

# **MEETING OF THE PARLIAMENT**

Thursday 2 March 2006

Session 2

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## Scottish Parliament

*Thursday 2 March 2006*

[THE PRESIDING OFFICER *opened the meeting at 09:15*]

### Shirley McKie Case (Inquiry)

**The Presiding Officer (Mr George Reid):** Good morning. The first item of business is a debate on motion S2M-4039, in the name of Nicola Sturgeon, on the Shirley McKie case.

Before the debate, I remind members that they have the right to debate and examine any matter. Members enjoy wide freedom of speech to represent their constituents and to consider the public interest. In so doing, they should act with discretion and responsibly. It is important to note that nothing should be said in Parliament that has the potential to prejudice the outcome of matters that are before the courts. That is why we have rule 7.5 on sub judice. I remind members that, after extensive legal debate, I have been advised that the case of David Asbury is technically sub judice. However, in this case and at this point, I am not in the position to rule absolutely on the sub judice ground. I simply ask members to take great care in the remarks that they make.

09:16

**Nicola Sturgeon (Glasgow) (SNP):** I thank the Presiding Officer for those opening comments.

In some ways, this debate is unique. The leaders of three parties have united to raise a matter not for reasons of confrontation but for public concern and basic justice. Perhaps that is the type of politics that Scotland said in 1999 it wanted, but which has been too little in evidence since then.

The motion in my name, which is supported by Annabel Goldie and Robin Harper, does not seek to divide opinion. Instead, it seeks to persuade the Executive that with so many questions unanswered, matters simply cannot rest. The motion quotes Lord McCluskey, the former Labour Solicitor General and senator of the College of Justice. His clear call for a public inquiry is immensely significant and he is just one of many who are demanding that an inquiry be held. Organisations as diverse as the Strathclyde police board and the Faculty of Advocates, and individuals who are as polarised on the issue as the McKie family and the Scottish Criminal Record Office experts who made the original identification, all want and demand further inquiry. The consensus is clear and it is growing.

Today, that consensus was joined by Lord Mackay of Clashfern, the former Lord Advocate and Lord Chancellor, and by the Police Superintendents Association of England and Wales. Those clear calls must be heeded in the interests of justice. There must be a public inquiry, so I will outline what I believe should be the focus of such an inquiry.

First, because the Executive has used what are in my view some disingenuous arguments to oppose an inquiry, I will be quite clear about what such an inquiry should not focus on. As was demonstrated in the Chhokar inquiry, the Lord Advocate's decision-making process is not above scrutiny. Even though an inquiry would not, as has been suggested, compromise the Lord Advocate's independence in any way, it should not focus on his decision not to prosecute fingerprint experts for perjury, despite a recommendation to do so from the senior investigating police officer.

An inquiry should focus on two very different and important matters. First, it should focus on the original misidentification and attempt to discover how that came about and why it was not recognised in time to prevent Shirley McKie's prosecution for perjury. Secondly, it should look at the associated sequence of events that also led to the false identification of a fingerprint of Marion Ross that was used in a conviction that has since been overturned.

There are basic, but fundamental, questions to be answered. Was a mistake made? The First Minister said that there was, but the experts involved still insist that no mistake was made. How, therefore, can the minister say with confidence that lessons have been learned when the people at the very heart of the system do not accept that there are any lessons to be learned?

If a mistake was made, why and how did it happen? Why did an organisation that, we are told, has not made any other mistakes before or since this case, get it so wrong with two fingerprint identifications in the same case? Until we know the answer to that, we cannot be sure that the reforms that are referred to in the Executive's amendment have put things right. Those fundamental questions must be answered.

An inquiry would also focus on the political issues in this case. Chief among those is the extraordinary fact that although the then Minister for Justice, Jim Wallace, said to Parliament in June 2000 that the fingerprint was not Shirley McKie's, it took another five years and eight months for the Executive to settle with her. During that time, no priority was given to securing a fair deal for her; indeed, many attempts were made to ensure that she got no deal at all. Those attempts include the five-day hearing in the High Court in October 2003 at which the Scottish Executive

sought to have removed from Ms McKie's case most of the key evidence that is now seeing the light of day. That evidence includes the Mackay report and the presentation of allegedly distorted material to independent overseas experts working on behalf of Her Majesty's chief inspector of constabulary.

An inquiry should also seek to understand how it was that a final settlement was offered to Ms McKie only on the steps of the court when, as Lord McCluskey pointed out on Saturday, much would have been saved in costs and in Ms McKie's agony if such a settlement had been proposed much earlier. An inquiry would be able to examine the facts of those matters and it would be able to see documents that are essential to an understanding of the case; the McKie family has not been allowed to do that. Despite many freedom of information requests, the Executive is still withholding more than 1,000 documents from the McKie family, including the independent Macleod report that it commissioned. An inquiry could also question witnesses, including ministers and those who advised them.

At the end of the day, we hope that an inquiry would be able to explain—in a way that the Executive has not—why Scottish taxpayers' money has been used as it has. I also hope that it would be able to reassure Scottish citizens that their justice system is operating efficiently and effectively.

Section 1 of the Inquiries Act 2005 says:

"A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that—

(a) particular events have caused, or are capable of causing, public concern".

I put it to the minister that almost everything about this case has caused, is capable of causing and continues to cause public concern. There is the agony of Shirley McKie and the delay in paying her the compensation that she deserved, the nagging and persistent doubts about what happened at the heart of our fingerprint service during and after January 1997, the lingering suspicion that all this has been badly mishandled by our Executive, our civil service and our justice system and—above all else—there is the fact that nine years after her brutal murder, we still do not know who killed Marion Ross.

This is a classic case that is crying out for a public inquiry. No one who has nothing to hide has anything to fear from the truth being told. If the truth is not allowed to be told, we all have much to fear, however, because confidence in our justice system will be diminished. I urge the minister to reconsider her refusal to hold a public inquiry.

In closing, I urge all members in the chamber to put aside party politics on this occasion and to join

me and the other Opposition party leaders in articulating Scotland's clear and overwhelming desire for justice to be done and to be seen to be done.

I move,

That the Parliament agrees with Lord McCluskey, retired High Court judge and former Solicitor General for Scotland, that one of the fundamental principles underlying the rule of law in a mature democracy is the principle that justice must be seen to be done; considers that in the case of Shirley McKie issues have arisen implying that justice has not been seen to be done, and, in further agreeing with Lord McCluskey that the issues involved are not party political but go to the heart of public trust in the criminal justice system, calls on the Scottish Executive to consider how the concerns expressed by Lord McCluskey should be addressed.

09:25

**The Minister for Justice (Cathy Jamieson):**

This morning, I will repeat much of what I said last week in my statement to Parliament on the Shirley McKie case. It is important to remind Parliament of the case's history, what we have done to deal with concerns about it and to account publicly for those actions.

Following Shirley McKie's acquittal seven years ago, Her Majesty's inspectorate of constabulary carried out an inspection of the Scottish Criminal Record Office's fingerprint bureau in Glasgow. My predecessor and the Lord Advocate made statements to Parliament as soon as they became aware of HMIC's concerns.

**Alex Neil (Central Scotland) (SNP):** Will the minister take an intervention?

**Cathy Jamieson:** The Lord Advocate announced that all current and future cases in which fingerprint evidence was led would be subject to independent external checks. Last week, I informed Parliament that HMIC's report was published on 14 September 2000. It made 25 recommendations covering the range of issues that arose. On the same day, my predecessor Jim Wallace made a clear commitment to put right the deficiencies that had been identified.

**Nicola Sturgeon:** Will the minister take an intervention?

**Cathy Jamieson:** On 6 July 2001, the Lord Advocate announced to Parliament that during the previous 13 months, more than 1,700 cases that had been examined by the SCRO's fingerprint staff had been independently reviewed and confirmed to be accurate with no misidentifications.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Will the minister give way?

**Cathy Jamieson:** External verification was no longer necessary. Presiding Officer, these are

important points that I believe must be on the record.

In the five years since then, approximately 20,000 cases have been presented to the Scottish courts and HMIC carried out three follow-up inspections of the SCRO. In its 2004 inspection report, the inspectorate discharged all the outstanding recommendations from the 2000 inspection and concluded that the SCRO was efficient and effective. All of HMIC's reports were published.

**Alex Neil** *rose*—

**Cathy Jamieson:** May I just put several matters on the record? I listened with interest and courtesy to Ms Sturgeon's speech, so I hope that Parliament will accord me the same courtesy so that I can put several matters on the record.

**Members:** Hear, hear.

**Cathy Jamieson:** Last week, I described in detail the progress that has been made in improving our fingerprint service, and the further measures we plan to implement. The Lord Advocate also provided a full explanation of the decisions that have been taken in the past on criminal prosecutions.

We now have a national fingerprint service that has common standards, external competence testing and continuous professional development. Many members want to have confidence in the fingerprint service; they should listen to what I have to say if we are to restore public confidence in the service.

We must accept that the Scottish fingerprint service is very different from what it was in 1997 and we must look to the future and not to the past. We have ambitious plans for the service's future. The Police, Public Order and Criminal Justice (Scotland) Bill will create a new authority that will provide independent oversight of the fingerprint service within the new forensic science service for Scotland.

I announced last week that I had asked Deputy Chief Constable David Mulhern, the interim chief of the proposed Scottish police services authority, to submit by the end of March an action plan for the migration of the Scottish fingerprint service into the new Scottish forensic science service from April 2007. I have already discussed its progress with him. Many people have said that their fundamental concern in the McKie case is to ensure that the SCRO and the fingerprint service has moved ahead and is fit for purpose in the 21<sup>st</sup> century. I have made it clear that Deputy Chief Constable David Mulhern's plan should be open and inclusive, that everyone who wishes to make a contribution should be able to do so and that it should draw on the best available expertise.

The Justice 1 Committee has already written to me with a series of questions. I welcome its interest. Implementation of the action plan must bring us a world-class fingerprint service with independent oversight, scientific excellence and transparent adherence to standards. It must be a service that remains fit to meet the challenges of the 21<sup>st</sup> century.

**Alex Neil** *rose*—

**Cathy Jamieson:** Presiding Officer, I am well aware of the need to continue to report to Parliament on progress. Parliament must have an opportunity to scrutinise our plans for the future and their implementation.

**Nicola Sturgeon** *rose*—

**Cathy Jamieson:** I believe that that is the appropriate way forward. We must look to the future to ensure that Parliament is able to satisfy itself that our fingerprint service and criminal justice system meet the high expectations that the people of Scotland are entitled to have.

I move amendment S2M-4039.2, to leave out from first "with" to end and insert:

"that action needs to be taken to restore public and professional confidence in the Scottish Fingerprint Service; acknowledges that in 2000 the SCRO Fingerprint Bureau was the subject of an independent inspection by Her Majesty's Inspectorate of Constabulary (HMIC); notes that following three further inspections HMIC reported that its 25 recommendations had been fully discharged; notes that further reforms are being taken forward; that the Minister for Justice has instructed the interim Chief Executive of the Scottish Police Services Authority to bring forward, by the end of March, a comprehensive action plan drawing on the best available international scientific advice and management expertise; notes that this action plan will be reported to the Parliament; believes that a public inquiry is not appropriate; notes that it is the responsibility of the Parliament to hold the Scottish Executive to account; welcomes the work already commenced by the Justice 1 Committee, and confirms the Executive's commitment to co-operate with any inquiries that the Parliament may decide to take forward in scrutinising these reforms."

09:30

**Colin Fox (Lothians) (SSP):** The large out-of-court payment of £750,000 by the Scottish Executive to Shirley McKie leaves us with more questions than answers. Issues that refuse to go away do so for one simple reason: the public want reassurance about the reliability of fingerprint evidence that is found at a crime scene. The McKie case undermines that because it will go down in legend that the Scottish Executive admitted that someone who was not at a crime scene could have his or her fingerprints detected there. There is widespread anxiety that the Scottish Executive is hiding something from the public.

The Executive argues against a public inquiry, but refuses to provide an alternative forum to examine the evidence, cross-examine the witnesses and ensure that justice has been seen to be done. The public is not satisfied that the truth is available to it.

The statements from the Lord Advocate and the Minister for Justice last week did little to help the public understand why two diametrically opposed positions cannot be reconciled. Shirley McKie insists that she was not at Marion Ross's house and the four SCRO officers are adamant that they made no mistake in identifying the fingerprint. Is it possible that they are both right? There is understandable anger in both campaigns.

**Alex Neil:** Will the member take an intervention?

**Colin Fox:** Give me a minute, Alex.

What if Shirley McKie's fingerprint was identified but not found at Marion Ross's house? What if it was put there by somebody else? Will the minister explain what inquiries her department has made about that serious possibility? It would explain why both parties are so adamant that there should be a public inquiry.

