haughey (Rutherglen) (SNP):** I thank all the MSPs who signed my motion, and I am very grateful to all those who are in the chamber for the debate.

This year, 2024, marks the seventh anniversary of the United Kingdom Government's introduction of the callous two-child benefit cap and the associated rape clause. The policies were the brainchild of the former Tory Chancellor of the Exchequer, George Osborne, who announced in 2015 that, as part of a series of harsh welfare cuts, the UK Government would limit child tax credit and universal credit to the first two children in most households. As a result, the majority of families with a third or subsequent child born after April 2017 have been ineligible for additional tax credit or universal credit for that child, and support provided to families who made a new claim for universal credit after that date has also been limited to two children.

The policy affects 1,420 households in South Lanarkshire, which is the local authority that serves my Rutherglen constituency. It means that younger siblings are missing out on the £62 per week that their older siblings receive from the state, which equates to a total loss of £3,200 a year per extra child for families in receipt of universal credit or legacy benefits.

Within the details of the two-child limit policy announcement, the Tories buried their cruel rape clause exemption. The UK Government announced that it would

"develop protections for women who have a third child as the result of rape".

The word "protections" is hardly the one that I would use, given that the workaround is that women have been required to fill out an eight-page form in order to prove that they have been raped. Under the process, women need to show documents such as a criminal injuries compensation scheme award, or provide available evidence of a conviction for rape. What a heartless and horrific process. Year after year, that cruel policy has forced women to relive the trauma of sexual assault in order to claim the support that they, and their children, need in order to live.

A common argument from the UK Tory Government, in trying to sell its regressive welfare cuts, is that they are supposed to incentivise parents into work. However, a 2023 study from the London School of Economics and Political Science, found

"no evidence that capping child benefits increases employment."

According to Save the Children, 60 per cent of families affected by the two-child limit

"have at least one adult in paid employment",

and

"the remaining non-working households"

might

"include a parent with a disability or health issues, or a parent who acts as a full-time carer."

The policy has plunged a rising number of children into poverty, placing them into a cycle of poverty that not only harms their experiences in childhood but impacts on their long-term opportunities and life chances. The Joseph Rowntree Foundation reports that, at 43 per cent, the poverty rate for children in families with three or more children was almost twice as high as the poverty rate for children in one-child or two-child families in 2021-22—which is 23 per cent and 22 per cent respectively—as a result of UK welfare policies such as the two-child benefit limit.

It is worth looking at the UK's two-child limit policy in an international context, too. Research from the London School of Economics shows that only three European Union countries—Cyprus, Romania and Spain—restrict their benefits by family size, but they do so at three or four children. Indeed, in many countries, benefits actually increase with family size.

In the UK, the two-child cap affects 1.5 million children, or one in 10, with more than 87,000 children impacted in Scotland, and it has been estimated that

"under a fully rolled out two-child limit ... 590,000 more children would be in relative poverty than if the two-child limit did not exist."

**Jeremy Balfour (Lothian) (Con):** Would the member recognise that the majority of Scottish people, as the latest surveys show, actually welcome the benefit cap and support the UK Government with regard to that particular policy?

**Clare Haughey:** I absolutely would not recognise that. In fact, the majority of people condemn the callous welfare cuts and the austerity agenda that your party supports and promotes.

In contrast, the Scottish National Party Government is doing everything that it can to prevent families in Scotland from falling into poverty. The Scottish Government has spent more than £1 billion on protecting Scottish households from the impacts of 13 years of Tory austerity and policies. That spend, including the Scottish child payment, has helped lift 100,000 children out of poverty in Scotland. Without the full powers of independence, however, our work on tackling child poverty is hampered by the actions of Westminster.

The Child Poverty Action Group argues that

"Abolishing the two-child limit is the most cost-effective way of reducing child poverty—it would lift 250,000 children out of poverty, and a further 850,000 children would be in less deep poverty at a"

relatively modest

"cost of just £1.3 billion."

Staggeringly, the Prime Minister revealed at the weekend that, purely for ideological reasons, he will keep the two-child benefit cap if the Conservatives win the next election. That has nothing do with cost; rather, making kids poor appears to be Sunak's political priority, and he evidently does not care about the long-term costs of keeping the cap in place.

Thankfully, this heartless Tory Government looks unlikely to win the next general election, but we cannot pin our hopes on Labour either. If Labour is serious about tackling child poverty and breaking down barriers to opportunity, abolishing the two-child limit should be one of the first things that it does when it gets the keys to number 10. The Resolution Foundation estimates that by the end of the decade, the benefit cap and the two-child limit are due to drive the majority of large families into poverty, yet Labour has, time and again, failed to commit to scrapping the limit if it gets into office.

