MEETING OF THE PARLIAMENT

Wednesday 20 November 2002
(*Afternoon*)

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Debates

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[THE PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Presiding Officer (Sir David Steel): To lead our time for reflection today we have Professor Abd al-Fattah El-Awaisi, the vice-chancellor of the Al-Maktoum Institute for Arabic and Islamic Studies in Dundee.

Professor Abd al-Fattah El-Awaisi (Al-Maktoum Institute for Arabic and Islamic Studies): Thank you. One day my son, Ali, who was in primary 5 at the time, came back from Dunblane Primary School and proudly started explaining to me about the Scottish clans and their different tartans. Then he asked, "Where is the El-Awaisi's tartan?" That question was, for me, a reflection of the strong sense of belonging among the new Muslim generation, whom I tend to call the Scottish Muslims.

There are Muslims in Scotland, however, who do not have that sense of belonging. They live as if they are foreigners in the country. I tend to call them Muslims in Scotland. For example, a certain mosque has an imam who has lived in this country perhaps for more than 20 years, but who cannot speak English. He delivers his sermons every Friday in broken Arabic, although the majority of his audience does not understand Arabic.

Islam, as I understand it, encourages Muslims to be part of the community in which they live. Indeed, Islam encourages integration, which is an important component in Islamic teachings. The Qur'an says:

"O mankind, we created you from a single pair, from a male and a female, and made you into nations and tribes so that you get to know each other."

And not to fight each other—that is my addition, not the words of the Qur'an.

The month of Ramadan, which Muslims are observing now, is for me the month of communities. In this month of Ramadan, Muslims try to share the hardship faced by those suffering poverty and those in need.

For the first time in history, Muslim minorities form a significant proportion of the total Muslim population of the world. Muslims have been living in Scotland for at least 130 years. In 1873, Joseph Salter, a Christian missionary, wrote in his book, "Missionary to Asiatics in England", that he had met Muslims in Aberdeen, Glasgow and Edinburgh.

In Scotland, our focus has been to study Islam and Muslims from the Scottish context. I feel proud to be part of the Al-Maktoum Institute for Arabic and Islamic Studies in Dundee. The institute has set up a unique centre for the study of Islam and Muslims in Scotland. My colleague Professor Malory Nye has been appointed as the chair in multiculturalism, Islam and Muslims in Britain. Our unique institution prides itself on its multicultural vision, which exemplifies our commitment to encourage integration and co-operation.

I would like to pay a special tribute to the late Donald Dewar, the first First Minister to acknowledge the Muslim communities' contributions to Scottish life. In 1999, Donald Dewar held a reception in Edinburgh Castle for the Scottish Muslim communities to mark the end of Ramadan and to celebrate Eid al-Fitr.

Let me finish by reading the meaning of a verse in the Qur'an. God says:

"Help one another in righteousness and piety, but do not co-operate in sins and aggressions."

Thank you.

Protection of Children (Scotland) Bill: Stage 1

The Presiding Officer (Sir David Steel): Our main item of business is a debate on motion S1M-3369, in the name of Cathy Jamieson, on the general principles of the Protection of Children (Scotland) Bill. I make a particular plea on this occasion for members who want to speak in the debate to press their request-to-speak buttons now, as I have had notice that the business motion at the end of today's meeting will be opposed and I want to allow time for that. Therefore, I would like this debate to conclude at around 4.50, rather than 5 o'clock.

14:36

The Minister for Education and Young People (Cathy Jamieson): I am delighted to open this stage 1 debate. The Protection of Children (Scotland) Bill is an important piece of child protection legislation and another significant step in our work to increase children's safeguards. I welcome the opportunity that we have this afternoon to debate the general principles of the bill in full.

I would like to record my thanks to the Education, Culture and Sport Committee and the Justice 1 Committee for their careful and thoughtful consideration of the bill. The committees' support for the general principles of the bill is welcome.

It is worth reminding ourselves that we have a vision of a Scotland in which every child matters and has, regardless of his or her family background, the best possible start in life. It is also worth remembering that it is everyone's responsibility to ensure that children are cared for and that the measures in place to protect them from harm are as robust as possible. Much has been done to strengthen child protection in recent years, but more needs to be done.

It might be helpful if I briefly outline why we need this legislation and what it will do. Colleagues in the chamber will be aware of the work that I was involved in before joining the Parliament. Perhaps I should declare a particular interest in this legislation, as someone who has, over a number of years and in a number of ways, highlighted the need for greater protections for children.

Unfortunately, it is a sad fact of life that a small minority of people seek to exploit positions of trust and to harm children. It is also a sad fact that a minority betray the trust that has been placed in them by parents, employers and children themselves. Some of the most harrowing stories that I have ever heard and had to deal with relate to situations where adults have harmed children in their care. The worst of those were situations in which those adults were not stopped, but were able—despite clear and serious concerns being expressed and action being taken—to continue moving from one workplace to another, putting more young people at risk.

We must face the fact that some individuals who have been dismissed from child care positions because of serious concerns about their suitability to work with children have been able to move on to other jobs where they continue to work with children. That is simply unacceptable and the bill is designed specifically to address that. It is not, and was never intended to be, the only measure to protect children.

It is worth remembering that the need for such a list was identified by Lord Cullen in his report into the tragic shootings at Dunblane, and by Roger Kent in his report on the children's safeguards review, which involved children who are looked after away from home. Both reports recognised the need for improved checks on the suitability of people who work with children.

Since then, much has been done to help strengthen the checks on the suitability of child care staff including: the introduction of increased access to criminal record checks under part V of the Police Act 1997; the establishment of the care commission and the Scottish Social Services Council, which are both committed to improving the quality of care and carers; and the recent publication of the parent checklist for youth activities, which is already having an impact and gives parents the opportunity to ask questions of the clubs that they send their children to and ensures that those organisations carry out checks on their staff. The bill will complement those improvements and put in place a much-needed additional safeguard for children.

We must take every possible step to ensure that individuals who have harmed a child or placed a child at risk of harm are not able to do so again. Employers may have taken steps to dismiss the person or to move them away from contact with children within their organisation, but as we know from past events, that is not enough. We do not currently have a robust enough system to ensure that, when such a person is moved on, they are prevented from working with children and putting children elsewhere at risk.

Parents place their trust in the individuals who work with and come into contact with their children, whether those individuals are teachers, nursery nurses, social workers, janitors or others. We must ensure that future employers are given the information that they need to decide whether an individual is worthy of that trust. That must be wider than simply information about previous convictions. It is vital that employers should know

if an individual has been dismissed from a post due to substantiated concerns that he or she harmed a child or placed a child at risk of harm.

The bill will plug the gap. It will work by allowing ministers to establish a list of persons who are considered to be unsuitable to work with children either in a paid capacity or as unpaid volunteers. The information that someone is on the list will be made known to a prospective child care employer as part of a criminal record check carried out by Disclosure Scotland under part V of the Police Act 1997.

There are two main ways in which an individual may be referred to the list: by an employer or through the courts. An individual in a paid or unpaid child care position would be referred to the list by their employer when they harm a child or put a child at risk of harm and—it is important to stress that "and"—they are sacked or moved away from contact with children as a consequence. A person would also be referred to the list if they retire or resign, but would otherwise have been sacked or removed as a consequence of actions that harmed a child or put a child at risk of harm.

It is important to stress that those referrals are for individuals in child care positions, which are defined in schedule 2. They include a wide range of positions in which normal duties involve contact with children.

The bill proposes that regulated child care organisations will have a duty to refer and that other organisations will be able to refer an individual. The reason for that distinction is enforceability. Regulators could, for example, back up a duty on the organisations that they regulate. I am aware that the Education, Culture and Sport Committee has suggested that we should re-examine which organisations have a statutory duty to refer. It is worth remembering that all organisations that employ individuals in child care positions, whether they are regulated or not, will have to carry out checks on those individuals or they will risk committing an offence. I will come to that in more detail later.

Although the duty to make referrals to the list is proposed for regulated organisations only, non-regulated organisations are not precluded from making referrals and would be encouraged strongly to do so if appropriate. Indeed, many organisations that gave evidence to the Education, Culture and Sport Committee said that they would feel a moral duty to do that. We are considering the committee's concerns. The issue is difficult and complex, and I am keen that we get the balance right. We must not impose an unreasonable burden on organisations, especially small organisations in the voluntary sector. I will be interested to hear members' views on that during the debate.

It is also important to explain in detail how a decision to place a person on the list would be made. In making a referral, the employer will submit the evidence that was gathered during the disciplinary process that preceded the person's being dismissed or moved. It is not the case that for an organisation simply to say that it had some concerns about an individual would be enough. I know that many organisations that submitted evidence expressed concerns that they would be unsure in what circumstances to refer or that individuals' rights may be at risk. I will come on to those concerns in more detail.

We would expect to see that, during the disciplinary or dismissal process, the individual had been given ample opportunity to defend their actions and had had the appropriate representation. Good employment practice dictates that that should happen. Referrals that are not backed up by robust evidence and that could not demonstrate that those appropriate procedures were followed in investigating the incident that led to the referral would simply not be entertained.

The bill proposes that, following an initial assessment of the evidence, Scottish ministers would provisionally list an individual if they were satisfied that the referral was not vexatious or frivolous, and if the information indicated that listing might be appropriate.

Provisional listing is an essential safeguard in preventing unsuitable persons from moving undetected from one post to another. The fact that a person was on the list would be released only as part of a disclosure check, which would make it clear that the listing was provisional. Provisional listing would not in itself attract a ban on working with children, although it would alert prospective employers to an issue of which they would wish to be aware. The details would not be disclosed, but the employer would have the opportunity to make further inquiries and then decide whether to appoint the person concerned.

It is important to stress that our intention is to keep provisional listing to an absolute minimum. The bill allows a maximum of only six months in which to reach a full determination, unless criminal proceedings are continuing or the sheriff grants an extension. The person's name would be removed from the provisional list as soon as a determination was reached, or once the six months allowed for a decision elapsed without an extension having been granted. A subsequent disclosure check would contain no record of provisional listing.

If a determination is being reached, the evidence submitted with the referral would be scrutinised in detail, and the individual would be given the opportunity to submit their observations on the

evidence. A formal, fair and transparent process of gathering information, which would involve inviting the views of both parties on the information and clarifying any points as required, would be part of the process.

We will ensure that the assessment of each case is informed by the relevant expertise. The proposals that we set out in the consultation document, "Protecting Children: Securing their safety", suggest that senior officials would act on behalf of ministers, and that a member of the senior civil service, together with a social work services inspector or with Her Majesty's Inspectorate of Education, would make the determination. They would bring their expertise and professional understanding of child protection and child care positions and settings to the decision-making process.

In recognition of the serious consequences of listing, the bill provides for an extensive appeal process. As far as listing is concerned, there will be a right of appeal to the sheriff or to the sheriff principal and, if leave is granted, to the Court of Session. There is also provision for people to have a periodic review of their listing when they can demonstrate that their behaviour has changed, for example as a result of successful rehabilitation following treatment for alcohol or drug misuse.

Christine Grahame (South of Scotland) (SNP): The minister will undoubtedly have had the opportunity to read the Justice 1 Committee's views on that matter. Does she perceive difficulties arising from the fact that, if an application for review is refused, the individual cannot make another application for another 10 years—or five years, if they are a child? It seems extraordinary that that is the case if reviews are to bring justice.

Cathy Jamieson: We would be prepared to consider a number of issues in that regard, including timings. It is important to recognise the fact that no one would be put on the list without serious consideration and without a very serious incident or situation having occurred. I wish to stress for the avoidance of any doubt that, if any malicious individuals were to make suggestions that people were unsuitable to work with children, that would simply not be enough on which to base a referral to the list. The bill specifies that the sheriff would allow an appeal unless they were absolutely satisfied that the individual had harmed a child or placed a child at risk of harm and that that individual was unsuitable to work with children.

In addition to the referrals that I have already mentioned, those who have been convicted of an offence against a child would be referred to the list at the discretion of the court. For the most serious offences listed in schedule 1, the court would be expected to refer the individual to the list of persons unsuitable to work with children. If a court referred an individual for inclusion on the list, listing would be automatic. It will be possible to appeal the listing in the same way that sentences are appealed.

Those who are on the list, as a consequence of a referral by either their employer or the courts, would commit an offence if they applied to work with children or continued to work with children. Any organisation would commit an offence if it offered child care work to a person on the list or if it failed to remove an individual who was disqualified. As I indicated earlier, that means that any organisation that takes on a person to work in a child care position will need to obtain a check from Disclosure Scotland or risk committing an offence. Those deterrents give strength to the new measures to provide children with greater protection.

I want to say something about how the bill fits in with United Kingdom-wide proposals, as the Justice 1 Committee and the Education, Culture and Sport Committee were concerned about that. The proposals are in line with the list that the Department of Health maintains under the Protection of Children Act 1999, which covers England and Wales. Similar proposals are being considered for Northern Ireland. One of the bill's main aims is to link up the information that is held in the different jurisdictions and to remove the potential for an individual who has been banned from working with children in one country to move undetected to a child care position across a border. We plan to amend part V of the Police Act 1997 so that the information held on lists throughout the UK can be included in disclosure checks. The bill includes an order-making power that would allow links to be developed with other countries in the future.

The list does not remove the need for other good recruitment practices, including following up references and making the checks that are necessary to ensure that people are suitable to work with children, such as close supervision of those who are employed on probation. An essential element of good child protection is on-going supervision and staff development—of both paid workers and workers in the voluntary sector.

I welcome the lead committee's recognition that the bill must perform a difficult balancing act between children's rights and the rights of individuals. I know that the committee has made a number of suggestions in that regard. In developing the proposals, we have been very careful to take account of the rights of the individual. We are well aware of our responsibilities under the European convention on human rights. Inclusion on the list will be a civil rather than a criminal matter. We believe that the

administrative decision-making process, taken together with the right of appeal to the sheriff, complies with article 6.1 of the European convention on human rights, which states:

"In the determination of his civil rights ... everyone is entitled to a fair and public hearing".

The draft bill was carefully considered in the light of that article and other relevant articles of the ECHR. Legal advice was taken to confirm that the proposals are compliant and fall within the Parliament's legislative competence. Having said that, I will consider carefully the points that the Justice 1 Committee and the Education, Culture and Sport Committee have made about ways of improving the protection of human rights in the bill. However, we must also consider the need to protect the human rights of children and their right to be protected from harm and abuse. I will listen very carefully to members' views during today's debate.

The proposals in the bill have been widely consulted on and there is a strong body of support for its general principles. The measures contained in the bill will plug a small but very important gap in child protection in the workplace. The proposals serve both as a safeguard and as a deterrent. They are essential for closing a dangerous loophole.

Every child has the right to grow up safe from harm. I have no doubt that members will give full support to measures to strengthen the legal framework in favour of Scotland's children.

I move,

That the Parliament agrees to the general principles of the Protection of Children (Scotland) Bill.

The Presiding Officer: One member who gave notice that she wanted to speak in the debate has not turned up, so I am fairly relaxed about the timing of speeches.

14:53

Michael Russell (South of Scotland) (SNP): I thank the minister for introducing the debate. I confirm that the SNP will support the general principles of the bill in this evening's vote. We support the bill and want it to be passed. The party's work on the bill in committee has been overwhelmingly positive. However, there are concerns about the bill, one of which I will articulate in a moment.

At the outset, we must ask ourselves whether the bill is needed. Once one has listened to the evidence that has been given and heard some of the concerns that exist, one must agree that it is. The bill is the third lock in the system for protecting children and young people. The first lock is legal action. The second is the existing system of checking and registers. The bill covers all the issues that may not be covered by the two other locks.