**Alex Neil:** I thank Colin Fox who, unlike the minister, has graciously given way.

I draw Colin Fox's attention to the fact that there was not just one misidentification of a fingerprint at the murder scene in question. There were in fact two—only one of which was of a fingerprint as being Shirley McKie's. This case is not just a dispute between Shirley McKie and the SCRO. The SCRO has never explained the second misidentification, which did not relate to Shirley McKie's fingerprint.

**Colin Fox:** I am grateful to Alex Neil for that intervention—it was exactly on cue.

The second issue concerns the reliability of fingerprint evidence, which has been called into question by many people in recent weeks. The Lord Advocate and the chief constable of Dumfries and Galloway constabulary seem to be telling the public that fingerprinting is not an exact science. How reliable is it, when David Asbury's print was also wrongly identified? In the past several weeks, hired fingerprint experts have left a trail of doubt behind them about the reliability of the science and its Scottish practitioners.

The Scottish Executive's position is that a genuine and honest misidentification was made by four fingerprint service workers and it claims that changes that have been introduced as a consequence of the case are all designed, as is the action plan, to restore public confidence in the fingerprint service. Similar reassurances about the service were widespread in 1997.

The fingerprint service workers are furious that their reputations have been sullied and they feel let down by their line managers and the Justice Department for not mounting a robust defence of them, their work and their competence. The reputation of the four officers has been hammered. It is not good enough for the minister to throw up her hands and say that she doubts that the two parties will ever be reconciled, especially since both feel that the Executive has denied them the chance to get at the truth, the whole truth and nothing but the truth.

Last week, the Scottish Socialist Party, along with others, called for a public inquiry into the McKie case. We have been consistent in our approach and a public inquiry has been supported by the McKie family and by Unison—the trade union that represents the four workers. We feel that it is in the public interest that a public inquiry be ordered. We want the handling of the McKie matter to be reconsidered. The case for a public inquiry remains.

I move amendment S2M-4039.1, to leave out from first "issues" to end and insert:

"the public is still not satisfied that the truth of the matter is all available; recognises that the McKie family campaign is not satisfied that there was no conspiracy against her; also recognises that the four Scottish Criminal Record Office (SCRO) fingerprint workers are furious that their competence and reputation has been sullied; believes that the Scottish Executive has a duty to address all these concerns, and calls for a public inquiry to get to the truth of this matter and to restore public confidence in the SCRO and the fingerprint service as soon as possible."

09:34

**Miss Annabel Goldie (West of Scotland) (Con):** I thank the deputy leader of the Scottish National Party and her party for using their time this morning to allow Parliament to consider the escalating concern outside it about issues arising from the Shirley McKie case. The matter is—or should be—above party-political divisions. I thank Nicola Sturgeon for her willingness to discuss the terms of the motion, which is not intended to be judgmental but is instead an attempt to bring to Parliament for responsible discussion the genuine alarm that is being sounded outside Parliament.

The Shirley McKie case has assumed huge significance for our criminal justice system. It has raised issues of practice, procedure and protocol that go to the heart of that system. It has implied incompetence, corruption and collusion and has raised suspicions of criminal conduct and cover-up, all allegedly within our criminal justice system. It has left question marks over police officers, fingerprint experts, the Scottish Criminal Record Office and, of course, the role of Scottish Executive justice ministers. The report of Deputy Chief Constable James Mackay raised significant



questions. However, as Colin Fox said, there are clearly conflicting opinions from fingerprint experts outwith Scotland, especially Peter Swann.

The Scottish Executive and the Lord Advocate have resisted calls for a public judicial inquiry, believing such an inquiry to be unnecessary and inappropriate. The minister reiterated that position this morning. I infer from the Executive's attitude that it believes that the crisis will subside, but it has not subsided and it will not go away. The storm clouds are still gathering around our criminal justice system and the Executive.

The minister's comments this morning were interesting. Her amendment concedes

"that action needs to be taken to restore public and professional confidence in the Scottish Fingerprint Service".

She therefore accepts that such confidence does not currently exist. She also concedes the principle of an inquiry. However, she truly believes that a parliamentary inquiry is the correct approach. If she accepts that there is a loss of confidence in our criminal justice system, how can confidence be restored by a parliamentary inquiry that would be undertaken by a committee with a Scottish Executive majority and which would be prosecuted by people who—however well intentioned they might be—lack the necessary skills and technical expertise to do the job?

Today, the minister has failed to address the concerns that are properly expressed in the motion. Specific reference is made to the view of Lord McCluskey. However, as Nicola Sturgeon said, he is not isolated in his concerns. We have heard a host of opinions: from Derek Ogg, a senior criminal practice Queen's counsel; from John Scott, a human rights lawyer; from Maggie Scott, the chair of the Criminal Bar Association; and from Joe Beltrami, a highly experienced criminal solicitor advocate.

This morning, Lord Mackay of Clashfern, the former Lord Advocate and Lord Chancellor, said that he thinks that

"there should be an inquiry to look into the reliability of fingerprint evidence in Scottish court cases, and the implications for other cases on which such evidence depends."

He also said that what troubles him is

"the question of whether the fingerprinting system is reliable for ordinary people. It's used in many cases every week. Why are these particular fingerprints open to doubt, if other fingerprints are to be relied upon?"

The fact that a person as significant as a former Lord Advocate and Lord Chancellor is expressing concerns and pointing out the necessarily technical nature of the issues goes to the heart of the matter. I think that the minister's response is ill-considered, inappropriate and inadequate.

I am aware that many members want to speak in the debate. Today the minister has made things worse. She acknowledges that there is a fire, but she reaches for a can of paraffin to extinguish it. That is utterly unacceptable. I support the motion in Nicola Sturgeon's name.

09:39

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I am sure that Lord Mackay will be pleased, as I am, that the Justice 1 Committee has begun an inquiry into the concerns that have been expressed about the operation of the fingerprint service. The aim of the inquiry is to determine whether, as a result of the reforms that have been introduced in the service—to its standards, to the operation and management of its staff and to the organisation of its bureaux—it is moving towards an internationally standardised approach to fingerprint identification. Justice must be done and must be seen to be done, but so should the work of Parliament in its inquiries. We must also take account of the previous independent reports that have been published.

I hope that the Justice 1 Committee's inquiry will lead to a thorough examination by Parliament of the Executive, to determine whether Parliament should have confidence in our justice system and the fingerprint evidence that is provided in court. However, let us not forget that in each case fingerprint evidence must be considered on its merits, by experts presenting for the Crown or the defence. It is for justices of the peace and juries to decide what weight should be attached to such evidence.

**Nicola Sturgeon:** We all accept that there have been welcome reforms to the SCRO. Does Jeremy Purvis accept that we will not be in a position to judge whether those reforms are adequate to fix what went wrong in the Shirley McKie case until we know what went wrong in that case? Does he accept that that is the missing bit of the jigsaw and that a public inquiry is necessary to find it?

**Jeremy Purvis:** I have heard Ms Sturgeon say that before. I have also heard her say that the integrity of our justice system is "on the line". I do not agree: confidence in one aspect of the system is being questioned and the people of Scotland expect Parliament to determine whether further reforms have been implemented since 2000.

**Alex Neil:** Will the member take an intervention?

**Jeremy Purvis:** I will not.

Ms Sturgeon asked whether we can assess the adequacy of the reforms before we know what went wrong. She suggests that we cannot know

whether we have fixed the service if we do not know what was broken. That shows ignorance of the independent primary inspection report of HM inspectorate of constabulary, which was published in 2000 and which, I am sure, Ms Sturgeon and all other SNP members have read. The inspectorate found that the SCRO was neither efficient nor effective, but its follow-up report of March 2005 found that radical reforms had been implemented. That is on the public record. The report found the service to be effective and efficient. Efficiency is about swift application of justice and effectiveness means that evidence can be trusted in court.

**Nicola Sturgeon:** Will the member give way?

**Jeremy Purvis:** I will not. I would have done so if I had had more than four minutes for my speech.

Are the SNP and the Conservatives saying that Scottish fingerprint evidence that is presented by the Crown should be inadmissible? On "Newsnight", Ms Sturgeon said that three questions need to be answered: Was there a mistake? How did it come about? Why has it taken so long to put it right? We do not know whether she has read HMIC's report from 2000, which asked for the opinion of two independent and established senior experts who have international fingerprint experience and who found that the prints in question were not those of Shirley McKie. I accept that there is a dispute about that.

Ms Sturgeon asked why it took so long to do something about the experts' findings. However, from the moment that Jim Wallace, the then Minister for Justice, made a statement to Parliament about the matter, reforms began. Work was done to establish the criteria that are used for examinations on a United Kingdom and international footing. There was also internal reorganisation of the service in Scotland, and training and management procedures were changed. For example, all trainees are now trained at the UK base for fingerprints in Durham, and have been for some time. Last week, Miss Goldie claimed that there is

"a huge black cloud hanging over the Scottish Criminal Record Office"—[*Official Report*, 22 February 2006; c 23350.]

If so, that cloud is currently hanging over the UK service as a whole, because there is a consistent approach to identification across the UK.

Miss Goldie must recall our being informed of the new procedures by the SCRO when, as members of the Justice 2 Committee, we visited it on 21 June 2005. We asked questions about the international—

**Miss Goldie:** Will the member take an intervention?

**Jeremy Purvis:** I am afraid that I do not have time.

I recall the briefing that we received about the international standards that are being put in place and the reforms that are being introduced—the move to introduce IDENT1 and the introduction of palm scanning. I do not recall Miss Goldie saying to the chief executive or staff of the SCRO that she believed that "a huge black cloud" was hanging over the service.

Such reforms should be scrutinised, and Parliament should have a role in that. We should examine the implications of the McKie case. Of course public confidence in the service has been shaken, but grossly irresponsible suggestions such as the one that Ms Sturgeon made on 22 February do not help. She said that when it failed to order an inquiry six years ago,

"the Scottish Executive became party to a massive cover-up of the truth".—[*Official Report*, 22 February 2006; c 23349.]

HMIC's report was commissioned six years ago and identified considerable failings. The report was published, and I have heard no one question it. How on earth can there be a cover-up? A cover-up of what? Did the Scottish Executive and the Lord Advocate try to cover up major failings in a department when they had already told the country that such failings existed? The allegation is ridiculous.

**The Presiding Officer:** We move to open debate. Clearly, time is very tight. If members stick to their allotted time, we will just about get everyone in.

09:44

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** The legal team acting for Shirley McKie in the civil litigation had three matters to prove: first, that print Y7 was not that of Shirley McKie; secondly, that print Q12 was not that of Marion Ross; and thirdly, that there had been a malicious prosecution. If the team failed to prove that, the minister must explain why taxpayers must pay £750,000 to Shirley McKie.

During statements on the matter in Parliament last week, it was stated that 1,700 cases were checked to ascertain whether other errors had been made around the time of the Marion Ross murder investigation. No errors were found in those 1,700 cases. Nevertheless, two errors were made in the Marion Ross investigation. Stewart Stevenson, our resident mathematician, assures me that the chances of that occurring naturally are one in 1,444,150. Alex Neil and Nicola Sturgeon raised that issue, but neither the minister nor Mr Purvis provided an answer. If the minister and Mr Purvis regard the Taylor HMIC report as an

inquiry, they should note that paragraph 9.9 of that report says:

"The experts were not asked to explain why in their view SCRO experts were mistaken ... They were asked to assist HMIC in the inspection process and not to undertake an enquiry."

My question for the minister is simple. Has any inquiry that has taken place considered why the misidentifications occurred?

**Jeremy Purvis:** Will the member give way?

**Fergus Ewing:** I would be happy to give way to the minister, if she wants to answer my question.

**Jeremy Purvis:** Will the member give way to me?

**Fergus Ewing:** I ask members to put themselves in the position of Iain McKie, whose daughter faced charges of perjury and a trial in the High Court. After she had been acquitted it was discovered that the state had withheld evidence. Last week I asked the Lord Advocate whether evidence had been withheld. I knew that it had been withheld and so did he, but he failed to mention that to the Parliament. The defence team never received evidence of a blind testing that was carried out eight days after the original misidentification occurred. The fact of that blind testing was concealed from Shirley McKie's defence team and was not mentioned by any of the three SCRO witnesses, who swore on oath that they were telling the truth, the whole truth and nothing but the truth. The fact of that blind testing was revealed by the Mackay report, which was provided to civil servants. Of course, the Minister for Justice and her predecessor say that they never saw the report. However, they were told what was in the report five years ago. That was a cover-up.

**Jeremy Purvis:** Will the member give way?

**Fergus Ewing:** No. I do not give way to bit players. If the minister wants to try to answer some of the questions—

**The Presiding Officer:** You have one minute left, Mr Ewing.

**Fergus Ewing:** On 22 June 2000, the then Deputy First Minister and Minister for Justice said that the print was not that of Shirley McKie. Five years later, lawyers acting on Cathy Jamieson's instructions had still not admitted that fact. They did not even admit in the pleadings a matter that had been stated in this nation's Parliament five years earlier. That is outrageous. If every civil court action in Scotland was conducted in such a way there would be no justice system, because the system would grind to a halt. What else is the minister covering up?