I have a question for the Labour MSPs sitting in the chamber today—all three of them. Isn't that marvellous? As the party of the working people, do you really believe that it is acceptable for children across Scotland to suffer, simply because of the number of siblings they have? We know that the Tories thrive on monstering people who are in receipt of benefits, but it is shocking that Labour is taking the same line.

**Paul O'Kane (West Scotland) (Lab):** Will the member take an intervention?

**Clare Haughey:** I will take your intervention.

**The Deputy Presiding Officer:** Speak through the chair, please, Ms Haughey.

I call Paul O'Kane.

**Paul O'Kane:** We have debated the benefit cap in the chamber a number of times, and we have been very clear in our opposition to it. However, would the member not agree that the entire universal credit system must be fundamentally looked at and reformed to ensure that all parts of it can better serve those who need it?

**Clare Haughey:** I agree that the benefits system needs to be looked at. However, I have not seen anything from Labour to say that it is going to scrap the two-child policy. I ask the member to point me to where Keir Starmer has that written down. Then again, would I believe him? He has flip-flopped on so many policies and promises since he got a sniff of getting into number 10 Downing Street.

Notwithstanding the moral arguments for abolishing the cap, it would send a strong signal that we are moving on from austerity and welfare cuts, which have torn the heart out of communities across the UK. I suspect that the reason that Labour does not want to do that is because it has already signed up to the same fiscal rules, and many of the same policies, as the Tories.

I will end on a quote from Becca Lyon, who is the head of child poverty at Save the Children UK. She said:

"This policy is one of the cruellest welfare rules of the past decade. Right now 1.5 million children—one in every ten children growing up in the UK—is affected by it and misses out on £62 a week. This can mean less money for food, children's clothes, toys and books, and being able to travel to nearby activities and experiences … Scrapping it should be a priority for the current or any future UK government."

I could not agree more.

17:49

**Jeremy Balfour (Lothian) (Con):** It is of the utmost importance that we, in the chamber, tell the truth. It is incumbent on us, as lawmakers, to ensure that we are being honest with the electorate, and that we do not simply tell them what we think that they want to hear. We should not be engaging in the primary-school politics of promising the world, when we know that it is undeliverable.

In that light, I will lay out what I think are some of the reasons why the two-child cap is necessary. From the outset, I ask colleagues in the chamber to understand that support for the two-child cap is not a result of a disregard or dislike—or denial—of the most vulnerable in our society. Too often, we hear those charges levelled at well-meaning people who are trying to do what they think is best. That does nothing for the standard of discourse, and it encourages the polarised political landscape that is playing out.

Governments have to do their best to distribute their resources fairly, and that is what the UK Government is doing. The Scottish Government, and the Scottish Greens, seem to be in denial when it comes to the evidence. However, a YouGov poll from last year showed that 53 per cent of people in Scotland wanted the cap to remain in place. The majority of Scottish people, when asked about it, endorsed the responsible path that is being taken, but that is not what we are hearing today from other members.

When it comes to Government, there are tough choices to be made. There is only so much money that can be spent, and Government has to do what it can with the resources that are available. If, as Clare Haughey has suggested, the cap were to be lifted, the UK Government would have to find well over £1 billion to fund that change, and that would have to be raised either through taxes or through cuts to other services.

**Clare Haughey:** Given the impact of the benefit cap on children, including on their development and their future prospects, does the member not think that that amount of money would be an investment? He should look at some of the waste over which Westminster has presided; we have had high speed 2, the personal protective equipment scandal and all sorts of other things. If Westminster wanted to support those children, it could find the money.

**The Deputy Presiding Officer:** Interventions could be a bit briefer. I will give you the time back, Mr Balfour.

**Jeremy Balfour:** I am not ignoring the member by not addressing her intervention immediately—I will come to it at the end of my speech, if that is okay.

There are those who would want to fund the abolition of the cap through deficit spending. However, in the wake of the Covid-19 pandemic, the world has seen the effect of high levels of borrowing on the economy. I am afraid that it is not enough simply to call for the removal of the cap; those who oppose it need to come up with a viable solution to replace it.

It is worth noting—and I come back to the intervention that we have just heard from Clare Haughey—that if the SNP really believes that there is an alternative, or that the policy should be changed, it could fund that tomorrow if it wanted to do so—[*Interruption*.] Nothing is stopping the Scottish Government from scrapping—and nothing is preventing the Cabinet Secretary for Social Justice from standing up tonight and saying that it will scrap—the limit in Scotland—[*Interruption*.]

**The Deputy Presiding Officer:** Mr Balfour, resume your seat, please.

Listen—we have listened to members with respect since the start of the debate. We are now hearing too many interventions from a sedentary position. Mr Balfour has taken interventions; I am assuming that other members will do likewise, and members should, therefore, desist from making sedentary interventions.