However, with the bill we are moving on to awkward ground. Shorn of dressing, the reality is that the individuals with whom the bill deals are being described as potentially capable of committing criminal offences against children, regardless of whether they have been subject to a full disciplinary hearing by their employers. That is essentially what is being said about individuals who are listed, but they have not been charged with any such offence, which is where the difficulty lies with parts of the bill.

The committee identified two areas of primary concern. The first, which my colleague Irene McGugan will deal with later, was the organisations that might be required to refer. I will deal with the other issue, which the Justice 1 Committee report also covered. I know that my colleague Christine Grahame will speak about it as well.

In Illinois, a recent survey of capital convictions found that over the past 50 years the error rate in capital convictions has been around 8 per cent. That means that 8 per cent of those who have been found guilty of capital offences did not commit them. That is a very scary figure. The documentation surrounding the bill suggests that around 30 people will be listed each year. That is a low total and I think that the reality is likely to be far higher. However, if we accept the figure and accept a failure rate of 8 per cent or so, we are talking about two individuals a year being listed wrongly. That might not happen, but it is possible that individuals will lose their employment because they have been listed wrongly. As the minister said, absolutely correctly, a balance has to be struck between the inevitability of error and the need to protect children. Whether the bill has struck that balance so far is the question in point.

Most of the evidence that the Education, Culture and Sport Committee took was doubtful about whether that balance had been struck. Rosemarie McIlwhan of the Scottish Human Rights Centre said to the committee:

"It is a difficult balancing act—

and we can all agree with that—

"particularly in the current climate of fear … I suggest that the bill does not strike the right balance. It is essential that a right to a fair trial or hearing be provided."—[*Official Report, Education, Culture and Sport Committee*, 24 September 2002; c 3720.]

I have heard what the minister said and there are procedures for fair trials or hearings, but whether those procedures are robust enough to diminish the possibility of error is one of the key issues. One of the things that would help

substantially would be for the minister not to have a role in these matters. I have heard what the minister said about the involvement of a senior civil servant and a social work inspector. However, the process would be much more transparent if the minister did not have a role in making the decisions and if there was a role for a tribunal of some sort. Indeed there are examples of how that works elsewhere.

The minister said in oral evidence that she recognised those problems. She said:

"It is a serious matter for people to be put on the list and ministers will be held accountable for the decisions that they make."—[*Official Report, Education, Culture and Sport Committee*, 8 October 2002; c 3800.]

The issue here is not accountability; it is natural justice. There is no doubt that ministers will be accountable, but the question is whether it would be better to have a more robust system to protect natural justice.

Cathy Jamieson: My evidence to the committee also suggested that the decision between a tribunal system and the system that is proposed was finely balanced. The system that we are proposing appears to work successfully in other jurisdictions and I think that we can learn from that. Mike Russell said that there are always possibilities of error. I wonder whether in striking the right balance he would agree that there is always the possibility—indeed this has happened in the past—that children are abused because the appropriate action is not taken. We must ensure that that is one of our primary concerns in the bill.

Michael Russell: I made it absolutely clear at the outset and I shall make it clear again that of course that is a concern. I am raising points about the way in which we strike the balance. I certainly was not alone on the committee in having concerns about that and in feeling that the issue needed to be explored further at stage 2. The Justice 1 Committee raised the substantial point that having a tribunal make decisions might be better than involving ministers and, as the minister indicated, senior civil servants. That applies to the provisional and final listings.

There is a substantial problem with provisional listing. I understand from the bill that provisional listing will not result automatically in the loss of a job, but it will be a considerable stigma for someone's career history. It will prevent any possibility of that person moving on to another position. Careful thought needs to be given to whether provisional listing, which is a good thing in the way that the bill puts it, is required. Would it be better to move simply to listing, because the status of provisional listing is a form of limbo in which people could languish for some time? It might be better not to have that state, even though not having it might seem to be less generous. In that way, one would be listed or one would not be listed.

We should acknowledge that there are also some issues that cause a few problems for employers. Although the minister referred to "substantiated" evidence from employers, the bill, particularly in sections 2(2)(c) and 2(3)(a)(iii), talks about transfer. Although that is a disciplinary matter, many organisations have correctly used the process of transfer to nip a problem in the bud. The NHS Confederation was worried that that might be made more difficult for employers. Hilary Robertson of The NHS Confederation said:

"In NHS organisations, it would be good practice to move somebody out of a child care position if an allegation was made or if there was a suspicion that they had either harmed a child or put a child at risk. As the bill is drafted, that would trigger a referral to the list… The danger—apart from any subsequent action against the employer for unfair dismissal if an individual is dismissed rather than just transferred—is that employers might be deterred from moving people and, therefore, from referring them to the list if they do not have substantial evidence against them."—[*Official Report*, *Education, Culture and Sport Committee*, 24 September 2002; c 3708.]

That represents an area of difficulty for employers, which was also picked up by the Scottish Trades Union Congress.

Cathy Jamieson: Situations have occurred in which, although employers have taken the opportunity to transfer people out of the direct line of working with children, they have not been able to ensure that those people could not simply transfer again to other posts. That is a critical part of the bill. We have attempted to ensure that the evidence must be robust—it must be robust enough to stand up in some form of recognised disciplinary process. Such evidence must not be examined behind closed doors; it must be brought out and the people concerned must be challenged about it. That has not always gone on in the past. The member's social work colleagues Irene McGugan and Kay Ullrich know well what I am talking about.

Michael Russell: I lean heavily on both of them in such matters. One might add that I could do nothing other than lean heavily.

Although I accept the minister's point, I continue to emphasise that a balance has to be struck. The Parliament might pass the bill as it stands, but it is right to assess whether there are ways of improving the bill to ensure that we are fairer to everyone. That is what the process is about. The interests of children are paramount, but we must remember the interests of adults about whom false allegations might be made.

My final point is about vexatious and frivolous complaints. The burden of making a decision on those lies with the minister. There is a problem. If

we are to have a better, tribunal system, as I suggest, we should also have a more robust system of deciding what is vexatious and frivolous.

There is strong support for the bill. The work that the Education, Culture and Sport Committee and the Justice 1 Committee have done has revealed many areas that we need to pin down firmly at stage 2. The SNP will support the bill, although we hope to see some improvements in it. We are devoted to ensuring that there is maximum protection for children. Along with the Executive and the other parties, we aim to achieve the best bill possible.

15:03

Mr Brian Monteith (Mid Scotland and Fife) (Con): I am pleased to contribute to the debate on the bill on behalf of the Conservative party. We will support the general principles of the bill. We welcome the bill and we agree that there is a need for such a bill. Michael Russell has already made a good case about the need for such a bill. However, we should bear in mind a number of other aspects.

Of course we must offer to children protection from abuse, violence and threat to life. However, we must be aware that, although systems are already in place, some of them are in place only in part of the United Kingdom. It is important that we use the opportunity that the Parliament presents us with to ensure that there is uniformity across the UK. Were we not to take up that opportunity, we might leave the door open to people who wanted to abuse children. Such people might be attracted to Scotland because our rules were more lax. That is why it is important that we consider the issue carefully. We need to seek a balance, but we must ultimately aim to provide at least the same standard of care and protection in Scotland as is available in the rest of the UK.

Like Mike Russell, in giving my general support for the bill, I want to raise a number of issues. I seek no immediate response from the minister—there will be time enough for that at further stages of the bill—but I want to flag up some issues that should be borne in mind both by the minister and by those who take an interest in the debate.

Disclosure Scotland highlighted the importance of putting in place reciprocal agreements, which we believe to be fundamental to the bill's purpose. Given the fact that lists are available in other parts of the United Kingdom, those lists must be made available to people in Scotland—including the minister, obviously—and the Scottish list must be made available to other parts of the UK. That would surely be one of the bill's achievements.

We agree with a number of organisations—not least Disclosure Scotland but also many voluntary sector organisations—that it is important that the voluntary sector should be included. As Alison McLeod from Disclosure Scotland said,

"The majority of people who work with children and vulnerable adults are in the voluntary sector, which is a sector that has been neglected for a long time."—[*Official Report*, *Education, Culture and Sport Committee,* 24 September 2002; c 3705.]

We believe that it is important that the voluntary sector is included, although that would throw up a number of difficulties.

Those difficulties arise because of the very nature of the voluntary sector, which does not normally have available to it the administrative and resource back-up that a company or a public organisation would have. Those concerns must be borne in mind. Indeed, the committee received evidence about the onerous nature of some of the checks that are already in place and about how voluntary organisations struggle to match up to the demands. Our consideration must go beyond the bill itself.

The NHS Confederation raised an issue about what "risk of harm" means. Referrals can be made only when a person has

"harmed a child or placed a child at risk of harm".

It is important that the meaning of "risk of harm" is clearly understood. The NHS Confederation's Susan Aitken pointed out that we cannot allow different employers and organisations to apply different standards. There must be clarity in that respect.

Michael Russell: Mr Monteith has raised an important point, but some of my sympathy is with the evidence that the minister gave on that issue. She pointed out that any attempt to define such things could open up the potential for loopholes.

One issue that concerns me, although it has nothing to do with abuse as such, is the example that Mr Jenkins gave to the committee. The teacher who takes a group of pupils out on an excursion may—perhaps for the only time in that teacher's career—have behaved irresponsibly because the children were put at risk of harm in a sporting venture or something of that nature. For those types of things, one would want to think more carefully about definitions. Like the minister, I worry that if the bill were to provide a complex list of risks and harms, it would create exclusions as well as offences.

Mr Monteith: That point is well made and I wholly agree with it. However, in our debates during the passage of the bill, it is important that we at least tease out a discussion about what "risk of harm" means. I do not believe that a definition could be included in the bill, as it would probably allow loopholes to be created, but we need to discuss and debate what we mean by that term.

Unless we are clear, people may misconstrue the meaning so that there are different levels of harm. For instance, it has happened that a local authority has dismissed a teacher for just such conduct on a trip with school students only to find that the General Teaching Council for Scotland takes a different view and does not then remove that teacher from its register. Clearly, there can be different considerations in what "risk of harm" may mean. We need to give consideration to those issues, even though a definition may not appear in the final legislation.

Unison raised concerns about trade union representation at appeals and about the fact that appeals will have to go through sheriff courts. Those concerns are worthy of consideration and thought should be given to rights of representation.

I also flag up the difficulty that—as Mike Russell rightly pointed out—if people are put on the register or the provisional register but it is shown subsequently that a mistake has been made, they are harmed by that. I am also concerned about the process whereby that person ends up on the list and the extent to which the mere suggestion that they might go on the list will undermine their ability to gain employment.

Only today, the Educational Institute of Scotland raised with me the issue of teachers' conduct, accusations that are made against teachers and the difficulties for teachers who are placed in what might turn out to be a protracted period of suspension until the issue is resolved. Vexatious complaints are made against teachers, sometimes by fellow teachers and sometimes by pupils. When a teacher is suspended, there is the difficulty of where that person might be placed in relation to the list, and we have to be careful about that.

We also have to consider the other uses of the list, not just those that are flagged up by the bill. How might the list serve to protect people? We can take many steps to protect children. However, the processes that are in place already, or the addition of the list that is proposed, might not be enough to protect some people. Clearly, people such as Brady and Hindley would not have been entered on any such list.

Cathy Jamieson: Again, I stress and clarify—if my point needs clarification—that the list cannot and should not be seen as a panacea. The list will not stop people who are determined to do harm to children. It will close a loophole that has allowed—and, for all we know, might well be allowing—people who have caused harm to children to continue to seek gainful or voluntary employment directly with children and young people. We have to be very careful to ensure that we talk about closing a loophole, not about a panacea.

Mr Monteith: I agree with the minister. As I was going to say, although the bill is not a panacea and it cannot ensure that harm will not come to children, it can offer hope.

For instance, there is no doubt that Thomas Hamilton was the sort of person who might have, at some time, been referred to a list such as the proposed one because of his involvement with a voluntary organisation such as the scouts. We cannot tell; obviously that is hindsight.

I flag up another possible use of the list. When someone is placed on the list, we are limiting their ability to work with or be responsible for children. Will the minister also consider—and I have no particular view—other uses of the list? For example, had Thomas Hamilton been on the list, would that not have been considered in relation to his receiving a firearms licence? I am flagging up the possible cross-uses of the list. Might the list not be checked when someone is applying for a firearms licence, such as a shotgun licence? Obviously, such weapons are still available to people. Should the proposed list serve other purposes?

We can consider ways of closing further loopholes and trying to put obstacles in people's way. The Conservative party accepts that if people want to do harm, that will happen, so obstacles must be put in the way. The bill is well meant and well intentioned and the Conservative party will support it.

15:14

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): As a member of the Education, Culture and Sport Committee, I thank the clerks and all the people who gave evidence to us. Before I start, I declare that I am a member of the EIS.

Members will not be surprised to hear that the Liberal Democrats will support the principles of the bill, but there is a sense in which I am sad that it is a necessary and important addition to legislation. I am afraid that it speaks of a loss of innocence in our society, and it suggests that we are uncertain of and fearful for our children's safety, to the point where we are driven to see potential danger in every appointment to a child care position.

It is important that we ensure that our youngsters are not exposed to the attentions of unsuitable adults and individuals who are left in positions of authority and influence over them and who have unsupervised access. It is right that we should seek to establish a list of such individuals and make it an offence for them to seek positions that put them in a position of care over children. Similarly, it is good to ensure that those who employ individuals in such positions should have a statutory obligation to ensure their suitability and

to refer for inclusion on the list anyone who is deemed to be an unsuitable adult.

Even while I was listening to the evidence at the Education, Culture and Sport Committee, I sometimes wondered whether we were seeking to create an elaborate and bureaucratic system unnecessarily—perhaps overreacting to horrific, but essentially rare, incidents where children had been harmed by people in positions of trust. I would have liked to think that the problem was so limited that this legalistic apparatus was unnecessary but, sadly, as Michael Russell said, the statistics and the evidence that we heard suggest that the problem is much more widespread than I knew or would have expected.

We repeatedly hear of incidents, sometimes from many years ago, where lasting harm has been done to youngsters, and where the caring organisations to which we entrust vulnerable youngsters have either been unable to act or have hesitated to act for too long. Although, as Cathy Jamieson said, the bill will not stop every offence, close every loophole or deter every offender, it will act as another safeguard and provide a level of protection for our children, so we accept that it is necessary. We need to examine the provisions of the bill in detail to determine how effective they will be.

I will spend a few moments on three aspects of the bill. On the first of those aspects, the provisions are too narrow and, on the second, I fear they may be too wide. The bill specifies that child care organisations that are regulated under the Regulation of Care (Scotland) Act 2001 have a statutory duty to refer an individual to the list of unsuitable persons if they believe that the individual has harmed a child. The bill goes on to specify that all other organisations may refer an individual; there is no statutory duty on them to refer. Along with other members of the Education, Culture and Sport Committee, I feel that it is important that we cast the net of the regulations more widely to make the system as universal as is practically possible, so that all organisations should have a statutory duty to refer, as well as a duty not to employ anyone who is on the list. It seems weak to limit that protection when so much of the work that is done with children is done in voluntary organisations.