09:49

**Mr Kenneth Macintosh (Eastwood) (Lab):** I am pleased to have an opportunity to speak after the outrageous, irresponsible and reprehensible comments that Fergus Ewing made.

The Scottish National Party would have us debate one of the principles of justice. I too want to consider the principles of justice, in particular the principle that a person is presumed innocent until proven guilty. It is almost impossible to read coverage of the Shirley McKie case without coming across the accusations and allegations of criminality, conspiracy and cover-up that are thrown at the fingerprint officers who made the original identifications in the Marion Ross murder investigation. We have just heard such allegations. The allegations are entirely unproven, untested and unsubstantiated.

**Alex Neil** *rose—*

**Mr Macintosh:** I remind members that the four fingerprint officers reached their conclusions independently from each other and in the context of there being individuals such as police officers who might have been at the crime scene but who clearly were not involved in the murder. In other words, the officers made their identifications with a view not to prosecuting Ms McKie or other such individuals but to ruling such people out of their inquiries. The officers, who are my constituents, did not take the subsequent decision to charge Shirley McKie with perjury—it was taken much later. Some members would have us believe that the people who were responsible for prosecuting Ms McKie were in cahoots with the four fingerprint officers a year earlier. My constituents gave their evidence in good faith and face outrageous allegations because they had the temerity to refuse to concede that they did not do so. Subsequently, the McKie family accused my constituents of maliciously conspiring against Shirley McKie.

Such allegations continue to be repeated in the press and in the Parliament, despite conclusive proof that there was no conspiracy. As a result of the allegations, my constituents were suspended from their duties for more than a year and subjected to an intensive criminal investigation. The findings of that investigation were presented to the Lord Advocate, who found that there was no evidence to support a prosecution. Perhaps some members think that the Lord Advocate decided to join a conspiracy against Shirley McKie.

**Colin Fox:** Will the member give way?

**Mr Macintosh:** I would like to give way, but I do not have enough time to do so. I have only four minutes in which to speak.

As if the criminal investigation were not enough, the fingerprint officers were subject to a disciplinary inquiry, which—again—exonerated them from any wrongdoing and concluded:

“This report finds no evidence of misconduct as defined above. In the case of the four suspended experts the procedures followed and the relationships maintained throughout the initial work, the preparation for the court cases and in the years following remained professional and correct.”

Perhaps some members think that the Strathclyde joint police board also decided to join the fingerprint officers in a conspiracy and cover-up.

Beyond the inquiries and investigations that I described, the fingerprint officers were named as defenders in the action that Ms McKie raised against Scottish ministers and others. The McKie family decided to settle before the case went to court. Perhaps the most conclusive proof that there was no conspiracy would have been presented if that case had gone ahead. The independent fingerprint expert Peter Swann, formerly of West Yorkshire police, stated in his sworn testimony in preparation for the Court of Session:

“My first involvement in this matter was in May 1998, when I held a lengthy meeting in my office ... with Shirley McKie and her father Iain McKie ... At that stage, neither Ms McKie nor Mr McKie made any allegations against the Scottish Criminal Record Office and appeared to have a high regard for the expertise of its fingerprint officers.”

Peter Swann goes on to say that on 2 March 1999 he attended the High Court to view the Crown's evidence—the door standard. He describes his inspection in detail and concludes:

“As a result of that inspection I confirmed that the mark was the left thumb print of Shirley McKie”.

He maintains that position.

There is no doubt that different fingerprint experts have offered different opinions on the authenticity of the mark but, in the light of Peter Swann's evidence and that of the McKie family's expert, it is beyond my understanding how anyone can maintain that the SCRO officers were involved in a conspiracy or offered any more than their professional judgment.

My constituents have been subjected to investigations and interrogations but not one of the allegations that the McKie family and others have made against them has stood up to examination. It is time that we allowed those decent public servants to put the affair behind them and to get on with the task of rebuilding their lives. Justice should not just be seen to be done; it should be done.

09:54

**Patrick Harvie (Glasgow) (Green):** I thank the Scottish National Party for devoting time to an

important case. Many people in Scotland would be disappointed if the Parliament chose not to debate the matter.

Members must accept, and ask the Executive to accept, that many and diverse voices are calling for more action on the case. The voices are those not just of political parties, but of the people involved on both sides of the case—some of whom Ken Macintosh referred to—former Lord Advocates and police officers. I cannot be the only MSP who has had taxi drivers and people in the pub talk to me about the issue. Many people are not satisfied. Given the level of dissatisfaction, the SNP motion is moderate and we are happy to support it.

We all throw around and accept the phrase, “Justice must be seen to be done.” The Executive accepts it in saying that we need to restore confidence in the fingerprint service. The actions that are being taken in that regard are welcome, but they are focused principally on the current service and its future. That is important, but we also need confidence in the past. In many justice debates, the Executive understandably places great emphasis on how the victims of crime feel. How will the victim of a past crime feel today if the person who was found guilty of that crime was convicted on the basis of fingerprint evidence? We need to restore victims' confidence in the system.

Colin Fox raised the question whether fingerprinting and other biometric methods of identification are an exact science. Of course they are not—they are an applied science and so are not exact. Fingerprinting is about identifying and eliminating doubts. Nicola Sturgeon made that point when she asked for an inquiry that examines specifically why the misidentification in the McKie case was not picked up and the doubt not identified earlier.

**Jeremy Purvis** *rose*—

**Patrick Harvie:** I will come back to the member.

Jeremy Purvis responded to Nicola Sturgeon's request by arguing that the ineffectiveness or inefficiency of the service has been recognised in a report. However, that report was a general statement about the effectiveness of the service; it was not about the specific case and the specific questions about two fingerprints. If a general doubt about the service's effectiveness still exists, that must be dealt with in the interests of many other people.

**Jeremy Purvis:** I am sure that the member has read the report, which in fact details the work that was done on the McKie case and deals with the misidentification. I ask the member to clarify what he wants a public inquiry to do. Does he want to reopen the Lord Advocate's decision not to

prosecute? Members from the SNP say that that is exactly what they want it to do.

**Patrick Harvie:** I sign up to Nicola Sturgeon's suggestions about the remit of a public inquiry.

I want to make a wider point about the use of biometric information—an inexact science—in our courts. I urge the Executive and members of all parties to resist the expected amendments to the Police, Public Order and Criminal Justice (Scotland) Bill that will increase the use of the DNA of innocent people who are on the police database in police investigations and, ultimately, in court cases. If we want to avoid further muddles such as the one that we are discussing and further damage to people's confidence in the justice system, we should resist those amendments.

09:58

**Phil Gallie (South of Scotland) (Con):** I congratulate Ken Macintosh on the way in which he defended his constituents: his was as good an argument as I have heard in support of Nicola Sturgeon's call for a public inquiry.

Six years ago, in the Parliament and in the then Justice and Home Affairs Committee, I warned of what was likely to happen if we did not achieve an open inquiry into the case. I spoke to Jim Wallace and Lord Hardie, but my pleas fell on deaf ears. Last week in the Parliament, I put it to the Lord Advocate that, in the spirit of the Executive's openness, we need to release the Mackay and McLeod reports. Sadly, that too fell on deaf ears and there was a blank refusal. This week's article in *Scotland on Sunday*, which claimed to leak the Mackay report, confirmed my long-held suspicions on the matter. However, I accept that the report has not been open to public scrutiny. In the interests of the SCRO officers, Marion Ross and the public at large, whose confidence has been dented by the episode, an inquiry is necessary.

I exclude from that the McKie family, simply because Shirley McKie has been exonerated by the court, as a result of which her family has no need to press further to demonstrate her innocence. However, the system's innocence must be demonstrated. Cathy Jamieson commented last week that only one out of 1,700 fingerprint identifications were found to be faulty. Why on earth did we need a further inquiry into that? There is no problem with people making mistakes, and one out of 1,700 is surely no big deal. However, the Executive and the Lord Advocate seem reluctant to concede that we need openness on the issue and an admission that that one mistake was made.

I have several questions based on the *Scotland on Sunday* article on the Mackay report. Does the report accuse the SCRO of "unbelievable ...

arrogance ... and complacency"; of taking a "criminal course of action"; and of

"protecting reputations, regardless of the impact on others"?

Does it reveal early disagreement within the SCRO over the identification of the McKie fingerprint? Does it show that senior officers pressurised juniors to support their claim and that five SCRO officers refused to confirm that claim?

Jeremy Purvis mentioned the national fingerprint training centre. Is it true that the centre claimed that the McKie identification was incorrect? Does the report say that grave doubts over the conclusions by the SCRO were arrived at independently? Does it state that independent assessment is mandatory on all evidence that is submitted to the courts? On wrong identification, does the report say that an initial error was compounded by criminal action? Is the present Minister for Justice aware of the letter that Jim Wallace received from a senior SCRO officer, saying that he was concerned about institutionalised arrogance in the organisation and about the effect of that arrogance on the many excellent officers who served in the SCRO?

If the minister cannot stand up and refute the claims that have been made in the national press, we need a full and open public inquiry, so that the claims can either be found to be justified, or dealt with fully.

10:03

**Des McNulty (Clydebank and Milngavie) (Lab):** Four public servants have been subjected to a political and media witch hunt, of which the present debate is simply a continuation. Last week, the Lord Advocate informed Parliament that an investigation into the conduct of the SCRO staff members had been completed. That investigation, which was led by a regional procurator fiscal, Mr Gilchrist, reviewed all the evidence, including that provided by Assistant Chief Constable John Mackay. On the basis of Mr Gilchrist's report and on the advice of the deputy Crown Agent, who had full access to all the available evidence, the Lord Advocate decided not to proceed with a prosecution. Had there been evidence to support a prosecution, the Lord Advocate would have been duty bound to initiate one.

Last week, Nicola Sturgeon alleged that fingerprint evidence had been

"manipulated, misrepresented and dishonestly presented in court and in subsequent presentations".

The SCRO staff members who, in the course of their duties, have presented evidence in court and elsewhere, deny strongly any suggestion of

dishonesty on their part or of the manipulation and misrepresentation of evidence.

**Nicola Sturgeon** *rose*—

**Des McNulty:** Two highly reputable independent expert witnesses who were selected by lawyers representing Shirley McKie and David Asbury confirmed the SCRO staff's identification of the fingerprint as Shirley McKie's. That completely undermined the possibility of mounting any successful prosecution of the SCRO staff.

**Fergus Ewing** *rose*—

**Des McNulty:** Fergus, you disgust me—sit down.

Ms Sturgeon went on to ask the Lord Advocate why he had not

"investigated or acted on the considerable subsequent evidence of criminality that has been presented to the Court of Session by Shirley McKie".—[*Official Report*, 22 February 2006; c 23348.]

The Lord Advocate's decisions on prosecutions are not a matter for which he is or should be accountable to Parliament. However, Ms Sturgeon's allegation that there was subsequent evidence of criminality raises more serious issues. As a consequence of the settlement of the action brought by Ms McKie, SCRO staff were denied the opportunity to defend themselves against allegations contained in that action. The best way to get at the truth would have been for that action to proceed, so that all the issues could have been examined in the most appropriate and competent setting: a court of law. Repeated investigations have concluded that my constituent and her colleagues have no case to answer. The principle is clear. Allegations of criminality should be dealt with by the courts, not made and repeated by politicians in the chamber of the Scottish Parliament. Those arguing for a public inquiry should consider this: why should my constituent and her colleagues be subjected to an investigation into outrageous and untrue allegations against them, without the normal protections that they would enjoy in a court of law?

In 2000, a statement in the chamber—an opportunity for members to ask questions—led to the naming of individuals and a serious accusation being made against them in Parliament, not in court. That was an abuse of the rights of my constituent and her colleagues. Regrettably, some of the statements made at that time may have had an influence on the case. That is firmly against natural justice. After nine years, my constituent and her colleagues must wonder when their nightmare will end. In seeking a proper resolution, everyone should think carefully about the unfairness of what those individuals have been put through and how their rights—and the rights of public servants who might be placed in a similar

position in future through no fault of their own—can be safeguarded. To those people, this is a real issue of justice; apart from Ken Macintosh and I, everyone seems to be disregarding that.

10:07

**Mr Kenny MacAskill (Lothians) (SNP):** Great play has been made on all sides of the chamber of the legal maxim that justice must not only be done but be seen to be done. I agree, but there is another test of a judicial system, which is not only that should we try to get it right on all occasions, but that when we get it wrong we should be big enough to acknowledge it, to remedy that wrong and to try to learn from the mistakes that incurred it. What happened in this case was in all likelihood a minor matter and an honest mistake, but it snowballed into a massive injustice perpetrated against one individual. As Mr McNulty has commented, there have been side issues, but they pale into insignificance compared with the almost Kafkaesque situation that arose for Ms McKie. As has been put eloquently by Ms Sturgeon and those who have given their support to the motion, we must have an inquiry to remedy what went wrong.