Mr Balfour, you can begin to bring your remarks to a close.

**Jeremy Balfour:** The Scottish Government would have to find funds from another portfolio. If it is going to do so, I would be interested to know which portfolio Clare Haughey would want to see cut. All that I am asking the Scottish Government to do is what Clare Haughey is asking the UK Government to do: find the money from another budget and put it in. I would much rather that the Scottish Government were honest, and that it either brings forward that money or stops telling people that it is against something that it could change tonight.

17:55

**Paul O'Kane (West Scotland) (Lab):** I am pleased to contribute to this evening's debate. Clare Haughey's motion provides Parliament with an opportunity to look back at social security across the UK, including here in Scotland, over the seven-year period. We know that those seven years have been part of a longer period—14 years—of a Conservative Government at UK level that has failed to support people who need the social security system most, failed to tackle

poverty and wreaked economic chaos on families and the household incomes of people across this country.

We have had a decade or more of so-called reform through universal credit, but it is clear that it is not working. We have 400,000 more children in poverty now than there were in 2010, when the previous Labour Government left office. As we have heard, most people who are in poverty today are in work, and two thirds of children who are in poverty live in a household with someone who goes out to work. It is clear that, in regard to both the social security safety net and work in this country, the system is not working.

Reform has been debated here tonight, including reform of the two-child limit, which is a pernicious policy. I have outlined my opposition to it in the many debates that we have had—I think that this is the fourth debate in the chamber on the issue, including one that was in Government time.

**Jeremy Balfour:** Will Mr O'Kane tell me where the UK Government would find the extra £1 billion to pay for scrapping the two-child limit? What other budget would his UK colleagues cut?

**Paul O'Kane:** Mr Balfour has heard me say before that the entire system is not working. That is why we must take a whole-system approach and look at all the facets and measures of universal credit. We will not take advice from a Tory Government that has, as I have outlined, pushed more and more people into poverty and has not focused on ensuring that the safety net is there for people who need it.

We need to fundamentally reform all aspects of universal credit and have an overarching UK Government anti-poverty strategy, which has been seriously lacking from the Conservative Party over both the seven years and the 14 years that the Conservatives have been in government. Given what I said about in-work poverty, it is clear that we need to reform work across the UK to ensure that we lift people's wages, put money in people's pockets and put an end to insecure work.

What a contrast the past 14 years have been for the 1 million children, including 200,000 children in Scotland alone, and the 1 million pensioners who were lifted out of poverty by the previous Labour Government. That will be our focus if we form the next UK Government, through a new deal for working people and fundamental reforms of the social contract.

The motion reflects on what has happened in the past seven years under this Parliament, including the advent of Social Security Scotland. The cabinet secretary and I have often tried to find consensus in many such areas—I know that she is keen to do so. For example, Labour members have supported the Scottish child payment, and I think that support for it will continue as we move forward.

However, the Government and the SNP must reflect on what is not working so well in the system. We talk about a system that is rooted in fairness, dignity and respect, and we hear assertions that those concepts are inherent in the system. However, there are serious challenges with waiting times for benefits such as the Scottish child disability payment—just in the past week, we heard that, sadly and tragically, nine children died while waiting for payment of that benefit. I therefore do not think that it is fair to say that the system in Scotland is perfect or is always rooted in dignity, fairness and respect. There is much more to do to move that forward.

It is clear that there is a huge amount of work to do to rectify the legacy that the Conservatives will leave behind when—I hope—they leave office not too far in the future. There are huge challenges with the social contract, which will have to be rebuilt from the ground up. Crucially, for people who experience in-work poverty, we need to have a new deal for working people that supports them, puts money in their pockets and ensures that they are in safe and secure work and that they can bring in the money that they need to support their family.

18:00

**Collette Stevenson (East Kilbride) (SNP):** I am grateful to Clare Haughey for securing the debate. It is seven years since the introduction of the cruel two-child limit—a policy that was driven by Westminster's austerity agenda and was designed to put children into poverty. The policy's most toxic part is the rape clause, whereby women with more than two children must prove to the UK Government that they got pregnant after being raped if they are to be entitled to the payment. In Scotland last year, more than 2,500 women had to relive the trauma of sexual assault or coercive control just to put food on the table.

It will not surprise many people that the Tories champion such a policy. However, a vote for Labour is also a vote for the two-child limit, because Scottish Labour politicians are happy to support whatever their Westminster leader, Sir Keir Starmer, says. It seems that MSPs have been whipped into line—it says a lot that not one Labour MSP supported today's motion for debate.