I recognise that the Minister for Education and Young People feels that there may be difficulties with enforcement, but I urge her to consider carefully how the mandatory requirement to refer an individual can be widened, if not to all, then to more child care organisations. It is interesting that similar legislation that is proposed in Northern Ireland allows organisations to apply for voluntary accreditation, which draws them into the full rigours of the child protection system. If we cannot go as far as I might want, perhaps that would be another avenue by which more people could be drawn in. Either kind of extension of the mandatory requirement would almost certainly require the establishment of a system of training and advice for voluntary organisations, to ensure that the basis of referral was sound and the management of the process was appropriate.

There are further issues about the multiplicity of situations where volunteers and, indeed, professionals in various disciplines may be put into or find themselves in a child care position with unsupervised access to children. It is important that we recognise the complex nature of the whole network of caring that surrounds our children. In the evidence that the committee took, people mentioned further education colleges, health centres and out-patient clinics. Although we might not think it, those are places where people have unsupervised access to children. It is a bit of a nightmare to cover everything, but that should be in our thoughts in our approach to the bill.

The second area for consideration, which is at the heart of the bill, was mentioned by Brian Monteith: the imprecise definition of the offence that would trigger referral to the list. The bill says that someone should be referred if they have

"harmed a child or placed a child at risk of harm".

I am afraid that those phrases are so wide open that they have the potential to draw in individuals who are not the real targets of the bill. I am also afraid that, although children can come to harm by accident or can be put at risk by even the most caring of teachers or parents, in our litigious society someone who has infringed the letter of the law might be subjected to massively disproportionate penalties and procedures that could damage their personal lives and professional status.

I am aware that that is not the intention of the bill, but children can be harmed or put at risk of harm in situations in which there is no malice, deliberate intention of abuse or recklessness that would justify branding someone as unsuitable to work with children. That is a terrible label to put on someone and it must not be contemplated unless there is a motivation to do harm. I ask the minister to consider the definition of the risk of harm.

Scott Barrie (Dunfermline West) (Lab): On that point, does Mr Jenkins accept that sometimes, particularly when we are considering offences against children, we should consider not only commission but omission to determine whether someone is suitable to work with children? If someone omits to do something or does not take proper safeguards, they could end up in an equally serious situation in which they could be disqualified from working with children.

Ian Jenkins: Every case would need to be examined as it happened. Someone could make an error of judgment, for example, and not do something that they would normally have done or something which perhaps, on broad reflection, they should have done. However, if a child is harmed, that person has by definition exposed the child to the risk of harm. I return to the point that I made about malice.

Cathy Jamieson: I want to try to be helpful on that point. Referrals will be made in circumstances in which some form of disciplinary hearing or employment tribunal has taken place. If, at that stage, the situation was deemed to be serious enough, someone would lose their job or be moved on as a direct result of the incident that had taken place.

I hope that that gives a clear steer as to the kind of situations in which incidents will be investigated and due process undertaken. If someone was found not to have acted with malice, I hope that other steps could be taken in respect of supervision or support. In essence, the situation would be different from the one in which it was clear that a child had been harmed and that the person involved had intended to harm the child. In the latter situation, a referral would be made. I will address the point further in my summing up.

Ian Jenkins: I totally accept what Scott Barrie said. If someone consciously or repeatedly omits to do something for the child's safety, I agree that that should come within the ambit of the bill. However, in a culture of blame, every time an accident happens, someone wants to blame someone. If that is the case, we can get into difficulties. The bill should not be able to damage the professional lives of individuals who may simply be guilty of momentary errors of judgment or be the victims of accidental circumstances.

The mechanisms in the bill in respect of vexatious or frivolous accusations are not clear but, as a result of the minister's intervention, I am now clearer about her intention.

I have spent time on that point because I recognise the hugely serious consequences for anyone who is placed on the list. That brings me to my third area of concern, which I will not spend too much time on, as it has in part been dealt with. My third point deals with the mechanisms of referral and the inclusion of individuals first on a provisional list and ultimately on the substantive list.

The committees' reports expressed reservations about human rights issues, the complex relationship between human rights and employment law and the duties that are placed on employers by the bill. In those reports, questions are raised about the standard of proof that is required for referral; the procedures that should be undertaken before the referral is made; the status of an accused individual while investigations are in progress; and the potential for and legal consequences of mistaken listing. Indeed, questions were even raised about the whole idea of provisional listing.

As Michael Russell said, it has been suggested that a tribunal should be established to make decisions on the listing, rather than that function being in the hand of the minister. We all recognise with hindsight that in many child abuse cases it would have been beneficial if the authorities had been able to act on evidence that was less robust than the standard of proof for criminal cases. It is important that we seek balance in a system that adequately protects children from harm and the rights of an individual to a fair hearing.

The legislation is important in that regard. The safety of children is paramount, but we must find a way to ensure that serious injustice is not part of the system. Someone must not be branded as guilty if there has not been a fair hearing of some sort—whether there has been a tribunal or the case has come in front of the Scottish ministers. A fair hearing must be part of the system before someone is branded in this way. I urge the minister to address those areas of concern.

I support the principles of the bill. I hope that the issues that I have raised will be addressed as the bill passes through Parliament.

The Deputy Presiding Officer (Mr Murray Tosh): Unusually, we have a reasonably generous amount of time. Eight members want to speak in the open part of the debate. We can allow members to speak for up to seven minutes. It is not compulsory to do so, but members who speak later might get even more time if the earlier ones undershoot. The minister might have to speak for a very long time at the end of the debate if members cannot adjust their speeches accordingly.

15:26

Karen Gillon (Clydesdale) (Lab): The pregnant pause before I started my speech will take up a few seconds of my seven minutes.

I welcome the bill and support its general principles. On behalf of the Education, Culture and Sport Committee, I welcome the close working relationship that the committee has had with the minister and the civil service team that is working on the bill. We all recognise the importance of the bill and want to ensure that, as it goes through the parliamentary process, it receives the detailed scrutiny that it needs, so that it will be fit for purpose and will do the things that everyone hopes that it will do.

It is important to remember that we are dealing with a very small number of people—we are talking about tens rather than hundreds. Before, they would have fallen through the net. If the bill prevents one child from being abused in the future, it will be very much worth while.

Other members have said that the bill is not a panacea. It is important for us all to stress that point to ensure that people are aware that the bill will not prevent tragic events from happening. It will not prevent people who wish to commit abuse against children from finding a way to commit such abuse and it will not prevent abductions of children. However, the bill is another part of the jigsaw that enables children to have greater protection.

Children and young people are some of the most vulnerable members of society. One of my biggest worries about the bill is that it does not cover other vulnerable members of communities. The Executive should consider how we could introduce the same level of protection for other vulnerable members of our society.

As members have said, this is a difficult balancing act. Some members have indicated that they have specific concerns about the bill. I take a slightly different view from that of some of my colleagues on the committee. I side with Thomas Lyons from Oakgrove Primary School and Tricia McConalogue of Glasgow Braendam Link, who, when quizzed by committee members, came down clearly on the side of children's rights coming first and other matters being balanced alongside them.

When Dr Beaumont from Hillhead Primary and Secondary School Boards gave evidence to the committee, she raised the question of how we listen to children and how they are able to articulate their concerns. She stated:

"Children have their own monitors—they know when something is not right. We frequently override children for reasons of convenience or because we are blinkered. Children are often right, but they are not listened to."—[*Official Report, Education, Culture and Sport Committee*, 24 September 2002; c 3726.]

It is important that we listen to the views of children. The recent Dumfries case, of which committee members are aware, raises other potential problems about how children bring forward cases of abuse. If we are looking to provide greater protection, we must consider that issue.

I hope that the minister will be able to address some other issues in the bill. The first is which organisations should have a duty to refer people to the list. The Education, Culture and Sport Committee thinks that the duty to refer should be much wider. When we took evidence from sporting organisations, particularly Scottish Swimming and the Scottish Rugby Union, they were clear that they will implement the bill whether or not a duty is placed on them. That is good practice and it is important that we develop that. My colleague Jackie Baillie will deal with the voluntary sector in more detail, but we must also consider that issue further.

Another issue is training and guidance. It is important that everybody says the same thing and sings the same hymn tunes so that people are referred on an equal footing. Training and guidance will be important for local government, the voluntary sector and the child care organisations that will have a duty to refer. It is important that those bodies have information and guidance on what they should do, how they should deal with cases and how to refer people.

During the past few weeks, the committee has been lobbied heavily on the issue of referrals from regulatory bodies. A strong case can be made for including regulatory bodies among the organisations that have the right to make referrals, although the way in which regulatory bodies react to people who are listed will be a matter for them, so I do not concern myself with that.

Co-operation between the parts of the United Kingdom is an important issue. Committee members are concerned about how to safeguard against people travelling from Northern Ireland. There are good communication links, by ferry and air, to the mainland from Northern Ireland. We must ensure that reciprocal agreements are in place so that people cannot move about in that way.

The most important point is to ensure robust employment practice. If that is in place, the concerns that Michael Russell and Ian Jenkins raised will not necessarily come to fruition. When employees go through a period of investigation or suspension, they must be represented adequately at disciplinary hearings by their trade union and their voice must be heard. If disciplinary action is taken, any listing that arises from the process must be done for the right reasons.

My colleague Irene McGugan and I have discussed cases in which, for convenience, an employer simply moves someone rather than dealing with the problem. The bill will stop such convenience moving. It is difficult to label people as unsuitable to work with children, but we should not hide from doing it. If a person is unsuitable to work with children, they should not be allowed to move to a job in which they are in a position of trust with children and young people—which they might abuse—simply because their employer failed to tackle the problem when it first manifested itself.

I hope that the minister will respond to some of those issues when she sums up. I hope that the Parliament will accept the general principles of the bill. I look forward to working with the minister and her officials in the weeks to come to ensure that the bill receives full scrutiny.

15:33

Fiona McLeod (West of Scotland) (SNP): I join other members in welcoming the bill as another measure to add to our toolkit of child protection. The minister said that the bill is not a panacea and, at the Education, Culture and Sport Committee meeting on the bill that I attended, she said that she could not give 100 per cent guarantees on child protection. However, the bill advances our ability to protect children. I take issue with Ian Jenkins on one point. The bill is not about a loss of innocence, but about recognising today's cruel realities. The minister said that she is keen to hear the tenor of the debate. I will reiterate some of the committee's concerns, but the points bear repetition to ensure that the minister recognises that many members are concerned about the issues.

Voluntary organisations do not have a statutory duty to refer people to the list. My comments are informed by the evidence that the committee took on the issue, but they are also tinged by my experience as a volunteer. I will not go into my experience in a voluntary organisation in great detail, but I will say that we could have done with a lot more help and support at one time.

There is a lot of talk about the worry that the burden that the bill will put on voluntary organisations will prove to be onerous. Karen Gillon mentioned the SRU and Scottish Swimming. They do not regard the burden as onerous and do not want concern about that to outweigh the bill's intention to protect. The two organisations are doing much of the work anyway, never mind anticipating whether they will have to do it.

That brings me to the evidence that we have heard about the need for an advisory panel on advice, training and support for organisations. The point is worth reiterating. The minister said that she expects that if organisations do not have a statutory duty, they will see themselves as having a moral duty. That exhortation from the minister lends even more weight to the need for an advisory panel for voluntary organisations.

Another area that concerns me is the way in which "child care position" and "an institution" are defined in schedule 2. I do not want to address the large number of such points, but one example from the list in schedule 2 is a hospital that deals mainly with children. In Scotland, there are possibly only three such hospitals, yet clinics, health centres, accident and emergency departments and the ambulance service all deal with children when they are most vulnerable. Therefore, we must reconsider the definitions of "an institution" and "child care position", as they apply to other institutions and positions.

We have already heard that teachers are covered by the bill, but self-employed tutors are not. The Association of Chief Police Officers in Scotland has raised concern about that, and the matter would bear a little more scrutiny and more definition at stage 2. Folk have said that we do not want to get into too much definition because that allows for loopholes, but the definitions in schedule 2 already leave too many loopholes and loopholes that are too big. It would be worth reviewing the definitions in schedule 2.

Supported by evidence from ACPOS, I want also to address section 10(5), which is where employers have the defence of whether they reasonably knew that a person was disqualified before they employed them. ACPOS says that a way round that would be to place a duty on employers to check through Disclosure Scotland. If employers did that, that would ensure that they had taken all reasonable steps and followed—as the minister said—good practice in employment techniques.

In her opening remarks, the minister implied that she expected employers to follow the full Disclosure Scotland route. I would like that to be more definite, so that it is not an expectation but a duty. The route works for employers and employees, as it allows employers to cover themselves with the argument that they made all reasonable checks, and ensures that employees, before they are employed, have been fully checked through Disclosure Scotland.

I am not going to take up my seven minutes, Presiding Officer.

Cathy Jamieson: I will intervene and help Fiona McLeod out by using up some of her time. Perhaps she can take some of mine later.

The issue of private tutors was raised. Many private tutors work through agencies or other organisations that would be covered by the definition in the bill, so they would be committing an offence if they continued to seek work. We believe in the parents' checklists and our being able to give parents more information. There are also issues about ensuring that parents are able to check through the General Teaching Council for Scotland, for example, whether someone is registered as a teacher and has not been deregistered from that list. We want to ensure that parents are provided with the appropriate advice.

Fiona McLeod: I thank the minister for that clarification, but I do not think that she has yet taken us far enough along the route of understanding the position of the self-employed tutor who is not working through an agency, for example. Increasingly, parents are turning to tutors, with the drive to improve standards in schools and so on. I would like a wee bit more clarification.

I recently received a letter from a constituent who had spent 20-odd years working in child protection services. She wrote to me with concerns about the new Regulation of Care (Scotland) Act 2001, which came into force on 1 April, which she felt did not allow her to ensure full protection of children. My answer to her was that I felt that, taken in conjunction, the Regulation of Care (Scotland) Act 2001 and the Protection of Children (Scotland) Bill will take us further along the route of ensuring child protection.

I hope that the minister will accept many of the committee's recommendations. I know that we will not achieve 100 per cent child protection, but I certainly hope that we will raise the percentage and ensure that children in Scotland are afforded greater protection than at present.

15:41

Jackie Baillie (Dumbarton) (Lab): Let me start by adding my voice to the chorus of approval for the Protection of Children (Scotland) Bill. Like many others, I welcome the Executive's clear intention to enhance the protection of children. By establishing a list of people deemed to be unsuitable to work with children, banning them from working with children and making it an offence for organisations to employ somebody from the list, the bill acts on the recommendations of the Cullen inquiry and the Kent children's safeguard review.

For me, the bill is particularly timely for another reason. I have spent the past couple of years dealing with a constituent who experienced significant abuse as a child at the hands of staff in the care home where she lived. The bill should help to prevent such abuse from happening in future.

It has been stressed already and I stress again that the bill is not, and never will be, a substitute for effective and robust child protection measures such as criminal record checks and proper supervision of all staff. It will undoubtedly close down opportunities for people who are intent on causing children harm. As we have heard this afternoon, protecting children is of paramount importance. That view was shared by absolutely everyone who gave evidence to the Education, Culture and Sport Committee. All the witnesses, without exception, welcomed the general principles of the bill. However, a number of concerns have been raised about the bill's application and its implementation.

In the time available to me—I was going to say the short time, but the time limit has been elongated—I want to focus on one area in particular. It should come as no surprise to the minister that I want to concentrate on which organisations are covered by the bill. As the bill stands, only child care organisations regulated under the Regulation of Care (Scotland) Act 2001 have a statutory duty to refer an individual to the list. Any other organisation may refer, but there is no duty or obligation on it to do so. In effect, we are creating a two-tier system of protection. Not only is that undesirable but, as one witness put it, it falls short of the moral duty of the state to protect all children.