Another legal maxim says that it is better that 99 guilty men go free than that one innocent should be convicted. What we have here is an attempt to focus on the SCRO. That is an important aspect. Clearly, the matter of whether a minor error occurred derives from the SCRO's position. Whatever Mr Fox may say, fingerprinting is not an exact science, as Patrick Harvie said; it is an art form and, as a result of that, mistakes—honest or otherwise—are made. The minister is on the right track when she refers to remedying what has gone wrong in the SCRO. The SNP fully appreciates that. There is no dispute that good work is being done by the SCRO and that we are well served. However, that does not take away the need for an inquiry, because what happened to Ms McKie is fundamentally wrong.

The £750,000 that was paid to Ms McKie may seem a gross amount to many of us, but it is a small sum to somebody whose life has been ruined in many respects and who has had a career to which she aspired taken away from her. As public servants, we have a duty to find out not just why we are paying out that much public money but why the matter went wrong in the first place. That cannot be dealt with by a committee inquiry; there needs to be a full judicial inquiry. Whatever Mr Macintosh or Mr McNulty may say, when two law officers from different political backgrounds agree—Lord Mackay of Clashfern was a Conservative law officer and Lord McCluskey was a Labour law officer—there is clearly some unanimity.

We need to work out why, when some information was available, a prosecution still went ahead. When I practised law many years ago, it was always my understanding that there were three criteria for a law officer to consider. First, had an offence occurred? Secondly, could that offence be proved in law? Thirdly, was it in the public interest to prosecute? Clearly there was an allegation that an offence had been committed by Ms McKie, but was there the evidence to prove it in law? To use another legal maxim, if a person knew or ought to have known that information existed that cast doubt on Ms McKie's involvement in the offence, that should lead them in another direction.

**Jeremy Purvis:** Will the member give way?

**Mr MacAskill:** No. Mr Purvis has tried valiantly to get in on the debate—frankly, it has been pathetic.

We must consider when that knowledge was available. Even if a senior law officer believed that an offence had occurred and that the offence could be proved, why was it in the public interest to prosecute, when a senior police officer, who had no axe to grind, was saying that something was significantly wrong? That is not justice.

For those reasons, we need to work out not what went wrong at the SCRO but why what started off as a minor mistake became a cataclysmic error with huge effects, not just on the public purse but on an individual, who has been badly treated by the law of Scotland.

10:11

**Colin Fox:** The debate has been interesting. The case for a public inquiry is surely much stronger as a consequence of many of the contributions. The minister gives us all hope when she says that she hopes that people will have confidence in the Scottish fingerprint service from now on. The difficulty is that the public will not have any confidence in the service unless information about the failure is imparted to them fully. Her remarks still have a tone of blame in relation to the four fingerprint officers. That is inadequate. The record will show that the Scottish Executive has prevaricated and has been less than open with information on the matter throughout the entire period. Many members have mentioned the growing call for a public inquiry. Lord Mackay of Clashfern, Chief Superintendent Tom Buchan and Shirley McKie herself have been mentioned. Unfortunately, Ken Macintosh and Des McNulty did not make it clear enough that the four fingerprint workers are in favour of a full public inquiry and are in fact among the most forceful voices in the debate. It is disingenuous of Ken

Macintosh and Des McNulty not to contribute the remarks of those SCRO staff.

**Mr Macintosh:** Will the member take an intervention?

**Colin Fox:** I am sorry, but I do not have time.

Instead of a full public inquiry, the minister suggests that the Justice 1 Committee considers the matter. For a general public that feels that it has been denied information, an inquiry by a committee that simply does not have the powers to compel evidence and to ensure that witnesses are there would appear to be yet another denial of a public inquiry.

**Pauline McNeill (Glasgow Kelvin) (Lab):** Will the member give way?

**Colin Fox:** I am sorry—I do not have the time.

A public inquiry is needed more than it has ever been. There is a groundswell of opinion for it. The Scottish Socialist Party will support the Scottish National Party's motion, but I hope that since it is only the SSP amendment that calls for a public inquiry, the SNP, the Greens and the Tories will support that amendment.

**Tommy Sheridan (Glasgow) (SSP):** And Ken Macintosh and Des McNulty.

**Colin Fox:** And Ken Macintosh and Des McNulty.

**Pauline McNeill:** On a point of order, Presiding Officer. I feel that the Justice 1 Committee's position has been misrepresented. At no time did any member of the committee suggest that a parliamentary inquiry would be a substitute for a public inquiry, nor has the committee decided to launch an inquiry. It is important, for the purposes of the debate, that Parliament should be aware of that.

**The Presiding Officer:** That is a point of information. You have put it on the record.

10:14

**Mr Jim Wallace (Orkney) (LD):** I welcome the measured way in which Nicola Sturgeon opened the debate. For once, she gave us some indication of her reasons for wanting a public inquiry and some context in which a public inquiry would take place. In contrast, I have not yet heard from Annabel Goldie what the remit of a public inquiry would be.

It is unfortunate that Nicola Sturgeon's party did not follow her lead. Although Nicola Sturgeon indicated that an inquiry would not be a matter of examining the actions of the Lord Advocate, nothing more than that could be read into what Fergus Ewing said, or what Kenny MacAskill said. Mr MacAskill clearly questioned the decision of the

Lord Advocate—the Solicitor General for Scotland, as he then was—to prosecute Shirley McKie.

Alex Neil, who is sitting beside Nicola Sturgeon, and who may well respond to the debate for the SNP, said in a press release dated 21 February, with reference to the fingerprint bureau:

“All its staff should be suspended on full pay pending the outcome of a judicial public enquiry into this whole fiasco. Such an enquiry would have the power to recommend disciplinary action and criminal proceedings against those who deserve it.”

That is an outrage. It would imply that those who had already been told by the Lord Advocate that they would not be prosecuted could be prosecuted. That is contrary to the principles of Scottish justice.

The people who had a hearing before an independent disciplinary body would also be affected. The body that was set up, which was deliberately made independent, was chaired by Doris Littlejohn, a former employment tribunal president. The other two members were nominated by the Scottish Trades Union Congress and the Chartered Institute of Personnel and Development. That body recommended that no disciplinary action should be taken against the four officers concerned. If the SNP's position is that people who have already had a hearing before a disciplinary panel should be subjected to another hearing before a disciplinary panel, that is totally contrary to the principles of justice in this country. If that is what we end up trying to do, that in itself would be cause for a public inquiry.

In response to Fergus Ewing's remarks, I can say categorically that I did not see the Mackay report. I was informed in August 2001 that, because of emerging findings from the Mackay report, four members of SCRO personnel had been put on a precautionary suspension by the chief constable.

**Fergus Ewing** *rose—*

**Nicola Sturgeon** *rose—*

**Mr Wallace:** That was a clear indication to me that a serious report was in train and that serious action was being taken.

**Fergus Ewing:** Will Mr Wallace give way?

**Mr Wallace:** I do not think that anyone has suggested that that was an improper response.

I mentioned Fergus Ewing, so I will give way to him.

**Fergus Ewing:** I thank Jim Wallace for giving way. Will he make public the advice that he received in connection with the report that he mentions? That advice was quoted in *Scotland on Sunday*, yet it remains covered up and secret, like so much else.

**Mr Wallace:** I was told, without explanation, that an issue was emerging from the Mackay inquiry. That is why four SCRO personnel had been suspended. The advice was also given that it was too soon to draw final conclusions, and that the outcome of the Association of Chief Police Officers in Scotland presidential review report should be awaited.

There is no cover-up that I am aware of. If we were embarking on a cover-up, as I said in the chamber last week, I would not have come to the Parliament straight away when HM chief inspector of constabulary for Scotland told me that the fingerprint bureau was not operating efficiently and effectively. We published the report. The chief inspector was told that if, in the course of his work, he came across any allegations of malfeasance, they should be reported appropriately to the chief constable and the procurator fiscal. There was no effort to cover up.

Nicola Sturgeon said that one of the reasons for having a public inquiry was to examine the political reason why there had been a delay in paying Shirley McKie her compensation. I do not believe that a public judicial inquiry should be examining political decisions. That is totally contrary to the principles that we have established in this country. If there is a political issue, as Nicola Sturgeon said in her speech—[*Interruption.*] I heard her use the word “political” in her remarks. If there is a political issue, it is the job of the Parliament—nay, it is the duty of the Parliament—to call ministers to account. I am happy to stand to account before a committee of the Parliament for the actions that I took. I hope that, if there is such concern, the Parliament will have the will to bring such a committee into being.

10:18

**Margaret Mitchell (Central Scotland) (Con):** I hope that, if the Minister for Justice takes nothing else from today's debate, she will acknowledge the message that is coming from the Parliament loud and clear that it is impossible to move on and seek to restore confidence in the SCRO fingerprint bureau and in Scotland's criminal justice system when so many questions remain about the past.

The work that it is proposed will be undertaken by the Justice 1 Committee, which is referred to in the minister's amendment, will be absolutely no substitute for resolving those questions, as the committee's convener has pointed out. The committee will not be a forum to provide the answers that are desperately required about the past. Until those questions are answered, as Annabel Goldie, Nicola Sturgeon, Colin Fox and just about everyone else has said, the issue will simply not go away. It is too fundamental, and the



questions that have been raised are too monumental.

When Jim Wallace first apologised to Shirley McKie in the Parliament in 2000, following the Taylor report, I doubt very much that he realised the full implications of what that meant for both the SCRO and the criminal justice system. An admission of an honest mistake having been made was made by the Lord Advocate on behalf of the Scottish ministers. In the light of that, the McKie family and the SCRO want a public inquiry. Why? With hundreds and hundreds of fingerprints being looked at every day, why was there that one mistake? Even the most casual observer must seek answers to that question. The SCRO fingerprint experts maintain that their original verification stands. They want to give evidence on the record in public. To date, there has been no opportunity for them to do so.

On 9 February, the First Minister said in the Parliament:

"All sides have accepted ... a settlement that I believe is fair and right".—[*Official Report*, 9 February 2006; c 23255.]

That is not the case. The SCRO fingerprint experts had not even been notified of the settlement, nor of the final admission, until after the event. They categorically dispute the First Minister's statement about that.

The only trial that those fingerprint experts have had to date has been trial by media, as Des McNulty and Ken Macintosh have pointed out. The Minister for Justice has been clear that she does not want a public inquiry. She has been clear about what a public inquiry would not achieve. It could not rule on anyone's civil or criminal liability. It could not rule on whether Shirley McKie's claim against the Scottish ministers would have been successful had she not agreed to settle out of court without an admission of liability. The minister has mentioned other things that a public inquiry could not do, all of which are true.

What the minister omitted to say, however, was that a public inquiry would establish the facts in an open, transparent and public forum. Crucially, it would provide the SCRO fingerprint experts with the opportunity, for the first time in nine years—while a huge cloud hangs over their heads and, by extension, over the Scottish criminal justice system—to put their case, which has never deviated from their original position. A public inquiry would also ensure that evidence could be heard from Peter Swann, who was hired by the McKies, and who was subsequently sacked by them after positively identifying Shirley McKie's fingerprint in the Ross household.

All that stands in the way of a public inquiry is the Labour-Liberal coalition. A Liberal minister, Jim Wallace, decided that a mistake had been made.

Subsequently, the Lord Advocate spoke on behalf of Government ministers in accepting that an honest mistake was made. A Labour Minister for Justice is now denying us a public inquiry. That is totally unsatisfactory. It is damaging to the reputation of both the SCRO fingerprint bureau and the Scottish criminal justice system that the full facts have not been aired in public. Seven hundred and fifty thousand pounds of taxpayers' money was spent on settling the McKie case. The public has the right to know why.

10:23

**Cathy Jamieson:** I have listened to the debate very closely. It has confirmed a number of points that I made in my statement last week. Sadly, I do not believe that it will be possible to reconcile the different views and for everyone to come to agreement on the matter. Once again, despite people saying that they were calling for a public inquiry in order to examine the SCRO, to consider the way forward and to try to establish the facts, I heard a number of members fundamentally calling into question decisions that have been made in relation to court processes, to disciplinary hearings and to the independent investigations and the inquiry that have been carried out by HMIC.

**Nicola Sturgeon:** Will the minister take an intervention?

**Cathy Jamieson:** I really would like to move on for a moment—

**Members:** Aye!

**Cathy Jamieson:** Members have asked me a number of questions and I want to comment on them.

From what I have heard this morning, I am not persuaded that holding a public inquiry would allow us to draw a line under the matter and to move on with respect to making improvements, where they are required, to the fingerprint service. I believe that what we need to do is to have Parliament scrutinise the Executive's plans to improve the fingerprint service, which is what we intend to do.