As Clare Haughey said, more than 87,000 children in Scotland are affected by the two-child limit.

**Paul O'Kane:** I hear what the member says about the support or otherwise for the motion, but will she recognise the concern about Social Security Scotland, the challenges around waiting

times and the issues around fairness, dignity and respect—the motion refers to that—as I outlined in my contribution?

**Collette Stevenson:** The member said that it is a pernicious policy. Can you not stand up and say that you would scrap it, if you were in number 10?

**The Deputy Presiding Officer:** Please speak through the chair.

**Collette Stevenson:** As Clare Haughey said, more than 87,000 children in Scotland are affected by the two-child limit. Recent data from the End Child Poverty coalition shows that that includes about 1,500 children in the Westminster constituency of East Kilbride, Strathaven and Lesmahagow.

Scrapping the two-child limit could lift 20,000 children in Scotland out of poverty. If the policy were scrapped, the benefit to each of the children who are living in poverty would be just over £3,000 per year.

In comparison, Westminster politicians are entitled to claim extra expenses that are worth up to £6,120 per child per year for three children. Research suggests that dozens of Labour and Tory MPs benefit from that. Politics is about choices, and the choices of Labour and Tory politicians are beyond hypocrisy—they are shameful.

Let us consider the choices that the SNP Government has made. Only about 15 per cent of social security responsibility is devolved to Scotland, and many vital payments are still controlled by Westminster. With those limited powers over social security, the Scottish Government is delivering 14 benefits, seven of which are unique to Scotland. That includes the game-changing Scottish child payment, which is worth £26.70 per eligible child per week. That offers real help to thousands of families who are struggling during the cost of living crisis, and it lifts kids out of poverty without any discriminatory two-child cap or toxic rape clause. Inclusion Scotland has declared that the Scottish child payment has created

"the largest fall in child poverty anywhere in Europe for at least 40 years".

Overall, modelling suggests that Scottish Government policies will keep 100,000 children out of poverty this year. It is worth repeating that our Government has achieved that with one hand tied behind its back. Let us imagine what we could do with the full powers of independence.

Policies such as the two-child limit clearly show how out of touch Westminster is. A vote for Labour or the Tories at the next UK election is a vote to keep the rape clause but to have no cap on bankers' bonuses.

**The Deputy Presiding Officer:** You need to conclude, Ms Stevenson.

**Collette Stevenson:** While Westminster demonises the most vulnerable in our society, the SNP Government will do everything that it can to tackle poverty.

18:05

**Carol Mochan (South Scotland) (Lab):** I agree that we must reverse the two-child benefit cap; indeed, I am on record as supporting that position. The policy has, quite clearly, led to misery and distress for many families, and it strikes me as exactly the kind of cruel policy designed to grab tabloid headlines that has become the Conservative Government's trademark. My view is now on the record again.

Our welfare system should not be designed to discourage families and victimise children before they even have a foothold in life. The entire purpose of the welfare state was to create a safety net from the cradle to the grave, but that concept has been continuously degraded year after year, while the wealthiest in our society have amassed yet more wealth.

**Jeremy Balfour:** If, as Mr O'Kane has said, you are going to review the whole universal credit system, how long will that take? Where will you find the £1 billion to pay for getting rid of the two-child cap? Can you help me out, please?

**The Deputy Presiding Officer:** Speak through the chair, Mr Balfour.

**Carol Mochan:** I am extremely happy to help out Jeremy Balfour. This will be an investment in our young people, which, in turn, will be an investment in our society, and there is clear evidence that what we gain from doing that will be far more than the cost will ever be.

The wealthiest in our society seem to gain the most, currently. A country that operates in that way only further ingrains inequality, and the consequences of that—Jeremy Balfour might want to listen to this—will be felt for generations to come and cost the country for generations. I do not want that to happen, and I believe that most members in the chamber do not want that, either.

Surely the fact that we are still talking about austerity in 2024—a full 14 years after that short-sighted economic strategy began—says a lot about the clear fact that it simply does not work. As I have said, I am sure that the vast majority of us in the Parliament—certainly Labour members—agree that we do not want policies that reflect inequality in our society.

The motion mentions devolution, as my colleague Paul O'Kane has said. More devolution

is, of course, welcome, but we must use the powers that we have in a timely manner, and it is the responsibility of Opposition parties to hold the Government to account on its record.

We recently learned, following freedom of information requests from my colleague Paul O'Kane, that 116 people in Scotland died while waiting for their adult disability payment to be approved. Some of the same problems are associated with the callous disinterest of the Department for Work and Pensions system. We should all stand up and say that that is absolutely unacceptable. I am sure that Government members will agree that the whole point of retrieving such powers was to counteract that flawed approach, so we must all be vigilant in ensuring that we raise any issues that come to us.

