

MEETING OF THE PARLIAMENT

Wednesday 3 December 2003
(*Afternoon*)

Session 2

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Scottish Parliament

Wednesday 3 December 2003

(Afternoon)

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

Time for Reflection

The Presiding Officer (Mr George Reid): Good afternoon. The first item of business this afternoon is time for reflection. Today our time for reflection leader is the Rev Marion Chatterley from Waverley Care, who is chaplain to people living with HIV.

The Rev Marion Chatterley (Waverley Care): This is the beginning of Advent and on Sunday many churches will have lit the first of four Advent candles. As we move towards Christmas, the number of candles—and so, symbolically, the amount of light—increases. That light is a reminder of God's love for our world. It is not the case that the actual amount of light—or love—increases week by week. Rather, we are encouraged to be more aware week by week of what is already in our midst.

That is a very good illustration for world AIDS day, which was on Monday. As world AIDS day approaches, we see an increasing number of people wearing red ribbons—a growing reminder of the presence of HIV in our world. This year, the theme for world AIDS day is stigma and discrimination. That theme goes right to the heart of the experience of living with HIV and is very real for many people in Scotland.

Living with HIV is not always easy, especially for some of the more vulnerable people with whom we work in Waverley Care. They are people who have lived through abuse and trauma, who have not always found healthy ways of coping and who are struggling with the reality of social deprivation. They are people who have found themselves infected with HIV, a diagnosis that can leave the strongest person isolated within their family and neighbourhood. It is a diagnosis that people often hide from others and that brings—even now—a range of responses, many of which serve simply to increase social isolation and discrimination.

World AIDS day is an annual reminder of the existence of this virus in our midst. It is a reminder of our responsibilities—to those who are infected, to those who are at risk of infection and to ourselves. We all need to be aware of the risks that we might take.

The Advent candles are an annual reminder of God's love for us and our world. That love is for each and every one of us. The red ribbons are an annual reminder of those who live alongside us: people who still live with HIV, who still face stigma and discrimination and who still need our compassion, our love and our prayers. As we are reminded during Advent of God's love for all his people, I pray that we will find new and creative ways in which to show that love to those people whose lives include HIV.

Amen.

Legal Advice, Information and Representation

The Presiding Officer (Mr George Reid): The next item of business is a debate on motion S2M-685, in the name of Cathy Jamieson, on modernising access to legal advice, information and representation, and on two amendments to the motion.

14:34

The Minister for Justice (Cathy Jamieson): I am not sure that the fact that leading this debate are two former lawyers and a former advocacy worker who is a non-lawyer will mean that there is consensus or whether there will be a bit of a spat—only time will tell.

I am pleased to have this opportunity to debate modernising access to legal advice, information and representation. Our partnership agreement sets out the building blocks for our long-term goals of a safer and stronger Scotland, confident and prosperous communities and excellent public services. I do not think that there is any doubt that an effective, efficient and fair public justice service is vital for creating a safer, confident Scotland.

I have set out previously in the chamber my aim to modernise our justice system and to make changes where they are needed to ensure that our justice system, both civil and criminal, is effective, efficient and fair and, above all, inspires public confidence and a sense of ownership. In that context, it is crucial to ensure that those who need the law will not be excluded from using it, whether because of prohibitive cost or lack of knowledge or help. Legal advice, information and representation are fundamental to our objectives of modernising justice and tackling social exclusion.

Legal advice on rights and responsibilities and on resolutions and remedies for the problems that we can all come across in our everyday lives is provided not just through legal aid and solicitors, but by a wide range of other organisations and agencies. We know from recent research that, when people want advice on legal problems, the most common first point of contact is a solicitor—three in 10 people choose to go to solicitors first. Next are the citizens advice bureaux, to which just under one in five people go first for advice. After those two major advice sources—accounting for just under 50 per cent—there is a wide variety of advice providers, ranging from the police to trade unions, local authority departments, housing associations, insurance companies, advice agencies, welfare rights officers, trading standards officers and, as members know, MSPs. The list is long and varied.

We know that getting the right advice and help from what can seem a bewildering range of advisers can be a difficult and time-consuming process. Offices might be shut, telephones might be engaged and people might have to make several contacts before they find the right source of advice. When it comes to getting advice from a solicitor, people worry about what that might cost and they worry that the eligibility criteria for legal aid might be too strict. My concern is that people often give up before they get advice and before their problems are resolved.

Mr John Swinney (North Tayside) (SNP): The minister and I have corresponded regarding Mr and Mrs Mackenzie, a couple of my constituents who have had a pretty bad experience of dealing with lawyers over 15 years. The minister talked about better serving the consumer interest and improving access to legal advice. Did she read the article in *Scotland on Sunday* a week past by the Scottish legal services ombudsman, who talked about the importance of her work and her desire to strengthen the powers of her office to give greater scrutiny to the way in which the Law Society of Scotland handles complaints against solicitors, primarily to protect the consumer interest? Has she given any thought to those issues and does she think that some of the valid points that the ombudsman raised would enhance the modernisation of the justice system?

Cathy Jamieson: For obvious reasons, I do not want to talk in detail about Mr Swinney's constituents. I read the article and I am aware of the work that the Justice 1 Committee did during the previous session on the issue that he raises. I will give the matter further consideration and see what we can do to ensure that people get the best possible advice at every stage. If Mr Swinney wants to raise other issues in relation to his constituents, I am happy to deal with those matters.

Mr Swinney: Will the minister give way?

Cathy Jamieson: I need to move on. Perhaps we can deal with the other matters later.

I have described some of the problems that people face in the legal system. We have just heard an example of the kind of things that people write to their MSPs about. People tell me and other members about their worries over costs, over whether they will get legal aid and over the time that things take. People feel a sense of injustice, as they believe that those who are accused of crimes perhaps have easier access to lawyers and legal aid, whereas they cannot access legal advice to help them solve the difficult problems that they face. Such public perceptions give us serious reason for concern. We cannot allow our society to be one where many people have little faith in the legal system, feel unable to

use it when they need to and are cynical about its ability to deliver fair solutions. That kind of cynicism undermines the fundamentals of democratic society.

Let me say clearly that publicly funded legal advice, aimed at those who cannot afford to pay for it, is an essential part of any modern justice system in a democratic society, because the law and the legal system are the guardians of our individual rights and safety, as well as of our collective values. It cannot and must not be the case, in a Scotland where we want a justice system that is rooted in the principles of equality and fairness, that only some people are able to get help to use the law and to access the legal system, whether that is to get the protection that they need, to get the redress that they seek or to defend themselves in a criminal court.

There are two sides to the coin of access to justice. On one side is the principle of providing access to legal advice and help so that people can resolve their civil legal problems and disputes; on the other side is the principle of ensuring legal help and representation for those accused of crime. The two sides are equally important. Modernising access to legal advice is not a question of doing one or the other; it is about doing both better, about making legal advice provision more accessible and transparent where it needs to be and about ensuring greater efficiencies where possible and where required.

We have already started that work both on the civil side and on the criminal side. Following recommendations from the working group that was asked to consider how a community legal service might be developed in Scotland, we have—together with the Scottish Legal Aid Board—undertaken a programme of research and pilot projects, with activity all over Scotland. That work will conclude next spring. We have also set up four new in-court advice projects, which provide on-the-spot legal advice, support and information to people who are not assisted by a solicitor or other adviser in civil actions. Because we know that problems escalate if they are not dealt with early, we have significantly increased the number of money advisers in Scotland as part of our strategy to help people to address their debt problems before matters need to come to court.

Christine Grahame (South of Scotland) (SNP): When I was convener of the Justice 1 Committee, I went to the United States to observe mediation procedures. Will the minister comment on progress that could be made towards using mediation procedures in civil matters in order to save money and to make resolution easier?

Cathy Jamieson: I am interested in the question that the member raises. Considering alternative forms of dispute resolution is important.

Many cases come to court that could, if people had been given the right support and advice at an early stage, have been resolved more quickly and efficiently. We will want to consider such issues.

I can say today that the Executive is making a small but crucial contribution by making the Equal Opportunities Commission website on sex discrimination relevant to Scottish advisers. Many advisers and solicitors who represent clients at Scottish employment tribunals might want better information than is currently available on the website. We have therefore committed a relatively small, but significant, amount of money to update the website to ensure that Scottish interests are represented.

We have made big strides by introducing quality assurance in civil legal aid through the civil legal aid reform programme. On the criminal side, we have widened the Public Defence Solicitors Office pilot scheme and have introduced fixed payments for lower-level sheriff court cases. We have only just begun the process. We are developing a long-term strategy for the delivery of legal advice in Scotland and we want to get it right.

Johann Lamont (Glasgow Pollok) (Lab): Will the proposed review of legal aid include consideration of the provision of legal advice to asylum seekers in Scotland?

Cathy Jamieson: I will go on to say more about the review of legal aid. However, I will put it on record now that I intend that that issue will be considered as part of the overall review. There are clear differences between the way in which legal aid is delivered in Scotland and the way in which it is delivered south of the border. I want that to be considered in the review.

It will be important to get things right for the people who need legal advice, information and representation. We have to get things right because of the significant investment of public money. We must ensure that we get the best out of that money.

Tommy Sheridan (Glasgow) (SSP): Will the minister take an intervention on the subject of that money?

Cathy Jamieson: I would like to make progress.

We spend £140 million to £150 million a year on legal aid alone, both civil and criminal. To put that in perspective, £150 million a year is more than we spend on the entire Scottish Ambulance Service, as many members might know. However, the money that we spend on legal aid is by no means the only public money that is spent on providing advice on legal matters. We should not forget or underestimate the amount of public money that is spent on advice agencies by local and central Government or the amount of money that goes

into advice services that are provided by local authorities.

The real challenge that we face is to build on the firm principle of access to justice so that we move towards a Scottish system that delivers the legal advice and help that all our citizens need. I put that challenge to the Parliament and to practitioners and policy makers locally and nationally. On matters of civil law, that means that we must look beyond the confines of legal aid in Scotland and consider much more widely how best we can deliver publicly funded legal information, advice and representation for those who cannot afford to pay for it.

I am clear about our objectives for modernising access to legal advice, information and representation. I want better access—people need to be able to get legal advice when they need it, regardless of where they live or what their problems or needs might be. Everyone who is involved in the process should provide advice that is of high quality across the board. I want the public to be assured that the advice that they get is good, because, as we all know, bad advice is often worse than no advice at all.

Tommy Sheridan: I am sure that all members welcome the extra funding that has been provided centrally for money advice, but will the minister say how much extra money has been put into providing legal representation at that level, particularly through the law centre system?

Cathy Jamieson: It is worth remembering that, as I have stated, we have a demand-led budget on legal aid, particularly on representation. I stress that we are not talking about taking money from one part of the system to put it somewhere else; we are talking about ensuring that we get the best value from the money that we are investing. In some instances, that might well involve choosing to provide the advice, information and representation in a different way. During the review, we will consider the whole issue of how those elements are provided locally, whether through money advice, law centres or other forms of community legal provision.

To deliver on that and to obtain best value for the public purse, we need to have a national strategy and a planning framework and I am well aware that we do not have those at present. The provision of publicly funded legal advice—whether by the public, private or voluntary sectors—is largely demand led; it is not based on a consistent assessment of priorities and needs. We need to change that situation and we are beginning to do so.

During the next six months, we will carry out a strategic review of the delivery of legal aid and examine the role, functions and powers of the

Scottish Legal Aid Board, as well as the roles of all those who are involved in the delivery of publicly funded legal advice. We will look at how those roles might need to be changed in the light of the policy to modernise legal aid and the objective of implementing a national strategy and planning framework. The results of the work that we have done—our pilot projects and our research—will inform the review, which will be short, sharp and focused. It will not drag on—I expect that it will deliver its recommendations to us within six months. We will consider closely how effectiveness and efficiency can drive forward the changes that we will make.

I have written to the conveners of the Justice 1 Committee and the Justice 2 Committee with details of the review's terms of reference. Those details will be available in the Scottish Parliament information centre and on the Scottish Executive's website.

As well as conducting the review, we must work closely with local authorities in Scotland to increase awareness of their role in funding and providing advice and information on legal matters. There are strong arguments for local authorities to review their role and activity in that area systematically and strategically. I want to encourage and work with local authorities to help them to find out how they can provide better joined-up, client-centred advice and information to their local communities. We have started that work by holding the first in a series of seminars; the seminar, which was held in Motherwell last month, considered how existing processes, such as community planning and the best-value reviews, could be used.

I will conclude by saying a few words about criminal legal aid. In that area, efficiency and effectiveness can be drivers for the modernisation that we need. It is worth remembering that expenditure on criminal legal aid accounts for 70 per cent of Scottish legal aid spending and now totals nearly £100 million a year.

We have a responsibility to the public to assess value for money. I make no apologies for that. We cannot ignore the value-for-money question, because through criminal legal aid we in essence provide a public service, which, like all public services, is paid for by the taxpayer. Part of our review will be to promote best value in the delivery of legal aid, with a particular focus on some of the current pressures on criminal legal aid.

I want to maintain the principle of the availability of criminal legal aid, which, as I have said, is a hallmark of a mature democratic society. I also want professionals to be paid a fair price for the work that they do—they need the reward that the work deserves. However, we also have to show, achieve and maintain maximum efficiency and

value for money. That is a challenge; it is a challenge for us all to come to a solution.

The approach and objectives that I have set out for modernising access to legal advice are just one part of our wider justice reforms. Taken together, those reforms are delivering the most significant overhaul of justice in a generation. We have an opportunity to place those reforms at the heart of a major cultural shift towards a public justice service that delivers for all the people of Scotland and of which we can all be proud.

I move,

That the Parliament notes the progress made to date on modernising access to legal advice, information and representation; agrees the importance of increasing access to justice through a better and more consistent provision of legal information and advice throughout Scotland, and welcomes the strategic review of the delivery of legal aid, advice and information as a means of ensuring a better and more efficient public service in line with the needs of Scottish citizens.

14:51

Nicola Sturgeon (Glasgow) (SNP): I will be eternally grateful to the minister for outing me as a former lawyer. Those of us in the chamber who fall into that category are probably the only members who took a step up in public esteem when we were elected to Parliament.

Before I deal with the substance of the debate, I will make a preliminary point in relation to Johann Lamont's intervention. I hope that the Scottish Executive will take the opportunity to distance itself loudly, clearly and definitely from David Blunkett's plans to restrict legal aid access for asylum seekers. I know—and I am sure that ministers also know—that asylum cases are some of the most complex cases that are dealt with in Scotland. Restricting asylum seekers' access to appropriate legal aid would amount to a denial of human rights. I hope that the Deputy Minister for Justice will reiterate that point when he sums up.

I welcome the debate. If it is the Executive's objective to ensure equitable access to high-quality, independent and appropriate legal advice at the point of need, regardless of ability to pay, SNP members share that objective. However, it is appropriate to point out that the experience out there for many people who are in need of legal assistance falls far short of that ideal. I will highlight a number of issues that any review must address if it is to be worth while and not just a crude cost-cutting exercise. The issues relate to, first, the availability and ease of access to the right advice from the right provider at the right time and, secondly, the funding of that advice for people who cannot afford to pay for it—those are two sides of the same coin.

The first issue is an obvious one and the minister has referred to it at length. Not everyone

who has what they consider to be a legal problem requires to see a lawyer. In many cases, they would be better served by, for example, a citizens advice bureau, a money adviser or a welfare worker. However, too often, people cannot access the most appropriate advice, either because it does not exist in their area—there is a postcode lottery—or because, where it does exist, people do not know about it or do not know how to access it. The development of community legal services is to be welcomed, if they are to act as portals to advice services.

Often the Executive appears to be trying to reinvent the wheel, with reviews and pilots, followed by further reviews, instead of supporting and seeking to build on best practice where it exists—and it does exist. I say that not as a politician, but as a former community lawyer. Before I was elected in 1999, I worked as a lawyer in Drumchapel Law and Money Advice Centre—a one-stop shop that provided legal advice, money advice and welfare rights information. The centre also housed—and still does—an advocacy project and it had links with the local CAB, although, in my view, those links were not as strong or as formal as they could have been. The benefit of that model was that, when people came through the door not knowing what type of advice they needed—often people do not know—they could be directed to the right kind of adviser. People who needed more than one type of advice—for example, someone who was facing eviction for rent arrears and needed legal representation and help in sorting out their finances—could get that advice under one roof.