A number of issues have been raised this morning as if they were new revelations. However, as Jim Wallace made clear in his speech, a number of those issues go back some considerable time and were in the public domain at that time, when Jim Wallace, the then Minister for Justice, took the appropriate actions. He has answered some of the points that were raised this morning and, like him, I am more than happy to be involved in any parliamentary inquiry that is decided on to take this matter forward.

A number of members asked questions about the settlement. I said in my statement last week

that I believed that to settle was the right thing to do and I still believe that that was the right thing to do. I wanted to draw these matters to a conclusion, because it is important that both Ms McKie and the constituents whom Des McNulty and Ken Macintosh represent are able to move on in their lives. It was always the Executive's position that the misidentification was not malicious. That was public knowledge and has been understood by the parties to the action since last June. It was the basis on which the final settlement was made.

We must not lose sight of the transformation of the Scottish fingerprint service since 2000. A lot of work has been done.

**Tommy Sheridan:** The minister knows that I have been corresponding with her on compensation for other cases. Who decided on the level of compensation in this case and how quickly was that decision taken?

**Cathy Jamieson:** I am sure that Mr Sheridan would not expect me to go into detail on the other cases that he mentioned. He will be aware that when a settlement is reached out of court, it is negotiated between the two parties. When we decided to move to settlement a number of negotiations took place. As I said in my statement last week, the settlement took account of the length of time that Ms McKie had been involved in the situation that she was in and the fact that she had been unable to pursue her employment during that time. Those matters were negotiated and settled between the two parties.

I make no apology for saying that I wanted to see the matter brought to a conclusion. I think that it is important that people can move on. We have to stop and think about some of the things that members are saying here today. Shirley McKie was cleared in court. The fingerprint officers were not prosecuted and a disciplinary hearing decided that they did not require to be subjected to disciplinary procedures. I hear all the calls. Are members really saying that we want to undo or unpick the actions and decisions of the Lord Advocate, the people who undertook that disciplinary process and HM chief inspector of constabulary for Scotland? Despite what members are saying, it seems that some people are suggesting that.

We must be careful about casting aspersions on the quality of the work that is being done in the SCRO today without evidence to back them up.

The Presiding Officer is indicating that I should wind up, so I will conclude on this point. We should work with the Justice 1 Committee—I am more than happy to do that—to provide the answers to the questions that have been raised and to take forward the action plan in relation to

the SCRO and the fingerprint service in the future. That is the right and proper way to proceed. I hope that every member of this Parliament will take as much interest in that future process as they have taken in this debate.

10:29

**Alex Neil (Central Scotland) (SNP):** This debate is about justice and injustice, the administration of justice and the maladministration of justice as it affected Shirley McKie and all those who are associated with this case.

I disagree fundamentally with two or three of the points that the Minister for Justice made. First, the idea that the Shirley McKie case could be investigated by a parliamentary committee is, quite frankly, laughable. No parliamentary committee, even with the best of intentions, would carry any public confidence in its inquiry or in its conclusions for the simple reason that we are all politicians and are not qualified to undertake such an inquiry. As Pauline McNeill said, a parliamentary inquiry would be no substitute for a proper, judicial public inquiry.

Jim Wallace said, in his reference to the settlement, that we should not set up a public inquiry to review political decisions. The Fraser inquiry was precisely that: an inquiry into a series of political bungs made by him and his colleagues and predecessors.

Secondly, the Minister for Justice has said repeatedly that we cannot reconcile both sides. This is not about some kind of marriage guidance counselling or reconciliation of two sides, but about finding out the facts of what went wrong in the Shirley McKie case. Any public inquiry would be undertaken not to reconcile two points of view, but to establish the facts and report on what we then judged to be the case.

Finally, the minister said in summing up that the SCRO staff can now move on. However, their own union is calling for a public inquiry because it acknowledges that, until a proper public inquiry is held that carries the confidence of the public, the SCRO will not be able to move on.

As a separate issue, it is worth considering the reforms that have taken place and how they have been effective. In doing that, I hope that we will consider the Sinclair case in Ayr 18 months ago, in which there was a misidentification of a fingerprint by the SCRO.

I can understand why Jim Wallace is against a public inquiry, given that he had a major role to play in all this. He, too, has questions to answer. He received at his constituency office a letter dated 7 August 2001, from a whistleblower within the SCRO. I could quote the letter extensively, but

I will quote just the key sentence:

"After commencing duty at the SCRO bureau, I was shocked and appalled at the level of malpractice."

One of the issues that a public inquiry would consider is what happened when the then Minister for Justice received that letter, which was copied to the Lord Advocate. Did they act on the letter? Did they act on the allegations that were made in it? If so, what did they do and what was the result? What malpractice, if any, did they discover? If they did not act on the letter, why not?

**Mr Wallace:** I do not in any way demean or diminish the significance of what the whistleblower said, but does Mr Neil accept that when HM chief inspector of constabulary tells us that the fingerprint bureau is inefficient and ineffective, it does not get any more serious than that and that we acted on that?

**Alex Neil:** I would have thought that anyone who called themselves the Minister for Justice, on receiving a letter that made accusations of criminality, would at the very least ensure that there was a proper inquiry into those allegations. It is quite clear that a public inquiry would have to look into the role of the minister and examine why it took five years and eight months from Jim Wallace, the then Minister for Justice, issuing an apology to Shirley McKie in the chamber for a settlement to be reached. Why did the Scottish Executive unnecessarily put Shirley McKie through six more years of hell? We need to know the answer to that question.

We need to know the answer to many other questions, too. For example, why was there a misidentification of Shirley McKie's fingerprint? Why was there a second misidentification of someone else's fingerprint at the same murder scene? Is it true that some of the evidence has since been lost? If evidence has been lost, when and why was it lost? Is it true that, at the time, more fingerprint experts in the SCRO said that the fingerprint was not Shirley McKie's than said that it was? If that is the case, why did the criminal prosecution against Shirley McKie go ahead? Was the then Lord Advocate, or the procurator fiscal who took Shirley McKie to court, aware of the division of opinion in the SCRO? If they were aware of it, why did they go to court? If they were not aware of it, why not? Was the Lord Advocate—either as Solicitor General or as Lord Advocate—aware of that division of opinion? Was there a deliberate attempt to stitch anyone up in relation to the Marion Ross murder scene? Why did the Lord Advocate give a guarantee to the SCRO officers that, even if new evidence came forward, there would be no chance of a further prosecution? What about the allegations that were made by the whistleblower? For the record, I point out that the inspector's report did not consider the

McKie case; it was about processes and procedures.

Why, why, why? We do not know the answers to those questions. I could go on and on with a list of questions to which we need answers. The time has come for justice. Shirley McKie has had a financial settlement and now she must get a settlement in justice.

**The Presiding Officer:** I will allow a slight pause before the next debate, which is on Scottish Water. The debate will be shorter than planned.

## Scottish Water

**The Deputy Presiding Officer (Trish Godman):** The next item of business is a debate on motion S2M-4036, in the name of Rob Gibson, on Scottish Water.

10:38

**Rob Gibson (Highlands and Islands) (SNP):** This debate has to pin down why ministers assured us for months on end that Scottish Water was ready and able to meet the challenge of the quality and standards III exercise for 2006 to 2010. We were also assured that the regulators were in dialogue with Scottish Water and were ready to be auxiliary midwives to the revised business plan, but suddenly, in February, stories emerged that they had not signed it off and that Ross Finnie, who places great store by those regulators, had called in the Scottish Water chairman, Professor Alan Alexander, to explain. As a result, Professor Alexander decided to fall on his sword. Scottish Water domestic and business customers across the country are entitled to ask what will happen next and what will become of the Government's promises to deliver.

On 1 December, the First Minister said to John Swinney:

"We gave a commitment last year to review the strategic objectives of Scottish Water and the long-term investment plans, and we have done that. We set clear objectives that are on target."—[*Official Report*, 1 December 2005; c 21366.]

Disagreements that emerged in early February seemed to relate to the technical processes whereby each regulator signs off the Scottish Water delivery plan. Ample evidence shows that impatience in the Scottish Executive was forcing the pace. Rhona Brankin's letter of 1 February to each regulator reminded them that they all had to agree that the delivery plan should begin, as that would

"provide a clear means of measuring progress towards delivery of all the objectives."

Each regulator seemed to be working closely with Scottish Water. That was underscored by Colin McLaren, the drinking water quality regulator, who told Ms Brankin on 6 February:

"I had not seen SW's Delivery plan prior to its submission to the Executive on 30th January, although I have worked closely with Scottish water in recent weeks to agree exactly what needs to be delivered to meet the Minister's drinking water quality objectives."

Sir Ian Byatt's team also appeared to be working closely with Scottish Water personnel, but he found fault with Scottish Water's new plan. On 7 February, he noted:

"In a number of material elements the Delivery Plan fails".

He reflected the minister's impatience, saying that he was pleased that Mr Finnie's official would chair the proposed high-level group that was "planning an early meeting". He also caught the ministerial mood by noting that

"we were not encouraged by the tone of the document".

Was that, perhaps, to break the logjam? He also said:

"to ensure that your objectives are met it is essential to define and report on regular (measurable) milestones".

Unfortunately, bungling by officials in the Environment and Rural Affairs Department misled the regulators, who were asked to comment on an older draft of the new delivery plan than the one that was delivered to ministers. The waters were muddied while each party set to rights the actual position. I ask the minister whether that was deliberate.

Despite the previous close working between the regulators and Scottish Water, ministerial stewardship began to look a bit shaky. At that point, Mr Finnie brought the crisis to a head. Professor Alexander's rebuttal letter expressed surprise about many of the regulators' comments. Was the minister beginning to see problems with the delivery of the quality and standards II outcomes for 2002 to 2006 overlapping with the start date of Q and S III in April? Was the conclusion of Q and S III slipping beyond the 2010 completion date? Was the very structure that was forcing customers to pay around 80p in the pound for capital developments creating a new water tax, as commentators have alleged? Further, is the minister siphoning off borrowing consent from Scottish Water for other Scottish Executive purposes, thus adding to the crisis of delivery in relation to Q and S III?

Comments about the impact of delays in development constraints rain in from housing and business developers who are sick, tired and fed up of getting no definite dates for water infrastructure new starts. Given the small sums that were allocated by ministers to remove development constraints in the overall package, was Scottish Water fully to blame?

It is incumbent on ministers to set out how they will handle the sign-off of the 2006 to 2010 delivery plan. It is essential that customers get a clear picture of what will achieve ministerial objectives and what effects the current delay in agreeing them will have on the whole programme.

On 1 December, the First Minister said to John Swinney:

"The Water Industry Commission for Scotland has made it clear in its expert analysis that Scottish Water can deliver

all the objectives with less-than-real-terms increases in water consumer charges in Scotland over the next few years ... If the constraints and development plans change over time, the objectives will be reviewed. However, we need to get on with the process now.”—[*Official Report*, 1 December 2005; c 21366.]

We are not getting on with the process, and we want to know why. It cannot be put any clearer than the First Minister put it then. Things were on track on 1 December. In mid-February, after Scottish Water submitted its new delivery plan, we were still told that Alan Alexander believed it

“to be wholly compliant with the Ministerial requirements”.

By early February, while regulators such as the drinking water quality regulator were continuing to work with Scottish Water to achieve ministerial objectives by 2010, Ross Finnie had decided that the uncertainties raised by Scottish Water’s rebuttals were the last thing he wanted to hear. They opened up too many assessments of risks and unforeseen realities, and questioned the £2.1 billion cap with a £50 million contingency that could still make the ministerial objectives go west.

In the *Sunday Herald* on 26 February, Alf Young noted that he was told by one Executive source:

“we don’t mean it’s a matter for negotiation.”

Scottish Water was told that it had to deliver quickly, but we do not know how.

My colleagues will explore in detail the Executive’s flawed water delivery model and poor stewardship. I will listen with interest to members who have lodged amendments, but we will get to the root of the matter if we get some honest answers from the minister.

I move,

That the Parliament notes that, despite assurances from ministers that Scottish Water’s investment plans were on target, the Chairman of Scottish Water has resigned due to disagreements with ministers and Scottish Water has been required to produce another business plan; considers that these events highlight poor stewardship of the water industry by the Scottish Executive; expresses its concern over the impact of delays in investment in water and sewerage infrastructure on economic, environmental and social development in Scotland, and calls on the Executive to set out promptly what impact these events will have on delivering the ministerial objectives for the water industry in Scotland.

10:45

**The Minister for Environment and Rural Development (Ross Finnie):** Any delay in the delivery of Scottish Water’s plan for 2006 to 2010 is to be avoided as far as possible. However, let me make it absolutely clear where things went awry between what the First Minister said—correctly—on 1 December and what happened in February.