We must do better with all our legislative powers and strive to maintain respect for social security. Without that, it does not take much for opportunistic politicians across the different Parliaments to come in and degrade the entire system. That has been happening throughout my entire adult life, and we should not imagine that we are any less prone to it in Scotland.

I will play my role in pushing any new Labour Government to invest in our social security system. My front-bench colleague mentioned many ways in which we will do that through a whole-system approach and by using the new deal for workers to maximise what we can do for working people in Scotland and across the rest of the UK.

Labour has a very strong record of lifting people, including children, out of poverty, and I have every confidence that it will do so again. I have always played my part in shaping the Labour movement, and I will continue to do so.

I say again that we must all work together where we can to ensure that we fight inequality. When we see austerity—

**The Deputy Presiding Officer:** Please wind up, Ms Mochan.

**Carol Mochan:** —we must ensure that we work together to change it.

18:10

**Jackie Dunbar (Aberdeen Donside) (SNP):** I congratulate my friend and colleague Clare Haughey on securing this important debate.

As the motion regretfully notes, this month marks the seventh anniversary of the introduction of the two-child cap. That cruel policy means that families miss out on around £3,200 a year due to the loss of universal credit or child tax credit. That is £3,200 for every child that they have after their first two.

That policy could not be further from my values or from those of many folk across Scotland. I believe that children should be given the best possible start in life. In Scotland, and with an SNP Scottish Government, we are investing in that best possible start, in our future and in our young people through a wide range of measures. We are doing that with the baby box, by delivering 1,140 hours a year of free childcare and through the game-changing Scottish child payment.

We can compare and contrast that with the UK Government's two-child cap, a policy that directly targets children, based simply on how many siblings they have. That policy includes the rape clause, which forces women to prove that they were raped and is one of the cruellest policies to have been introduced by the Tories during their time in Government. An email that I received this morning from the Scottish Association of Social Work said that its members

"witness day-in and day-out the hardship and poverty caused by this inhumane piece of legislation. It hits the most vulnerable children and families the hardest and fails to recognise the fact that all children, whatever their placement is in their sibling group, are citizens with human rights to the basics of decent living. It impacts most on women (still usually the primary or only carer) both financially but also because the impossible and pernicious decision to label a child the result of rape falls to them."

As far as I am concerned, the child cap should have no place in a modern democracy and I look forward to its being scrapped at the earliest possible opportunity.

Just last June, the then shadow Work and Pensions Secretary, Jonathan Ashworth, described the two-child cap as "heinous" as he unveiled Labour's plans to scrap it. A little over a month later, UK Labour decided that it would keep the cap after all and, two months after that, scrapped Jonathan Ashworth instead, in a reshuffle.

This is not about a lack of money, but a lack of principles. Just a couple of weeks ago, in an exclusive piece for the *Daily Mail*, Sir Keir Starmer pledged to increase the defence budget by billions of pounds. There always seems to be money for bombs—whatever shade of UK Government we have, they will always prioritise bombs over bairns. That is the answer to Jeremy Balfour's question about where we could get the money from.

**Paul O'Kane:** In the interests of ensuring the accuracy of the record, the UK Labour Party was talking about a plan to uprate defence spending, not to introduce a 2.5 per cent increase in defence spending right away. In the interests of accuracy, it would be useful to reflect on that.

**Jackie Dunbar:** That money could still be spent on ensuring that our children are fed every single night.

It is a tragedy that the two-child cap has remained in place for seven years. There are about 24,000 such tragedies across Scotland, because that is the number of households—including 730 across Aberdeen—that are currently affected by the policy. According to an End Child Poverty report last year, 2,600 children in the Aberdeen City Council area live in households that are affected by the two-child cap, while, across Scotland, the policy affects more than 87,000 children. The UK Government is failing more than 87,000 children in every corner of Scotland and it will continue to fail them for as long as this barbaric policy remains in place.

18:15

**Maggie Chapman (North East Scotland) (Green):** It is the seventh birthday of the two-child cap. Should we have a party, with balloons, games and wee slices of sponge cake wrapped in a paper napkin? Maybe not. For the 400,000 UK families who are being bludgeoned by the two-child cap, including nearly 500 in Dundee West alone, there is not much money for parties. Indeed, there is not much money for anything.

A report published just last week by Nesta, the innovation agency, found that parents who are affected by the cap are struggling to afford necessities for their children. Many are being forced into desperate debt, and many are skipping meals and selling their belongings. Taking their children to other children's parties—never mind having their own—is one of the luxuries that they cannot afford, along with books, educational toys and school trips. Parents described the stress, guilt and demoralisation that they feel. They are often trapped in low-paid and insecure jobs—we must remember that 59 per cent of affected households are in work—because they cannot afford the childcare that would help them earn more.