Many people with long-standing experience told us that individuals who are intent on harming children will simply move on to the unregulated organisations, as they are not subject to the same strictures as regulated organisations are. In my view, we must close that loophole. Surely the issue is not the status of the organisation but whether the individual has unsupervised access to children, irrespective of whether the organisation is regulated or not.

I note that the minister has said that the problem lies, in part, with enforcing the duty to refer on unregulated organisations, given that the care commission has no statutory responsibility to ensure compliance in those cases. However, the bill does not contain provisions on enforcing the statutory duty, so in effect there is no difference at all. Therefore, there is no technical reason why the duty should not be applied across the board.

The evidence taken by the committee was compelling. Voluntary organisations such as the scouts, guides and sports clubs—all of which are not regulated—have stated that they will treat the bill as placing a mandatory duty on them to refer to the list. They believe that, in addition to their well-developed child protection measures, the bill will provide a tool to ensure that their practices are robust.

Their approach is to be welcomed, but there is a strong view that we cannot rely on a moral duty in place of a legal duty, particularly for organisations that do not have the same experience as those that I have just mentioned.

I will quote Debra Shipley. For members who do not know her, she is the MP whose private member's bill in the Westminster Parliament led to the Protection of Children Act 1999. In a letter to the Education, Culture and Sport Committee, she said:

"I am concerned that there are some areas of ambiguity about definitions which have created confusion for child care organisations including the voluntary sector and an array of organisations providing sport and leisure activities for children in England … This still leaves a situation where children will be protected by some child care organisations but not others and it is unclear how to identify those who are. This makes the situation for a parent very difficult if they are enquiring about the protection aspects of an organisation including recruitment of paid and unpaid staff."

I agree with the minister that a balance needs to be struck, but surely that balance should be tipped towards protecting children. I do not want to place an onerous burden on small voluntary sector organisations, but the interests of children should be the primary consideration.

I underline the fact that the bill represents a significant step forward in ensuring maximum protection for our children, but we should make it as robust as it possibly can be. I urge members to support the general principles of the bill.

15:47

Kay Ullrich (West of Scotland) (SNP): Like all the members who have spoken before me, I support the bill in principle at stage 1. However, like other members, I have reservations, not the least of which is that the bill should be strengthened to protect individual human rights. I fully support the need for the bill to include volunteers and, indeed, for it to be expanded to include all voluntary organisations. I hope that those concerns will be addressed at stage 2.

I will put my marker down. Since day one of my social work career, my bottom line has always been to save the children. I know that that might sound like a clichéd soundbite to the assembled old cynics around me, but that criterion has guided me throughout my working life. If we use that criterion, the bill, if appropriately amended, could be an additional tool to protect our children from harm.

I commend the minister for recognising the need to legislate in the area in question. When suspicions are raised, people who abuse children tend to move on before they are convicted. Often, they move on to other positions in which they have direct access to children. Sexual abuse allegations are particularly difficult to prove and often managers must either move or dismiss people without being able to enter the real reason on that person's record.

I will give an example. A man was brought to the attention of the court, as a result of the disclosure of his sexual abuse of his two young stepdaughters. For more than 20 years, the man had served in one of Scotland's most famous regiments. He had achieved the rank of company sergeant-major and had a chestful of medals to confirm his illustrious career in the service of his country. However, the facts relating to the abuse of the two little girls were proved in court.

When I was compiling a background report, the seeming pattern of his targeting of victims became clear. He had been family services officer in his regiment. He had won awards for his out-of-hours running of youth groups and had commendations for his work in general with the children of service people. Guess what job the man managed to acquire after his very honourable discharge? At the time of his arrest, he was working as a janitor in a private school for girls in the south of England. Heaven only knows how many children that man abused before he was finally put behind bars. In spite of all his commendations, there might have been suspicions and, indeed, accusations along the way.

The bill seeks to address the fact that even substantiated concerns cannot always be translated into convictions. However, let us not for one moment think that the bill is a panacea that will stop the abuse of children. It is unfortunate, but the fact is that most abuse is perpetrated not by strangers but by people within family units or by family friends. Make no mistake, folks: in terms of child abuse, the devil you know does the most harm.

Let us put into perspective what the bill can achieve. The bill will not save all our children from harm, but if it is properly amended at stage 2, it will place another legislative weapon in the armoury of the Parliament's determination to make Scotland a safer place for all our children. I urge members to support the bill in principle.

15:52

Mr Jamie McGrigor (Highlands and Islands) (Con): Yesterday, in a statement in the House of Commons, David Blunkett said that the Government had set up a task force to tackle child abuse on the internet. I am glad about that. As I mentioned in my speech on 24 April 2002 during Fiona McLeod's members' business debate on the United Nations children's summit, the modern internet has exposed children to a new abuse that is increasing at an alarming speed.

Child abuse must be fought on every front. The six-month Operation Magenta that was carried out by the police throughout the United Kingdom successfully achieved prosecutions against people who used internet chat rooms to advertise and trade images of child abuse. Can anyone imagine how a child who has been abused must feel when he or she realises that images of that abuse could be available worldwide on the internet?

The most worrying aspect of Operation Magenta was that the people who were arrested included

people in child care work, teaching and medicine. They appeared perfectly normal and would not easily be suspected of child abuse. That concern was confirmed by recent revelations from the Federal Bureau of Investigation's Operation Candyman: thousands of British people logged on to a child pornography website in the United States of America, 700 of them from Scotland.

The FBI was alerted by a message that said:

"This group is for people who love kids."

The group turned out to be a hideous child pornography site. John Ashcroft, the US Attorney General, said:

"It is clear that a new marketplace for child pornography has emerged from the dark corners of cyberspace."

As long as this kind of pornography continues to be available on the internet, more and more people will get caught up in its horrible web. The spiders doing the spinning at the centre of the web must be crushed. That must be the long-term goal.

The bill's purpose is to establish a list of people who are deemed unsuitable to work with children, to criminalise them if they try to find employment in child care and to criminalise such organisations if they knowingly employ them. The Conservatives welcome the bill. We will support any avenue that improves the safety and well-being of our children and young people. We must, however, be careful with the detail of the bill, to ensure that it is effective in meeting the intention and that it will not simply generate extra, burdensome, bureaucratic hurdles that get in the way of child care organisations.

The Scottish Executive has promised that criminal record checks made on volunteer workers will be free of charge for the voluntary sector. Children in Scotland tells me that organisations will require initial and on-going training and that a funded advice source for child care organisations would be welcome.

How voluntary organisations will be affected and how they will be enabled to cope with the new measures must be made clear. It is also vital that willing and innocent volunteers are not frightened off. It appears that students undertaking field work with children and young people that involves conducting interviews in private might not be subject to criminal record checks if they are not working for an educational institution, as there might not be an employer to ask for a standard or enhanced disclosure. That is a worrying loophole that I ask the Executive to address.

There should also be indemnity for an organisation that has correctly followed procedures to make a referral that proves to have been misplaced when subsequent information comes to light. As Ian Jenkins mentioned, in relation to the gatekeeping criteria in section 2(2)(a), which deals with an adult who has harmed a child or placed a child at risk of harm, organisations will need advice and training in outlining what might be included and what might not be.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I am sorry. This may be due to my own stupidity and I am not saying that Mr McGrigor is wrong, but I did not quite understand what he was saying about organisations that had gone down one route only to find that it did not work. Could he flesh that out slightly?

Mr McGrigor: If an organisation had correctly followed the criteria suggested by the bill but, as a result of something it had not known about, evidence that the referral had been misplaced came to light, there should be some indemnity for that organisation.

Cathy Jamieson: In those circumstances, the organisation would not be held liable because it would not have acted with any malicious intent. If the organisation had acted in good faith and had followed the procedures, it would have no cause for concern.

Mr McGrigor: I am delighted to hear that.

Yesterday, the Home Secretary revealed new measures to introduce stricter controls in relation to sex offenders and to protect victims of sex crimes. I am happy to say that he adopted four of the six suggestions to increase the protection of children that were made by the Conservative party some months ago. He has obviously listened to some good sense in this case. As Oliver Letwin, our shadow Home Secretary said yesterday,

"All good criminal law strikes a balance between public protection and the protection of civil liberties."—[*Official Report*, *House of Commons*, 19 November 2002; Vol 394, c 508.]

We do not want to see a witch hunt against innocent people who genuinely wish to help children.

Michael Russell: I shall be generous and say that there appears to be nothing in the bill to suggest that witch hunts are intended. The issue that I addressed earlier and which other members spoke about is that the balance is not yet quite right. There must be further debate in that regard. The possibility of errors in the bill exists and we must do our best to ensure that there are none, but this is not a witch-hunting bill—at least, I hope it is not.

Mr McGrigor: I am sure that it is not intended to be a witch-hunting bill; I only hope that it does not end up being one.

Cathy Jamieson: Will the member take an intervention?

Mr McGrigor: I must make progress.

The Scottish Executive says that most sex offences are covered by Scots common law and so the UK reforms will not apply in Scotland. South of the border, the new offence of grooming children for sexual abuse will be applied to every aspect of life, not just adults who lure youngsters on to the internet. The Scottish Executive says that Scots law is sufficient to deal with such grooming and that, because Scots law is more flexible, it will not be necessary to undertake a full-scale review of sex offence law in Scotland. I hope that that assumption is correct. We are told that steps are being taken to combat the use of the internet by paedophiles. I hope that those steps are big ones and that they are being taken swiftly.

One change that will happen in Scotland is that convicted paedophiles will have to confirm their details in person each year with the police, provide national insurance details and notify the police of any change of name or address within three days of the change. Furthermore, overseas offenders will have to register here, which is extremely important. Such measures are welcome.

We welcome the intentions of the bill but it is essential that the regulations that are made under it achieve those intentions for the benefit of better child protection. Only the detailed drafting will determine whether the bill will have the right effects in practice.

The Deputy Presiding Officer: Despite Mr McGrigor's valiant attempts to take interventions from all round the chamber, an adequate margin of time remains for the remaining members not to feel that the seven minutes that I announced earlier ought to be considered oppressive or restricting. Having said that, I am now tempting fate, because I call Des McNulty.

16:00

Des McNulty (Clydebank and Milngavie) (Lab): How long do you want?

It is more appropriate to bemoan the need for the bill than to welcome it. The bill is necessary, but it is unfortunate that we require a way of dealing with people who intentionally cause children harm. I take the point that the minister made in her opening speech: the bill deals with a limited number of individuals—the list will be a short list rather than a long list. I also take the point that Kay Ullrich made: as we know, the bulk of child abuse is committed in a domestic setting—it happens within families—and the bill does not address that in any targeted way.

However, the bill provides a safety net for when other procedures break down. It is important to consider the bill in the context of other procedures and to focus our attention on how they should work in conjunction with the way the bill will operate.

The important factors in protecting children are the selection of people to work in child-linked services, ensuring that those services are well managed and that the interests of children are appropriately protected within those services. Some of the evidence that the Education, Culture and Sport Committee took for its stage 1 report gave important signals to the committee and the Parliament. None is more important than Dr Joanne Beaumont's suggestion that we should listen to children and make the system children focused. It is important that we recognise that children must be at the centre of the processes that we are putting in place. Although we have to focus on the bureaucratic mechanisms and the legal means, everything we do must satisfy the test of being child centred.

A number of speakers, particularly Michael Russell and Brian Monteith, raised the applicability of the listing process and the need to ensure that we get the balance right between identifying individuals whom it is appropriate to prevent from having contact with children and ensuring that individuals' rights are respected in the way the process is implemented. From reading the bill and considering the stage 1 evidence, I—like Michael Russell—am not sure that that balance has been struck yet.

We must focus on what the bill needs to do. Its focus should be those individuals—the very few, I hope—who operate with the intent of causing children harm. We must also consider the procedures that operate under other legislation and the codes of conduct and rules that operate in organisations and that are designed to produce other, lesser safeguards to ensure that children are not treated inappropriately through ignorance or unintentional actions that could cause them harm. The bill is intended to deal with deliberate abusers rather than those who, in certain circumstances, might find themselves in a situation in which misuse or abuse might be alleged. The balance is difficult. It is difficult because the bill is targeted and other legislation must do the bigger job.

I am concerned that placing someone on a provisional list could cause inappropriate application of the bill's procedures. Michael Russell raised that issue. Before someone goes down the route for which the bill provides, they must have very good evidence and a solid basis for placing someone on such a list.

I am concerned that a provisional listing system could offer a route for an authority or organisation to take a safe way out. Under some circumstances, that might be against the rights of the individual. A lesser test might impose a

diminution of rights, which would be very unfortunate. That needs to be appropriately safeguarded against.

I disagree with some of the comments in the committee's stage 1 report about the bill's applicability to smaller voluntary organisations. Although measures to protect children against abuse are very important, the way in which they are applied must appropriately take account of the realities of the operation of smaller voluntary organisations. The things we might expect smaller voluntary organisations to do on their own are different from what we might expect larger, funded, organisations to do.

A number of people from smaller voluntary organisations, including representatives of scout and guide groups and people who run youth clubs, have approached me with their concerns. They are concerned not necessarily about the Protection of Children (Scotland) Bill in itself, but about the weight of regulation and bureaucracy that they face in carrying out their functions.

Fiona McLeod: I understand what Des McNulty is saying and the concerns voiced by some of the smaller voluntary sector organisations that he has mentioned, but those who have an intent to harm children will move from the regulated sector into the non-regulated sector if they know that they can exploit that loophole. Does Des McNulty agree that there is a need for an advisory panel to support voluntary organisations and to ensure that they will be part of the process and get the necessary help?

Des McNulty: We need rather more than an advisory panel. If the bill is to apply to smaller voluntary organisations, practical support requires to be delivered to them for them to continue functioning. There are many organisations—for example scout and guide organisations and smaller sports associations—that are currently running right at the edge of their resources. They have to meet requirements to do with regulation of care, child supervision and health and safety, which take up a huge amount of time before people get to take part in activities with children. That is not an argument against child protection; it is a practical recognition that those smaller organisations are overloaded and overburdened with systems of regulation.

It is easy for us to put those systems of regulation in place. By doing so, we tick our own box, as Apex Scotland, the Scout Association and the SRU have said they will do, making the child protection requirements in the bill mandatory. However, the people who actually have to deliver voluntary services are saying that they are under serious pressure.

There is a danger that smaller organisations might collapse under the weight of the regulation and supervision requirements that we are imposing on them. They do not necessarily require a panel of advisers, as Fiona McLeod suggests; they need practical administrative support to help them to meet the requirements. I am not sure that we are adequately addressing that for the voluntary sector.

Jackie Baillie: I thank Des McNulty for drawing breath and allowing me to intervene. Small voluntary organisations already get the kind of practical support he is describing, to conduct Scottish Criminal Record Office checks through the central registered body, which is based on Volunteer Development Scotland. They get practical support, advice and training to enable them to carry out SCRO checks, so surely it is a matter of extending that slightly further while still providing the organisations with the same level of advice.

Des McNulty: Organisations get support from Disclosure Scotland, but I am not sure that I agree that the position as described by Disclosure Scotland is always consistent with the experience of practitioners who have spoken to me. There are delays in getting checks done timeously and there are issues of expense, which prevent organisations from getting volunteers into place. Delays can result in activities collapsing or in groups falling apart. If things do not happen to a schedule or within a set period of time, people sometimes lose interest.