I am not saying that that is the only way in which to deliver an integrated service. In this day and age, virtual networks, which link up different services, often work as well as that kind of physical collocation. My point is that, when I was working in Drumchapel, the people who managed the centre spent most of their time worrying about their next grant application and how they might find the money to keep the show on the road month after month. At the same time, it seemed that politicians were scratching their heads and trying to think of different ways of providing and funding the same type of service. It would be better to support and build on best practice, wherever that exists. The CABx service is another obvious example of best practice and the Executive could do worse than to provide sustainable funding that would allow the service to provide a quality, geographically consistent service.

My second point is about the quality of service that is provided to people on legal aid. Many people on legal aid feel, rightly or wrongly, that they receive a second-class service. In some cases, that perception is right, because the service

that the clients get is shoehorned into the fee that the lawyer can charge. In civil cases, that fee is about a third of the fee that the lawyer could charge for private work.

One of my constituents is going through a complicated divorce. She suffers from depression as a result of the divorce and, as she finds it hard to take in and remember what her lawyer tells her, she asked for copies of all correspondence with her husband's solicitor, so that she could discuss matters with her family. She was told that legal aid would not cover the cost of the photocopies. That is a basic point, but it is fundamental to that woman's rights. People on legal aid should receive as high quality a service as someone who pays for legal advice.

My third point relates to the same issue. It is getting harder to find a lawyer who will do legal aid work, because such work is not profitable. I quote from a letter that I received from a lawyer, which sums up the problem:

"I have decided not to undertake further Legal Aid work ... I know that several of my very experienced colleagues ... have also decided to stop carrying out Legal Aid work.

I also know that several firms seeking to employ younger solicitors to service their Legal Aid clients cannot find anyone willing to apply for such vacancies. These firms can't compete with the higher salary levels being offered to young solicitors in other areas of law, because of the low level of remuneration Legal Aid work generates."

Probably more than the non-lawyers in the chamber, I know that there is no public sympathy for poor lawyers. That is quite right; there should not be. However, the issue is not lawyers' ability to make profits for their own sake. The reality is that if lawyers stop doing legal aid work—and they are stopping—the public will ultimately suffer because they will be denied legal representation when they need it. Legal aid is public money, so of course there should be accountability and value for money and we must be confident that legal aid is targeted at the people who need it most. Although the system can always be reformed, we have to reflect on the fact that some of the increases in the legal aid budget have come about not as a result of profligacy, but because there are more cases. I think that, last year, some 14,000 more criminal legal aid applications were granted, yet the legal aid budget was £2 million less than it was in 1997-98.

Cathy Jamieson: On that point, I accept—and I hope that Nicola Sturgeon will accept—that this is not, and has not been, a question of setting a fixed budget for legal aid. We recognise that there has been an increase, particularly on the criminal side, because of the volume of cases that are going through the courts.

Nicola Sturgeon: I accept that, but I sometimes think that such points are lost on the public. I know

that legal aid is a demand-led service. My point is that, for all that we need accountability, transparency and value for money, it is in the public interest for the legal aid system to be properly funded. If it is not, we will have a two-tier justice system and the poorest, who are often the people in most need of legal advice and representation, will be denied access to those services.

The Executive will say that the review is designed to tackle such problems; to some extent, it will be right. However, there is a suspicion out there that the problem is, in some ways, Executive policy and that there is a deliberate game plan to ease lawyers out of the system to cut costs. We can argue that one way or the other, but the suspicions remain. If there is such a game plan, people would have to rely on non-legal representation in civil cases. As I said, that is fine if that is what is needed but, in some cases, people need access to lawyers. In criminal cases, people would be forced to rely on a public defender system. The minister knows my views on that subject. The pilot of that system has just been extended, despite an evaluation report that is at best neutral—the report found that the public defender was not more cost effective and had lower client satisfaction and client confidence than private solicitors had. The suspicion is that the funding issue is being used as the reason to design the service that the Executive wants, rather than a service that is in the public interest.

Those are important matters for debate that relate to real issues for many people out there. A review of the system is not unwelcome, because the system is not working and needs to be fixed. However, we must be clear about the objective. The outcome of the review must be a high-quality service that offers advice from the most appropriate provider, is available at the point of need, is independent and is offered regardless of ability to pay. If the Executive can achieve that, it will certainly have our support.

I move amendment S2M-685.2, to insert at end:

“, but expresses concern that the reality for far too many people in need of legal advice, information and representation still falls far short of this standard, that availability of high quality legal advice and representation for people who cannot afford to pay for it is less accessible now than previously, and that access to advice and assistance from non-legally qualified providers, which in many circumstances is more appropriate than access to a solicitor, remains needlessly fragmented and geographically inconsistent due to a failure to build on best practice where it exists.”

Marlyn Glen (North East Scotland) (Lab): On a point of order, Presiding Officer. Given your comments on the relevance of speeches, is it in order to accept an amendment that has no relevance to the debate?

The Presiding Officer: I considered the amendment carefully and decided that it was in order.

15:01

Miss Annabel Goldie (West of Scotland) (Con): I declare my interest as an enrolled solicitor in Scotland, a member of the Law Society of Scotland and a partner in a Glasgow law firm. It might be tempting for someone in such a position to approach the debate as a lawyer who advocates a case for himself or herself, but given the old adage that a lawyer who acts for himself has a fool for a client, I shall deploy a different tack. I shall also try to minimise the Mogadon effect that is usually attendant on any discussion of the law or related matters.

Christine Grahame: Surely not. The debate is thrilling.

Miss Goldie: In no way do I impugn Ms Sturgeon's speech.

To the average individual, the motion has the same degree of excitement as has watching rain run down a window. Lawyers have tended not to be high in the public affection stakes and the provision of legal services is pretty dry fare as a topic for discussion. Of course, that is until an individual needs advice, when a different attitude prevails.

The debate is timely. Devolution has offered an opportunity to consider in detail the provision of legal advice and information and the delivery of legal aid. Post devolution, some interesting information has emerged. The strategic review that the minister announced on 24 October this year is welcome. It provides a sensible opportunity to take stock.

A strong, independent and flourishing legal profession will be a core component of any civilised and democratic society. For decades and centuries, Scotland has been revered for possessing such an attribute. On the broad front, we have a legal system that has been not only admired, but emulated abroad and, interestingly, south of the border in some respects. The Executive and the Parliament should be the passionate and vigorous custodians of that gem.

In passing, I say that I have concerns about the proposed supreme court that is being considered at Westminster. I urge the Executive not to spare the baring of its teeth about that proposal if the danger exists that the court of ultimate appeal for civil matters in Scotland will move from the judicial independence of the House of Lords to the more questionable structure of a political creation whose purpose and relevance to Scotland are less than clear.

Our independent legal system has created a legal profession that, for decades and centuries, has been an important source of fearless and independent advice to generations of clients and has played a significant part in maintaining a strong and cohesive civic community throughout Scotland. Therefore, in any consideration of the provision of information and advice throughout Scotland, we need not only to identify what the public needs—and how best to serve those needs—and to distinguish between general provision and the specific requirement to procure legal advice, but to be mindful of nurturing and safeguarding the best elements of a strong and independent legal profession.

As has been indicated, we need to distinguish between the public's needs. At any one time, members of the public may need guidance, advice and information. However, those needs might not be the same as the requirement to have access to legal advice under Scots law.

At the simplest level, people may need to speak to someone about debt, faulty goods or services. They might require information about the court system or court procedures. They might need guidance about where they can go to seek the help that they need for their specific problem. In fact, in the first instance, all of those matters could be—and very often are—addressed by a variety of solutions.

For example, tribute should be paid to citizens advice bureaux, law centres and the Executive's public information websites on justice. However, the Executive does not have a simple website that contains basic facts, such as what happens if someone reports a crime, the role of the police or the procurator fiscal, what court procedure involves or what powers the court has on conviction. All of those are areas on which the public would welcome more information.

There is merit in continuing to develop those facilities. The four pilot projects under the Legal Aid (Scotland) Act 1986, which involve partnerships with local agencies throughout Scotland, are an interesting contribution to the debate. The pilots should be rigorously assessed so that they can inform future thinking.

It would also be worth while to examine the community legal service that is being developed by the Executive, again on the basis of four pilot partnerships. Similarly, the in-court advice service, which has been available in Edinburgh sheriff court since 1997, merits examination in the light of the announcement in March of this year that the service was to be the subject of further pilots.

The Executive is to be commended for being prepared to test those innovations. However, it should not be scared to review how they operate if

the evidence shows that they are not meeting need.

Maureen Macmillan (Highlands and Islands) (Lab): Annabel Goldie talks about meeting need, but will she talk about the Conservative record on legal aid matters? Does she agree that, in 1992-93 when her party was in power, the number of cases that were refused on receipt of an offer jumped enormously? According to the Scottish Legal Aid Board, the Conservative Government cut the level at which people were eligible to apply for civil legal aid.

Miss Goldie: I do not accept that that is an accurate description. Interestingly, it was a Conservative Government that piloted the concept of the Public Defence Solicitors Office. I will address that subject later in my speech. The Conservative Government is to be congratulated on trying to operate a legal system at a time when a population with a burgeoning expectation of advice and assistance sought recourse to that advice and assistance.

I talked about the difficult-to-define area that arises when a member of the public strays from needing general advice into territory where legal advice will be required. I want to emphasise to the minister that, although a bridging presence is essential for many people, it should be regarded as just that—a bridging presence. The next destination is always going to be a solicitor who is competent to give independent advice and who is regulated by a rigorous mechanism in respect of their conduct, the handling of their clients' finances and the advice that they give. That mechanism is in place solely for the consumer protection of the client.

The public is entitled to independent advice that is given without fear or favour, and that advice is demonstrably available from a solicitor in private practice. The public might question whether the same independence could exist in a publicly funded community provider. Such a provider might feel an understandable inhibition about challenging the state or a quango or—indeed—the activities of other public sector providers.

One area in which legal advice is definitely required is when someone has been charged with committing a crime. I made mention of the Public Defence Solicitors Office. The extension of the service to Glasgow and Inverness offers a valuable opportunity to assess how the service is working. The extension of the service should be robustly examined and analysed.

I hope that in its strategic review, the Executive will regard the Law Society for Scotland as a partner and not as an adversary. The Law Society has a great deal to offer.

Cathy Jamieson: On that point, I think that the

Law Society and the Scottish Legal Aid Board have circulated information to members about their participation in the process. That is important. Only by getting everyone's views and by taking them into account will we be able to move forward and solve some of the problems. I am happy to give that reassurance.

Miss Goldie: I am equally happy to hear that reassurance, for which I thank the minister.

Protection is available to members of the public when they use a solicitor. That comparable protection—

Alasdair Morgan (South of Scotland) (SNP): Will the member take an intervention?

Miss Goldie: I am running behind time and as I have been fairly generous about allowing interventions, I would like to continue.

On the important issue of the protection that is available to the public when using a solicitor, I observe that comparable protection is not available to the public when it procures services from an unregulated sector of advisers, such as claims companies. I suggest that that area should be considered under the strategic review.

It is necessary to be clear that legal aid is the funding mechanism available to people who require legal advice under Scots law and fundamental principles must apply to that. The solicitor is entitled to a proper rate for the job and the client is entitled to know that the solicitor has experience in the relevant area of work and that the advice will be delivered in an efficient, competent and understandable manner. Once again, information about eligibility levels for legal aid can be provided on websites or in community locations.

When legal aid is provided from public funding, the public, the Executive and the Scottish Legal Aid Board are entitled—not unreasonably—to evidence of the provision of quality advice. In that respect, a quality assurance system is desirable, but not at the price of the system being bureaucratically oppressive or disproportionately expensive for the solicitor to comply with.

I make a final entreaty to the Executive. I ask the Executive to treat with the same disfavour as the odour from a bucket of rancid fish a legal services commission. The Legal Services Commission in England and Wales is a monolithic, regressive structure. There is no need for it in a country the size of Scotland and we can do better here.

The debate has to take place against the backdrop of public confidence in our legal profession and in our legal system. Recent evidence in that respect is discouraging. If the public is to be reassured that those components can work well and are strong, we must advertise

our criminal justice system far better than happens at present. We need to restore that confidence, which is why, in drafting the amendment that I lodged, I chose carefully the text that I used. I thank the Presiding Officer for his tolerance.

I move amendment S2M-685.1, to insert at end:

“; acknowledges, however, that improving confidence in our justice system means more than ensuring that people get legal advice, but is about creating a system of criminal justice in Scotland which works and in which the public has confidence, and therefore calls for an end to delays in cases coming to court, an end to automatic release of prisoners and the introduction of proper public accountability within our police forces.”

Alasdair Morgan: On a point of order, Presiding Officer. Is it in order that, in a speech that lasted 10 minutes and 35 seconds and in which an amendment was moved, the amendment was mentioned for the first time 10 seconds before the end of the speech? The point that I make is serious, because I wanted to ask a question about what the amendment meant. However, because Miss Goldie never got round to the amendment, I was prevented from doing that.

The Presiding Officer: It is not a particularly desirable practice, but it is a matter for Miss Goldie. I am sure that she will take your point on board for future occasions.

15:13

Margaret Smith (Edinburgh West) (LD): I apologise to the minister for missing the first couple of minutes of her speech.

I welcome the review of the legal aid system that the minister announced last month. As other speakers have said, the legal aid system is central to the delivery of a proper justice system. The minister was right to speak about people's cynical attitude towards the legal aid system and the need for reform.

It is critical that we look at the wider issues of legal advice, access to information and the ways in which we can support and encourage the wide range of organisations that help people through the provision of advice services. We must ensure that enough funding is made available to local authorities and others to make sure that that happens.

The central question before us is whether the current system delivers access to justice for the people of Scotland. The answer is clearly that it does not. We need a high-quality public legal aid service that is available at the point of need. In many cases, that is not what we have.

The Justice 1 Committee report from 2001 and a number of other reviews have highlighted the difficulties faced by several sections of society and

by a number of people with particular legal needs in accessing legal services and legal aid. They might include those who wish to pursue class actions; organisations and representative bodies; people on middle incomes or on certain benefits; people pursuing small claims or certain types of tribunal work; and people who live in rural areas. Let us hope that in the future, the list does not include asylum seekers. I associate myself and my party with the comments made earlier by Johann Lamont and Nicola Sturgeon.

As we have heard, increasingly lawyers are not accepting legal aid work. We have to address that issue full on to make sure that we build a system that attracts not only the people of Scotland but the legal profession and encourages it to get involved in legal aid.

In evidence to the Justice 1 Committee, the Scottish Legal Aid Board said:

“The regulatory framework for legal aid and advice and assistance can appear inconsistent and the system can be very complex both for the Board to administer and for others to understand, including solicitors and their clients.”

It is essential that we streamline the service and reduce any unnecessary bureaucracy.

The key question is whether the legal aid system, which cost Scottish taxpayers £135 million in the past year, delivers access to justice and, indeed, justice itself. Applications for legal aid are assessed by the Scottish Legal Aid Board, which applies statutory tests of financial eligibility, probable cause and reasonableness. However, the financial trigger levels are so low that only the poorest will be eligible, meaning that justice in Scotland is available only to the very poor or the very rich. Only 50 per cent of Scotland's people will be eligible in any way for legal aid and, of those, many will not pursue cases because of the financial contribution that they will have to make.

In evidence to the Justice 1 Committee, Scottish Women's Aid said that

“ineligibility resulting from income and contribution levels are the two most common factors disbaring women from accessing legal aid and, consequently, the right to justice.”

The Faculty of Advocates also raised the question of the eligibility criteria being too low. The situation was so serious that when Professor Alan Paterson gave evidence—

Phil Gallie (South of Scotland) (Con): Will the member take an intervention?

Margaret Smith: I would like to finish my sentence, if the member does not mind.