We have known that for a long time, of course. The Tory UK Government knew from the beginning that that would be the outcome. It went ahead anyway, veiling its war on the poor with pious talk of unavoidable austerity. That was never true—not then, not now.

Six months ago, we debated the issue here, not long after Keir Starmer had declared:

"We're not changing that policy."

Paul O'Kane has reassured us this afternoon that that is not Scottish Labour's position, which is good to hear. However, it was chilling to hear Sir Keir, in conversation with Tony Blair, doubling down on his intransigence by comparing the lifting of the two-child cap to Liz Truss's calamitous speculation. If he does not understand how distasteful and how downright demeaning that is, I do not know what can reach him.

I do not know what can reach the Tories either. New evidence from the End Child Poverty coalition shows that a quarter of households that are caught by the limit are single-parent families with a child under three. Those are parents that even the UK Government's universal credit rules recognise should not be obliged to find employment. Further, a fifth of the households affected have at least one disabled child.

I have to ask the Conservative representatives: is that really what they want? Do they really think that parents of disabled children, babies and toddlers are to blame for experiencing hard times, perhaps as a result of bereavement, separation or redundancy or due to the excruciating effects of inflation, mortgage or rent increases and the cost of the heating and the food that keep those children alive?

If they do think that those parents should be punished, do they really believe that punishment should be borne by the children? After all, that is what the policy means: collective punishment. We are seeing the punishment of babies, toddlers and disabled children for sins that are not even those of their parents but of successive Tory Governments. Those Governments have no shame, no compunction and no conscience about using the poverty, ill health and misery that they have created to scapegoat those who bear the heaviest burdens.

I am tired. Like many of us, including Clare Haughey, whom I thank for securing this evening's debate, I am sick and tired of standing here, begging those who can influence this obscene policy to do so. However, I am not as sick and tired as the mothers who go without meals so that their children can eat. I am not as tired as the parents who work multiple jobs, come home to care for their families and still cannot afford to buy them a picture book. They are not giving up, so neither will we.

**The Deputy Presiding Officer:** I am aware of the number of members who still want to participate in the debate, so I am minded to take a motion without notice under rule 8.14.3 to extend the debate by up to 30 minutes. I invite Clare Haughey to move the motion.

*Motion moved,*

That, under Rule 8.14.3, the debate be extended by up to 30 minutes.—[*Clare Haughey*]

*Motion agreed to.*

18:19

**Marie McNair (Clydebank and Milngavie) (SNP):** I thank Clare Haughey for bringing this incredibly important debate to the chamber.

It is appalling that Westminster has given us seven years of the disgusting two-child policy. The policy, with its abhorrent rape clause, is one of the cruellest welfare policies to emerge from Westminster. It is designed to set families up to fail and to deny children the most basic levels of subsistence. In April 2023, the two-child limit affected 55 per cent of the 772,000 families with three or more children who were claiming universal credit or child tax credit. That is a staggering figure.

In addition to its being an inhumane and cruel policy, it simply has not worked. Its introduction would—it was trailed—provide incentives for people to find more work and would influence their decisions about having children, but it has failed miserably. A three-year study by the London School of Economics and Political Science found that the policy had had no impact at all on employment rates or on work hours.

Interviews that were carried out as part of that study show—perhaps unsurprisingly—that families' labour market participation is constrained for a number of reasons. One significant reason is to do with access to childcare.

The policy has also had a minimal impact on birth rates. For many families who were interviewed, times had been good when they had an additional child, so the level of benefits was not part of the equation. There are so many people who forget that we are all just one life event away from relying on benefits.

The only thing that the policy has achieved is that it has drastically increased child poverty rates. Nearly half of UK children with two or more siblings now live in poverty, and it is projected that that number will rise sharply in the coming years. Analysis by the Resolution Foundation estimates that, in 2024-25, the lowest-income households will be an average of £1,000 a year worse off as a result of the limit. That is equivalent to 4 per cent of their overall income.

In the past seven years, the only significant shift that we have seen in relation to the policy has been in the Labour Party's position on it. The party that said in 2019 that it would scrap the policy would now keep the cap and the rape clause. That is just one of several U-turns but, in my opinion, it is the most dangerous one. Should the Labour Party win the next general election, it would keep children in poverty.

As a result of the UK Government's reckless policy, the Scottish Government spends a large proportion of its budget on protecting the Scottish people. I am proud that we have a Scottish Government and a Scottish social security system that are committed to dignity, fairness and respect, and which will provide for and protect Scottish children—for example, through the game-changing Scottish child payment.