We must reduce the disincentives to people engaging in voluntary activity with children. We all know that there are problems with rising crime, anti-social behaviour and so on. Many voluntary organisations are doing good work and are giving children positive alternatives to crime and anti-social behaviour. In supporting the application of the bill, we must ensure that there is an infrastructure of support—not simply to ensure compliance with regulations, but to enable voluntary organisations to continue their activities.

16:10

Christine Grahame (South of Scotland) (SNP): I will restrict my remarks to the report of the Justice 1 Committee, the secondary committee on the bill. Our remit was focused narrowly on human rights issues and the procedures relating to those who are placed on the list—the methods by which they appeal against decisions or have their cases reviewed.

All members of the Justice 1 Committee felt that the committee was given far too little time to scrutinise the bill. Increasingly, secondary committees are encountering problems with the time scale for consideration of bills. The conveners group intends to refer the issue to the next

Parliament. Although this is a short bill, it raises important human rights issues. The Justice 1 Committee would have benefited from having at least a couple more meetings to examine the bill. We were forced to restrict ourselves to written evidence.

I accept fully that there is a difficult balance to be struck on this issue. Jackie Baillie was right to say that the state has a moral duty to protect children. However, society also has a duty to protect the rights of the individual to a fair hearing. Article 6.1 of the European convention on human rights states:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Justice 1 Committee has some difficulty with the methodology proposed by the bill as drafted. The committee was not content that there should be referral in the first instance to the Scottish ministers. It adopted almost whole-heartedly the comments of the Law Society of Scotland, which stated:

"Questions may be asked as to whether Scottish Ministers can be viewed objectively as independent when determining referrals made in some cases, especially where the organisations concerned may also be emanations of or regulated by the State.

It is also of concern that the decision to include a person's name on the list will be founded on a paper based approach."

The society added that it was

"not convinced that these proposals offer sufficient protection to the individual to ensure that he or she can have access to a 'fair and public hearing'."

The committee considered the issue of the standard of proof. The minister has said that cases will be decided on the balance of probabilities, which is not a very high standard of proof. The committee took the view that charges should not just be credible, but be corroborated by reliable evidence.

In a moment I will return to the issue of the standard of proof. Six-month provisional listing raises huge human rights issues for the party who is placed on a list. The Law Society suggests that there should be a fast-track procedure, through an emergency tribunal. The Justice 1 Committee would like cases to be referred to a tribunal chaired by someone with legal experience, assisted by someone from children's services, rather than to the Scottish ministers. It is much fairer to fast-track cases than to place people on provisional lists.

Such an approach would protect the decisions that are taken. We recommend a right of appeal from the tribunal to the sheriff. Under the usual appellate procedure, there would be a right of appeal from the sheriff to the sheriff principal and from the sheriff principal to the Court of Session. Initial decisions should be as sound, fair and robust as possible. We are concerned that the bill fails to ensure that, as it contains no reference to corroboration and provides for cases to be referred to the Scottish ministers. Those issues should be considered at stage 2.

The bill would deprive people of significant rights. It would take away their right to work and, perhaps, their right to a good reputation. We are dealing with people who may never be charged, let alone convicted.

Section 4, on reference by certain other persons, states:

"the individual has (whether or not in the course of the individual's work and whether before or after this section comes into force) harmed a child or placed a child at risk of harm".

Section 16 states:

"'harm' includes harm which is not physical harm."

I do not have a problem with the definitions. I am saying that in terms of the test of fairness to both parties, cases have to be examined very carefully on evidential grounds.

The committee supported the process by which there is appeal to the sheriff, the sheriff principal and the Court of Session. The question of standard of proof raised problems for us with regard to someone seeking to have their name taken off the list or non-inclusion on the list. First, what is the standard? Are we talking about the balance of probability or are we talking about a case's being proved beyond reasonable doubt? Is there a presumption of innocence of the person on the list, or does the burden of proof fall on them to establish beyond reasonable doubt that they should not be on the list? Those are technical, but important, points in ensuring that the legislation works.

The committee felt that there should be a new crime of false referral of an individual to be placed on the list, so that it is made clear to public authorities and individuals that malicious and mischievous reporting will be treated seriously as a criminal offence.

I have touched on review. The concerns of the Sheriffs Association were valid and the committee accepted them. The sheriffs said that if a person made an application after 10 years to have their position reviewed and they failed, they would be barred for another 10 years. The Sheriffs Association stated:

"it seems odd that the power of the sheriff to entertain an application early, on a change of circumstances, can be exercised only on a first and not on a subsequent application."

That truly deserves examination.

I say to Jamie McGrigor, who did not take my intervention, that heaven forfend that I should defend the Executive, but it is examining whether there should be a statutory offence of grooming. Like others, if that is brought in, I want it to be extended to vulnerable adults.

Finally, the comments that the Justice 1 Committee has made show the value of there being a secondary committee with expertise in certain areas. I hope that ministers will take on board the point that when they consider passing a bill to a secondary committee for scrutiny, they should give the committee time to do it justice.

16:17

Scott Barrie (Dunfermline West) (Lab): The debate has been immensely consensual and I—as everyone has this afternoon—welcome the bill's general principles. My answer to the question whether the bill is needed is an overwhelming yes. When I started my social work career in the mid-1980s, I was not even police checked, despite the fact that I was doing statutory child protection work. I moved jobs within the same local authority, but it was not until after the publication of the Kent report in the 1990s that the procedures were changed in Fife and I and many other individuals in social work were police checked. That is a graphic example of how far we have come.

Even 20 years ago, it was assumed that a reasonably responsible person with a social work qualification would not pose any danger to children and that certainly no one who had a conviction would try to practise social work. I remember interviewing someone in the 1990s and only when the police check came back did we find out that the person, who had applied for a statutory child care post in a local authority, had a conviction for a crime against children. The person knew that they would be police checked, but there was always the possibility that they would not be discovered and that the police check would come back with a wrong date or date of birth. It just goes to show that we can never be too careful and that we can never have enough statutory checks in place.

Karen Gillon raised an important issue about the scope of the bill. Although the bill is addressing the protection of children, the point that Karen Gillon raised about extending the same protection to other vulnerable client groups is important. We all read with absolute horror about the case in Newtown St Boswells in the Borders, which involved a young woman with severe learning difficulties. She suffered horrific abuse for a considerable time. If we cannot offer protection to such people, we are neglecting the duty of care that Jackie Baillie described so clearly.

My intervention during Ian Jenkins's speech concerned the commission versus omission debate. Ian Jenkins responded by saying that the fact that someone had unconsciously omitted to do something did not quite mean that they caused as much harm to a child as someone who deliberately set out to cause harm. From my experience in social work, some of the most dangerous situations often involve people who did not set out deliberately to harm children, but who omitted—however unconsciously—to offer the protection and care that the children evidently needed. We must acknowledge that people can fall foul in that way and that they should be treated appropriately.

Although there is no general disagreement about the bill, it seems from the Education, Culture and Sport Committee's report that the heart of the discussion about the bill concerns the balance that needs to be struck. Adults' right to be protected against wrongful or malicious listing needs to be balanced against the obvious need for better protection of our children. I echo the sentiments of my good comrade Jackie Baillie, who said that if the balance is not to be absolutely level, it must be tipped in favour of children. I make no apology for endorsing that statement.

Members who, like me, have had significant involvement in child protection work—Trish Godman, Irene McGugan and Kay Ullrich—will know that adult abusers can be most persuasive in arguing their corner against children who are very confused and upset and who do not necessarily know what has happened to them. I would rather err on the side of getting things wrong in relation to an adult who is not guilty beyond reasonable doubt, which Christine Grahame referred to.

Christine Grahame: Given that being put on a list is a paper conviction that does not involve a hearing for the person affected, does the member support the requirement for corroboration—however narrow the margin of that corroboration—or is he saying that there should not even be corroboration?

Scott Barrie: There is a difference between corroboration and something being proved beyond reasonable doubt in a court of law. The burden of proof is important. If one makes "beyond reasonable doubt" the test, one is in effect having police checks by another name. The burden of proof should be "on the balance of probabilities".

Christine Grahame: I want to make it clear that although in relation to putting someone on a list the Justice 1 Committee accepted that the test should be "on the balance of probabilities"—which is a lower test—the committee sought corroboration of evidence. In other words, one source of evidence would not be sufficient; there would have to be separate independent evidence.

Scott Barrie: I have no difficulty in accepting the idea of corroboration. However, my point concerned whether the burden of proof lay with the "on the balance of probabilities" test or the "beyond reasonable doubt" test. In my view, to use the "beyond reasonable doubt" test would be to set the test too high.

I think that it was Brian Monteith who referred to the infamous Thomas Hamilton, whose activities prior to Dunblane might well have attracted the authorities' attention if the proposed list had been in place. To some extent, Thomas Hamilton's name was on a list, albeit an unofficial list. He was not permitted to hire a hall in a then Fife Regional Council school but, unfortunately, because the list was unofficial, that information could not be shared with neighbouring authorities. If that had been possible, the tragic consequences at Dunblane might have been prevented. It was right to mention that example, because it shows how necessary it is for the bill to make such lists much more official than they used to be. They used to be hidden, because no one could admit that such behaviour existed.

In her intervention on Brian Monteith, the minister rightly pointed out that the bill is not a panacea that will end all child abuse; however, it will close a gap in current legislation. That is indicated in paragraph 78 of the committee's report, which restates the views of Carole Wilkinson—formerly of Falkirk Council and now of the Scottish Social Services Council—and of the minister.

Christine Grahame raised an important issue about the ECHR that we cannot ignore. Obviously, we cannot pass legislation that is incompatible with the ECHR. Ideally, we would be able to balance the rights of young people who might face abuse with the rights of adults to a fair hearing. However, as I said, it is my opinion that, if we must err on one side or the other, we should err on the side of children.

The Deputy Presiding Officer (Mr George Reid): We move to wind-up speeches, which should be of five minutes.

16:26

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Although I am a layman, I wind up for the Liberal Democrats because I was Ian Jenkins's predecessor as spokesman on such matters. I approach the issue with less knowledge than the members of the Education, Culture and Sport Committee have, but I must say that I have found the debate to be very informative. Although I come from the remotest part of the Highlands, where one might be tempted to think that child abuse is not such a problem and that people live in that age of innocence to which Ian Jenkins referred, I know full well just how important is the bill that is before us today.

I will, if I may, pick my way through this afternoon's debate. The minister explained the historical basis for the bill, which emerged from Lord Cullen's findings after the Dunblane tragedy. The issue that led to some of the best debate was the minister's statement that individuals could be provisionally listed on a decision by Scottish ministers as advised by civil servants.

Mike Russell said that he supported the bill. He used the nice expression that it would be a "third lock" to close off loopholes. He cited the case of Illinois, where 8 per cent of convictions were found to have been of innocent people. He developed that argument and said that the listing process must be belt-and-braces safe. If I followed him correctly, he said that a tribunal system would be better than leaving ministers to do an inside job. The minister will forgive me, but the perception will always be that a tribunal would give more of a fair trial. Fairness and openness are absolutely essential in the matter. Finally, Mike Russell also touched on referring people to the list for vexatious and frivolous reasons.

Brian Monteith called for a definition of risks and harm. The rejoinder to that is that, if a list were made, anything that was not included could lead to loopholes, so I fancy that the committee has some work to do on that. The thought sprung to my mind that an individual who was put on to a provisional list and, having ultimately been found to be innocent—if that is the correct word—was taken off the list, would nevertheless probably be marked for life. That issue was flagged up by Ian Jenkins. Perhaps in their future work, the committee or the ministers could consider what right to recompense individuals who ought not to have been put on a provisional list should have. If I understood Mike Russell correctly, that situation might undermine the argument for the provisional list, so perhaps one should move to the final list right away.

Mr Monteith: Although I have an open mind on whether the bill should provide for the possibility of compensation, does the member agree that instead of making such a provision, we could consider whether one method might not be to require that the tribunal's deliberations about listing should be held in camera? That might limit the potential danger of slandering or libelling someone in the process of an investigation.

Mr Stone: That might be a sensible suggestion, which I imagine the committee will consider.

Finally, Brian Monteith touched on cross-use of lists. I can see where he is coming from on that, but I would be slightly worried about the use of

public information that might go against human rights. Again, the committee can do some useful work on that.

Three points were made by my colleague, Ian Jenkins. First, he said that the bill was too narrow in relation to the statutory duty to refer and in relation to voluntary referrals. That point has been fleshed out by other members.

His second point was that the definition of offence was too wide. To back up that opinion, he argued that even the suspicion that someone might be on a provisional or final list is deeply damaging. He said that that would be a terrible thing by which a person could be marked for life.

Thirdly, he made the point that one has to be careful about the human rights aspect of mechanisms of referral and reservation and the standards of proof that would lead to referral.

In the time that I have left, I must pay a compliment. Jackie Baillie—who is not in the chamber—and Kay Ullrich made excellent and thoughtful speeches; those two colleagues were at their very best.

Des McNulty flagged up the infrastructure of support. When I tried to intervene on Mr McNulty, who is also not with us—obviously my speeches clear the chamber faster than anyone else's—

Ian Jenkins *rose—*

Mr Stone: Ian Jenkins can sit down.

I was going to push Des McNulty on how he would make the mechanism work. If the right money was attached, could one make the mechanism an additional function of local authorities? I do not know the answer to that question, but the committee might want to work on the matter.

The bill is excellent; my party supports it and it has the support of all right-thinking members in the chamber. I am sure that I speak for the Liberal Democrats when I wish the bill godspeed and good luck to the minister and the committee. What they are doing is worth while and Scotland and the United Kingdom will be better places when the bill is enacted.

16:31

Murdo Fraser (Mid Scotland and Fife) (Con): I will be relatively brief. The Scottish Conservatives support the general principles of the bill for the reasons that were outlined by my colleague, Brian Monteith, in his opening speech.

The bill seeks to ensure that adequate checks are made on the stability of people who work with children and young people. It is important that people who have a record of child abuse are stopped from simply moving from employer to employer when they have been found out. The bill seeks to introduce appropriate safeguards. Employers must be aware of who they are employing and they must be aware of those people's backgrounds if they are to work with children. That applies to employers and to voluntary groups, about which I shall say a bit more in a moment. Of course, we have some concerns about the bill; many have been aired during the debate. I have four specific points to touch on, most of which have been covered.

First, we are concerned about the extra burden of administration that the bill will place on organisations. That burden will apply to schools. Judith Sischy of the Scottish Council of Independent Schools raised the issue in her evidence to the Education, Culture and Sport Committee. However, more relevant is the concern about how the extra administration will impact on voluntary groups. Jackie Baillie and Des McNulty referred to that during the debate. We are sympathetic to the view that the register should cover all groups and that all groups should get assistance in the costs that will be involved in registration. Costs do not come only from registration. A Scottish Criminal Record Office check must be paid for, but there is administrative and training time involved in making such referrals and doing the SCRO checks. We must take account of the burden that the register will place on voluntary groups.

There is also concern that if checks must be made on potential volunteers, there will be a delay before a person can be appointed as a volunteer. That could remove spontaneity and cause difficulties for voluntary organisations. The minister should consider that concern, which was also referred to by my colleague, Jamie McGrigor, in his speech about training.

Our second concern is about who makes the referrals. There is no doubt that there can be no objection if the court refers to the register a person who has been convicted. There is, however, a question about employers making referrals. In her opening speech, the minister said that referral to the register would result in cases in which an employer's substantial concerns have led to a dismissal. That is welcome, but there is a question about unscrupulous employers who, were they to dismiss an employee, could seek to make life difficult for them by seeking to put them on the register.