Professor Paterson said that the 1993 cuts in eligibility that Maureen Macmillan mentioned

“marked a move of civil legal aid from a citizenship right to a welfare benefit”.

Many of us believe that that is part of the reason why the public has a lack of confidence in legal aid. They see those who are accused of committing a crime get access to legal aid when many people in Scotland do not.

Phil Gallie: Margaret Smith referred to the situation whereby there was a problem with funding for legal aid. The minister has already suggested that legal aid is led by demand and that the funding has fallen from the level it was at when the Conservatives were in power to the 1999 level, when Labour was in power. Today that funding has been reconstituted to the original levels left by the Conservatives. Has a change in the parameters led to a reduction in demand?

Margaret Smith: The member will find that the increase in legal aid funding that is proposed for the coming year is in the region of 6.5 per cent. The point that I have just made was meant to show that the eligibility criteria were changed under a Conservative Government and, more than anything else, that has taken away from the body of society in Scotland the link to access to legal aid, which means that most people are unhappy with the situation.

The issue has been considered several times during the past few years by the Justice 1 Committee and by a working group that examined community legal services and reviewed legal information and advice provision in Scotland. The group developed some recommendations and examined particular areas in which the situation could be improved, including information technology, outreach delivery, referrals, quality assurance, the role of lawyers and non-lawyers, and the role of contracting in England and Wales. I support the pilot projects on some of those initiatives that the Executive is backing.

There was broad agreement that an element of quality assurance should be brought into the legal aid system to introduce the best value that the minister talked about. In calling for an increase in fees, the Justice 1 Committee linked that to the need for quality assurance. I am pleased to see that that idea was being acted on as of last October.

We must also remember that much legal, or pseudo-legal, advice is given to people by trained staff and volunteers from excellent voluntary sector organisations such as Citizens Advice Scotland and Shelter, and in places such as the Drumchapel Law and Money Advice Centre, which Nicola Sturgeon mentioned. The Executive has been considering how legal and non-legal bodies and practitioners might work better together. It is clear that people benefit from the expertise of citizens advice bureaux, for example, but their experience, expertise and success have possibly resulted in a shortage of lawyers doing similar

social welfare work. Therefore, it is important to have a more strategic view of what we need to ensure that gaps are plugged.

One reason why England has gone down the route of contracting is to plug gaps in the advice system, although probably the main reason for doing so was to cap costs rather than to plug gaps. However, looking south to find out what has happened there is probably a worthwhile exercise. Evidence seems to show that there has been an increase in bureaucracy and regulation and a decrease in costs, but also a decrease in the number of solicitors who are coming forward to do legal aid work. It would be a good idea for the Executive to consider further what is happening down south in that respect.

There also seems to be a more prescriptive attitude to the type of work that advice bodies can carry out with clients. That is certainly one of the areas that CAS has written to us about. It has highlighted the need for both its independence and the holistic nature of its and other people's work, which safeguards and protects clients not only in legal terms, but in respect of money advice, for example.

It is clear that the various reviews have agreed that a more strategic approach to legal advice provision is needed and that we should support organisations in the dissemination of information in a more targeted way through technology and outreach work. We should consider the best way in which they can refer across the whole span of organisations and advice.

I welcome the review. Unfortunately, members will hear from me again, as I will sum up at the end of the debate. I will pick up on some of the issues that I have not had a chance to deal with yet.

15:21

Karen Whitefield (Airdrie and Shotts) (Lab): I am pleased to participate in the debate. One of the key priorities for the Labour Party and the Scottish Executive during the current parliamentary session is to modernise and improve the justice system in Scotland.

It has already been said that the experience of far too many people of the Scottish justice system is not positive. They encounter bureaucracies that appear to stifle rather than facilitate justice and they suffer antisocial behaviour in their communities that appears to be outwith the control of the police and the courts. They face delay after delay during the entire process. When they finally get to court, they often face an ordeal that is not conducive to their giving their best evidence.

I am pleased that the Labour-led Scottish Executive is taking positive action to deal with

such problems. The Antisocial Behaviour etc (Scotland) Bill, the Vulnerable Witnesses (Scotland) Bill and the introduction of youth courts are just some of the substantial steps that the Executive is taking.

There is broad agreement that the Scottish legal aid and legal advice systems are in need of reform. Indeed, SLAB's annual report for 2002-03 highlighted the need for reform. It stated that the system has developed in a largely ad hoc fashion, which has resulted in a fragmented and inconsistent pattern of provision. The report goes on to quote the Lord Chancellor, who said that it is not

"enough to take the easy approach of simply plugging the gaps as they appear—say, employ a few salaried lawyers here, open a new Law Centre there. That would do nothing to tackle the fragmentation of the current system ... by rushing to plug obvious gaps, we would be throwing away the opportunity to tackle the causes of unmet need, rather than the symptoms."

Access to legal advice and information must be available to all, not only to those who can afford to pay. I am pleased that the Minister for Justice has recognised that. Indeed, she mentioned it in her recent speech at the Law Society of Scotland and Scottish Legal Aid Board conference in Dunblane. Like Nicola Sturgeon, on that occasion the minister said that it is not good enough to have a postcode lottery in respect of access to legal services and advice. It is important that we continue to address that problem.

Important first steps have already been taken. Legal aid has been extended to cover youth courts and VAT tribunals, as well as cases involving social security and child support commissioners. In addition, capital limits have been increased for both advice and assistance and civil legal aid, and new provisions have been established to speed up the process of getting urgent legal aid. Many of those measures were called for by members of the Parliament in the Justice 1 Committee's report in the previous session.

However, more needs to be done. Unfortunately, access to advice throughout Scotland is patchy. It is vital that any review of access to legal advice ensures that both the poorest and the most remote sections of Scottish society have access to sound legal advice and support. I believe that it is also important that any modernisation of legal advice and support should take into account the important role played by the voluntary sector and organisations such as citizens advice bureaux. In my constituency, CABx offer excellent debt and money advice and legal services.

CABx staff and volunteers already provide support, advice and representation to many people in Scotland. Importantly, they are seen as being entirely independent from the legal and justice establishment.

Christine Grahame: I invite Karen Whitefield to recognise—I know that I will not be popular with the public for saying this—that solicitors volunteer to do service and take on cases at CABx in the evening for nothing. That should be recognised.

Karen Whitefield: That is true. I know that one of my constituents, Sheriff Neilson from Airdrie, gives up his time regularly to provide free legal advice. That should be supported and welcomed.

The Legal Aid (Scotland) Act 1947 established a system that was based on a solid principle—a principle that lies at the heart of Labour values—that those who cannot afford to pay are not excluded from the benefits of a modern society. That is the basis of our national health service and our benefits system. It is essential that it is also the basis of our justice system in Scotland. Times have changed, but the principle—the provision of high-quality services to every member of our society—remains the same.

Those are the principles established by the Labour party and I am pleased that the same principles will guide the Executive's review of legal aid and our justice system, to ensure that we have a justice system in Scotland that is fit for the 21st century.

15:28

Mr Stewart Maxwell (West of Scotland) (SNP): Any moves to improve access to legal advice in its widest sense—whether it be through CABx, money advisers, welfare rights officers or solicitors—are, subject to the proper safeguards on quality, certainly welcome.

For example, I look forward to supporting any positive ideas that come from the pilot schemes on how the community legal service could best be introduced. However, in that context I have to ask, "Why the delay?" Jim Wallace announced in October 2000 that he would set up a working group to analyse whether a community legal service for Scotland should be established. That was six months after the same service had been established in England and Wales. He published a report, "Review of Legal Information and Advice Provision in Scotland", on 26 November 2001. However, it was not until May 2002 that the Executive announced that it would set up three pilot schemes in Scotland.

Finally, three years after England and Wales established community legal services, we are now at the stage of debating many of the features of the pilot schemes. Surely, given the difficulties throughout the legal system, a far greater degree of urgency was and is required from the Executive.

The first pilot Public Defence Solicitors Office was established on 1 October 1998. However, an

independent assessment in 2001 showed that on most assumptions public defender and private sector costs were not significantly different. It also found that only 60 per cent of clients who used the public defender said that they would use the service again, whereas 83 per cent of private practitioners' clients said that they would use the private service again. Only 48 per cent of clients agreed strongly that the public defender had stood up for their rights, compared with 71 per cent of private practitioners' clients. Despite those concerns, the plan is to extend the scheme to both Glasgow and Inverness. Surely, if there are concerns about the system the priority should be to mend it before extending it. That is a critical issue. If fewer than half the clients who were questioned had complete confidence in their representation by public defenders, the matter must be addressed urgently.

I turn to the problems that are created because we do not have a legal system that consistently provides a service of a standard that meets the expectations and needs of clients. All members would agree that what we are after is not access to basic legal advice, information and representation, but access to high-quality legal advice, information and representation. I am concerned about the fact that the number of complaints that are made to the Law Society, the Faculty of Advocates and the ombudsman has continued to rise. Between 2001-02 and 2002-03, the number of complaints that were made to the ombudsman increased by 42 per cent. That followed a 66 per cent rise in the number of complaints in the previous year. In 2002, a total of 2,500 people complained to the Law Society.

The Scottish legal services ombudsman is quite right to point out that she is concerned about the length and complexity of the Law Society of Scotland's complaints procedure. In her annual report this year, there are examples of cases in which it took years of persistence to reach a conclusion and of files being apparently lost for years at a time. The number and complexity of the complaints give a broad overview of the problem. However, to understand the real impact on people, we have to look at individual cases. I shall highlight one case from this year's ombudsman's report, about a Mr G,

"who instructed solicitors to represent him at a High Court Trial ... He wrote to the Law Society to explain that for over a year after receiving a prison sentence he had tried to get the solicitors to appeal his case but they had never ... made an application. He changed solicitors"

but his files were not passed on to his new solicitors. After some time, his original solicitors said that they had lost the files. They eventually found them but decided not to send them as, in their opinion, the files

"cast no particular light on the matter ... The Law Society upheld two complaints ... but made no order or sanction"

against the original solicitors. Their reason for not doing so was that the complainant

"had not suffered major adverse consequences".

I am not sure what the Law Society considers adverse consequences, but most people would agree that his being in prison while his solicitors did not make an application for appeal, despite repeated requests, was a very serious adverse consequence.

The question of the level and quality of the service that is expected of the legal system is crucial in any debate about access. We must ensure that the result of any changes that we make to the legal system is that all the people of Scotland receive equal access to high-quality professional legal advice, information and representation.

I hope that the result of this debate is not just further reviews and pilot schemes, but that we begin to move forward, implementing the best practice from the pilot schemes and using the ideas that have been put forward and the comments that have been made in this debate and in previous debates—I understand that the matter has been debated several times over a number of years. Surely, it is time that we stopped talking and started putting into action the words that have been spoken in this chamber, as well as all the reports, reviews and structures that are already in place. Let us see some action and stop talking about it.

15:33

Donald Gorrie (Central Scotland) (LD): I speak as a veteran of the Justice 1 Committee in the previous session. One of the better things to happen in my life recently was being moved on from the Justice 1 Committee to other committees. I hope that I am now off the blacklist of Scotland Against Crooked Lawyers. Despite the fact that they were not all lawyers, the members of the Justice 1 Committee were all blacklisted for the misdemeanour of not wholly supporting the views of that group with regard to the regulation of the legal profession.

Like other members, I think that the review is a good idea and timely. The critical point in any means-tested scheme is whether the people whose income is just above the threshold are denied whatever service it is—in this case it is justice. The review should study the position of those people and consider whether the banding could not continue, so that they would get at least some assistance with their legal fees. It is unacceptable that people are denied justice because of their income although, obviously, there is a limit to the finance that can be poured into legal aid. That aspect should be looked at carefully.

We need to concentrate more on dispute resolution. There are some good schemes around the country, but only some lawyers treat dispute resolution in the right way. Just as a doctor's job is to keep us out of hospital, so a lawyer's job should be to keep us out of the law court and to diminish the income of some advocates. The lawyers should concentrate more on getting people together to sort out their problems in a more civilised way.

We need an advice network to achieve that. As other people have said, such a network already exists to some extent, but we need to organise it better. There are lawyers who excellently give of their time voluntarily to help citizens advice bureaux. If we could get more young lawyers to do that, they would learn a lot and other people would benefit. One advantage is that the citizens advice bureaux and similar organisations deal with all aspects of life. Often, people have multiple problems and their legal problem is not the only one that needs to be sorted out. If the legal person were part of a team of people helping to sort out the person, that would be helpful. Law centres also deserve more support and have a useful contribution to make. People who would not go to an ordinary law firm might go to law centres.

More and more law is now done through tribunals. There is an issue about supporting people at tribunals, but that can often be done by a well-informed volunteer from an advice organisation. It is important that there is someone to hold the person's hand, to advise them and to help them through the peculiarities of the tribunal. Similarly, more use could be made of the small claims courts and other types of dispute resolution.

The next aspect is the monitoring of standards. We want to ensure that we are providing a good system, so that the consumer gets good advice and we get good value for money. We need to protect consumers. There is great scope for people other than fully qualified lawyers whose profession it is to give advice to play their part, but they too should be properly regulated. The regulations might extend to ensuring that lawyers were paid only if they did not consistently delay court actions and foul up the legal system, as a small minority of lawyers do—possibly with a view to earning more money. The small minority who harm the system should be strongly dealt with.

To achieve all that, we need overall strategic planning and management and better use of resources. I hope that the review will achieve that. We could make better use of the ombudsman, whose powers were increased by the Justice 1 Committee. I am usually against the word "strategy" but, in this case, there is room for bringing together all the people who are involved

in advice giving to get a coherent system. In many ways, we have a better system than some other countries, but we could make it better still. I am sure that there is support across the chamber for that.

15:39

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Today's debate is helpful for back-bench MSPs, who can raise constituents' concerns about the impact on them of decisions that are made by the Parliament. The current access to civil legal advice, information and representation does not meet the needs of two of my constituents, whose experiences I want to share with members today.

The first is a constituent whose former partner, who is the father of her six-year-old child, has constantly pursued her for contact with the child. The father has now raised five separate actions, all of which have been totally covered by legal aid. The constituent, who works for a local employer, has had to fund her own defence and has lately had to defend herself due to her diminishing finances. That has annoyed the local sheriff, who has, on one occasion, held her in contempt of court.

Child contact is a highly emotive issue and my concerns relate to why the child at the centre of the dispute is viewed as a commodity rather than as a person. I do not accept that a child of six cannot express themselves in relation to such matters, which is the current view. The parents have their own views of each other, which cloud their view of what is best for their child. The current system has so far not afforded the child any rights to representation.

A similar case in my constituency involved a 19-year-old full-time student who requested legal aid to enable her to pursue her father for maintenance to assist in the continuation of her studies. The Child Support Agency, which had previously been involved, dropped its pursuit of the father on the student's 19th birthday. The student was in receipt of a student loan and had earnings from a part-time job and was required to contribute to the cost of the action. Despite the fact that the student loan would have to be paid back at a future date, the Scottish Legal Aid Board considered it to be income. The father, on the other hand, made himself deliberately unemployed and left his partner in order to obtain legal aid with no financial contribution and to negate his duty to maintain his daughter.

The pressures that were put on that young woman by the correspondence between the solicitors leading to the case going to court resulted in her being hospitalised on a number of

occasions. Eventually, her consultant, having carried out many tests, put her condition down to stress caused by her pursuit of her father and advised her that she should drop the case for the good of her health.

Both those cases demonstrate the way in which the system continually fails young people when they are most in need of help. The situations in both cases would have benefited from an alternative route that had a greater impact on the outcome than the present system.

The system needs to reflect the needs of the individual, irrespective of their age. It also needs to reflect the situation of single parents and should demonstrate an understanding of the impact of fees on their finances and on those of students. We must find an appropriate route, which could include dispute resolution, within an approved framework of competent individuals who are not necessarily from the legal profession.

However, when it is necessary to have legal representation, it must be responsive and those who provide it must be appropriately rewarded.

All those issues must be taken into account in any review if we are serious about modernising access to justice for the people of Scotland.