We were in a process whereby the objectives of Scottish ministers had been evaluated and costed by Scottish Water. It came up with a delivery plan, which then had to be sent to the economic regulator. That is quite proper for a body that is a public monopoly. As members are aware, the regulator’s view was that the plan could be delivered for £1.5 billion less, without any deviation and while producing the same amounts to tackle development constraints, environmental quality and drinking water quality. The consequence for industrial and domestic consumers would be that average charges would increase by less than the rate of inflation.

Scottish Water was then required to respond to the regulator. At that point, on behalf of Scottish consumers, ministers made it clear to Scottish Water that we had to be satisfied not only that it was signing up to the economic cap, but that the plan would deliver the entire programme—including the work on development constraints and the improvements in environmental quality—at the right time, the right quality and the right price. We also made it clear to Scottish Water that it had to have the agreement of the regulator.

**Mr John Swinney (North Tayside) (SNP):** The minister brushed rather lightly past the First Minister’s remarks of 1 December. My question to the First Minister was clear. I asked him to confirm that the dialogue between the Water Industry Commission for Scotland and Scottish Water about the £1 billion funding gap would not delay the process. It now looks as if it has delayed the process. The First Minister told me that everything was on target. I want a more detailed explanation of why the First Minister’s statement has been air-brushed out of the record.

**Ross Finnie:** With all due respect, I have not air-brushed anything out of the record. Scottish Water had a simple choice: either it accepted the determination in full with no caveats and no equivocation, or it appealed to the Competition Commission. In accepting that, we set the caveat that I mentioned—namely, that the economic regulator had to be satisfied with Scottish Water’s response. As Rob Gibson said in his opening remarks, the economic regulator said that the delivery plan did not meet its requirements in a number of material respects.

**Mr Swinney:** Why was the regulator involved in dialogue and debate about what has been described to me as a car park of proposals, where some of the proposals in the determination were sidelined to secure an agreement? That led to an impasse, and the regulator has now pulled the plug on the whole development plan. Why did that dialogue take place, given that ministers seem to have had a very different agenda?

**Ross Finnie:** In December, it was neither my wish nor the First Minister's wish to get to a point at which Scottish Water was unable to meet the regulator's requirements. Early in December, we had no indication that that was going to be the case. *[Interruption.]* I do not know how other members operate in business life, but I am content that it is perfectly appropriate for Scottish Water—in trying to respond to a heavy demand by the regulator to take £1.5 billion out of the programme—to have a dialogue with the regulator. That does not mean that in those discussions every aspect of the plan would be approved.

Scottish Water, led by its chairman, was adamant that it would deliver the plan in its entirety, but the regulator advised me that that was not the case, that there were caveats, and that certain material aspects of the plan meant that it might not be delivered. That put at risk the very delivery that John Swinney and his colleagues seek, not only in terms of quantity but in terms of price. Given those circumstances, it seems to me—contrary to what the SNP suggests—that it was good stewardship for me to insist that Scottish Water was unequivocal in its acceptance of the delivery plan. In the absence of such acceptance, we fundamentally disagreed with the chairman, and he decided to resign. I regret that, but it is a fact.

It is not in Mr Swinney's interests or in his constituents' interests for Scottish Water to seek to deviate from a determination by the economic regulator. That would not represent good management. It is a matter of regret, but we now have to move quickly to request a plan that will be delivered. If the SNP is satisfied that another course of action would not have resulted in increased prices, so be it.

**Mr Swinney** *rose—*

**The Deputy Presiding Officer:** You must finish now, minister.

**Ross Finnie:** There were doubts about Scottish Water's ability to deliver on development constraints, which is the very matter about which SNP members are concerned. As ministers, we were not prepared to take that risk, therefore we took the action that we took.

I move amendment S2M-4036.2, to leave out from “,despite” to end and insert:

“Scottish Water's draft business plan of April 2005 stated that achieving Scottish Ministers' objectives for 2006 to 2010 would require a capital investment programme of £3.7 billion and a doubling in customer charges; notes that the Water Industry Commission's determination of charges for 2006 to 2010 allowed Scottish Water a capital investment programme of £2.1 billion and charges rising by less than the rate of inflation to achieve the objectives; notes that Scottish Water accepted the determination but its plan

demonstrating how it would deliver the objectives within the limits set by the determination was judged by the Executive, supported by the regulators, not to meet the requirements in a number of material aspects; notes that the Executive has required Scottish Water to produce a new plan which will command the confidence of Ministers and regulators, and considers these actions by the Executive to represent good stewardship of Scottish Water in the public and customer interest.”

10:52

**Murdo Fraser (Mid Scotland and Fife) (Con):** I welcome the opportunity that the SNP has presented to debate the future of Scottish Water. Rob Gibson's motion rightly highlights several problems with the organisation and the recent resignation of Professor Alan Alexander as chairman due to disagreements with ministers.

My amendment details some other difficulties with the nationalised water company. Scotland's business community has consistently complained about overcharging by Scottish Water. Scottish businesses pay much more than their counterparts south of the border. Scottish Water is also inefficient. Today, *The Scotsman* draws attention to the latest report from the Office of Water Services, which ranks Scottish Water below every one of the 22 privatised water companies south of the border.

**Rob Gibson:** The member mentioned the Ofwat report. Does he agree that Scottish Water is trying to do in eight years what other companies have tried to do in 15 or 20 years, so the comparison is poor?

**Murdo Fraser:** Perhaps we should have started earlier, but I will come to that in a moment.

Scottish Water charges higher prices and provides a poorer service than its counterparts in England and Wales. Once again, there is independent confirmation of something that we in the Conservative party have been saying for years.

Most worrying of all for Scotland's economy is Scottish Water's failure to invest in infrastructure, which has led to development constraints throughout the country. Scotland's economic progress is being stifled by that lack of investment. It is a problem throughout the country. It is a problem in my region—Mid Scotland and Fife—and in the area where I live. As Mr Swinney will know, it is a problem in towns such as Blairgowrie, Coupar Angus and Alyth.

**Ross Finnie:** Will the member take an intervention?

**Murdo Fraser:** I am sorry. I have only four minutes, so I do not have time to take another intervention.

In the towns that I mentioned, much-needed commercial and housing developments—including the construction of affordable housing—cannot proceed due to lack of infrastructure. That is a major economic and social problem.

There is much that is wrong with Scottish Water, and the SNP is right to raise concerns about it, but what is missing from the motion is the SNP's alternative. What does it intend to do about the problem, other than call on the Executive to set out promptly the impact that Alan Alexander's resignation will have on the delivery of ministerial objectives?

We on this side of the chamber are not so coy. I will be helpful to Mr Gibson and tell him what his motion should have said about the future of Scottish Water. He does not have to look too far to find the solution. On 21 November last year, he lodged a parliamentary motion to congratulate Glas Cymru—the company that owns Welsh Water—on retaining the position of joint top-performing private water and sewerage company in Wales and England. Welsh Water is a private company, albeit one that operates as a mutual, rather than with shareholders who draw a dividend.

It is precisely because Welsh Water is in the private sector—as are other water companies south of the border—that it is able to deliver high levels of investment, high-quality water and lower costs than Scottish Water. There is the solution: it is time to take Scottish Water out of the public sector and privatise it. That would solve Mr Gibson's problems for him.

Scottish Water has to appoint a new chairman. It is difficult to imagine that there will be a long queue of applicants for the job, given the difficulties that it has faced. Whoever comes in will be hampered by the public sector status of the organisation and the constraints on it, and they will face the interference of ministers. It was too much for Alan Alexander to cope with, and he walked away from the job. I am sure that the Executive will find some other mug to take on the position, but that will not solve the fundamental problem.

We need to open up Scottish Water to the market. We should not fear privatisation. It has delivered higher investment, better water quality and lower costs south of the border. It can do the same in Scotland.

Mr Gibson and the SNP have simply been too timid this morning. They should join us in the growing consensus in favour of privatising Scottish Water, which would remove at a stroke the problems that hamper economic growth and social development throughout the country.

I move amendment S2M-4036.1, to leave out from “and calls” to end and insert:

“further expresses concern that Scottish Water is failing to deliver an appropriate level of service to its customers; notes the concerns of the building community about Scottish Water's failure to allocate sufficient resources to remove development constraints; further notes the Executive's admission on 9 February 2005 that business customers have been overcharged £44 million a year for water; further notes that the introduction of surface water drainage charges based on the size of the property are to be introduced into the denationalised English water market on 1 April 2006 which will lead to significantly lower charges for small businesses in England than in Scotland, thereby reinforcing the present competitive disadvantage faced by Scots firms; further notes the comments of former Environment Minister, Sam Galbraith, that “We are slowly going broke and the only way to solve this is to reduce the public sector wage bill. Privatised water and, at a stroke, the bill is cut” (*The Scotsman*, 10 February 2005); believes that as long as Scottish Water remains a bureaucratic, nationalised monopoly it will struggle to adopt the private sector disciplines expected by the Executive and the Water Industry Commission, and therefore calls on the Executive to take its commitment to make economic growth its top priority seriously by creating a genuine market in water and privatising Scottish Water or adopting a “not for dividend” model such as Welsh Water.”

10:57

**Des McNulty (Clydebank and Milngavie) (Lab):** I have almost given up blaming the Tories for what they did in the 18 years that they were in government, but in connection with the legacy of a long period of underinvestment in water and sewerage—

**Murdo Fraser:** Will the member take an intervention?

**Des McNulty:** Yes, if the member wants to explain why his party did it.

**Murdo Fraser:** I suggest that Mr McNulty looks at the comments of the water industry commissioner, who said that the argument that there was underinvestment in Scotland during the period of the Conservative Government is without any basis in reality.

**Des McNulty:** It depends on the comparisons that the commissioner was making.

I commend Alan Alexander on his period in office first in West of Scotland Water and then in Scottish Water. He had a considerable influence on improving and stepping up the water industry's capacity to meet the challenges that it was set. He was a long-standing advocate of retaining the water and sewerage industry in the public sector. It is a matter of considerable regret that he felt the need to resign.

As well as holding Alan Alexander in high regard, I hold Ross Finnie in high regard. Mr Finnie is perhaps not my favourite Liberal Democrat minister because, after yesterday, my affections might have to transfer to Tavish Scott, but he is a very competent minister. Some of the

changes that have taken place in Scottish Water have been a product of Mr Finnie listening, not least to the Environment and Rural Development Committee and the Finance Committee, and adapting the systems of governance. The changes that were made to create the Water Industry Commission for Scotland, for example, have marked a significant step forward, as has the greater transparency that we have introduced into the financial arrangements.

Regrettably, however, this debate occurs at a time when we do not have all the information about what is to happen in the period from 2006 to 2010. There is a time for agreement on these issues. I hope that that agreement is forthcoming soon and that people in the Parliament, in business and throughout Scotland are clear about what they can expect from the implementation plan for achieving the targets set out by the Executive on the advice of the Water Industry Commission.

The targets are challenging. We recognise that, whatever Murdo Fraser says, the past pattern of underinvestment in the water industry requires us to move forward quickly. In my constituency, for example, a £120 million water treatment plant is being built and other major projects are taking place throughout Scotland, many of which are to deal with water quality and other quality issues.

The biggest challenge before us is how to address development constraints. I would like to hear in the minister's response some clarity about the priority that will be given to development constraints relative to other criteria in the implementation plan; the phasing for dealing with development constraints; the mechanism through which local authorities, private sector agencies and others can ensure that they have a timescale for dealing with development constraints; and whether the quantification of those constraints is sufficiently robust to allow clarity in the implementation model.

The minister needs to address those issues and, although he might not be able to do that fully today, I hope that he will do so clearly in the implementation plan for the coming period.

**The Deputy Presiding Officer (Murray Tosh):** We are very short of time so I ask members to stick strictly to the time limits.

11:01

**Jim Mather (Highlands and Islands) (SNP):** I want to take a wider look at the financial and operational performance of Scottish Water. Who is broadly content with that performance now that Professor Alexander has gone? The First Minister? The Minister for Environment and Rural Development? Sir Ian Byatt? We must presume

so, but many more people are not content, including Ofwat, the signatories to the Finance Committee's minority report in 2004, many people throughout the country and, importantly, the formidable, public-spirited Jim and Margaret Cuthbert, who have been on the case since 2003. They recently said:

"The tragedy of the financial mismanagement of the water industry by the Scottish Executive since 2002 has been that it has converted a long-term potential problem (how to fund Scottish Water in the long term under the financial constraints imposed by Barnett) into an immediate crisis of overcharging, inadequate capital investment, and imminent non-sustainability."

Instinctively, many people in the country agree with that. If we return to the minority report of 2004, we see that it noted the reasons why. English water was privatised and, as the report went on to prove, in the absence of subsequent Barnett consequentials, the water industry commissioner, the Scottish Executive and Scottish Water overcharged water users—mainly business users—created many development bottlenecks and installed systems that were not fit for purpose in order to save money and reduce borrowings. That resulted in situations such as that in Campbeltown, where false economies led to there being odours, debris in the loch, flooding, damage to local businesses and expensive retrospective £8 million fixes.