Cathy Jamieson: Far be it from me to suggest how many unscrupulous employers there might be. It is important that we take account of employment legislation and of people's right to be represented at tribunals and fairly represented at disciplinary processes. I stress that should an

employer make a referral that does not show that due process has been gone through, or that appropriate proceedings have taken place, that referral will not be considered to be appropriate by ministers.

Murdo Fraser: I am obliged to the minister for that clarification. When I referred to unscrupulous employers I did not, of course, say whether they were private or public sector employers. The minister makes a good point, but will she acknowledge Christine Grahame's speech and consider going a little bit further by making it a crime for an employer to make a false referral? Will there be comeback against an employer for a person who has been placed on the register by that employer and who feels hard done to? We need to consider that.

Thirdly, provisional listing was referred to by a number of members—Michael Russell referred to it in his opening remarks, as did Des McNulty. The minister said that provisional listings would be kept to an absolute minimum. We welcome the idea that the provisional listing will last only for six months until the matter is resolved, but there is still concern about it. Christine Grahame, in what I thought was a valuable contribution, expressed the concerns of the Justice 1 Committee in relation to a right of fair hearing and how that might impact on human rights legislation. There is a question of balance: it is obvious that we must seek to protect children, but we must at the same time have regard to human rights issues.

I am short of time, but I have only one more point to make, about the role of teachers. The Educational Institute of Scotland expressed concern in its written submission about what is, in effect, double jeopardy. That would happen in the event that a person was placed on the register, dismissed from their job, but then appealed to the General Teaching Council which, in effect, cleared them. Such a person would still be on the register because there will be no automatic removal from the register when the GTC clears them. Although they have a right in law to go to the sheriff court and appeal, that is an expensive process that not many people have the resources or the will to go through with.

We support the bill; it is not a witch-hunting bill. Of course there are concerns about the impact that the bill might have on individuals who are falsely referred to the list. We all know the dangers of the press getting their teeth into that sort of thing and the damage that that can do to people's reputations and lives, but I hope that as the bill proceeds we can build in the necessary safeguards. We support the bill, and we hope that it will improve protection for our children in Scotland.

16:38

Irene McGugan (North-East Scotland) (SNP): I do not think that I have ever taken part in a debate in which the issues have been articulated so clearly, so often and at such length. The minister can be in no doubt about members' concerns. Further summing up seems to be a bit superfluous.

All members' speeches acknowledged the right of children to be protected and the need for the bill's help in achieving that. That is very much to be welcomed. The protection of children can be a highly emotive issue and a number of us—mostly as a result of previous professional experience—feel strongly about it. It is a sad fact that the impetus for new legislation in this area is usually prompted by high-profile cases in which it has been proved that the current system has in some way failed our young people. The roots of the bill go back many years to Lord Cullen's report following the Dunblane inquiry, which addressed the issue of vetting and supervision of adults who work with children and young people. I am pleased that, from the outset, the bill has used a wide definition of work, which covers not only those who are in paid employment, but unpaid volunteers. That is absolutely correct.

The bill's policy memorandum makes reference to Roger Kent's report on safeguarding children who are cared for away from home. He drew attention in particular to the soft information that is legitimately collected by agencies, but which is difficult to use. In their contributions to the Education, Culture and Sport Committee, the Scottish Commission for the Regulation of Care and the Scottish Social Services Council both raised the issue of sharing information. They reminded us that prior to the Regulation of Care (Scotland) Act 2001, local authorities were the main regulatory bodies in respect of care services for children.

At that time, a number of local authorities took the view that information that was gained in the course of their social work functions could and should be shared with colleagues in registration and inspection units. They also agreed that they could include information that suggested that an adult might pose a risk to children. Those organisations have said that they would welcome the opportunity that is presented by the bill to place the sharing of such soft information on a more statutory footing. We recognise the difficulties that that could cause, not least in relation to the Data Protection Act 1998, but the point is valid nonetheless. It is still the case that there is no source of information on misconduct that is not connected to criminal investigations or proceedings.

Given that the minister will no doubt want to say it one more time, I will say for the penultimate time today that no single measure, such as the bill, will protect children. However, if the bill does nothing more than highlight good recruitment practice, it will have done something valuable. I am thinking about proper checks on references, criminal record checks and supervision, all of which will enhance the level of protection that is given to children.

When we have an opportunity such as this to improve the situation of our children, we have to ensure that we establish the best possible system—one that offers the maximum protection to all children in Scotland. One of the principal concerns of the Education, Culture and Sport Committee has been extremely well rehearsed this afternoon and, although that means that I hardly need to mention it, I will say that the committee was concerned that the bill differentiates the obligation that is placed on organisations. As Jackie Baillie rightly said, the committee's concern is that that will lead to a two-tier system of protection. She made a point that was mentioned only by her, which is strange because it is one of the most valid points about this part of the argument. Surely what is important is whether a person has unsupervised access to children, irrespective of whether the organisation for which that person works is regulated or unregulated. It would be unacceptable for the Parliament to legislate for children to be protected by some child care organisations but not by others. That is especially the case when parents will be unclear about which clubs fall into which category.

It is worrying to note that Volunteer Development Scotland, in its evidence to the committee, was clear that

"If we do not make the position universal, unsuitable individuals may gravitate towards organisations that are not subject to the requirements."—[*Official Report*, *Education, Culture and Sport Committee,* 1 October 2002; c 3758.]

The witness from Volunteer Development Scotland used the words "may gravitate", but nothing is surer than that such people will gravitate and we must take that fact into account. That provision as drafted is unacceptable in that it does not meet the state's duty of protection. That was mentioned earlier in relation to human rights.

As someone who has been closely involved with the bill to establish a children's commissioner, I am totally up to speed on all of the articles of the United Nations Convention on the Rights of the Child. I draw members' attention to article 19 of that convention, which requires state parties to take all appropriate legislative and other measures to protect children. We need to keep that fact in mind.

Of course, we do not want to place unnecessary and undue burdens on small voluntary organisations but, because checks are made at present on potential workers, it can be argued that a duty to refer unsuitable adults to the list is simply an additional tool to ensure good, sound child care practices.

The minister mentioned the difficulties that surround enforcement of the requirement to refer in relation to non-regulated organisations, but the Education, Culture and Sport Committee does not believe that those problems are insurmountable. I agree that we can find a way around them and it seems that there is no technical reason why the mandatory requirement to refer an individual cannot be applied to all organisations.

Brian Monteith asked about other uses for the list. It might be more appropriate to explore the links between the proposed list and the sex offenders register, but we have not had a chance to explore that possibility this afternoon. Although I recognise that it is not a matter for the bill, I commend to the minister something that was mentioned by Karen Gillon and Scott Barrie, which is that comparable legislation to cover vulnerable adults should be introduced as soon as that can be arranged.

The bill is not a substitute for good child care practice, nether is it a substitute for good employment practice by organisations, but the Protection of Children (Scotland) Bill is one of a number of measures that are needed to protect children, to ensure that they are safe and to minimise harm to them. I am pleased that the Parliament will endorse the general principles of the bill.

The Deputy Presiding Officer: I ask Cathy Jamieson to wind up the debate on the general principles of the Protection of Children (Scotland) Bill. She has until 16:57.

16:45

Cathy Jamieson: I am sure that you will give me an indication of when I am rapidly approaching that point, Presiding Officer.

The debate has given us an opportunity to hear the concerns of committee members and others about the general principles of the bill, which I am glad to hear all members support. It has been useful to hear about the areas in which we need to tease out whether amendments are required at stage 2; I will come on to those areas later. The debate shows the value of committees having the opportunity to scrutinise the bill properly. It also gives the Executive time to think about the issues and to consider lodging appropriate amendments.

It has become apparent during the debate that members recognise that there is nothing easy about child protection work. Workers must always

look at a situation and weigh up the evidence. They must balance the needs of a child in a situation in which the child could be at risk. They must consider the human rights of both the child and the adult, make a decision and take action that will protect vulnerable children. If nothing else has come out of the debate, it has shown how difficult it is to do that. If members think that it is difficult for us when we sit in the chamber or in committees to discuss matters in a relatively quiet, calm and academic way, I ask them to consider the front-line social workers and all the other professionals who have to make such judgments every day. In many instances they are damned if they do and damned if they do not.

Kay Ullrich brings a wealth of social work experience to the debate. I worked in the same local authority as her, so I know of some of the difficult situations and cases that have a direct bearing on what we are trying to achieve through the bill. She and Jamie McGrigor highlighted the fact that many people who were seen as pillars of their communities have turned out to be the very people who put people at risk or harmed young people.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Mr McGrigor mentioned the internet task force on child protection. In fact, that task force was not announced in the Queen's speech; it was established in March last year. Given what we know about the type of people who seek access to children via the internet, what work is going on between the Scottish Executive and the Government to support the task force's recommendations?

Cathy Jamieson: I am pleased to say that the matter that Brian Fitzpatrick raises is not something new that has been sprung upon us. Christine Grahame and other members have raised the issue with me, and I have raised it with Jim Wallace, the Minister for Justice. We will continue to look for additional ways to ensure that children and young people are protected. The Executive has taken action to communicate to parents and young people some of the dangers that exist—in addition to the benefits—when using the internet.

As I said, it is difficult to get the balance right between protecting children and young people and protecting the rights of adults. That will be the crux of the matter when we consider the bill at stage 2.

I have listened to what members said and I have already considered some of the evidence that was presented to the committee, on which I think there is scope for movement.

Several members talked about the provisional listing of an individual who has been suspended from their post. It became apparent during the committee's evidence taking that a number of organisations were concerned that they would have a duty to refer an individual to the list when they suspended them prior to carrying out the full disciplinary process. They felt that having to comply with that duty might inhibit them from undertaking such suspensions as a precautionary measure or from moving the employee away from contact with children while they carried out a full investigation. We have no wish to put organisations in such difficulty. I have sympathy with that concern and I will consider our proposals for provisional listing and suspension. I hope that we will be able to lodge amendments on the issue at stage 2.

Karen Gillon and others mentioned the GTC, which, as members will be aware, feels strongly that it ought to have the opportunity to make referrals under section 4. I hope that members will be pleased that I have listened to the evidence and that I plan to lodge amendments at stage 2 to allow for that possibility.

As we move towards stage 2, we must consider a number of other points that were raised. A range of members, including Ian Jenkins, Jackie Baillie, Karen Gillon and Fiona McLeod, commented in detail on the key issue of whether the duty to refer should be on all organisations that employ people in child care positions. It is not our intention to have a two-tier system, because that would enable people who are looking for an opportunity to exploit children to gravitate towards organisations that are not covered by the duty to make referrals to the list. From our discussions with the voluntary sector, I know that it is moving towards improved child protection procedures. The introduction of wider access to criminal record checks has been an important factor in that, but, as Des McNulty and others said, it will take time for the new procedures to bed down.

All the organisations that we heard evidence from and spoke to support the bill. Many of them said that they will take certain actions, whether or not they have a statutory duty to do so. However, some organisations have concerns about their ability to comply with that duty. I give a commitment to consider the matter again. If we can find a way of achieving a universal duty on all organisations that employ people in child care positions, without imposing the unreasonable bureaucratic burdens of which people are wary, I will lodge an appropriate amendment at stage 2.

A number of members highlighted the fact that, in order to make a universal duty workable, we must find a way of giving effective support, advice and training to voluntary organisations, particularly those that require time and support to get up to speed. Another interesting issue is that of how best to provide advice to organisations in the

voluntary sector in a way that makes their job easier and does not deter people from volunteering.

I want to return to the balance of rights. When I opened the debate, I explained in detail the procedures that we believe should be followed before an individual is included on the list of persons who are unsuitable to work with children. I set out why the procedures that we suggest are compliant with the ECHR and are in line with procedures elsewhere in the UK. The proposed procedures strike a balance between the rights of the child and the rights of the individual.

We will consider carefully the remarks of the Justice 1 Committee and the Education, Culture and Sport Committee on how to improve the protection of human rights in the bill, but in doing so we must weigh up a number of points that were made this afternoon. If the balance must be tipped, we should ensure that it is tipped in favour of children's rights. An adult who is listed wrongly has a right of appeal, but there is no appeal against abuse. A person who is abused as a child carries that with them for the rest of their life. I want to be absolutely sure that the system that we put in place is as robust as possible so that no one is put in a position in which they can harm a child again and again.

Michael Russell, Brian Monteith, Ian Jenkins and others raised points about the guidance on the definition of harm. I understand why members want clarity on what counts as harm and what does not, but I refer members to my opening speech. Deciding what counts as harm is a judgment call, and it is right that employers should make judgment calls about what is appropriate in certain situations. As the bill stands, employers will apply the test of harm. If, having followed due process, it is discovered that someone has made an error that is not likely to be repeated, the employer's processes should take care of that. That would not necessarily constitute an opportunity to refer to the list.

We are painfully aware from a number of inquiries into institutional abuse—particularly abuse in residential care—that there are people who have consistently harmed young people and who have moved around without being stopped. We want to ensure that those people are caught by the legislation. I give a commitment that the guidance that will be prepared for the implementation of the bill will address the issue of harm. I do not want to include the definition in the bill for the very clear reasons that I have outlined. The minute that something is ruled in, something else is ruled out, and that would not be helpful. We will prepare guidance that should help to remove any uncertainties over when to refer, rather than include a detailed definition of harm in the bill.

I am pleased that the general principles of the bill are supported by all parties. The organisations that work with children and young people, who have to take difficult decisions on a daily basis, will be pleased to hear the commitment that members expressed this afternoon. I am glad of their support and I am glad of the opportunity to consider how we can improve the bill at stage 2. I look forward to the bill's successful completion at stage 3.

Protection of Children (Scotland) Bill: Financial Resolution

16:56

The Presiding Officer (Sir David Steel): The next item of business is consideration of the financial resolution to the Protection of Children (Scotland) Bill. I ask Peter Peacock to move motion S1M-3436.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Protection of Children (Scotland) Bill, agrees to any expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.—[*Peter Peacock.*]

Business Motion

16:56

The Presiding Officer (Sir David Steel): The next item of business is consideration of the revised business motion. I ask Patricia Ferguson to move motion S1M-3597.

Motion moved,

That the Parliament agrees as a revision to the programme of business agreed on 14 November 2002—

Thursday 21 November 2002

after—

"*followed by*	Financial Resolution in respect of Title Conditions (Scotland) Bill"

insert—

"*followed by*	Executive Debate on Extradition Bill - UK Legislation"—[*Patricia Ferguson.*]

The Presiding Officer: No member has asked to speak against the motion. The question is, that business motion S1M-3597 be agreed to.

Motion agreed to.

Parliamentary Bureau Motions

16:57

The Presiding Officer (Sir David Steel): We have three Parliamentary Bureau motions before us. I call Patricia Ferguson to move motion S1M-3604.

Motion moved,

That the Parliament agrees to meet in The Hub, Castlehill, Edinburgh during the period from 12-29 May 2003.—[*Patricia Ferguson.*]

The Presiding Officer: I call Patricia Ferguson to move motions S1M-3605 and S1M-3606 together.

Motions moved,

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the following regulations—

the Civil Legal Aid (Scotland) Regulations 2002 (SSI 2002/494);

the Advice and Assistance (Scotland) Amendment Regulations 2002 (SSI 2002/495); and

the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2002 (SSI 2002/496).

That the Parliament agrees that the Rural Development Committee be designated as lead committee in consideration of the following regulations—

the draft Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003; and

the draft Cairngorms National Park Elections (Scotland) Order 2003.—[*Patricia Ferguson.*]

Ms Margo MacDonald (Lothians) (SNP): On a point of order, Presiding Officer. I may have missed your instructions. Are we discussing the move to the Hub?