15:43

Murdo Fraser (Mid Scotland and Fife) (Con): I declare an interest, as I am a solicitor—albeit not currently practising—and a member of the Law Society of Scotland.

I wish to speak in support of the amendment in the name of my colleague Annabel Goldie, because I do not think that it is possible to consider the availability of legal aid without examining the justice system in the round and particularly the public's confidence in it.

In her opening remarks, the minister mentioned the issue of criminal legal aid, which was also touched on by Margaret Smith. There is a deal of public frustration in relation to that issue.

I will give members an example. Let us say that there are two trials going on in adjoining courtrooms in the High Court down the road. In the first courtroom, Mr Smith is on trial for housebreaking. He is a gentleman with a long record of previous convictions for housebreaking who has served a period of time in prison. He is in receipt of legal aid to pay for his expensive defence team as he meets the criteria because he does not have a job. Indeed, he has not worked or paid tax in his life.

In the adjoining courtroom is Mr Jones. He has been charged with a serious offence—a murder or violent assault—of which he happens to be

innocent. Because he is someone of modest income, he does not fulfil the legal aid criteria and has to fund his own defence. Because of the seriousness of the offence, his solicitor recommends that he engage junior and senior counsel, and his defence therefore costs him a great deal of money. Although he is acquitted of the offence, he is left with an enormous bill to pay for clearing his name—£30,000 or £40,000, plus VAT, of course, so that the state gets its share of the money—and is left, if not bankrupt, having to sell his house and use up any modest savings that he might have to fund his defence.

That example—which is fictional, but not too far from the truth in many circumstances—illustrates why people can become frustrated with criminal legal aid and the way in which it is allocated. However, there is an issue not only with criminal legal aid but with civil legal aid. I remember acting a number of years ago for clients who wanted to take a case to court and who fulfilled the criteria for civil legal aid but who were turned down by the Legal Aid Board. That was at the time when Robert Maxwell's sons were up for various misdemeanours of which they were rightly being accused. They had applied for and had been granted legal aid, and it took me great pains to explain to my client why the Maxwell brothers got legal aid and my client did not.

There are a number of ways of accessing legal advice that do not involve going to solicitors, and perhaps we need to consider expanding some of those services. A number of websites and telephone advice lines are currently available. Many organisations, such as the Consumers Association, provide legal advice by telephone, and many insurance companies now provide telephone advice on legal cases as part of their package.

Members have referred already to the citizens advice bureaux, which provide an excellent legal advice service. I visited my local CAB in Perth about a month ago and was able to see for myself the work that the advisers do. Many of those advisers are not legally trained but, because of the number of cases with which they deal, they are able to grasp legal concepts over time. However, the CAB has an enhanced service, because it has an arrangement with many local lawyers in Perth whereby people who have a legal case that requires a bit more attention have the opportunity of a free first consultation with solicitors. In that way, although they do not have to be eligible for legal aid and to go through the process of filling out forms, they are able to get some advice on whether their cases are worth pursuing and taking to another stage.

There is scope in civil cases to get round the court system as much as possible. There is an

opportunity for alternative dispute resolution and mediation, which avoid having to go to a solicitor and go to court, if that can possibly be avoided.

One of the previous Conservative Government's initiatives was the small claims action, which has been taken up widely. It is an opportunity for claimants themselves to take cases up to a certain level to court and avoid having to employ solicitors altogether—the level of fees awarded at the end of such cases is deliberately capped to dissuade people from employing solicitors. That initiative has been successful, particularly in consumer cases, and has enabled people to access the courts. Perhaps the Executive should consider expanding it.

There will always be a great deal of interest in civil legal aid while the number of cases continues to expand, because we seem to be growing a compensation culture in this country. The Institute of Actuaries calculates that Britain's compensation culture now costs around £13 billion a year and that that is rising by something like 15 per cent year on year. That has a substantial impact on our economy, quite apart from anything else: premiums for employers' liability insurance are increasing dramatically and, in fact, for some employers in the construction industry, insurance premiums have increased twentyfold, which is a dramatic increase.

When examining this issue, we need to be conscious of the fact that it has an impact on wider society. These days, people are much more conscious of their rights. They are attracted by adverts on television and see that organisations and companies have been set up deliberately to exploit people who may have a claim against a public body or private company. We need to be wary of that.

The Conservative amendment indicates that the debate is not just about legal aid but about the whole justice system. The example that I gave of criminal legal aid and the circumstances in which it is awarded shows that the public are nervous and, sometimes, unhappy about the way in which the justice system operates. That is why we need to consider the whole picture, not just the award of legal aid.

15:50

Patrick Harvie (Glasgow) (Green): In referring to information, advice and representation, the motion before us is concerned with access to services and funding. I agree that that is an important subject. There are issues relating to the supply of and demand for advice, information and representation. Solicitors, citizens advice bureaux and voluntary and statutory organisations will all have their views, which I trust that ministers will

take into account. I believe that the Executive has a sincere desire to improve provision, although it must also deal with budgetary realities.

I would like to take a step back and to discuss the relationship between access to justice and access to the justice system. We have inherited from an earlier age a justice system that used weapons such as fear, class power—a term that members will not hear me use very often—language, religion and other forms of control to impose justice. As a result, we face a serious challenge in turning round the culture of our justice system, which can be as much of a barrier to justice as cost can.

I welcome the Executive's desire to do that. I have heard both Cathy Jamieson and Hugh Henry talk about their desire to change the culture of our justice system in a number of contexts—most recently, during the stage 1 debate on the Vulnerable Witnesses (Scotland) Bill, which has already been mentioned. We hope that, by making the experience of going to trial less traumatic for some individuals, we will improve people's access to justice—or rather, remove some barriers to justice.

As we remove those barriers, should we not stop, think and ask ourselves why they exist in the first place? Why should systems and institutions whose purpose is justice depend for their operation on environments and processes that inflict such trauma on people? Such conditions are not conducive to justice. Improving access to justice should not be interpreted simply as being about improving access to the justice system.

The Executive has also made commitments to restorative justice. I hope that it will go further and acknowledge that diverting people away from the court system by means of mediation, dispute resolution and community-driven processes that seek to heal grievances rather than simply to judge them can have tremendous benefits.

Johann Lamont: I hope that the member agrees that, in certain circumstances, some groups would be opposed to pre-court diversion. Women's organisations have made it very clear that, although they understand the arguments in favour of diversion, for some victims of crimes involving male violence against women it is important that cases are dealt with in the court system.

Patrick Harvie: Absolutely. I will not pretend for a moment that the processes that I have described will be appropriate in all cases. However, where they are appropriate, they offer a substantial range of benefits—not only the achievement of just outcomes, but the feeling of arriving at a negotiated settlement that has been achieved mutually. They also enable communities to

respond assertively and with authority and fairness to difficult situations.

None of that is to be seen as a substitute for an effective and well-resourced court system—it should be seen as a supplement to that system. In many—perhaps most—situations, courts will still need to impose solutions on individuals who are unwilling, for a range of reasons, to deal with one another through the processes that I have described. However, we could provide many people with an opportunity to avoid experiences that are stressful, expensive, long-drawn-out and emotionally draining for all concerned.

I want to talk about the situation of organisations, especially small voluntary organisations with limited resources, when they encounter the court system or other situations in which they need legal advice, information and representation. My experiences along those lines relate to the campaign against the repeal of section 2A of the Local Government Act 1986. During the campaign, a single action against Glasgow City Council, which led to a judicial review, resulted in the suspension of funding to a wide range of organisations from youth groups to telephone helplines, arts organisations and essential support services for people living with HIV. In the end, the action against the council was dropped within hours of the first day of the judicial review, but that was long enough to affect many small, unstaffed, unfunded organisations seriously and to prevent people working for the larger organisations from focusing on their work for weeks on end in what was already a difficult time.

Voluntary organisations can face that kind of situation not just in such politically sensitive, high-profile situations, but in property, employment, copyright and planning cases. Planning presents particular problems, given that the planning system is stacked overwhelmingly against objectors. The small campaign groups that form, most often to make an attempt at community self-defence, are normally not well resourced and have little or no access to legal advice, information and representation. Those factors combine to deny them access to justice or just outcomes. I hope that the Executive will acknowledge in its review of the planning system that the same enthusiasm for changing culture and modernising and improving access to legal advice is needed there, too. I hope that in responding to the debate the minister will tell us whether there has been contact with her communities portfolio colleagues in that regard.

15:56

Ms Pauline McNeill (Glasgow Kelvin) (Lab): I welcome how responsive the Executive has been in the debate about modernising justice. This afternoon's debate is about modernising access to

justice—not simply improving access to lawyers or to court but, in a wider sense, assisting the population at large to resolve disputes and to force and implement action to improve their quality of life. That is the wider debate that we should be having.

Our court system is the main forum for legal action, but it should not be the only forum for resolving disputes. It is important that we examine procedures designed to allow informality. The small claims procedure that Murdo Fraser talked about is in theory the right idea, as it is meant to provide informality. However, it does not do that in practice, because of people's fear of representing themselves and because of lawyers' natural desire to get involved in the system.

Donald Gorrie talked about the tribunal system. Our employment tribunal system—another system that is designed to allow individuals to represent themselves—is getting out of control, as no one in their right mind would represent themselves without the support of their trade union or a solicitor. That has to stop. I realise that the issue is reserved. Although we provide legal aid or advice and assistance for some cases, which is to be welcomed, we have to expand the number of such cases.

Christine Grahame: Will the member give way?

Ms McNeill: I will take a brief intervention—and I mean brief.

Christine Grahame: The member raised the issue of small claims. As long ago as 2001, the previous Justice 1 Committee recommended that the Executive examine how legal aid could be made available to support small claims actions. I take it that the member would support that.

Ms McNeill: That is exactly what I am saying. Legal aid is meant to be for complex cases, but we have either to expand it or to tell solicitors that they really should not be in the system—it has to be one or the other. We have to protect the informality of systems such as the small claims procedure. Lawyers have a natural tendency to want to represent people and people feel that they need lawyers to represent them, because that is what they are good at.

If we want informality in the system, we have to think seriously about how we are going to achieve that. That is why alternative dispute resolution, which Margaret Jamieson and Stewart Maxwell have talked about, is fundamental to providing a system that is genuinely about access for all. The Justice 1 Committee is considering the European Union green paper on a potential European framework for alternative dispute resolution, which might give people more satisfaction by allowing them to confront the other side in a case in a different setting. There is scope for doing more

here. We have reservations about how far the European Union wants to go, but it is important that we get involved in the debate.

We have to continue to address the experience of ordinary people in the system. The legal profession has to acknowledge the frustration felt by ordinary people when they feel that their solicitor has represented them inadequately. The procedure involved in taking a case either to the Law Society of Scotland or to the legal ombudsman is a quagmire. We need to smooth out the procedure so that people feel able to make challenges.

The fee system needs to be more transparent. I do not know how many people have walked into a lawyer's office and asked how much things will cost. Well, how long is a piece of string? I accept that, in a complex case, it is not easy to know how much things will cost. However, some people's experience is that they are not kept informed and then, before they know it, they have received a huge bill. We all know of cases in which people have felt dissatisfied with the system. They have felt even more dissatisfied with the body that is supposed to deal with their dissatisfaction. I am not suggesting any big changes, but we need to look at the system.

Margaret Smith spoke about the legal aid threshold. We need to address that. The situation is worse than the threshold simply being held at benefit level. Some benefits are included as income and some people who want to use the civil system—for protection from abuse, or for non-harassment orders—are affected by that as they receive child benefit or incapacity benefit. We need to look at that.

Women—and some men—who are victims of domestic abuse have either to seek legal aid or to protect themselves by paying for a protection order. We have to ask whether there is another way of doing things. In other jurisdictions, where it has been shown on conviction that there has been a serious assault, the court can grant some protection at that point. Legal aid is therefore not required. As a result, costs are reduced. We have to consider other ways of ensuring that people are not removed from access to aid. A section of the community cannot access legal aid—not because they are on the lowest incomes but because they are on middle incomes. We need to think of ways of resolving that, not just through legal aid.

Margaret Jamieson was right about family cases, particularly to do with the custody of children and divorce actions. I am no longer sure that the system should concentrate on resolving everything in court. We need to look at ways of taking things out of court. Some people simply cannot afford to go to court in the first place. The Justice 1 Committee in the previous session did a

good piece of work on grandparents' rights—there is a lot of sympathy for their position. However, the cost of accessing justice needs to be looked at.

We need consistency and quality. We need to be prudent with public funds. We need efficient regulation. We need both formality and informality. Try as I might, I have not livened up the debate as Jackie Baillie asked me to. I told her that I would leave that to her.

16:03

Stewart Stevenson (Banff and Buchan) (SNP): The legal aid system

"must be affordable, as far as the public purse is concerned; it must give access to justice to those who need it; and it must provide high-quality legal services. Those requirements seem obvious, but in practice, they often produce a tension. Our purpose is to try to achieve a balance ... On the other hand, there is a legitimate requirement to give proper access to justice wherever that is required, although ... we do not always achieve that. The perception is that the only people who can afford to be involved in the courts or in any legal action are the very poor and the very rich."

I say to Patrick Harvie that the Executive has said that it

"would consider the business of collective action by representative bodies such as community councils. There are many occasions on which an injustice arises because legal aid is not available to such organisations ... We need joined-up legal services and a proper, strategic approach ... we have never had that".—[*Official Report*, 13 March 2002, c 10194-95.]

I was delighted to see Gordon Jackson here—although he has just departed. His words are always informed. That is why almost every word that I have said up to now has been from his speech on this subject on 13 March 2002—20 months ago. Unlike on 15 November 2001, when he croaked, "My voice has gone," I was looking forward with some anticipation to hearing his first speech in this session of the Parliament.

I draw attention to my entry in the register of interests, which shows, of course, that I am not a lawyer, which is perhaps unusual for someone who is taking part in this afternoon's debate. Nevertheless, many of my constituents arrive at my surgeries in the hope that I will give them legal advice. I share my extremely limited legal experience with them—much of it is saloon-bar gossip, which is probably not worth very much—but I am always careful to tell them not to rely on my advice, but to consult a lawyer or go to our citizens advice bureau, which is excellent. However, in my constituency, people can be an hour and a half's drive away from the single citizens advice bureau that operates; they can even be out of reach of it by bus.

What all those people share with me is a concern about costs; they are especially

concerned about having to give up cases because of runaway costs. The lawyer on my right—Christine Grahame—has whispered in my ear that it is possible to obtain interim costings and to find out how costs are developing. That is fine; it tells someone that they are going to have to stop because they cannae afford to go on. However, the reality is that, once one has started a legal action, to stop it might weaken one's position—one can end up in a much weaker position than one would have been in if one had never taken action in the first place.

Miss Goldie: I have an important point of information. I have tried to resist the temptation to defend the legal profession against charges, but I must say that no responsible lawyer would ever advise a client to embark on litigation without first obtaining the fullest explanation of what the foreseeable costs could be and discussing with the client how those costs could be met. We do a disservice to responsible lawyers if we create the impression that that is not the case.

Stewart Stevenson: I accept entirely what Miss Goldie says and I thank her for what was a valuable and useful point. However, in a contested case, the costs are not wholly under the control of my constituent's lawyer, for example. When fighting a well-funded opponent—whether in the criminal system, where the state is extremely well funded, or in the civil system, where one might be fighting a very large company—there will come a point at which the anticipated costs, on which the lawyer has provided perfectly proper advice, are exceeded.

So far, the Tories have told us absolutely nothing about automatic release of prisoners, proper accountability in our police forces and public confidence in the criminal justice system, even though those matters are so important that they had to be included in the Tories' amendment. In those circumstances, I cannot see how even the Tories can vote for the amendment and I am sure that, if they do, they will be entirely alone.

In his summing up, I ask the minister to assure us that he does not agree with his Westminster colleague Mr Leslie, who said yesterday, in a written answer on legal aid in England:

"We ... have to live within our financial allocation".—*[Official Report, House of Commons, 2 December 2003; Vol 415, c 26W.]*

That makes it sound as if there is an end to a demand-led system down south. We would resist that here and we want to hear that we will not be following colleagues in the south.