However, we can do only so much. Fundamentally, the UK Government's benefit cap punishes children and has emotional and material impacts on them. The policy is ruining children's lives today and their futures tomorrow, so let us end it now by reversing the cap. The suffering has gone on for too long.

In response to Sunak's recent reaffirmation of the policy, the CPAG's chief executive said:

> "With child poverty at a record high, the prime minister has now clearly decided that making kids poor is his political priority."

She is spot on, but rather than bringing change that would reverse the trend, the Labour Party has promised to implement the cap and its rape clause "more fairly". How can it be made more fair? I really do not understand that—I cannot get my head round it, at all.

The problem is not just the Tories; it is also the Labour Party. We know from the Labour Party's policy that there is no change coming for children in poverty. Real change will be secured only when we have full control over welfare powers and Scotland is independent.

18:23

**Monica Lennon (Central Scotland) (Lab):** As we have heard, there has been a lot of agreement tonight. There is a lot of unity about and a lot of resentment felt for the policy, so it is right that we have had an opportunity to debate it. Clare Haughey was concerned about the lack of numbers in the chamber, but it is good that we have had an extended debate, because people are so passionate and the majority of us in the chamber believe that the policy is wrong.

We must channel that anger and be careful that we do not become complacent. No Government or political party is doing enough, and the two-child benefit cap is far from being the only injustice that we need to tackle. I hope that debates such as this evening's will help us to think about other areas in which we need to go further and faster.

Scottish Labour has been clear, not just tonight but in recent times, that the two-child benefit cap and the rape clause need to go. We have been opposed to the policy from the very beginning.

**Clare Haughey:** Will the member take an intervention?

**Monica Lennon:** I will in just a second. Other members have made the point very well that we need extensive review and reform not only of universal credit but of the whole social security system. When Angela Rayner was campaigning in Glasgow and Rutherglen last summer, she was very clear that the clause is abhorrent and that the Labour Party is committed to an ambitious child poverty strategy.

**Clare Haughey:** We have heard some clarity about Scottish Labour's position from the MSP point of view. However, Labour UK MPs will make the choices in how they vote, should Labour form the next United Kingdom Government. Which lead will Scottish Labour MPs take? Will they take the one that Anas Sarwar sets, or the one that Keir Starmer seems to be setting?

**The Deputy Presiding Officer:** I can give you the time back.

**Monica Lennon:** It is great to talk about what all those Labour MPs will do. When we have a manifesto—no party has put out a manifesto yet—our Labour candidates will be campaigning to end child poverty. That is absolutely a given. I hope that we can all agree that we need political change and a change in Government at Westminster. That change is a choice between the Tories and Labour.

I do not expect Clare Haughey and her colleagues to say nice things about Labour in the chamber; however, if we are interested in what Labour is saying, as well as Angela Rayner, I will mention Gordon Brown. In an interview, he talked about the fact that it is a terrible policy and that it needs to be looked at as part of the reform. Just last week, Cherie Blair, the human rights lawyer who is part of a campaign, also made some good points. If we want to quote the Blairs, maybe it is Cherie Blair whom we should look at.

We need to think about the wider system change that is required, including what we, in this chamber, need to do. Let us pay attention to the End Child Poverty coalition, which includes more than 80 groups in Scotland. The most recent scorecard is a bit of a wake-up call. That is very much about what more we can do on the Scottish child payment.

We also have to be mindful that we heard from the Scottish Government, in Parliament last week, that the climate targets for 2030 are being scrapped. I hope that we do not get to a situation where the child poverty targets for 2030 become unachievable and also have to be scrapped. I hope that, when we hear from the cabinet secretary, she will give us some reassurance on that.

I believe that the majority of members come here to tackle the issues and to end child poverty, but we cannot be complacent. During the time that members have left in the Parliament, we must focus on those issues. Let us try to work together on that.

18:28

**The Cabinet Secretary for Social Justice (Shirley-Anne Somerville):** I thank Clare Haughey for securing this debate. The Scottish Government has been consistent in its opposition to the two-child limit and associated rape clause since it was introduced. We called on the UK Government, in advance of the spring statement, to abolish that policy. The First Minister has also written to Sir Keir Starmer to ask, in the event of a Labour Government, whether there is a commitment to scrap that policy at source. It is deeply disappointing that no response to either letter has been forthcoming.

The policy puts vulnerable children at risk of hardship and removes the link between what a child and their family need and the amount of financial support that they receive. The policy purposely targets vulnerable children, and the DWP's own analysis estimates that it is currently impacting around 1.5 million children in the UK.