The Presiding Officer: We have just passed it.

Ms MacDonald: Can we go back, please?

The Presiding Officer: I will allow you a minute, although we should not go backwards.

Ms MacDonald: I simply want to inquire which budget heading the move to the Hub will come under. Will it be under the heading of the Scottish Parliament project or another subject heading? Further to that, if anyone is found to have contributed to the additional cost, will they be pursued for recompense?

The Presiding Officer: Do you want to try to reply to that, Ms Ferguson?

The Minister for Parliamentary Business (Patricia Ferguson): I do not think that it is a matter for the Executive. It is a matter for the parliamentary authorities.

The Presiding Officer: Patricia Ferguson is correct. I am not sure that I should attempt to answer the question. The money comes out of the normal parliamentary budget and it is not part of the Holyrood project budget, if that is what the member is asking. It is the same budget from which the money for the moves to Glasgow and Aberdeen came, but the move to the Hub will cost very much less. I hasten to add that we are not meeting in a coffee shop or a pub, but in the former assembly hall of the Church of Scotland at the Hub.

Decision Time

16:59

The Presiding Officer (Sir David Steel): There are five questions to be put as a result of today's business. The first question is, that motion S1M-3369, in the name of Cathy Jamieson, on the general principles of the Protection of Children (Scotland) Bill be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Protection of Children (Scotland) Bill.

The Presiding Officer: The second question is, that motion S1M-3436, in the name of Peter Peacock, on the financial resolution in respect of the Protection of Children (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Protection of Children (Scotland) Bill, agrees to any expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.

The Presiding Officer: The third question is, that motion S1M-3604—the Hub motion—in the name of Patricia Ferguson, on May 2003, be agreed to.

Motion agreed to.

That the Parliament agrees to meet in The Hub, Castlehill, Edinburgh during the period from 12-29 May 2003.

The Presiding Officer: The fourth question is, that motion S1M-3605, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the following regulations—

the Civil Legal Aid (Scotland) Regulations 2002 (SSI 2002/494);

the Advice and Assistance (Scotland) Amendment Regulations 2002 (SSI 2002/495); and

the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2002 (SSI 2002/496).

The Presiding Officer: The fifth question is, that motion S1M-3606, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Rural Development Committee be designated as lead committee in consideration of the following regulations—

the draft Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003; and

the draft Cairngorms National Park Elections (Scotland) Order 2003.

Utilities (Mis-selling)

The Deputy Presiding Officer (Mr Murray Tosh): The final item of business is a members' business debate on motion S1M-3486, in the name of Mr Duncan McNeil, on the mis-selling of utilities. The debate will be concluded without any question being put, and I invite members who wish to participate in the debate to press their request-to-speak buttons now.

Motion debated,

That the Parliament notes the proposal of energy regulator, Ofgem, to penalise London Electricity for failing to prevent its sales staff from mis-selling products to customers; expresses concern over the high-pressure selling tactics employed by representatives of certain utility companies; believes that vulnerable members of the public are entitled to protection from such practices; seeks clarification over what safeguards are currently in place and how these are enforced, and considers that the industry, the Scottish Executive and all interested parties should undertake a concerted effort to put an end to underhand sales practices and restore public confidence in the utilities market.

17:01

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I thank those who have signed the motion and those who have stayed behind for tonight's debate. I am confident that the fact that many members have remained in the chamber is testimony to their genuine interest in the issue and has nothing at all to do with their trying to avoid the cold callers who night after night interrupt their tea with promises of untold riches if they change their gas or electricity supplier. I hope that they find attending tonight's debate slightly better than doing an impression of the poor woman in the advert hiding in a cupboard under the stairs because she is frightened of the doorbell ringing. However, the lengths to which we will all go to avoid utility companies' sales agents suggest how low the utilities market has sunk in the public eye.

I make it clear at the outset that there is no doubt that people, particularly those on fixed incomes, can benefit from competition in the energy market. However, given some of the underhand doorstep selling tactics that are being used, it is no wonder that the industry has been brought into disrepute. We have all heard stories of aggressive, high-pressure selling, of sales agents tricking people into signing transfer agreements and of salesmen sitting in the public library with the electoral register filling out their forms. Such stories have understandably turned people off.

I have also heard stories from the other side of the doorstep. One former salesman shocked me with his account of the sharp practices that he was forced to employ to cajole customers into switching suppliers. He made a number of serious allegations, including that he was given, without any police vetting, a fake identification card. I demanded that those allegations be fully investigated and I am thankful that the minister has informed me that his office has contacted the industry regulator and that the company in question is now under investigation.

Many in the chamber tonight could recount horror stories. It is easy enough to do that, but the key question is what we can do about the problem. I suggest the endorsement of three points. First, the industry watchdog, energywatch, as many members will be aware, is calling for the introduction of automatic minimum compensation payments for all cases of mis-selling and erroneous transfer. I back that measure. After all, if the energy companies are, as they say they are, in no mood to tolerate mis-selling and are driving it out of the industry, how could they possibly object? What better way is there for the companies to rebuild trust than by putting their money where their mouth is?

Secondly, I welcome initiatives such as EnergySure, which for the first time officially recognises and accredits energy sales teams. However, to concentrate on individual salespeople, however abusive or unscrupulous they might be, misses the bigger point. Earlier, I touched on the fact that some sales agencies that are subcontracted by the bigger power companies put their employees under intolerable pressure to hit targets. It is reported that such pressure can include telling employees to exaggerate or even lie about projected savings or encouraging them to sneak past wardens into sheltered housing complexes and to knock on doors after 8 o'clock, in breach of industry rules. An employer who treats workers in such a way is hardly likely to be concerned about an employee losing his or her job. Of course, when things go wrong, all the parties can blame one another. Therefore, I call on the power companies to take the next step, to recognise that the protection of the customer is paramount and to move away from using arm's-length agencies towards having accountable, in-house sales teams. That is the least that they can do.

Finally, we should consider what direct pressure we can apply on the power companies. Power companies are the partners with which we are delivering important anti-fuel-poverty schemes in Scotland, such as the warm deal and free central heating. How to square a company that works to reduce fuel poverty on the one hand and manipulates and exploits those on low incomes on the other hand is beyond me.

Gas and electricity companies have an obligation under condition 25 of their licence to produce information and advice on energy

efficiency. I suggest that, if they put information and advice at the forefront of their advertising campaigns rather than use discredited doorstep selling, perhaps they could repair the damage that has been done to their reputations. If we cannot trust them on the doorstep or on the telephone, how can we trust them on any energy efficiency advice that they give? How can we trust any scheme—even schemes that are run by the Executive—if companies that use sharp practices are involved? Mis-selling risks undermining the Executive's groundbreaking policies on fuel poverty.

I ask the minister to demand that companies stop undermining the Executive's work and face up to their licence obligations. Restoring faith in the energy market is in all our interests. If we hear nothing but horror stories about people being transferred without their knowledge or being bullied into signing a form that they have not read, who in their right mind would think about changing a supplier? That image of the industry will not only make it harder for energy companies to attract new customers, but discourage consumers from using the market to find the deal that is right for them. It is high time that all interested parties—the power companies, the consumer groups, the Executive and others—got round the table and made a concerted effort to drive out underhand sales practices once and for all. The industry needs safeguards and the public demand action.

The Deputy Presiding Officer: Speeches should be restricted to three to four minutes.

17:08

Mr Kenneth Gibson (Glasgow) (SNP): I am pleased to speak in a debate on an issue that has caused great concern and distress to many Scots, particularly to the elderly and vulnerable. I congratulate Duncan McNeil on securing the debate and on his excellent speech.

Mis-selling and fuel-supplier transfers in particular are frequently discussed by the cross-party group in the Scottish Parliament on consumer issues. Indeed, last June, we had a presentation from the managing director of a company that employs door-to-door sales representatives. He talked about the pressure that disreputable companies place on their sales staff, as Duncan McNeil said. Often, sales staff who are found to have mis-sold are dismissed by their employers, but apparently they regularly resurface with other companies. Reputable supply companies should ensure that direct sales companies blacklist those who fall into that category and drive them from the marketplace. Of course, we should also investigate companies that encourage sharp practice but throw up their hands in horror and blame their staff when they are caught out.

If companies do not get their act together, perhaps suppliers should consider whether they want their reputations sullied and fines imposed on them, such as the £2 million penalty that was recently imposed on London Electricity for continuing to work with the rogue companies. In a competitive market, salespeople are, of course, paid by results and often earn 100 per cent of their income from commission, which encourages the cutting of corners at best and downright fraud at worst.

Complaints continue to mount. Last year, Citizens Advice Scotland reported a 33 per cent increase in utility problems—some 8,200 cases. Those constitute 9 per cent of all Citizens Advice Scotland's social policy cases and more than half of them relate directly to problems arising from fuel transfer. The work load of citizens advice bureaux continues to increase in that sphere.

Enforcing licensing conditions, implementing the new code of practice and working with energywatch are important steps. Compensation for those who have endured mis-selling might also focus minds and hit rogue sellers where it hurts financially. I support Duncan McNeil's comments on that issue. However, the announcement by the Minister of State for Energy and Construction that rogue companies must crack down on mis-selling or face penalties has not yet had the desired effect, according to Citizens Advice Scotland. Perhaps last month's action by the regulator will make those companies think again.

Of course, we should take into account the fact that many people who transfer to another fuel supplier benefit financially. However, the fact that many of Scotland's poor are excluded from the opportunity to switch and benefit is the other side of the coin. We could debate that another time.

Another issue is that thousands of people who genuinely wished to transfer suppliers filled in forms and had them accepted. However, those forms were incinerated—and so could not be processed—because of the incompetence of some of the supplier companies. Therefore, there is the ridiculous situation in which some people are harassed and distressed by being mis-sold utilities, while others who genuinely want to transfer are being prevented from doing so. Restoration of public confidence in the sector is vital and I look forward to hearing the minister's response.

17:12

Sarah Boyack (Edinburgh Central) (Lab): I congratulate Duncan McNeil on securing this timely debate on utilities. I know that action is being taken at the United Kingdom level by the Minister of State for Energy and Construction, Brian Wilson. However, it is important that the

Scottish Parliament focuses on the issue. Duncan McNeil gave us an excellent overview when he kicked off the debate.

I have campaigned on the issue of erroneous transfer and the mis-selling of utilities for some time. In a motion that I lodged earlier this year, I suggested that compensation should be paid to customers if energy suppliers are at fault. Something must be done to concentrate the collective corporate mind of energy companies. I know that the most frequent complaint that energywatch Scotland receives is from consumers whose electricity or gas supply has been taken over by another company without their consent.

I have been contacted by many constituents about the mis-selling and erroneous transfer of utilities, which continue to cause unnecessary distress to many vulnerable people. Nobody is saying that companies cannot market or sell their products, but underhand tactics are simply not acceptable. I have heard countless examples of people being transferred without their knowledge or being bullied into signing a form that they have not understood because of the small print that is hidden at the bottom.

From personal experience, I know how irritating and difficult it is to resolve an erroneous transfer of supply, because the power companies do not believe that anyone has been transferred erroneously. They just read their papers and say, "No, you have been transferred. Here's your new bill." Duncan McNeil spoke about public confidence in the industry. He is right to say that the mis-selling of utilities and erroneous transfers will hit the power companies hard unless action is taken to restore public confidence in the industry.

That is why I welcome the Office of Gas and Electricity Markets' recent £2 million financial penalty on London Electricity for serious breaches of its licence conditions relating to the marketing of its products. That is the right way forward. However, I also want us to move to a situation in which customers are compensated when the energy companies are at fault.

I, too, have experienced someone from an electricity company on my doorstep pretending that they had been subcontracted to read my gas meter. I began to think that I had been targeted, because the same thing has happened to me in two different flats during the past few years. I refused to let the person across the doorstep, because I am quite assertive and was quite sure that the gas company had not subcontracted the work. I phoned up the gas company later and was assured that, indeed, it had not done so. I was not taken in by the person because I had read about such incidents before and was determined to follow my suspicion through. Even so, I could not believe that the situation was happening to me.

I know that many of my constituents are not as assertive as I am and find it difficult to shut the door on an assertive salesperson who is trying to finagle their way into the house. Particularly in relation to older people, that kind of treatment is an absolute scandal.

I am angry that my constituents are being treated in such a manner by the power companies. I support Duncan McNeil's initiative in highlighting the issue in the Parliament and calling for strong, co-ordinated action to stamp out such practices. If public confidence in the utilities companies is not to collapse, we need action and we need to broadcast the fact that action is being taken.

I was keen to speak in the debate not only to raise the concerns of my constituents, but to focus the discussion on action that needs to be taken in partnership by the UK Government and the Scottish Executive. That is why I have backed the call for all parties to get round the table and make a concerted effort to drive underhand sales practices out of the industry. Those practices are unacceptable and have to stop.

17:16

Phil Gallie (South of Scotland) (Con): I welcome Duncan McNeil's motion, although I have questions about some of its contents. The £2 million fine that was placed on London Electricity sounds fine, but I would like automatic compensation for consumers. Where is that fine going? Will it go into the coffers of Ofgem or will it find its way back to the consumer?

Like others, I find that my knowledge of the subject is based on things that have happened to my constituents. The issue that has affected my constituents most relates to fraudulent signatures. The companies do no checks, whether they are gaining or losing the customer. Nothing is done to check that the consumer wants to change supplier.

In 2001, when I took the matter up with Ofgem, I was told that that sort of fraud did not happen often. Ofgem was totally out of touch with the situation, although I recognise that it has now come up to date. It is a pity that it did not grasp the nettle earlier. At the time, I suggested to Ofgem that, when a company received forms from a salesman suggesting that the consumer had requested the transfer, the company should check whether the signatures were valid. Ofgem told me that that would add more bureaucracy to an already complicated system.

However, the problems that are faced by a consumer who has been wrongly transferred and tries to get the situation redressed far outweigh any bureaucratic inconvenience that the second check would cause the companies. I still think that

Ofgem could act in the way that I suggest and bring relief to consumers.

I resent the fact that, although privatisation of the power industry—which I recognise might still be a controversial issue—has brought considerable benefits with regard to costs to the consumer, the mess that has been created by the changing of suppliers against the wishes of consumers is preventing the elderly in particular from benefiting from the options that competition is creating in the power market. It is not only the elderly who are affected in that way. My colleague Mary Scanlon suffered from a false change of supplier. She is not someone who is elderly and confused; she is simply someone who was deliberately cheated.

I would welcome the automatic compensation that is suggested by energywatch and supported by Duncan McNeil. If our minister can do anything to press Brian Wilson into following that line, he will have done a considerable service to all consumers in Scotland and probably further afield.

17:20

Stewart Stevenson (Banff and Buchan) (SNP): I congratulate Duncan McNeil on securing the debate, which is timely. Anyone who is prepared to tackle ex-boilermaker Duncan McNeil on any subject—especially a subject that touches people, such as this one does—does so at their peril.

I will quote Ian Fleming, who, in one of the James Bond books, said:

"Once is happenstance. Twice is coincidence. The third time it's enemy action."

I bring to members today a tale of enemy action. I had great difficulty in preparing for the debate, because I could select only a few of the cases from my considerable file on the subject in my constituency office.