16:09

Jackie Baillie (Dumbarton) (Lab): It was entirely wrong of Pauline McNeill to heighten

expectations, because that leads to disappointment—but then we had Stewart Stevenson's speech. I have to say to him that he should get a life instead of counting the attendance of members in the chamber and checking when they make a speech. Someone whispered to me that Mr Stevenson's speech this afternoon might have been his seventh speech in the chamber—I am sure that he will check that—and that he plagiarised everyone else's speeches, which some people might not consider to be terribly good value. I am sure that he will be able to tell us the cost per word of having him here. My advice to Stewart Stevenson is to quit while he is ahead.

Stewart Stevenson: For Jackie Baillie's information, in the two and a half years that I have been here, Mr Jackson has spoken 10,800 words. I have spoken in 112 debates.

Jackie Baillie: Quantity matters far more than quality in Mr Stevenson's case.

We all acknowledge that an effective justice system has to be a central pillar of a strong and safe society. Access to quality legal advice is at the heart of ensuring that the system works to the benefit of all people. As others have already indicated, people's experience of the Scottish justice system falls short of legitimate expectations. It is critical that those who need access to the law are not excluded from using it, whether as a consequence of prohibitive cost, lack of knowledge or lack of help.

It is interesting to note that some of the barriers that were identified by the Executive working group that considered how a community legal service could be developed included a lack of information about legal rights and responsibilities, patchy availability of information, and a lack of capacity and resources in the not-for-profit sector. The Executive has taken considerable action to extend access, such as the pilot projects that are run by the Scottish Legal Aid Board, which members have mentioned, the extension of the in-court Public Defence Solicitors Office, and now a review of legal aid. I particularly welcome the review of legal aid. I hope that the review is not simply designed to improve efficiency, but equally is about addressing differential access to justice, which far too many in our hard-pressed communities experience.

I will use this opportunity to describe the evolution of a local service that should inform the legal aid review. I consider myself fortunate to have worked with the West Dunbartonshire Community Law Service. It was started in 1993 with urban programme funding, due to a perceived lack of available legal representation in the field of social welfare law. The bulk of its case load centres on tenancy issues, small claims,

employment matters, criminal injuries compensation and social security benefits. The purpose of the service—as it was in 1993 and still is now—is to provide representation in courts, tribunals and other legal forums, and to provide training in legal issues for community groups. It is all about ensuring that access to justice is available for all in our community.

Miss Goldie: I am genuinely interested in Jackie Baillie's speech. Has there been any opportunity to consider with the local legal profession its interaction in the provision of that service?

Jackie Baillie: There has indeed. I will describe that process. The project is now funded by West Dunbartonshire Partnership and West Dunbartonshire Council and is able to operate across the local authority area, not simply in social inclusion partnership areas. While that is a welcome expansion from a community point of view, the service continues to be provided by only one solicitor. In the circumstances, the service sensibly has sought practical ways of working with others in the area, thereby making the benefit of the service felt much more widely. As a result, it has developed a West Dunbartonshire-wide advice network, which includes active participation by local citizens advice bureaux, trading standards officers, the local advocacy service and many more. Indeed, I understand that solicitors also participate. Everybody is working together at a local level.

In effect, the community law service acts as a second tier, with clients being referred to it by other members of the network. Ironically, the operation of the network has increased the number of clients for the community law service. Indeed, over and above that, solicitors in private practice are referring people to the service, because of a lack of legal aid for certain matters, such as small claims, criminal injuries compensation and many employment tribunals.

The community law service is an asset. It would be easy to moan at the minister about more funding, but I would rather suggest a practical solution, for which the minister might at the very least wish to consider West Dunbartonshire as a possible pilot area. I suggest that community legal services in their widest sense should be able to access block funding through the legal aid fund. That source of funding would be in addition to securing commitments from the local authority and others, and would provide much-needed stability to the service.

The minister will, of course, be aware of the Scottish Association of Law Centres. The experience and expertise of that body is a resource that should be nurtured. Individual community legal services such as the one in West Dunbartonshire enhance community capacity,

both through the service that they provide to people in need of advice and assistance and through the support that they give to community organisations.

Let me be slightly mischievous as I wind up, Presiding Officer. I hope that the debate has not been too dull. Annabel Goldie said that it was likely to be dull and it was not clear to me from her reference to Mogadon whether she had taken some or whether we should avail ourselves of some during her speech. I shall study the *Official Report* but, regretfully, I suspect that it was the latter.

16:16

Phil Gallie (South of Scotland) (Con): Over the past 10 years, I have been involved in several debates on legal aid, especially in the former Justice 1 Committee, following the creation of the Scottish Parliament. If I go back to the period that Maureen Macmillan referred to and the changes to legal aid that the Tory Government made at that time, I have to accept that the parameters were changed. However, I must also mention the fact that, since then, the present Labour Government has been in office for almost six and a half years and has done little to change those parameters even though, in my view, change is certainly needed.

When I consider the amount spent on legal aid, I see that it reached a high under the Tory Government and that only now is it beginning to approach the level that the Tories provided back in 1997. To some extent, I welcome that, but we must consider how the service is provided and the parameters within which it is provided.

Before I go any further, I am accused of not referring in any way to our amendment. I must draw attention to the meeting of the former Justice 1 Committee at which it was claimed that there was not a sufficient number of practitioners to meet the demand for civil legal aid, which is accepted as the public's right. When we look at Annabel Goldie's amendment and consider the effect of early release on the recycling of criminals and the delays in criminal proceedings in our courts, we realise that there is an impact on the availability of civil legal aid practitioners and solicitors in the wider context. I will not continue on that line—

Pauline McNeill: Will the member take an intervention?

Nicola Sturgeon: Will the member take an intervention?

Phil Gallie: No. I want to drop that issue and pick up on the real thrust of what I have to say.

In another debate, at another time, we will talk about Scotland's economy, the need for

entrepreneurs and the need for people to start up small businesses and develop them, to Scotland's benefit. For many business people there is a massive difficulty in the way in which the legal aid system works.

I can think of a small business in the minister's constituency, whose owner recently faced the loss of two weeks' wages due to the increase in his water bill. When that individual is faced with a civil lawsuit, he cannot afford to defend it. As a small businessman, he is not entitled to the civil legal aid that people who have a complaint against him are entitled to and have used to his disadvantage. He cannot afford to defend the case.

I identify with the comments that were made by Stewart Stevenson. Those who can afford to go to the civil courts are only

"the very poor and the very rich".—[*Official Report, Justice 1 Committee*, 8 May 2001; c 2442.]

I am quoting not Stewart Stevenson or even his learned friend to whom he referred; I am quoting words that I used during the Justice 1 Committee's inquiry into legal aid in March 2001. There is a major problem, which must be faced up to, and any review that the minister undertakes must address that point.

Stewart Stevenson: In a debate 20 months ago, Mr Gallie raised the same issue and took an intervention in which he was asked how much the Tories' proposal would cost. In the intervening 20 months, has he managed to work that out?

Phil Gallie: I have not done that, simply because I have moved away from involvement in the Justice 1 Committee. My plea is personal and not necessarily a party plea. I went along with the Government when we changed the parameters back in 1992, but I suggest that all members should consider the matter. A cost is associated with the change, but incorporating businesses, in particular small businesses, would not be a great burden on the country's taxpayers. It would also improve the image of justice, on which Mr Stevenson poured scorn.

Donald Gorrie referred to Scotland Against Crooked Lawyers. I acknowledge that that organisation repeatedly goes over the top, but Mr Maxwell described another case whose outcome was hard to understand and in which the Law Society's actions were hard to understand. We need to make the justice system more transparent. Scotland Against Crooked Lawyers might not always be justified, but its campaigns have elements that all of us would do well to examine.

16:21

Christine Grahame (South of Scotland) (SNP): I, too, declare an interest as a member of

the Law Society of Scotland and a non-practising solicitor. I practised in civil legal aid and the main part of my practice was in divorce, family affairs and reparation, so I bring a different slant to the debate.

I was interested in what the minister said about access versus exclusion and I will pick up on some of Nicola Sturgeon's comments about the firms that are no longer prepared to take on legal aid work. The situation has not changed in my years in the Parliament. In some circumstances, a firm subsidises legal aid cases. Sometimes, a partner would enter my room to check how many civil legal aid cases I was running, because the fee check at the end of the month showed that I was way down the balance sheet compared with the commercial partners and those who were working on trusts and executries.

I did not doubt, and it was made clear to me, that my work was being subsidised not only by the Scottish Legal Aid Board, but by the firm. I am not afraid to say in the chamber that some solicitors out there do a public service and that major firms have taken on legal aid work as a public service, knowing full well that it does not pay its way. That is especially true of an extended reparation action in the Court of Session. Applications can be made to the Scottish Legal Aid Board for interim payment of fees, but if an action continues for four years, it takes a great deal from a firm's funding. At times, when it is in a client's interest, firms fund documents and expert witnesses when the board will not. Some pro bono work may still be undertaken in the middle of a legal aid action.

The minister said that legal aid was demand led, but I must cast a shadow of doubt over that. In some cases, when I sought sanction for a costly expert opinion or costly expert advice, the board would not grant it, whereas an insurance company that has limitless funds from insurance premiums could fund that, which puts the pursuer at a disadvantage.

In other cases, sanction is sought for senior counsel. I noted what Pauline McNeill said, but the trouble is that small claims can sometimes become complex legally. That is why I mention legal aid in some small claim actions. Such an action might not be for much money, but it might raise an important point of law that is difficult for an individual to pursue. That may arise in the middle of the facts of a case.

In my time as a solicitor, I found that I always had two files: the file for the court case and the legal aid file. The legal aid file was full of forms, applications, opinions of counsel seeking extensions and requests for increases in legal aid. Dealing with those matters had to run in parallel with the aim of doing my best for my client. That is why I suspect that when the minister says that

legal aid is demand led, the situation is not quite as it seems. The minister might want to examine the reasons for the refusal of certain aspects of cover in certain legal aid cases.

Pauline McNeill: Phil Gallie would not allow me in on the point about the booming legal aid budget under the Tories who, having changed the levels, now claim that the budget has been reduced. I think that the Justice 1 Committee discovered that one of the reasons for that is that demand for the civil legal aid budget is falling. I suspect that that is because of benefit levels—people think that there is no point in applying.

Christine Grahame: I accept that that is part of the reason. Perhaps it might also be a result of the tests that solicitors are required to go through either to obtain legal aid in the first instance or to obtain certain extensions of legal aid. We need to remember that there is a substantial recoupment of funds from the Scottish Legal Aid Board in respect of capital and expenses in civil legal aid cases.

I do not want to spend the whole of my speech on solicitors, but when solicitors come to settle their account, they have an endless battle with the board about how much it will pay out. Most solicitors do not let the board know this, but I think that, at the end of the day, they come to a compromise. They become fed up writing letters to the board.

I want to give a quick mention to the Justice 1 Committee's substantial report on legal aid. I do not know what has happened to it since it was published. We took evidence on a great number of issues and I will raise one of them.

The committee wanted to extend the range of tribunals and panels for which legal aid is available. I am thinking of the cases of children with special educational needs who cannot get a place in school, which come before education appeals panels. The local authority turns up with its solicitor, but the parents must have the money to pay for legal representation or they are on their own. Although an organisation such as Independent Special Education Advice (Scotland), which works on a shoestring out of Dalkeith, gives advice and represents parents in such cases, it gets very little funding. When ministers consider access to justice, rather than exclusion, I would like them to consider the funding of such organisations. The CABx have been mentioned, but ministers should also consider other voluntary organisations. They are doing the job that solicitors should be doing, because there is no legal aid.

16:27

Margaret Smith: It has been an interesting debate. The excitement heightened greatly when

Jackie Baillie stood up to speak. As usual, her speech was not a disappointment. There is as great a need for public confidence in the system of legal advice and representation as there is for public confidence in the chamber's ability to give us that level of excitement in our debates.

In many ways, the need for public confidence is the thread that has run through the debate. Murdo Fraser and others raised the fundamental question whether our present system is essentially fair. On many fronts, we have discovered that we do not have a fair system. The present system excludes people on certain benefits from certain types of legal aid work or advice work. It excludes greatly people on middle incomes—the middle chunk of society in Scotland—who feel disillusioned not only because they are, in effect, denied access to justice, but because they see that those who are given access to justice are very often the people who, in their view, do not deserve it.

We have patchy funding. As Nicola Sturgeon pointed out, we have a legal aid system that provides funding at a level that is one third of the fee that a solicitor might get in a private case. We also have patchy funding for the partnership organisations that all of us have referred to as being the organisations that assist people with legal advice, money advice and so forth. They are the organisations that take an holistic approach to supporting people who have difficulties and problems.

Many members spoke of the need to pull all those strands together and to build a strategic advice network. Donald Gorrie mentioned such a network on a national level. Other members mentioned what is going on down south and said that they were concerned about some of the approaches that were being taken to community legal services and the Legal Services Commission. We need to move towards a national strategy, which is what the review will consider.

Tellingly, Jackie Baillie mentioned what was going on at a more local level in Dunbartonshire and how people can work together if the will is there to pull together the different people who give advice at a local level. It is absolutely fundamental that we build on existing partnerships and the excellent, small, voluntary sector organisations. I highlight again the voluntary sector's need for secure funding. If there was a way in which such organisations could have core funding to allow them to get on with their job instead of constantly worrying about whether they have the money to do it, we would reduce the number of people who ask for legal aid and the high number of people who proceed to litigation.

The minister rightly talked about best value. Support for the kind of organisations that I have mentioned represents best value. We should learn

from the best practice that already exists throughout Scotland in law centres, advice networks and CABx. We must see that as part of the wider picture of reforming the legal and justice system of Scotland, because we are dealing with quality of life for Scotland's people.

From some of the experiences and constituency stories that we have heard today, we see that the fundamental concern is about how people's lives can be affected by their experiences not only as victims or of living with social issues, but of the judicial and legal system, which can compound the problem that started them on their path.

Pauline McNeill, Christine Grahame and others rightly picked up on the fact that we have an increasingly litigious society. We are not just talking about people going into the court system. I am struck by the number of occasions on which people find themselves up against the system, having to act without legal advice in employment tribunals, appeals for school provision or situations in which the local authority is armed with its legal team. We have to accept that that is the way life is, but I hope that the review will discover whether there could be some legal aid assistance in such cases.

The level of fees has also been touched on. It is important that we do not end up with a second-class system as far as obtaining expert witnesses, the level of fees, access to justice or outreach are concerned. The system is not demand led at the moment; we have a rationed demand-led system.

The Justice 1 Committee recently took evidence from Professor John Sturrock on how alternative dispute resolution can be used to reduce litigation and cost and to improve clients' experience of the justice system. With 95 per cent of civil cases settling and not going before a judge, it makes good sense for people seriously to consider alternative dispute resolution. The European Commission is seriously considering it and the UK Government is using it and has already saved itself £6 million in litigation costs. I would like a clear statement from the minister that the Executive will do the same.

We need secure funding in the fields of family, consumer and community dispute resolution because it is much better to settle disputes in a consensual manner than for people to have recourse to the courts.

16:34

Margaret Mitchell (Central Scotland) (Con): At the heart of the motion today is recognition of the importance of, and the need to extend, access to justice.

The strategic review of legal aid that was announced by the minister in October this year is

to be welcomed in terms of its assessing how legal aid can be modernised to provide a better service for those who need to access it for legal information, advice and representation, and also in terms of its assessing whether best use is being made of the budget that is allocated to legal aid.

At present, the Scottish Legal Aid Board has a budget of approximately £150 million that it uses to fund the legal advice and representation that is provided by solicitors and advocates. The strategic review will require the Scottish Executive and the Scottish Legal Aid Board to co-operate. The Scottish Legal Aid Board has a good track record in partnership working, which is evidenced by the work that it has done and the recommendations that it has made—in conjunction with the Law Society of Scotland, the Scottish Executive and others—about reform of civil legal aid.