In Scotland, nearly 80,000 children are affected by the two-child limit. When we say that they are affected, in reality that means that families are not able to afford the basic essentials in life. It is clear that the policy is punishing children because their parents are on low incomes. It cannot be right to limit the financial support that is available to children simply because they have two or more siblings. It is deliberate, callous and heartless, and it should have no place in a civilised social security system.

The Scottish Government has spent around £1.2 billion mitigating the impact of 14 years of UK Government policies such as the bedroom tax and the benefit cap. That includes almost £134 million being spent this year through our discretionary housing payments and the Scottish welfare fund, which is money that could have been spent on services such as health, education, transport or, indeed, on further ambitious anti-poverty measures.

Those figures do not include the investment that we are making in the Scottish child payment, in respect of which, unlike the UK Government's benefits, there are no limits on the number of children in each family who can be supported. This year, we will invest nearly £500 million in the Scottish child payment, which will help to improve the lives of 329,000 children across Scotland. Modelling that was published in February estimates that the Government's policies, including the Scottish child payment, will keep

100,000 children out of relative poverty in the year ahead.

As stated by the CPAG, Holyrood policies are working, but the UK Government must also invest in social security to reverse the long-term damage to living standards, starting by scrapping the two-child limit and the benefit cap and restoring the value of child benefit.

**Monica Lennon:** I agree with a lot of what the cabinet secretary has just said. Does she recognise that charities in Scotland are warning that the legally binding child poverty targets are at risk and are calling on the First Minister to make good on the commitment that he made when he ran for SNP leadership to increase the Scottish child payment to £30 a week straight away and to get on to a path of £40 a week by the end of this parliamentary session?

**Shirley-Anne Somerville:** I am grateful for the opportunity to reassure Monica Lennon that the Scottish Government is determined to fulfil our obligations on the child poverty targets. That is made more difficult when UK Government policies push people into poverty at the same time as we are trying to lift them out. Of course, the Scottish child payment has once again been lifted in the budget by inflation to ensure that we are adding to the investment that we are making in low-income families.

The Scottish Government has very different priorities from not only the current UK Government but the Labour Party, which continues to refuse to commit to scrapping the two-child cap. Despite a complete lack of moral leadership at Westminster, the Scottish Government's priority is to support children and their families out of poverty and to invest in our people and futures. To be clear: the Scottish Government will never have a cap of any kind in a devolved social security system.

As for Labour colleagues who are in the room tonight, I think that they all know that they do not need a review to know that the policy is a callous one. Yes, there is undoubtedly more that needs to be done about universal credit as a whole, but we do not need to wait for a review of the entire system in order to deal with the most toxic elements of that system. We should start on day 1. The Labour Party will have that opportunity, and I ask Labour members not to walk on by at that point. I recently said—I absolutely stand by these remarks—that the Scottish Government would be willing to work with an incoming Labour Government to tackle poverty. We are ready to do that on day 1. However, it appears that Labour will not be ready to do so, because, unfortunately, we are at the point at which Labour is quite happy for there to be no cap on bankers' bonuses but to say that there will be a cap on benefits for low-income children.

Labour colleagues may obtain power in the next election, but what principles will they have they lost along the way? I know that, after the next election, the SNP MPs will vote at every opportunity against the two-child cap and the rape clause. It is sad to know that Labour MPs will not.

**Paul O'Kane:** I find this interesting. We have had a number of party-political broadcasts on behalf of the Scottish National Party this evening, rather than a constructive debate. However, the choice in the election will be on whether to go for Labour's new deal for working people. I have pushed the cabinet secretary on this before, but is she suggesting that the principles that are held in the Labour Party, such as lifting people out of poverty by increasing the living wage, by ending fire and rehire and by ending zero-hours contracts, are not ones that she would stand behind?

**Shirley-Anne Somerville:** I was genuinely trying to be helpful to Labour colleagues by saying that they have an opportunity to work together with us, and I absolutely stand ready to do that on day 1—and, actually, even before any Labour Government comes in.

I say to Paul O'Kane that, every time we have a debate on social security, we hear about Labour's employment policies. We can have a debate about those another day, but what I never hear about in those debates is Labour's policy on social security, because it does not have one—it is just going to replicate the Tories' policy. With genuine sincerity, I say to Paul O'Kane that the greatest danger lies in the fact that Labour's social security policy is a review.

I am conscious that I am now over my time. In conclusion, I say that the two-child limit is just one policy impacting the financial support that is available to struggling families and that there are, of course, other pernicious aspects of universal credit. However, I call on everyone who genuinely wants to improve the lives of some of the most vulnerable children in our society—I include Labour colleagues in that—to come together to call on the UK Government, of any colour, to make the right first step, scrap the two-child limit, scrap the rape clause and ensure that we are there for the most vulnerable families at the time when they need us most.

*Meeting closed at 18:35.*

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