I will start with St Fergus church hall. Unlike the cases that members have mentioned so far, this happened over the telephone. St Fergus is in a rural constituency. To send people to chap the doors there is expensive and more difficult, and most utilities sales are therefore done by telephone canvassing. A call to the hall-keeper of St Fergus church hall led her to ask for a quotation. The result was that Scottish Gas transferred the church hall from its Scottish Hydro-Electric supplier.

The second case is Mrs B—I will not give her full name—in Maud. She received a letter, again after a marketing telephone call, indicating that her electricity supply would be transferred from Scottish Hydro-Electric to Scottish Gas. After my intervention, she received a letter from Scottish Gas resolving the issue on 14 August. Seven days later, Scottish Gas transferred her again—this time without even the courtesy of a telephone call.

The administrative systems in some of the utility companies are under considerable stress. In some respects, that is because of the competition from new entrants in the market and the urgent, belated response from the sitting tenants, as we shall call them. Mrs B's case resulted in a reference to the British Gas board. It has gone to a very serious level.

However, it was time to play double or quits. My own constituency office received a phone call making an offer. My constituency office manager requested a quotation, and within two weeks Scottish Gas had transferred even an MSP's constituency office gas supply. That made *The Press and Journal* and certainly made Scottish Gas sit up and pay attention.

I have an 80-year-old constituent in Fraserburgh who has had his electricity supply transferred on two separate occasions to two separate companies. I have only dipped into the file to pick a few random examples that are geographically representative of my constituency. The problem affects real people and causes real irritation. It is not just salespeople chapping the door; it happens through the telephone as well.

I have written to Ofgem and had a reply. Ofgem points out that it is a condition that suppliers carry out audits of all their sales and that they record the telephone calls. I have heard the script of some of the cases concerned. Unambiguously, there was no question but that transfers were not being made. The pressure on some of those involved in cases of mis-selling to personal and business customers is clearly unreasonable and untenable.

I will close with a final irony. Scottish Gas is fixing the problem—I am reasonably content about that—but, because my constituency is a rural area, many of my constituents whose electricity has been transferred to Scottish Gas cannot even receive gas from Scottish Gas. Is that not the final irony?

17:24

Mrs Margaret Smith (Edinburgh West) (LD): I congratulate Duncan McNeil on securing the debate and on his motion. I echo his comments on the potential benefits of competition but also the serious problem of high-pressure sales techniques, which often border on, and occasionally tip over into being, downright criminal.

I have been concerned about the issue for some time, since a constituent came to my surgery more than a year ago and told me how his 88-year-old mother had been mistakenly transferred from one

supplier to another. After months of wrangling, my constituent was still being told different things by different companies. He wrote to me:

"for the last 3 months the company involved in the erroneous transfer have said they have returned her account to the original supplier. The original supplier states that this has not happened. How is an 88 year old lady with dementia meant to deal with this?"

That question apart, we have heard that two of our female colleagues—who are well known for not suffering from dementia and for being quite assertive—have had to deal with the problem; we all have family and friends who have had to deal with it. Many of my neighbours and constituents, including the gentleman whom I have quoted, have brought not only the matter of aggressive and misleading sales techniques, but that of forged signatures, to my attention.

I lodged some parliamentary questions about the issue some time ago, and was given one of those glib answers along the lines of, "It's a reserved matter—don't worry about it. Go off and think about all those other things we have to think about." It may be a reserved matter on paper, but the Executive could assist in a number of respects. Duncan McNeil was right to point out that we are dealing with companies in the context of central heating schemes, and it is surely in their best interests not to annoy us by getting it wrong in the other areas in which they work.

Phil Gallie: Margaret Smith said that the subject is reserved, but fraud is not a reserved matter; it is a law and order matter.

Mrs Smith: That is the other thing that I was going to say. Following the responses that I received to my questions, I then lodged a motion on the subject, which was followed by many others from members of all parties. It is significant that we have all picked up on the issue. In my motion, I was trying to find a way for the Executive to work with the Scottish energy companies and with the police to combat fraud and bogus-caller crime in general. I totally agree with Phil Gallie's point.

Although many of the measures that might be taken are reserved to Westminster, others are in the hands of such bodies as Ofgem. I am delighted that Ofgem decided to maintain the operating licensing conditions that it had in place beyond March this year, and that it toughened them. I am also delighted that Ofgem has now announced its intention to fine London Electricity £2 million for failing to prevent mis-selling by its sales staff. Unfortunately, we can expect to see some action from companies only when they start to get hit in their own pockets. I would like the companies concerned to have to pay proper compensation to consumers for the distress that is caused by their malpractice, as well as having to pay out to Ofgem.

It is a little ironic that London Electricity was one of the companies that has recently signed up to the Electricity Association's EnergySure pilot accreditation scheme to improve the training and accreditation of energy sales agents. It sounds as if that company's staff could do with it. Companies have to work proactively to retain customer confidence in the face of newspaper reports of bullying tactics and forged signatures and so on, so I welcome that scheme. Time will tell whether it proves to be beneficial.

In supporting Duncan McNeil's motion, I strongly urge the Executive to do all that it can to protect vulnerable members of the public from the practices that we have been describing, and to work with partners, including the Westminster Government, to ensure that we alleviate the problems as much as possible.

17:29

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): I echo the sentiments of many colleagues in congratulating Duncan McNeil on securing tonight's debate. As Duncan McNeil, Sarah Boyack and other members mentioned, this is an important and worrying issue. I suspect that many of us have particular concerns arising from individual cases in our constituencies. Those individual circumstances highlight more general points, and it is on those that Duncan McNeil's motion focuses. The motion deserves our support for that.

In my constituency, a clear pattern is emerging of elderly people in particular having real difficulties in navigating the sometimes conflicting information from competing suppliers and their claims of potential advantages—with little mention of the potential disadvantages of switching supplier.

This debate is not restricted to nefarious activities such as deliberate mis-selling, serious though those are. Only a brave man would interrupt Duncan McNeil's tea with a telephone call, but some people are very persistent.

There is a need not only for monitoring, but for continuing assessment of how competition is developing for consumers—particularly vulnerable consumers. I am pleased to hear members say that, when there is competition, we must ensure that the poorest and most vulnerable do not end up paying the highest fuel prices. That is a clear ambition of Labour members; I hope that it is shared by members of all parties. Working together with Ofgem and the Department of Trade and Industry, Scottish ministers must continue to measure how competition is working in the market and involve themselves in discussions about how regulation of competition is operating across the United Kingdom.

It is a no-brainer to say that transparent and readily understood information for consumers is needed as a baseline for ensuring efficient and effective competition. As Duncan McNeil indicated, without such information, consumer misinformation may act as a deterrent or barrier to effective competition.

We need to get the system right. As Duncan McNeil mentioned, it is likely that the Executive's current central heating programme—installing heating systems in pensioner households throughout Scotland—will increase the number of people who are potentially at risk of being affected by misinformation and mis-selling. If those customers move away from the tariffs that are offered by incumbent suppliers—or it is suggested that they do so—they need comprehensive yet understandable information about the technical requirements of their existing and new suppliers, and about pricing tariffs. They must be clearly informed about the implications for them of additional charges—for example, for meter changes or internal circuitry works.

I mentioned to Duncan McNeil the concern that I felt after visiting a pensioners lunch club, which a pleasant woman addressed in near evangelical style about the advantages of being supplied by a particular company. At no point in her presentation did she mention that people might want to check with a qualified electrician what needed to be done and the costs of changing meters. I did not miss the opportunity to take the woman concerned to task on those issues, in relation to which pensioners need particular support.

Protections for vulnerable consumers and—as Duncan McNeil indicated—penalties for offenders are needed. I trust that the minister will make it clear that when members—certainly Labour members—are asked on behalf of vulnerable consumers where we stand on this issue, we say that we are on their side.

17:33

Alex Neil (Central Scotland) (SNP): I, too, congratulate Duncan McNeil on securing the debate and on his speech. I agree with every one of his recommendations. It is a rare event in this chamber for us to be united to such a degree. Phil Gallie, Brian Fitzpatrick, Duncan McNeil and I are all on the same side of the argument. It is important that we speak with one voice. A loud, clear message should go out from the Scottish Parliament that we are united in our support for the consumer.

We all have tales from our constituencies of people—especially older people and people suffering from early senile dementia—who have been victims of the mis-selling of utilities. Several such cases have been cited this evening. Rather than cite more examples of the problem, I would like to refer to three aspects of what should be the solution.

First, we need to consider the possibility of making independent advice readily available to people who have been approached by salespeople. I refer not just to salespeople who are involved in mis-selling, but to those who are genuinely selling an alternative method of energy supply.

There should be an easy and readily accessible source of independent advice. The points that Brian Fitzpatrick raised in his speech in themselves justify the need for such independent advisory services to be available. I had a phone call last week from Scottish Gas asking me to change from Scottish Power to Scottish Gas. I would not have known the technicalities to which Brian Fitzpatrick referred and I cannot think of any organisation that I could readily have phoned to get advice to enable me to make an informed decision. We need to consider the possibility of that kind of advice being available and perhaps having the producer organisations fund it.

Secondly, we should consider the need for a register, so that, as with land, every time that a change in power provider takes place, the company that takes over has to register the change. That would allow the regulator at least to monitor what is going on, perhaps initially on a pilot basis. We should certainly hold that in contingency if the power companies refuse to adhere to what Ofgem has declared and to the voices of this Parliament and, no doubt, the Westminster Parliament.

A couple of months ago, the director general of Ofgem, Callum McCarthy, was before the Enterprise and Lifelong Learning Committee. Brian Fitzpatrick and I both raised the issue with him and I hope that we can claim some credit for the recent changes that Ofgem has made in regulation—even if we cannot, we will.

My final point is on the definition of utilities. Inevitably tonight we have concentrated on gas and electricity, which are the energy utilities, but there is a similar problem in relation to the telephone companies, particularly with new companies coming into the market allegedly selling low-cost deals on calls. It seems to me that there is scope for us to send a message to Westminster that the new UK Communications Bill could have built into it additional safeguards for the consumers of telephone utilities.

I make those points in a positive manner, in the hope that the minister will at least consider them.

The Deputy Presiding Officer: And knowing that Alex Neil will subsequently take the credit.

17:37

The Deputy Minister for Enterprise, Transport and Lifelong Learning (Lewis Macdonald): I congratulate Duncan McNeil on securing the debate and on providing an opportunity for broad and useful discussion of such an important issue. Members have commented on the numbers of cases that have been raised throughout Scotland in urban and rural areas, but the sheer volume of cases is not the main reason for concern. We must also consider the consequences of mis-selling, such as the inconvenience, uncertainty and distress that such practices cause consumers, particularly vulnerable consumers, which a number of members mentioned. As Duncan McNeil described so graphically at the outset, those practices also undermine confidence in the energy industries.

The regulation of utilities is indeed a reserved matter, but it is also a matter of great consequence to all our constituents. That is why there has been such support for this evening's debate and for the view that Duncan McNeil expressed so clearly at the beginning, which is that mis-selling must be stamped out. Although many of the measures that are in place are Westminster's responsibility, I will start by rehearsing the safeguards that exist to protect consumers.

Brian Fitzpatrick asked how much we monitor the development of the market and competition. It is worth saying that since competition in domestic utility markets was introduced, there has been a good deal of movement within the market. About 7,000,000 out of about 20,000,000 gas consumers and 10,000,000 out of 30,000,000 electricity consumers—a third in each case—have changed their suppliers. The latest figures show that the number of transfers is still running at 750,000 consumers a year. That happens because of the benefits that people can acquire by changing supplier. Although it is important that we bear that in mind, we do not want competition alone—we want consumers' rights to be protected, too.

I mentioned existing means of protecting consumers' rights, some of which lie in criminal law and some of which lie in general consumer protection legislation. The industry regulator, Ofgem, and the consumer watchdog, energywatch, have specific powers in that regard. Other regulations are specific to the gas and electricity industries; they take the form of conditions in supply licences, which govern sales and marketing on the doorstep, over the phone and in the shopping centre. Among other stipulations, they include clear rules on selection and training of sales staff and auditing of sales.

Although those regulations were introduced some time ago, Ofgem has extended and developed them several times, which reflects its concern about the continuing practice of mis-selling in the marketplace. Most significant is that, as I think Kenny Gibson and Sarah Boyack mentioned, Ofgem acquired in April a new power to impose a fine of up to 10 per cent of turnover on a company that is guilty of breaching the licence conditions. Ofgem is already considering whether further new powers might be required to allow those conditions to operate more effectively. The first use of the power that Ofgem acquired in April was made in October. It is highly significant that a financial penalty of £2 million was imposed on London Electricity and its affiliate company Virgin HomeEnergy for failing to prevent mis-selling of gas and electricity to domestic consumers.

Phil Gallie: Does the minister have any idea where that money went?

Lewis Macdonald: The fine has not yet been collected. I will write to Mr Gallie about that. I noted his point that it would be good if the imposition of the fine produced a direct benefit for consumers. The purpose of the fine is to produce such a benefit by highlighting to the supply companies the consequences of failing to stick to their licence conditions.

Members might be aware that Ofgem confirmed the imposition of the fine on Monday, after considering representations in the interim period. In doing so, Ofgem indicated that all the representations that it had received provided strong support for its tough action. I want to add the Scottish Executive's support for that tough action. I also want to intimate our support for the work of energywatch in standing up for consumers. Several members have said that the consumer must be put at the centre of such considerations.

Several members—Duncan McNeil in particular—made the point that the energy companies whose agents sell gas and electricity on the doorsteps are our partners in promoting energy efficiency and warmer homes. That is why we look to energywatch to bring those companies on board and to ensure that they take their social responsibilities seriously not just in one area of policy, but across the board.

Earlier this year, energywatch launched its "Stop Now!" initiative, which is directed at mis-selling. The initiative brings together the suppliers, energywatch, Ofgem and the Department of Trade and Industry to discuss the problems of mis-selling and to identify possible solutions. That has resulted in the piloting by a number of companies—including Scottish Power—of EnergySure, which is a new effort to promote best practice in energy selling. There are two aspects to EnergySure: the training processes of participating companies will be audited to ensure

that they reach approved standards and a national database of accredited agents will be established. If an agent's performance falls below the required standard, that agent will not be permitted to continue to sell without undergoing retraining and demonstrating that they are fit to work in the industry.

In addition, the Office of Fair Trading launched an investigation into doorstep selling earlier this month, which will examine not only gas and electricity, but other commodities that are sold on the doorstep. It will seek to identify why the selling of some of those commodities causes the kind of problems that we have heard about during the debate and why the selling of others does not. The aim is to identify what causes such problems and how that can best be addressed.

Automatic compensation payments for the victims of mis-selling are on the agenda. Duncan McNeil and Phil Gallie raised that issue. The energy selling steering group, which includes suppliers, regulators and energywatch, is considering such proposals and is drawing up a code of practice to govern suppliers' contracts with customers. The group will also consider how proper checks might be introduced into the transfer process. I very much look forward to the proposals that the energy selling steering group will make when it concludes its considerations.

In summary, I can confirm our view that the practice of mis-selling is unacceptable, as are its consequences. We will continue to support the work of Ofgem, which strengthens market regulation, and the work of energywatch, which advises and supports consumers. We will also continue to encourage the industry to face up to the problem by continuing to engage in schemes such as EnergySure to eradicate the menace of mis-selling.

To consumers and to the constituents who have been represented in the chamber tonight, we convey the clear message that we are on their side and that we intend to ensure that the problem is cracked. Following this evening's debate, I will write to Ofgem and to the energy selling steering group to draw to their attention the concerns that have been expressed by members from around the chamber.

Meeting closed at 17:46.

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