The strategic review provides the opportunity for further reform. I welcome particularly the opportunity to explore and encourage greater use of alternative dispute resolution and negotiated settlements as alternatives to litigation. Falkirk Council is to be congratulated on its initiative in actively promoting alternative dispute resolution in an effort to stop neighbourhood disputes escalating and ending up in court. That is not only a more satisfactory means of resolving disputes for all parties—a point that was well made by Margaret Jamieson, Pauline McNeill and others—it also serves to ease the pressure of business in civil courts. As the minister stated in her speech, local authorities have an important role to play as key participants in the advice network, along with other independent agencies such as Citizens Advice Scotland. Murdo Fraser and Karen Whitefield graphically outlined and emphasised the important services that those local agencies provide.

I welcome the four pilot partnerships that the minister announced in March this year. They will bring together funders, service providers, and users of legal advice services in particular areas in order to ensure a more effective method of advice provision at community level.

I turn to criminal legal aid, in which costs continue to rise. It has to be noted that that rise is due in part to the increased volume of cases. It is to be hoped that the reforms that have been suggested in the Bonomy report will help to address delays in the High Court.

Alasdair Morgan: Will the member take an intervention?

Margaret Mitchell: In a moment.

In addition, consideration should be given to provision of weekend and evening court sittings, to increasing the number of procurators fiscal, and to greater use of stipendiary magistrates to tackle the

problem of delays and to ensure that the Scottish Legal Aid Board budget is used to best effect.

Alasdair Morgan: Since the member mentioned delays, I will ask the question that I was not able to ask Annabel Goldie about the Conservative amendment, which calls for an

“end to delays in cases coming to court”.

“End” is a fairly specific word, so what does it mean in the amendment? Does it mean no postponements, regardless of which side asks for it or which witnesses turn up? If it does not mean that, what does it mean?

Margaret Mitchell: It means putting in place the kinds of measures that I have emphasised and which are outlined in our amendment. Those measures will improve the justice system and are aimed at ending delays. I suggest that if we strive for anything less, we will be selling ourselves short. I hope that that answers the member's question.

Despite comments that were made by Nicola Sturgeon and Stewart Maxwell, the announcement that the pilot scheme that established the Public Defence Solicitors Office in Edinburgh is to be extended to Glasgow and Inverness is to be welcomed. It provides the opportunity to compare public defence and private solicitors better in terms of cost, quality, client satisfaction and wider input into the criminal justice system.

I urge the minister to take on board the concern that was expressed by Citizens Advice Scotland—a key player in providing access to legal advice, information and representation—that any modernisation should develop the role of lawyers in a manner that is complementary to independent providers, and should seek to build on the depth and breadth of experience that they provide rather than restrict it.

16:40

Michael Matheson (Central Scotland) (SNP): In the past four and a half years or so, I have found that debates on legal aid do not tend to be well attended. They do not tend to draw the crowds, although they tend to bring in the solicitors. The number of declarations of interest that have been made during the debate is interesting, but in case people think that there has been an oversight on my part, I have nothing to declare.

I welcome the fact that a review of legal aid provision is taking place, but I hope that the review will not be blinkered and that it will not operate under the financial constraints of the legal aid budget. I hope that the review will be an open review that is concerned primarily with improving access to justice for everyone. All members and

all people in Scotland have an interest in ensuring that we have an efficient, effective and fair legal aid system.

Several members highlighted the fact that there have been a number of parliamentary debates on legal aid in the past couple of years. As ever when there is a recurring debate, it must be asked what has changed since the previous debate. Have things improved?

There has been some progress in improving how our legal aid system works, but from what a number of members have said, it is clear that there is still a lot of work to do. That was demonstrated clearly in the examples that John Swinney, Stewart Maxwell and Margaret Jamieson gave. They spoke about civil and criminal matters in which there have been problems related to how the system operates. It is clear that considerable work must be done to ensure that the system is as fair and just as it can be.

One recurring issue in the debate has been the need to consider how we can keep some matters out of court. Margaret Smith mentioned that the Justice 1 Committee recently received evidence on alternative dispute resolution. There exists the potential to reduce significantly the number of cases that must go to civil courts, especially those that involve family and possibly children's welfare issues, which could significantly improve our justice system. One of the most interesting issues that came out of that evidence was that alternative dispute resolution is often more effective and that people feel more satisfied with the process and outcomes in resolving their problems.

It is clear that access to mediation services is patchy: there are areas where such access is simply not available; there are areas—such as in Edinburgh and Glasgow—where there are well-developed services; and there are areas where there is limited provision. Access to justice is not simply about the courts; it is about trying to resolve matters before they get to court, which in turn is about providing security of funding for provisions such as ADR. Margaret Smith highlighted the fact that the European Union is pushing ADR and I believe that the Lord Chancellor's Department in England has used it for the past year on a number of areas of dispute. That department has saved itself about 120 per cent of the budget that it had spent in past years by using such a mechanism for resolving problems. There are possible benefits to be had from pursuing ADR in our system.

A couple of members highlighted best practice in their constituencies and from their experience. Nicola Sturgeon highlighted her experience of the Drumchapel Law and Money Advice Centre. When we talk about providing access to justice, we are talking not only about providing access to a solicitor who can give a person legal advice, but

about providing support to organisations such as community legal groups that provide the range of money, legal and welfare advice. Those organisations should not constantly have to chase the small budgets that are available from the Executive for core funding. It is important that they be provided with the money that they require to maintain them and to allow them to continue to provide such services. Improving access to justice should also be about providing money to organisations that can provide access to that type of information, rather than just about providing money through legal aid budgets.

Several members highlighted problems that people have in accessing solicitors who are prepared to do legal aid work. That was a recurring theme when the previous Justice 1 Committee carried out an inquiry into legal aid several years ago. The issue has been highlighted constantly by legal practitioners: some who run their own practices say that it is impossible to recruit a trainee who is prepared to do legal aid work. Inevitably, they find that they are taking on fewer and fewer cases that are funded by legal aid. Consequently, there are no new lawyers coming through the system who have experience of working within the legal aid system. People are sometimes accused of saying that we simply have to give solicitors more money, but a number of issues must be addressed. When there is further modernisation of the system I hope that we will address on-going problems that have existed for some time.

One of the interesting issues that has been raised in the debate is regulation of the legal profession. I must confess that I did not think that the issue would be raised, given the terms of the motion that we are debating. However, if we are to modernise our justice system, the current system of regulation of the legal profession is untenable. The Justice 1 Committee carried out a thorough inquiry into regulation of the legal profession.

If we are to ensure that the public have confidence in the way in which our legal system operates and the way in which solicitors work within it, we must investigate reform of the system of regulation. Unfortunately, the Law Society of Scotland did not provide the most helpful of responses to the committee's report. I hope that the Minister for Justice will acknowledge that if she is committed to an agenda of modernising our justice system, the agenda must address regulation of the legal profession. She must ensure that regulation of the profession is not lost to the reform agenda, because many things must be changed. I hope that members support the amendment in Nicola Sturgeon's name.

16:47

The Deputy Minister for Justice (Hugh Henry): The debate has been a very good debate in which most speeches have concentrated on the positive things that are happening while identifying certain problems that no doubt need to be addressed.

Even the Conservatives managed to abandon their own amendment to talk about what we could do with the system—that is, of course, all the Conservatives except the irrepressible Phil Gallie, who reverted to the old certainties. Some things do not change. I did not quite understand Phil Gallie's comments, but at one point I understood him to be advocating legal aid for firms. That is a peculiar concept, because we would expect firms to have insurance cover to cover themselves against most legal problems. We may have budgetary difficulties in trying to cope with the demands on us now, but God knows how we would cope if we were to extend legal aid to firms throughout the country.

Most members concentrated on the need to create a modern justice system that delivers for the people that we represent. The justice system has to be effective and efficient and it has to be fair where it needs to be fair. The cases that Margaret Jamieson highlighted were, unlike Murdo Fraser's cases, not fictional; they were real cases that were harrowing and traumatic for the individuals concerned. Such cases are clear examples of the system's not being fair to all. I will come back to mediation and dispute resolution, which I think Margaret Jamieson's speech led us to conclude—

Jackie Baillie: There was, rightly, a resounding endorsement of dispute resolution services from Margaret Mitchell. Does the minister consider that a dispute resolution service would be useful between Margaret Mitchell and the Scottish Parliamentary Corporate Body to ensure that the Parliament's Christmas cards do indeed say "Merry Christmas"?

Hugh Henry: Far be it from me to stray into such complex territory; anything that can help would be welcome.

The system of justice must be accessible and it must be usable by the people who need it most. It must be relevant to the modern society in which we live and it must inspire a sense of public confidence and a sense of ownership.

Michael Matheson touched on some of the concerns that many members of the public have about our legal system—not just about the legal profession. It would be wrong to level all the criticism at the legal profession because some things in the system need to be modernised and improved. We are intent on doing that, whether for civil or for criminal proceedings.

When it comes to legal aid, we have much to be proud of in Scotland. Our system, in part, provided the original model for some of the most developed legal aid systems throughout the world. Indeed, in its scope, coverage and level of expenditure it still deserves to be the envy of many. However, in that, as elsewhere in the justice system, we need to move with the times and we need to review, reflect and improve. We must acknowledge that, although many other legal aid systems have developed and evolved over the years, legal aid in Scotland has not changed at all, although perhaps it should and could have done. Whereas other jurisdictions have examined the pressures and problems in their legal aid systems, assessed their priorities and tried to find—sometimes radical—solutions over the past two decades, our system has remained unchanged. We must address that.

Many helpful speeches were made this afternoon. I endorse the many comments on mediation and dispute resolution that were made by Christine Grahame, Donald Gorrie, Margaret Jamieson, Murdo Fraser, Patrick Harvie and others. I think—I know that Cathy Jamieson shares my views—that mediation and dispute resolution have a substantial role to play and can be developed much further beyond what we currently provide.

Christine Grahame: The minister will be aware of the study trip that I undertook to Maryland with senior members of the judiciary and members of the Legal Aid Board. Is the minister considering following through the model that exists in Maryland?

Hugh Henry: I was just about to come to that. I spoke at the Family Mediation Scotland conference in September, and we have committed £700,000 to that organisation. We are also funding Safeguarding Communities-Reducing Offending to the tune of £246,000 over three years. However, there is much more that we can do. At the conference, I was impressed when I listened to Judge Bell from Baltimore, who is a very charismatic and committed individual whom I do not think could have left anyone in any doubt about the value of such a system. It was interesting to talk to people who had witnessed what was going on in Maryland, who went out as sceptics but came back fully converted. There are lessons that we can learn from Maryland while developing some of the many excellent examples of measures that, as Margaret Mitchell and other members said, are starting to happen here.

It is important that we give due recognition to the role that is played by community legal services, which were mentioned by Tommy Sheridan, Nicola Sturgeon, Jackie Baillie and others. Nicola Sturgeon spoke about working in Drumchapel. I am very familiar with the organisation to which she

referred; I worked for many years in welfare rights in north-west Glasgow and I saw the work that was being done by Jim Gray and his colleagues in welfare rights, supported by the community legal centre. They did a first-class job. Jackie Baillie also spoke about the West Dunbartonshire Community Law Service. We need to consider how we can develop such projects, provide a framework and have a strategic service. We are committed to thinking carefully about how we can develop that.

Annabel Goldie talked about an interesting issue in relation to protection for the public and I think that she is right. She touched on the concern about the number of companies that are jumping in to give legal advice purely to make quick profits and which are sometimes not properly regulated through our legal system. It is a worry that people are sometimes being ripped off by companies that promise all sorts of services, especially in relation to compensation, but which do not always deliver to the requisite standard. Annabel Goldie made a good point that is worth considering. I reassure her that we will not be copying the English model of having a legal services commissioner.

Several members also spoke about quality assurance. They are absolutely right: whether in legal services, money advice services, welfare rights services or mediation, the public need to know that the quality of the advice that is being provided is of the highest standard, is properly scrutinised and is regulated. We are investing time and money in ensuring that by extending first-class money advice services throughout Scotland.

I also accept the points that Margaret Smith, Karen Whitefield and others made about the need for independence in advice giving. We are not investing in such work simply to try to control the advice that is given out. Advice needs to be independent, but it also needs to be of high quality. Karen Whitefield was also right to highlight the need to tackle exclusion. The review is about ensuring that the many thousands of citizens in our country who do not have access to legal advice are included.

Pauline McNeill made a point about small claims actions, which I thought she developed very well. I agree that we need to consider how more people can be given access to small claims actions rather than be cut out from the system. However, Pauline McNeill was absolutely right to say that the way in which to deal with that is not to extend legal aid to smaller and smaller claims, but to ensure that small claims are dealt with in a more flexible, friendly and informal environment so that there is not necessarily a requirement for legal aid.

I was a bit confused by Murdo Fraser's comment about the compensation culture. Although I agree with what he said about the way that things seem

to be going sometimes, I am not sure about the logic of a compensation culture that would allow firms access to the best lawyers and compensation for pursuing their rights, but which would not allow individuals—employees or members of the public who are badly treated by those firms—any support in pursuing legitimate claims. We should strike a balance rather than rule out one thing completely. I agree with Patrick Harvie that we need to change the culture and reduce barriers.

The review that we have been talking about today gives us some hope for the future. It will provide a framework for establishing that we have a legal aid system of which we can be proud, but which can also be improved substantially. I hope that the review and the work that we are doing will allow Scotland's legal aid system to evolve into a system that is fit for the 21st century. It must be fit for the people whom we serve and it must make a substantial difference.

Business Motion

16:57

The Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S2M-692, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a business programme. I ask any member who wishes to speak against the motion to press their request-to-speak button now.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 10 December 2003

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Executive Debate on Fisheries 2004

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 11 December 2003

9.30 am Scottish Conservative and Unionist Party Business

12 noon First Minister's Question Time

2.30 pm Question Time

3.10 pm Preliminary Stage Debate on Stirling-Alloa-Kincardine Railway and Linked Improvements Bill

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 17 December 2003

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Finance Committee Debate on Stage 2 of the 2004-05 Budget Process

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 18 December 2003

9.30 am Executive Business

12 noon First Minister's Question Time

2.30 pm Question Time

3.10 pm Executive Business

followed by Parliamentary Bureau Motions

5.00 pm

Decision Time

followed by
Ferguson.]

Members'

Business—[Patricia

The Presiding Officer: Mr Crawford has asked to speak against the motion.

16:57

Bruce Crawford (Mid Scotland and Fife) (SNP): The purpose of the SNP opposing today's business motion is to give the Parliament the opportunity to discuss the crucial matter of the ongoing intergovernmental conference and the new European constitution that will result from it. The development of the new constitution is, without question, the most important matter facing the European Community since the adoption of the Maastricht treaty in 1992. It is arguable that, because of the potential impact that it will have on our country, the constitution is for Scotland the most important development in Europe since the United Kingdom joined the Community in 1973.

For the new constitution, Scotland has specific wants and needs in fisheries, energy and justice and home affairs. The annual negotiations on the common fisheries policy are taking place, as they do every year. The draft constitution's inclusion of fisheries as an exclusive competence would entrench the CFP and make it all but impossible for the policy to be changed. Given that energy issues are crucial to Scotland's economy, moves towards European Union rules over oil and gas are vital to Scotland's interests. The draft constitution's provisions on nuclear energy, which would continue the privileged position of nuclear energy within EU markets, would have a disproportionate impact on the Scottish energy market. On justice and home affairs, the constitution envisages more co-operation, which would have an impact on Scotland's different legal system.

We do not know what the Executive's view is on those vital matters or whether it has raised the issue with the United Kingdom Government. The Executive has not even said whether Scottish ministers have attended any of the negotiations. The Executive must put on record what its view is and what discussions, if any, it has had with the UK Government. After all, it is this Parliament's job to oversee the Executive and to ensure that the concordats with the UK Government are working. Therefore, it is imperative that the Parliament is given the opportunity to take stock and give a view on the progress of the IGC.

The SNP is supported in the view that the Parliament should debate that vital matter by the European and External Relations Committee. The committee recommended that

"there should be a parliamentary debate on the draft treaty

and/or the progress of the IGC in relation to the Executive's priorities".