The minority report also exposed a pattern of obfuscation and deceit on the part of the Executive and the WIC, attempting to confuse and make acceptable the unacceptable suggestion that the strategy was justified because it complied with resource accounting and budgeting; because it was in line with free cash ratios elsewhere and regulatory current value; or because the Treasury said that it was okay. Yet all those Executive and WIC defences of unproven assertion and highly technical financial smokescreens have been systematically and logically demolished and dismissed by the Cuthberts.

Now we have the latest technique—not talking.

**Ross Finnie:** Will the member simply confirm that that "systematic demolition" was supported only by him and by one other member of the committee and that it was not just a minority but a very small minority that shared that view?

**Jim Mather:** Two other members supported that view. That just proves the ineffectiveness of committee investigations, which was said in the previous debate.

Professor Alexander is in purdah. Sir Ian Byatt is not talking about the 2002 to 2006 strategic review. He wants to apply business criteria, but he does not do the logical thing of emptying the skeletons from the cupboard and starting from a fresh base. Yet the burden on current water



charge payers is enormous. In direct financial terms, in the period from 2002 to 2005, 86.6p of every pound of capital expenditure has been paid by water charge payers. Indeed, over the whole period to 2014, 75.5p in the pound will be paid by them. The situation is so bad that I must ask whether the Executive is perversely and deliberately attempting to prove that Scotland cannot balance the competing objectives of maximising revenue and maximising competitiveness.

The strategy, which was originally designed to drive down Scottish Water debt year on year, frees up cash and borrowing for the Executive; boosts Scottish Water's asset value; creates a revenue stream that meets the cash-cow criteria; makes Scottish Water's underperformance a headache for Government, councils, developers and communities; and therefore tees people up to be persuaded that the organisation should be privatised and got rid of, while at the same time generating a queue of potential buyers.

We reject the current financial management and privatisation, because they are not in the public interest. Scotland does not want a highly profitable water company that continues to impede the country's development and the profitability of every other Scottish business.

11:05

**Mr Andrew Arbuckle (Mid Scotland and Fife) (LD):** I support the minister's robust statement of Scottish Water's position. However, introducing a local element into the debate, I think that the majority of people still believe that their local council is responsible for water. After all, the council sends out the water bill and remains the organisation that the public go to if there is a burst pipe or a problem with sewage.

I realise that that does not match the reality of the situation, in which Scottish Water operates through the Scottish Executive and has a telephone helpline that anyone can call in an emergency. However, people still think that the council is responsible for water, which is why many, if not all, councillors include dealing with Scottish Water as part of their workload. For example, last month, in my capacity as a councillor, I had six Scottish Water issues raised directly with me.

**Alasdair Morgan (South of Scotland) (SNP):** Now that we have established that the local council, not the Executive, is responsible for this mess, will Mr Arbuckle tell us what he is going to do about it?

**Mr Arbuckle:** As with Fergus Ewing during the statement on the bridges review, Mr Morgan's brain runs ahead of what he is saying. I thank him

for his intervention and he will get a reply to his question soon enough.

I know that in every case that was raised with me I could easily have handed over the emergency helpline number and walked away from the matter. However, one problem that councillors have faced in dealing with Scottish Water issues is the collapse in local answerability. It is very difficult to meet someone—indeed, anyone—in Scottish Water who will deal with a problem. Most of the time, one simply lobs the issue into the system and hopes that it will be addressed.

I do not denigrate the people who work in Scottish Water. They are doing a difficult job to the best of their ability in a system that does not provide as much contact with the public and their directly elected representatives as it should. I urge the minister—and here is my answer to Mr Morgan—to consider including in Scottish Water's plan systems that allow for more transparency. If, in 14 months' time, councillors are to receive increased rewards for their efforts, it is only sensible that their current informal contacts with Scottish Water are made stronger. That would restore and improve an element of local democracy that has recently been allowed to wither.

11:08

**Eleanor Scott (Highlands and Islands) (Green):** The Water Environment and Water Services (Scotland) Act 2003 has been described as the most significant piece of environmental legislation to be enacted in the country in the past 40 years and seemed to put us for once at the forefront of European environmental legislation. However, since then, such tight limits have been imposed on the Scottish Environment Protection Agency's budget that we must question whether it is able to deliver on certain requirements under the act. So much for the Parliament and Scotland leading the way in the implementation of European freshwater legislation.

Now it appears to be Scottish Water's turn. In time, the questions and mystery surrounding Alan Alexander's resignation will be clarified—or, more likely, forgotten—but the need to tackle the many separate pressing issues facing Scotland's water will remain. Indeed, last week, Scottish Water's spokesperson stressed:

"Changing the plan does not change what we have to deliver, it just changes when we deliver and the way we deliver."

On the question of investment, I am still concerned that the Water Industry Commission's assessment of the massive efficiency savings that Scottish Water could make could threaten the

organisation's operational efficacy instead of delivering improved value for money. I am aware that the commission's remit is quite narrow and is focused on costs. However, I believe that that is exactly where ministers could take a stronger stance on the commission's role in ensuring that Scottish Water is able to deliver on sustainable development aspects. In that respect, I am also concerned about benchmarking Scottish Water's performance with that of English water companies, because they are not on the same trajectory and work in very different physical environments from those in which Scottish Water works.

Because the investment programme is so massive, we must rigorously pursue efficiency gains and value for money. However, at the same time, we must ensure that we do not underinvest and confuse cutting costs with cutting corners. If we fail to meet the environmental requirements of Q and S III, we might be penalised by heavy fines from the European Court of Justice. We must spend our money not on such fines but on improving our water infrastructure.

I know that Scottish Water has been criticised for its financial management—somewhat unjustly, I feel, as a result of benchmarking with English and Welsh companies—and that it is under massive pressure from all sides to extend connectivity in new housing developments. It is essential that the development imperative does not override environmental and other considerations. We must take account of both.

I intend to be brief. In closing, I repeat that I do not know the whys and wherefores of Alan Alexander's resignation but, to paraphrase part of the motion, I believe that we need strong stewardship of the industry and strong leadership by Government. Scottish Water faces a tough task and, although it has been criticised—and no doubt will be criticised again—it is ultimately our water industry. It behoves the ministers, all members in the chamber and the regulators to support Scottish Water in achieving its objectives.

11:11

**Scott Barrie (Dunfermline West) (Lab):** The future of Scottish Water and its ability to deliver on ministerial objectives are crucial not only to all domestic customers but to the business community. We must ensure that constraints on our public water and sewerage infrastructure do not endanger economic growth and development.

We have heard before, and again this morning, that a lack of appropriate water and sewerage infrastructure has severely curtailed essential development in parts of Scotland. I share some of the concerns that have been expressed. Perhaps, in summing up, the Deputy Minister for

Environment and Rural Affairs will clarify how Scottish Water's future capital work will begin to address that problem. However, ensuring that that capital programme works is not solely the responsibility of Scottish Water. Our local authorities must work much more effectively with the organisation to find out what further infrastructure might be needed and how that will be achieved within our planning system.

In today's debate, we might be in danger of overlooking the huge advances that have been made in our water and sewerage infrastructure over the past decade. I do not necessarily want to take a leaf out of Stewart Stevenson's book of *curricula vitae* but, when I was a student, I worked for two successive summers as a temporary sewerer. It was not the most pleasant of jobs, but it was interesting nonetheless. For example, in those 26 weeks, I learned just how inadequate our sewerage system was, how much investment was needed and how little the system's custodians had spent on it in the 1960s, 1970s and early 1980s.

We need a system that is fit for purpose. It was not only the bathing water quality regulations and the drinking water quality regulations but the demand for cleaner beaches that eventually began the drive for greater investment in something that had been overlooked for so long. That investment has continued under Scottish Water and the organisations that preceded it. We now have a four-year capital investment programme of more than £2 billion, a commitment that customer charges in Scotland will not rise above the rate of inflation and the Executive's belief that its objectives will be delivered. That is all being delivered by our publicly owned Scottish Water.

I believe that Scottish Water is delivering for a better Scotland—although perhaps not as quickly as some of us would like—and is continuing to make the improvements that were not made in the past. I reject the Tories' call, yet again, for a privatised Scottish Water and I also reject their amendment's implicit attack on Scottish Water workers, who provide an essential service, sometimes in the most appalling, unpleasant and unsanitary conditions.

**The Deputy Presiding Officer:** For the guidance of members, we are being advised at the moment to keep the press gallery and the area towards the rear of the Conservative benches clear. That area is clear because I have just moved somebody from it. I shall update members on the position as we get further information. I call Derek Brownlee.

11:15

**Derek Brownlee (South of Scotland) (Con):** Thank you for moving me, Presiding Officer.

This is a timely debate. I was interested in what Murdo Fraser said about the Ofwat paper, which I am sure all members will have read with interest. I would like to mention some highlights from that paper—if “highlight” is the appropriate term. On page 58, the Ofwat comparison paper states:

“The water and sewerage companies in England and Wales appear ... more cost-efficient than Scottish Water.”

On page 62, it states:

“Scottish Water has a higher proportion of its underground assets in a poor or very poor condition than the England and Wales water and sewerage company average.”

On page 31, it states:

“all England and Wales water and sewerage companies performed significantly better than Scottish Water.”

On the points that have been raised about investment, Scottish Water is quoted in *The Scotsman* today as saying, in defence of its position:

“In England and Wales they have had 15 years of major investment, whereas this report measures Scotland only two years into a £1.8 billion programme.”

I am not entirely clear whether the argument is that, despite the past nine years of Labour Government and subsequent Lib-Lab Administration in Edinburgh, it is only for the past two years that Scottish Water considers itself to have been adequately funded, but the comparison with England and Wales is valid. Many of us, particularly those who represent the south of the country, have constituents with businesses that operate in Scotland and in England. Trying to explain to them why the cost base of Scottish Water is significantly higher than that of the water companies in the north of England is a difficult thing to do. There are two issues to explain: the underlying cost base; and the allocation and calculation of water rates. The comparison with England and Wales is valid and is something that we need to examine closely.

Jim Mather touched on the report from the Cuthberts, which was published in the Fraser of Allander Institute’s “Quarterly Economic Commentary” in February. I am sure that members will have read that report too with interest. I was not a member of the Finance Committee—or even of the Parliament—when the minority report to which Jim Mather referred was published, but it seems to me that there is a fundamental issue to be addressed. We are talking about Scottish Water appearing to be less efficient than other water companies and asking questions about its cost base, but the minister seemed to cast some doubt on the accuracy of the conclusions in the Cuthberts’ report. We are entitled to understand in a little bit more detail why that is.

The February report stated that, between 2002 and 2010, £960 million could be passed on in charges to the consumers of water in Scotland. That is a major sum of money and, as Murdo Fraser said, if Scottish Water were in the private sector and able to borrow freely, that figure could be met by water consumers over the period for which the investment would last, rather than during the narrow period over which it appears that it is being drawn out. It is not, as some people might think, about ideology. It is about getting a fair deal for water consumers.

I notice that today’s edition of *The Scotsman* also quotes Scottish Water as saying that 95 per cent of its customers are satisfied with its performance. I wonder whether 95 per cent of its business customers are satisfied. Given the record of underperformance that we have seen in Scottish Water, not just in recent years but over the piece, I wonder whether the minister really expects us to believe today that all the promises of improvements to come are credible and sufficient. We need to look much more fundamentally at the structure and cost base of Scottish Water. If we do not, we are condemning businesses—and, in future, consumers and taxpayers—to a significantly higher bill than we need to.

11:19

**Nora Radcliffe (Gordon) (LD):** Nobody would disagree that water and sewerage services are fundamentally important or that, over decades, the water industry suffered from underinvestment in infrastructure maintenance and development. That is not in doubt. We have passed three water acts to set up Scottish Water and the framework within which it operates. Throughout that legislation, we kept faith with the Scottish people, who did not and do not want a privatised water industry. Privatisation is neither an option nor an answer.

The issue here and now is about how the objectives set by Scottish ministers for 2006 to 2010 will be delivered. Those issues include improved customer service, further improvements in drinking water quality, improved compliance with environmental standards and support for new housing and economic development. Customers, both domestic and business, want those improvements to be delivered; they also want to see how they will be delivered. The debate has usefully put on record the sequence of events in the past few weeks. A number of members have mentioned the lack of investment in the Q and S II regime, which led to development constraints not being addressed. That has been recognised and addressed in Q and S III. As we move forward, that balance between maintenance and development will shift considerably, as people want it to do.

After listening to Jim Mather, I think that I would be inclined to offer him the job of chairman of Scottish Water. He seems to know exactly what we should do, how we should do it and how we can solve all Scottish Water's problems. That might be an interesting rollercoaster ride.