Indeed, Irene Oldfather said:

"That is a good idea. I always welcome an opportunity to debate Europe in the chamber."—[*Official Report, European and External Relations Committee*, 7 October 2003; c 133.]

Irene Oldfather (Cunninghame South) (Lab):

Will the member confirm that I asked for that debate to be secured through the committee slot and that, therefore, I asked for the matter to be raised through the Conveners Group?

Bruce Crawford: I am more than happy to confirm that, because the minutes of the meeting also say:

"Members also agreed to ask the Convener's Group in the first instance to agree to a request for a debate in the Chamber and, failing that, to write to the Parliamentary Bureau under Standing Order Rule 6.8.2 to recommend that there should be a parliamentary debate on the draft treaty".

Many people are concerned that the lack of meaningful and substantial debate on this matter is symptomatic of the Executive's dumbing down of Parliament. Many issues in the IGC are of crucial relevance to Scotland.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the member give way?

Bruce Crawford: Someone who can definitely be accused of dumbing down Parliament has risen to his feet. He should sit down.

We have a wonderful opportunity to show the people of Scotland that we can debate the issues of the day. I ask Parliament to support our view that we should debate the IGC and the new constitution as a matter of urgency.

17:02

The Minister for Parliamentary Business (Patricia Ferguson): It is ludicrous that the SNP has come to the chamber to ask for a debate on this issue.

I remind the SNP that it has a slot tomorrow morning in which it can discuss whatever issue it wishes to bring to the chamber and that it has chosen not to discuss the IGC. In fact, this is the second time in a week that the SNP has suggested that the Executive should sponsor a debate that the SNP has not seen fit to put on the parliamentary agenda.

Bruce Crawford: Will the minister give way?

Patricia Ferguson: No, Bruce Crawford has had plenty of time.

I had always assumed that the primary role of the Opposition was to scrutinise the Executive's

policies and legislation. Obviously, however, the SNP has decided to abrogate that responsibility in this instance. It is quite ironic that, when the SNP secures a debate, we end up talking about issues over which the Executive has absolutely no control. Mr Crawford seems to have missed that point.

I would like to point out something else that Mr Crawford has missed. Today, the SNP issued a press release in the name of Mr Crawford, which says:

“During yesterday’s meeting of the Parliament’s Business Bureau, Labour Minister for Parliament Patricia Ferguson”—

that is me, in case Mr Crawford is unsure—

“blocked any debate on the proposed new constitution being added to the schedule of Parliamentary business.”

As I am sure you will confirm, Presiding Officer, I was not in attendance at yesterday’s meeting of the business bureau as I had a meeting elsewhere. *[Laughter.]*

The Presiding Officer: Order.

The question is, that motion S2M-692, in the name of Patricia Ferguson, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)

Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Ms Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

ABSTENTIONS

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mundell, David (South of Scotland) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 67, Against 33, Abstentions 10.

Motion agreed to.

The First Minister (Mr Jack McConnell): On a point of order, Presiding Officer. I ask you to investigate the SNP's press release and the statement that it has made. I think—[*Interruption.*]

The Presiding Officer: Order.

The First Minister: Given the weight that the Parliament gives to the procedures and work of the Parliamentary Bureau, the nationalist member of the bureau should apologise to Patricia Ferguson for the content of that press release, which parliamentary resources were used to write, print and distribute.

The Presiding Officer: I will look into the matter.

Parliamentary Bureau Motions

17:05

The Presiding Officer (Mr George Reid): The next item of business is consideration of two Parliamentary Bureau motions. I ask Patricia Ferguson to move motions S2M-687 and S2M-688, on the approval of Scottish statutory instruments.

Motions moved,

That the Parliament agrees that the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518) be approved.

That the Parliament agrees that the Mink Keeping (Scotland) Order 2003 (SSI 2003/528) be approved.—[*Patricia Ferguson.*]

Decision Time

17:06

The Presiding Officer (Mr George Reid):

There are five questions to be put as a result of today's business. The first question is, that amendment S2M-685.2, in the name of Nicola Sturgeon, which seeks to amend motion S2M-685, in the name of Cathy Jamieson, on modernising access to legal advice, information and representation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Ms Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 36, Against 74, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The second question is, that amendment S2M-685.1, in the name of Annabel Goldie, which seeks to amend motion S2M-685, in the name of Cathy Jamieson, on modernising access to legal advice, information and representation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mundell, David (South of Scotland) (Con)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)

Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Campbell (West of Scotland) (SNP)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Ms Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Swinburne, John (Central Scotland) (SSCUP)

The Presiding Officer: The result of the division is: For 12, Against 97, Abstentions 1.

Amendment disagreed to.

The Presiding Officer: The third question is, that motion S2M-685, in the name of Cathy Jamieson, on modernising access to legal advice, information and representation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Frances (West of Scotland) (SSP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Ms Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Martin, Campbell (West of Scotland) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Swinney, Mr John (North Tayside) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

The Presiding Officer: The result of the division is: For 86, Against 0, Abstentions 24.

Motion agreed to.

That the Parliament notes the progress made to date on modernising access to legal advice, information and representation; agrees the importance of increasing access to justice through a better and more consistent provision of legal information and advice throughout Scotland, and welcomes the strategic review of the delivery of legal aid, advice and information as a means of ensuring a better and more efficient public service in line with the needs of Scottish citizens.

The Presiding Officer: The fourth question is, that motion S2M-687, in the name of Patricia Ferguson, on the approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the Nitrate Vulnerable Zones (Grants) (Scotland) Amendment Scheme 2003 (SSI 2003/518) be approved.

The Presiding Officer: The fifth and final question is, that motion S2M-688, in the name of

Patricia Ferguson, on the approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the Mink Keeping (Scotland) Order 2003 (SSI 2003/528) be approved.

Galloway Fisheries Inshore Exclusion Zone

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S2M-241, in the name of Alex Fergusson, on a Galloway fisheries inshore exclusion zone. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes with concern the threat to the fisheries within Luce Bay and Wigtown Bay in Galloway posed by recent exploitation of the fisheries by a "supercrabber" and the consequential threat to the 20 local livelihoods that these fisheries sustain; further notes that any future expeditions by industrial vessels of this nature will inevitably deplete available stocks to unsustainable levels, and therefore believes that the Scottish Executive should introduce a three-mile exclusion zone for all vessels over 40 feet to cover both of these bays thereby safeguarding both the stocks and the jobs that they sustain.

17:11

Alex Fergusson (Galloway and Upper Nithsdale) (Con): To tell the truth, I had rather given up hope of this motion's ever seeing the light of day. It was the first motion that I lodged after becoming the constituency MSP for Galloway and Upper Nithsdale and relates to the first big constituency issue that arose following the election. However, I am delighted that the motion has been selected for debate.

As luck would have it, the debate is very timely, given the subject matter of a briefing on the future management of inshore fisheries in Scotland that Scottish Natural Heritage and RSPB Scotland gave jointly at lunch time today. During that briefing, inshore fisheries were described as a priceless national asset that is in desperate need of sympathetic protection and management. Those who attended the briefing were left in no doubt that, where inshore fisheries are concerned, a properly worked out local management structure involving fishermen, scientists and other stakeholders—I put them in that order on purpose—can result only in a win-win situation for all concerned. Furthermore, there is no doubt that inshore fisheries are often worked for hundreds of years by the same families, using equipment that has scarcely changed in that time, and that they are as important to the local culture as they are to the local economy.

That is the exact scenario in the two Galloway bays to which my motion refers. From the waters of Luce bay and Wigtown bay, some 20 marine crofters—as I like to think of them—have for many decades eked out a living in a completely sustainable way that is possible only with an

intimate knowledge of local waters. In the five years from 1998 to 2002, the total number of days at sea hardly varied, ranging from a maximum of 1,057 days in 2001 to 920 days in 1999.

Inspection of the monthly figures showed that from October to February, days at sea are minimal. Members might assume that that is due entirely to the adverse weather during those months, but they would be completely wrong. The fishermen lay off the stocks during those months voluntarily, to achieve the sustainability on which their livings depend. It is worth remembering that we are talking about people who scratch a living, rather than people who earn a fortune. As the secretary of the Scottish Fishermen's Federation put it at lunch time today:

"There are no fortunes to be made from inshore fisheries."

In short, in Galloway we have a sustainable fishery that is being sustainably fished.

That was the case until June this year, when an event occurred that so alarmed the fishermen that within a very short time they formed the Galloway Static Gear Fishermen's Association. It is worth pointing out that the motion refers only to static gear fishermen.

The association was formed to present a united defence of the fishery in the face of the attack that the fishermen had long dreaded. That attack came in the shape of a supercrabber—a vessel from the nomadic fleet that is made up, in effect, of factory vessels that roam Britain's coastline seeking out likely fisheries, which they harvest before moving on to another site.

One might ask, justifiably, why those vessels should not make a living too. The answer can be found in the Galloway situation and the whelk fishery in particular. The total number of whelk pots fished by members of the local association is 900. They are full-time fishermen, although it is recognised that there are a number of part-time and hobby fishermen. The minimum number of pots that a supercrabber will deploy is 1,000 and some estimates show that it can deploy as many as 3,000. That gives one 80ft boat complete independence from weather constraints, given its size, and a potential catch level per day that is eight times the local fishermen's catch level per week. It does not take a rocket scientist to work out that just two or three visits to the waters a year by the nomadic fleet, or even just one vessel of the nomadic fleet, will clean out the stocks. The stocks might never recover and the word "sustainability" might as well be erased from the local dictionary.

The Executive's initial response to the concerns that the association raised was encouraging, and I commend it for sending a senior civil servant to a

meeting in Wigtownshire, which I attended. The official intimated that should a 3-mile exclusion zone be deemed necessary for the protection of stocks, such a zone would be introduced, but that a number of consultations needed to take place before that decision could be taken. That is fair enough. However, in reply to my question S2O-483 on 25 September, in which I asked Ross Finnie under what circumstances he would consider a 3-mile exclusion zone, the minister referred only to the review of inshore fisheries management policy. My colleague Ted Brocklebank will comment on that review, but in relation to the situation in Galloway I must press the Deputy Minister for Environment and Rural Development for a fuller response tonight, because time is against my constituents.

There is considerable suspicion that a further visit from the nomadic fleet in the new year is imminent. Given that the local fleet's effort does not get under way until much later in the spring, that could have devastating consequences, not just on the fishermen, but on the processing jobs that the fishermen in turn sustain.

Given the crossroads that our inshore fisheries are at, with many comparatively new pressures on them from renewable energy projects, displacement of effort from the white-fish fleet, fish farming and the invasive practices of the nomadic fleet—to name but four—the minister is bound, rightly, to take considerable time to get the review of inshore fisheries management right. It was made plain to us at the briefing today that we must get it right. The fishermen of Luce bay and Wigtown bay do not have the luxury of time to spare. I urge the minister to consider implementing the main part of my motion—the introduction of a 3-mile exclusion zone from Corsewall point to Heston island—for vessels over a certain length and/or engine capacity on a temporary basis until a future management structure for all Scotland's inshore fisheries is agreed.

Luce bay is now a candidate for designation as a marine area of conservation. Unless the minister takes immediate steps to protect the ecosystem in the bay, there is a real risk that there will be nothing left to conserve.

17:18

Alasdair Morgan (South of Scotland) (SNP): I congratulate Alex Fergusson on securing the debate, which covers an issue on which I have had correspondence—he has described accurately the situation that affects the fishermen in Galloway. The problem is that we are dealing with a natural resource, the upper limit of which is fixed. If somebody else starts to fish for whelks, lobsters or crabs in the area, there will be less for everyone involved. If the logic of free enterprise is

allowed to run untrammelled in such cases, everyone loses out.

As Alex Fergusson said, the local fishermen cannot afford to lose out, because their boats are incapable of moving elsewhere, even if the sociological circumstances surrounding their activity made it desirable for them to move. The local processors lose out, because clearly the supercrabbers take their catch elsewhere to be processed. The fish stocks are decimated—it is interesting to note that they have survived for centuries under the fisheries regime that applied previously. In general, the local rural economy loses out big style.

The only people who do not lose out are the large-scale fishermen from outwith the area, who simply move on and repeat the process somewhere else. The state and the community have to pick up the bill for that: the state picks it up in payments of unemployment benefit—if the worst comes to the worst—or other kinds of social provision; and the community picks it up in the decline of the community because of the loss of a few more jobs. We are talking about an area where jobs are measured in tens, not thousands.

I am not arguing against progress or innovation; I am arguing for sustainable development. As Alex Fergusson said, the technology in this field has hardly changed for many years—with the exception of safety measures. There is no point in the technology changing. Improving the technology will not increase the number of fish that are available and it will not help the local area or even the total Scottish economy. It will simply end what has been, up till now, a sustainable activity that has gone on for a very long time. It will end that activity for no point whatever and to no benefit to anyone—except a few people who will make a fast buck and move on.

The Scottish Executive must have accepted that argument. The document “Rural Scotland: A New Approach” was launched in 2000—I remember debating it when the Parliament was through in Glasgow. When I criticised the document for being glossy but not having much substance, the minister said that I was being ungenerous. Can I make amends for that now by quoting the document? It says:

“We increasingly acknowledge”

the need

“to extend local control of inshore fisheries by rural communities.”

That quote is from May 2000. What has happened since then? Alex Fergusson referred to a response from Ross Finnie in which the minister says that he and his officials hope to reach a resolution within six months—that is, by the end of March 2004.

Nothing has happened since 2000. Ross Finnie is procrastinating.

Mr Alasdair Morrison (Western Isles) (Lab): Will the member give way?

Alasdair Morgan: I am sorry, but I do not have time.

Only one thing happens quickly in the area. Before the Kosovo attack, some live cluster bombs—unexploded ordnance—were dropped in Luce bay. The Ministry of Defence had no problem in applying a blanket prohibition on fishing around where the cluster bombs fell. That prohibition was applied almost right away. The speed with which the Executive can move compares very unfavourably with the speed with which the MOD—another part of the Government of this country—can move when it suits. People’s livelihoods are involved and I urge the minister to get a move on.

17:22

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am pleased to be taking part in the debate, which I am sure people will find useful and interesting, and I congratulate Mr Fergusson on securing it.

This long-standing and difficult problem is, unfortunately, common practice, not only in Luce bay and Wigtown bay—as mentioned in the motion—but in many fishing communities around the Scottish coast. Inshore fishing grounds are regularly plundered by the larger deepwater boats, which, I am sorry to say, have little regard for the conservation of any particular fish species or for the damage that they cause to the traditional livelihood and earning capacity of their inshore colleagues and those fishermen’s dependent families.

I am regularly contacted by local fishermen and residents from areas such as Loch Hourn, which is a sea loch north of Mallaig. They complain about deepwater trawlers and dredgers invading the loch in contravention of local agreements and an annual legal closure period. That closure is designed to protect stocks and to improve opportunities for the local inshore fleet. The regulations seem to be disregarded.

By contrast, Loch Torridon in Wester Ross—a loch that I am sure many members will know—was eventually, after many years of conflict with the deepwater fleet, closed to all except the local creel boats. That was done in the interests of conservation. In fact, the local fishermen went a step further and reduced their catching capacity—they now have a weekend closure. Members will not be surprised to learn that that has proved to be a tremendous success—so much so that a co-

operative of 12 local boats now enjoys an excellent and sustainable creel fishery, the catch from which is processed locally and packed and dispatched live, on a daily basis, to dedicated European markets. That is all because of conservation measures.

The Loch Torridon fishery has demonstrated the success of co-operation and conservation measures, which I am sure could be implemented in other coastal areas. That success has recently been recognised by a visit from none other than Prince Charles, who came to present the European award for excellence and conservation to the Loch Torridon fishery.

The Executive must be encouraged to establish a realistic exclusion zone around our coast to protect our inshore fisheries and it must ensure that the zone is policed and enforced with determination and rigour. That will be necessary if we are to have a sustainable and effective inshore fishery. I am pleased to support the motion.

17:26

David Mundell (South of Scotland) (Con): I, too, support Alex Fergusson's motion. In his speech, he set out clearly the issues that are involved.

I am puzzled by the Executive's slowness to act on the matter, given that the last occasion on which I participated in a debate in the chamber on fishing issues in the Solway was when the Rural Development Committee was considering an order to ban the hand gathering of cockles in the Solway. At that point, the Executive expressed its clear wish to press ahead with the ban, because of the damage that gathering by mechanical means—which was seen to amount to hoovering up cockles—was perceived to be doing to stocks. To me, that situation is analogous to the one involving the vessel that Alex Fergusson has described. If the Executive was certain then that the ecological impact of such behaviour was so damaging, it should be consistent now and take a similar approach in relation to the activities in Wigtown bay and Luce bay.

The debate on cockling highlighted the threats that communities around the Solway that practise traditional fishing activities face. Hand gatherers had been confronted with the problem of people swarming in on the Solway from outside the area—people who had picked all the cockles in various locations around the coast of the United Kingdom—to become involved in an almost industrial process of removing cockles, which caused great inconvenience to local residents at the time.

If we are serious about preserving and sustaining such ways of life, we must be more

positive about doing more to help the people in those communities. As Alasdair Morgan said, the jobs that we are talking about are important in such small communities. To the people concerned, the Executive seems to be willing to act decisively in a way that has a negative effect on their communities. To those on the Solway who go out fishing for scallops, there is no better example of that than the Executive's determination to drive through its amnesic shellfish poisoning orders. That issue has been debated repeatedly in the Parliament. The people who are involved in such fishing activities see action on the ground when it has a negative effect on them, but they rarely see action that would be positive and would allow them to preserve their communities and way of life. I hope that the minister will assuage those fears by giving a positive response to Mr Fergusson's motion.

17:30

Chris Ballance (South of Scotland) (Green): I, too, congratulate Alex Fergusson on securing the debate and on the work that he has done with the Galloway Static Gear Fishermen's Association. I give particular thanks to the association. I, too, attended a meeting with it and was extremely impressed by its level of organisation, its determination and the amount of energy that it has put into the campaign. While I am congratulating people, I would dearly love to congratulate the Conservatives and the Scottish National Party on their conversion to the idea of sustainability. I encourage them to extend the idea to the entire range of policy, not just shellfish on the Solway shore.

Mr Morrison: Will the member give way?

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): Will the member give way?

Chris Ballance: I have only four minutes.

The Deputy Presiding Officer: You can take an intervention, if you wish.

Chris Ballance: I give way to Alasdair Morrison.

Mr Morrison: When the Green member has finished preening himself politically, will he reconcile what he has just said in relation to the Conservatives and the SNP with the position that his party adopted at a committee of the Parliament some months ago, when the Green party representative failed to support a measure that would conserve scallop stocks on the west coast of Scotland? The Green member present said that, as there was no crisis yet, the measure should not be implemented. How can he reconcile his political preening with the position adopted by the Green committee member some months ago?

Chris Ballance: Presiding Officer, I thank you for allowing me a little extra time to answer that, because it seems that Mr Morrison wishes us to repeat something that we have frequently said in the chamber—perhaps when he was not listening. We have no problem with the policy to conserve scallops. We were questioning the ability of the measure to do what the Executive hoped. We were attacking the competence, rather than the concept.

I will return to the Solway, as that is the subject of the motion. I call on the Scottish Executive Environment and Rural Affairs Department to implement the 3-mile exclusion zone not just within the bay itself, but 3 miles out from the headland. I ask the minister to expedite that matter so that we can make a case for the exclusion zone by Christmas and implement it by the end of January. If we do not do that, it will be too late. There is no point in having an exclusion zone after everything has been sucked up.

The situation is clear proof that growth for its own sake can damage and destroy communities. I add to what Alasdair Morgan said: large-scale fishermen themselves gain little from the situation. The supercrabber sailors have low wages and the boat is forced to work long hours to pay off the bank loan. It is a lose-lose situation. Nobody, except possibly the bank, gains from the economic growth.

Sustainability is at the heart of green thinking—ecological sustainability, economic sustainability and social sustainability. If we allow the supercrabber to fish the waters of the Solway without limit, without control and without regard to anything but some anonymous accountant's bottom line, we risk all three. The supercrabber is the modern equivalent of a plague of locusts. It consumes everything in its path, leaving only devastation and misery in its wake as it moves on to new feeding fields. We cannot allow the fisheries of the Solway to be its victim and we cannot allow the livelihoods of the 15 Galloway fishermen and the 12 associated processing jobs to be destroyed. We cannot and we must not allow the social fabric of those already fragile communities to be further damaged by destroying a tradition that has been part of their culture and identity for centuries.

What is happening in Galloway is a microcosm of what is happening across the globe. In the relentless pursuit of corporate profit and economic growth at any price, we have trashed entire ecosystems and often the way of life and culture of entire communities into the bargain—sometimes, as Alex Fergusson warned, permanently.

We cannot continue down that road. It is time to abandon the values of the economic madhouse and instead to embrace green economic values

and principles of sustainable growth, with economic development that serves the needs of local communities, that is—as far as possible—under the control of local communities, that is in harmony with our environment and that does not come at the price of degradation and destruction. We must live within our own and the planet's means. Banks do overdrafts, but nature does not. We must act to ensure that the supercrabbers do not empty the Solway account.

17:35

Mr Ted Brocklebank (Mid Scotland and Fife)

(Con): I congratulate Alex Fergusson on securing this timely debate on preserving the livelihoods of fishermen in the Luce bay and Wigtown bay areas. I accept our Green colleague's view that what we have seen in that area is simply a microcosm of the complex problems of finding just solutions to the management and well-being of all the species that co-exist in the inshore waters around Scotland's coasts.

We have been told that Ross Finnie's strategic review of Scotland's inshore fisheries is due to report in January. It certainly will not come a minute too soon, for this vital fisheries sector, which until now has been a neglected cinderella, is in danger of becoming a tired and over-used woman of easy virtue as more efforts are switched from the deep sea to the inshore sector.

I attended the meeting today that was organised by RSPB Scotland and SNH. I am attracted to their concept of regional inshore management committees, which should be at the heart of the policy that the Scottish Executive is working towards. I agree, in particular, with the conclusion of the report that was presented at that meeting:

"There may be no more opportune time for a fundamental reform of the system of inshore fisheries management in Scotland."

As politicians, we must play our part in those reforms. A long-term vision of the management of our inshore waters is required. All the local stakeholders, including fishermen, environmentalists and wildlife authorities, should be involved in thrashing out a system for the locally integrated management of inshore waters within the 12-mile limit.

Scotland's inshore waters support almost 2,000 fishing vessels and fishing is at the economic and social heart of communities. However, as an amateur ornithologist, I am equally aware that our coastal seabird colonies support more than 5 million breeding seabirds each summer and that many of our firths support internationally recognised concentrations of sea duck, geese and shorebirds over the winter. Those birds, too, deserve our consideration, not only because they

are cohabitants of our environment, but because they attract tourism.

It seems sensible that there should be a national inshore advisory committee, which would advise ministers, through SEERAD, on matters relating to the management of inshore waters. In addition to providing advice on fisheries and the environment, such a committee would offer the Executive the principal advice on issues that affect inshore waters, such as wind farm proposals, cable laying and aquaculture. One of the committee's first tasks would be to work out financial plans for the development of integrated fisheries management, which I hope would include the provision of financial incentives to the fishing industry to develop new fishery opportunities, as well as accelerating the process of environmental integration that has already been mentioned.

I welcome the Scottish Executive's strategic review of how we should manage inshore fisheries. That is a fishing sector that we control, albeit under the present common fisheries policy legislation, until 31 December 2012. There could scarcely be a better opportunity to show how we would begin the task of managing our wider marine environment until—and after—a future Conservative Government fulfils its pledge to withdraw from the CFP. I support the motion.

17:38

Richard Lochhead (North East Scotland) (SNP): I welcome this debate. That the issue is local to Galloway was eloquently illustrated by the motion's sponsor, Alex Fergusson, and my colleague Alasdair Morgan, both of whom are, among others, members for the area.

The issue highlights the importance of ensuring that the inshore fisheries issue moves further up the political agenda. A strategy from the Scottish Executive is long overdue. The inshore fishing community was excited by the prospect of the Scottish Parliament and thought that it was an opportunity to start to address some of the unique and distinctive issues that the community faces. However, we are now four and a half years into the Scottish Parliament and we are still waiting. There have been at least two rounds of consultation on the proposed strategy for inshore fishing. There was not a huge response from Executive ministers to the first consultation. The recent consultation closed in August and we now await the publication of the resulting draft strategy in early 2004. Producing that sooner rather than later is imperative.

One difficulty is that the inshore fisheries sector has been overlooked to an extent, because ministers and other politicians have been distracted by the crisis that faces our distant-water

and deepwater fleets—particularly the white-fish fleet. As a result, we have taken our eyes off the ball.

As has been said, the inshore fisheries sector involves 2,000 vessels in Scotland.

Mr Morrison: I welcome Mr Lochhead's encouragement for those of us who are involved in inshore fisheries. Will he use the debate as an opportunity to urge fishermen in his part of the country—the north-east—to use sensible, conservation-minded measures when they fish on the west coast? I am sure that the member knows well that north-east fishermen do not enjoy the best of reputations in the west of Scotland.

Richard Lochhead: I never fail to be amazed that Alasdair Morrison can bring his divide-and-rule tactics even into a members' business debate, which is supposed to be consensual. All SNP members advocate sensible measures for all fleets—the inshore, distant-water and deepwater fleets. Of course we support sensible measures.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I understand what Richard Lochhead says. Ministers must take account of all sections of the fishing industry. Does he agree with what was said about prohibiting nomadic vessels in inshore waters?

Richard Lochhead: I am about to talk briefly about the importance of protecting communities, which is the crux of the debate.

Inshore fisheries sustain many smaller coastal communities whose boats cannot go further afield to make a living, as has been said. Protecting the inshore fishery is imperative because, in many places, no alternative source of employment is available.

The Parliament and the Government must learn from mistakes. I will not go into a long debate on the common fisheries policy, but it has been a disaster. We must ensure that local communities are at the heart of the decision-making process on the inshore fishery. We must depoliticise the matter as much as possible. The problem with the other fleets has been politicisation of the issue among politicians in Europe, which is destroying fishing opportunities for Scotland.

We must depoliticise the inshore fishery and put local communities at the heart of decision making. If we achieve that in the foreseeable future, situations such as the one that has arisen in Galloway will not be created. That would be a huge step forward. I urge the minister to give us an idea of the time scale for producing the strategy for inshore fisheries; to explain the delay, because many people are scratching their heads and trying to work out why we have taken four and a half years to reach the current position; and to

describe his vision for inshore fisheries, so that we can help fishermen in Galloway and the rest of Scotland.

17:43

The Deputy Minister for Environment and Rural Development (Allan Wilson): I, too, congratulate Alex Fergusson on obtaining the debate. One success of the Parliament is the fact that the voices of small communities can be heard in the chamber on this matter and others. I am grateful to Alex Fergusson for maintaining the issue's profile and for his constructive liaison with my department, to which he referred.

As others have said, another success of the Parliament is the fact that we do not always have to be adversarial. The danger is that consensus could break out on the subject that we are discussing. The exception is a couple of misplaced remarks from Alex Fergusson's colleague David Mundell. I see no correlation between developments on Solway cockles and the situation that we are discussing. In fact, concerns were expressed about the cockle stock for several years before the order to ban all fishing for cockles was introduced. On mature reflection, Mr Mundell will agree that some of his criticisms about the Executive's lack of alacrity were misplaced.

I acknowledge fully the concerns that Alex Fergusson expressed on behalf of his constituents in Galloway. It is wise to consider the issue sooner rather than later and I suggest that we have been doing that, as the matter was raised less than six months ago.

Both static and mobile sectors reflect a rich tradition in Scottish fishing activities. Ross Finnie and I receive many representations from both sectors. The fishermen in each sector are concerned about the threats that are posed to their way of life and, more important, their livelihood.

There may well be enough fish in Luce bay and Wigtown bay to support both local fishermen and visiting nomadic vessels. Although I do not know that, I do not propose to sit back and wait for time to tell if that is the case. In the absence of formal stock assessments for the areas in question, I believe that it is wise to take a precautionary approach.

Indeed, one of the messages to emerge from the strategic review of inshore fisheries is that a proactive approach to management is preferable to a reaction after the event. The Scottish inshore fisheries advisory group, which is working on the strategic review of inshore fisheries, has told us that the fishing industry would prefer regulation by active management, rather than by prohibition.

In the past few weeks, fishermen's organisations have been drafting options for a new inshore

management structure, where fishermen can become directly involved in managing the fisheries in their area. That, and an accompanying draft strategy for inshore fisheries, will be open for consultation in the new year.

I thought that John Farquhar Munro hit the nail on the head in his speech. I for one would not want to see the inshore grounds being managed as a series of back yards. The sea is a common resource. Naturally, some communities are more dependent on a specific fishery than others are, which is a point that I made at some length to Alex Salmond in a recent newspaper correspondence exchange.

I believe that a balance can be preserved by taking an approach that is more constructive than simply excluding a particular sector from exploiting a particular fishery—unless, of course, that is what the nationalists are suggesting. I posed the question I did to Richard Lochhead because I was unclear about whether the nationalists are arguing something different about Luce bay and Wigtown bay from what they are saying about the north-east fishery.

With the responsibility of managing fisheries comes the responsibility of looking more widely than at the immediate issue. An initiative in my constituency brings together the people who are involved in protecting the Arran and inshore waters and members of the fishing industry. The aim of the initiative is to explore how the sectors can work together to improve fisheries and the marine environment more generally.

We need to assess the wider impact of our actions, whether that be in Arran, Luce bay, the north-east or elsewhere. I recognise the threat that visiting vessels pose to the Galloway fishermen. However, I do not want to take a short-sighted approach to the problem that would simply displace the activity to other vulnerable inshore grounds.

A vessel-length limit is different from the "exclusion zone" that is referred to in the motion. However, I do not want to start from the position of categorising people as good guys and bad guys. We agreed on a plan of action in August with the Galloway fishermen to tackle the issue. The plan is well on track. In the past few weeks, the fishermen sent us some practical information that will help us to decide on how best to resolve the issue, perhaps by means of a voluntary agreement, a restriction on vessel length or some other measure under inshore legislation.

Alex Fergusson: I would hate to think that, because we had run out of time, the minister had not had the opportunity to address the fundamental question that I put to him in my opening speech. I accept what he says about the

need for proactive management and for proactive steps to be taken. However, will he grant the sustainable fisheries temporary protection until the measures to which he referred are thought out and brought before the Parliament?

Allan Wilson: We will work with the fishermen to ensure that they are involved in determining their future. I think that Alex Fergusson would agree that there has been good co-operation between the fishermen and the Government in tackling the issue. I assure him that that will continue. Whatever solution is arrived at, it will be done in consultation and with the interests of the fishermen in mind. I am glad to have had the opportunity of hearing about the concerns of inshore fishermen—this is the second such occasion in a matter of weeks—but I am convinced that we are approaching the issue in the right way, and that we will resolve it in the next few months.

Richard Lochhead: Will the minister give way?

Allan Wilson: I have a final point to make, but I will take the intervention.

Richard Lochhead: There are fears in the fishing industry that the common fisheries policy is about to encroach further into inshore fishing grounds. Such a move would frustrate the Parliament's ability to issue in a few years' time some of the regulations that the minister has suggested. Are those fears with or without foundation?

Allan Wilson: We are working on the basis that we will implement whatever flows from the review of inshore fisheries management for as long as any of us can foresee.

I say to Alex Fergusson that I welcome the formation of the Galloway Static Gear Fishermen's Association to represent the interests of Galloway creel fishermen. I recognise that the inshore fishing sector is based in locations distant from Edinburgh, Glasgow and other Executive offices. As he knows, my officials have been proactive in travelling round the country to meet inshore fishermen at times and in places that suit the industry. I am very happy for that commitment to continue. I am also confident that we can find a satisfactory conclusion to the issue and that, within the next few months, we will resolve it through dialogue and co-operation with the fishing industry in Mr Fergusson's part of the world and elsewhere.

Meeting closed at 17:51.

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