Andrew Arbuckle highlighted areas in which Scottish Water's customer service could and should be improved. That has been a matter of on-going concern to those of us who are dealing with casework. Scottish Water probably recognises that. It is faced with enormous problems in bringing the water industry up to modern standards from a very low base, and perhaps customer service has not had the priority that it might have been accorded. I hope that that will change.

I offer Eleanor Scott the reassurance that, when we were putting in place the framework for Scottish Water, we were extremely careful to ensure that environmental issues would be given their proper place alongside social and economic issues.

Scott Barrie made an important point about local authorities and Scottish Water having to collaborate and work closely together to deliver efficient and effective water services that will integrate with local planning and with housing and economic development. He also usefully reminded us that enormous progress has been made.

The focus now must be on producing a delivery plan for 2006 to 2010 that achieves ministerial objectives within the financial limits set by the Water Industry Commission, to the environmental standards required by SEPA and the drinking water quality regulator.

11:23

**Alex Johnstone (North East Scotland) (Con):** It is interesting that we have reached this apparent crisis in the water industry, given that many of the things that the Conservative party said during the passage of previous water legislation may well be coming home to roost.

There is a certain irony in the fact that, as we on this side of the chamber sat under a beam that was dangling from the roof, the Presiding Officer suggested that efforts were being made to clear this corner of the chamber—many SNP members must have thought that that is what the electorate has been trying to do for a number of years.

The debate takes us back to a period in Scotland's recent political history that we have to revisit occasionally, and I am pleased to revisit it again today. I refer to the period during the early 1990s when some decisions were made—perhaps not for the long-term good—based on the political

pressures of the day. At the time, the dynamic and productive Conservative Government was hampered in its progress towards the provision of an efficient Scottish water industry by the efforts of people such as Des McNulty, who put in huge efforts to prevent the privatisation of Scottish Water, which would have used a similar model to that which is being used in the south. It is that failure—a failure that I freely admit to—of the Conservative Government to press home what would have been a sensible policy that resulted in the situation in which we find ourselves today.

**Nora Radcliffe:** Will Alex Johnstone take an intervention?

**Alex Johnstone:** No, I cannot take an intervention.

The truth is that the water industry in Scotland, influenced by the many decisions made by the Scottish Executive, is now a cumbersome, nationalised organisation that is unable to respond to the pressures of the day. The fact that Q and S II did not contain any commitments on development constraints and the struggle to include that particular problem within Q and S III are clear examples of how difficult it is to steer such a huge organisation.

Many accusations have been made during the debate, not all of which I will be able to respond to directly. It is clear that there is once again a need for change in the Scottish water industry. The minister expects Scottish Water to match private sector performance, but to do so within a public sector model. The cumbersome regulatory regime that has been made necessary by the decision to keep the industry in the public sector, which I believe was made strictly on political grounds, has left us with the water industry that we have today. Members such as Jim Mather quoted extensively from the Cuthberts' conclusions, but he failed to mention that they also believe that the privatisation of Scottish Water is now inevitable.

Eleanor Scott said that we need strong leadership and centralised control within the water industry. I suggest that we have seen a clear example of how supposed strong leadership can result in inappropriate control.

We heard clear evidence from Scott Barrie that the political problems that surround Scottish Water are as strong as ever they were. He seemed to suggest that the Scottish people want public ownership of Scottish Water at any price for political rather than practical reasons. Far too many of us in Scotland have heard from businesses that have suffered as a direct result of the cost of the supply of water. We heard from Derek Brownlee that we should not be talking about ideology. This is all about economic

performance, and we have seen a water industry that cannot provide that performance.

The structure of the industry has resulted in a situation in which it is all too easy, given that Scottish Water is an arm's-length organisation, for the minister to take the credit and for Scottish Water to take the blame. As a result, the resignation of Alan Alexander was inevitable. The minister should commit himself to reconsideration of the position that he has taken in recent years.

11:27

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** Our priority is to find an interim chair who can lead Scottish Water into the next phase of its development and ensure that it has a robust delivery plan for the business. Ministers recognise members' concerns that the time required to do that could hold back Scottish Water from making progress on issues such as development constraints. That is why we are moving swiftly to replace Alan Alexander.

I will address as many of the issues that members raised as I can in five minutes. Several members raised the issue of development constraints, about which Des McNulty asked some detailed questions, and I will try to respond to them.

We recognise the important role that Scottish Water plays in economic and other development. Where current infrastructure capacity is constraining communities, we are determined that those constraints should be overcome. One of the key tests of the delivery plan will be its attitude to alleviating development constraints.

Scottish Water, working within the delivery priorities that we set it, will work directly with local authority partners and others to anticipate future development needs and deliver new strategic capacity in response to those needs.

Scottish Water must produce an annual strategic capacity report, which will set out for the first time not only where strategic capacity exists and where it is constrained but its investment plans to address those constraints. Scottish Water will publish the first report by 1 April, and will publish reports annually thereafter. We believe that the publication of those reports will bring greater clarity and certainty to all parties. We have also required the establishment of a joint protocol between Scottish Water and SEPA to maximise the available infrastructure capacity across the country.

I will address the allegations made by Jim Mather and others. Jim Mather has yet again repeated the Cuthberts' suggestion that the

Executive should lend Scottish Water more money. We believe that doing so would not be sustainable; such an approach would mean that Scottish Water would keep adding to its debt without adding to the value of the infrastructure, and would lead to higher charges, with future customers paying for the service that today's customers receive.

The Water Industry Commission is the expert body tasked by Parliament with the economic regulation of Scottish Water. That is the model that Parliament agreed to. The commission is under a legal duty to decide how much funding—including customer charges and borrowing from the Executive—Scottish Water requires to deliver the objectives that ministers have set.

**Jim Mather:** I ask the minister a very simple question. Does she think that it is reasonable that, from 2002 to 2014, of every pound of capital expenditure, water charge payers will pay 75.5p and that, as a result, Scottish Water has a burgeoning corporation tax liability? Is that reasonable and prudent?

**Rhona Brankin:** I do not agree with that analysis. The Finance Committee looked into the matter at the end of 2003 and considered all the evidence, including that from the Cuthberts. It concluded that the financial sustainability of the industry is key, that the Cuthberts' allegations were wrong and that robust and transparent economic regulation has a crucial role to play in ensuring that Scottish Water becomes more efficient. If the choice is between the Water Industry Commission and the Finance Committee on the one hand and the Cuthberts on the other, I know which source I would choose.

It has been suggested that the public sector model is not working, and the Conservatives have said that we should privatise the water industry; we fundamentally disagree. The Conservatives have suggested that Scottish Water in its current form cannot be sustainable and efficient; we believe that that is nonsense.

In its first four years, Scottish Water has saved customers £3 million a week. It is concluding delivery of a capital investment programme of £1.8 billion, which has improved drinking water for customers and has contributed to a cleaner water environment. Despite the concerns that we have heard about development constraints, Scottish Water last year enabled more than 20,000 new homes to connect to the public system.

Looking forward, Scottish Water's average household charge in 2006-07 will be £287, compared with £294 in England and Wales. That means that our charges will rise by 2 per cent, including inflation, whereas those in England and Wales will rise by 5.5 per cent, including inflation.

Those charges will fund one of the largest ever investment programmes in the UK water industry. That programme will raise standards and provide new capacity.

The decisions that we have had to take recently have not been easy, but they have been necessary in the long-term interests of Scottish Water and the customers and communities that it serves. Failure to take those decisions now would have put at risk the delivery of the higher standards and increased capacity that we want. We were not prepared to take that risk. What is more, had we done so members would properly have criticised us. That is why the Executive's amendment to Rob Gibson's motion should be supported.

11:33

**Mr John Swinney (North Tayside) (SNP):** Not for the first time, I wish that Nora Radcliffe was on the Government front bench. If that were the case, she could enforce her suggestion that Jim Mather should be the chairman of Scottish Water. He could give it the decisive leadership that it requires. I am sure that he could manage to do that and sustain his responsibilities in Parliament as a first-class representative of the Highlands and Islands.

Why am I concerned about the issue and why have I welcomed the opportunity to debate it? I will give the minister a number of reasons why I am concerned. There are currently development constraints in my constituency in the village of Meigle and the towns of Alyth, Coupar Angus, Aberfeldy, Ballinluig, Blair Atholl, Dunkeld, Balbeggie, Bankfoot, Guildtown, Wolfhill, Kirriemuir, Maryton, Westmuir and Forfar. I will not mention the small villages and settlements that are also affected by development constraints—about 40 per cent of my constituency cannot sustain development because of development constraints. That is why I have pursued the issue so assiduously and why I asked the First Minister, on 1 December, what the consequences were of a £1 billion shortfall in what the Water Industry Commission said was the price tag on Scottish Water's proposals to deliver the ministerial objectives. On 1 December, the First Minister stated:

"We set clear objectives that are on target."

Here we are on 2 March and we are not on target. Scottish Water has neither a chairman nor a credible business plan for it to implement in the next four years.

My understanding is that the next business plan is to be submitted to the Government for agreement on 1 April. That is when the investment plan is supposed to be implemented—or when its

implementation is supposed to start. If a delay in the implementation of the plan is in prospect, what hope does that give to my constituents who want to undertake legitimate developments in their communities?

I return to the fact that the First Minister gave me an assurance on 1 December that the process was on target and on track. Several months later, we find out that that is far from the case. I plead with ministers to listen to members when we raise local issues about which we feel very concerned. When we do so, as MSPs, we are entitled to be given decent, straight and dependable answers. The First Minister's answer on 1 December could never be accused of that.

**Ross Finnie:** Mr Swinney and I will not agree on the matter, but I ask him to accept that the First Minister had no way of knowing on 1 December that Scottish Water's delivery plan would be found by its economic regulator not to meet its requirements in a number of material respects. Given the dialogue that was taking place between all the parties, there was no way that the First Minister could have anticipated that.

**Mr Swinney:** Instead of giving the stupid and nonsensical answer that he gave me on 1 December, the First Minister should have told the Parliament just that. If he had done so, I would not have objected. He did not do that; he gave me an answer in which he said:

"We set clear objectives that are on target."—[*Official Report*, 1 December 2005; c 21366.]

If the First Minister wants to be held in high regard in the Parliament, he should come to the chamber and give members proper answers—as the Minister for Environment and Rural Development has just done—and not the sort of rubbish that he gave us on 1 December, the object of which was to placate MSPs and brush aside the news agenda.

In today's debate, the minister tried to have it both ways. He said—and he has just repeated—that there was no way that the First Minister could have known on 1 December that the Water Industry Commission would find Scottish Water's plan so wanting. If I accept that—let us say for a moment that I do—why has the Water Industry Commission been involved in a negotiation with Scottish Water over the past few months, during which projects have been delayed or have been accepted only because people have said, "Well, we can delay this one but not that one". That was being done to ensure that a credible package would come forward. Perhaps the chairman of the Water Industry Commission knew that the determination that he delivered on 30 November could not be sustained.

If the view of the Water Industry Commission is the one that should prevail, why did not the Government simply enforce it on 30 November? That would have avoided the hiatus of the past number of weeks in which we have seen such slippage in the Scottish Water programme.

**Rhona Brankin:** Will the member take an intervention?

**Mr Swinney:** In a moment.

The Government tells us that economic growth is its top priority, yet 40 per cent of settlements in my constituency alone cannot be developed because of development constraints that are now subject to yet further delay.

In her winding-up speech, the deputy minister said that the Government was now on top of the situation. She said that it was undertaking a strategic assessment, the first report of which would be published in a couple of months' time. How many times does a member have to question the Executive on an issue in the Parliament before it wakes up to the fact that there is a massive problem out there? The most generous description of the minister and deputy minister's response to date is that it has been tardy.

**Rhona Brankin:** The member seems fundamentally to misunderstand the regulatory process that Parliament put in place.

Of course discussions between Scottish Water and the Water Industry Commission were taking place—they were taking place to allow Scottish Water to decide whether it would accept the Water Industry Commission's final determination or go to the Competition Commission. Scottish Water agreed with the Water Industry Commission's final determination and therefore decided not to go to the Competition Commission.

**Mr Swinney:** If the minister were to consider how the dialogue looks from my perspective, she would see that the Water Industry Commission was in dialogue with Scottish Water to try to come up with a flexible fix to a problem that could not, in the end, be sorted out. When the minister asked the hard question, the Water Industry Commission had to retreat to the position that it took in its determination of 30 November, which is a position that it was negotiating away with Scottish Water.

In his speech, Des McNulty said:

"There is a time for agreement on these issues."

Of course there is. The investment plans are due to start on 1 April 2006, yet a credible business plan is not in place. If that is not evidence of the Scottish Executive's poor stewardship of the water industry and of the failure of our present regulatory system, I do not know what evidence members require to prove our point.

**The Deputy Presiding Officer:** There is some conflicting intelligence on what we should do at this point about the problem that occurred earlier with the chamber roof. In order for the situation to be resolved, there will be a suspension.

*Meeting closed at 11:40.*





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