MEETING OF THE PARLIAMENT

Wednesday 5 November 2008

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Scottish Parliament

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

Time for Reflection

The Presiding Officer (Alex Fergusson): Good afternoon. As always on a Wednesday, the first item of business is time for reflection. Our leader for time for reflection today is the Reverend Donald Scott, who is chaplain of Her Majesty's Young Offenders Institution Polmont.

Rev Donald Scott (Chaplain, Her Majesty's Young Offenders Institution Polmont): Good afternoon. Conference speakers call this post-lunch slot the graveyard slot, so here is a quick quiz to establish how up to speed your brains are. Can you name at least two prison reformers? John Howard, of the Howard League for Penal Reform, might be known to some of you. In the 18th century he brought to Parliament two important acts that made incarceration more just and humane. Elizabeth Fry will be on the tips of some tongues for her work in combating poor prison conditions, and her face might be known to those who can find an English fiver in their wallets. Perhaps those of you who know something of Edinburgh's history—or, indeed, the history of the kirk—will be aware of Thomas Guthrie and his ragged schools for young destitute and criminal persons.

Googling those names and others that are associated with prison reform will reveal that most of the reformers were acting out of zeal that was based in their faith experiences. They read in the Bible that their Lord had an expectation that the poor would be cared for and the prisoners visited. The desperation of many people who were incarcerated in 18th and 19th century prisons moved those reformers and others to do something about the awful conditions.

As a prison chaplain, I witness daily the improving conditions for those who are held in Scottish prisons, although I wish that there were fewer of them. However, as a society, we can be grateful that our prisons estate is being made ready to meet the needs of the 21st century.

What exercises me to seek reform is what happens when people leave prison. For too many of the young men with whom I work at Polmont, the journey back into society is difficult and short. Their attempts to go straight are often frustrated by poor job prospects, limited accommodation choices and a lack of the peer and adult support that offer real alternatives to offending behaviour.

Today, the Jacob project is holding a briefing here at Holyrood. The project has been developed by people of faith to help young men who are leaving prison and re-entering the community. It aims to provide three simple things that we believe will prevent ex-offenders from reoffending: somewhere to stay, something to do and someone to talk to.

Please come and meet the project team this evening. Who knows? Maybe in years to come it will be your name that people think about when they are asked to name a great prison reformer.

Business Motion

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-2819, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme. I call Bruce Crawford to move the motion.

14:34

The Minister for Parliamentary Business (Bruce Crawford): I took the matter to the bureau on Tuesday past, so that a proper discussion could be had about when the financial resolution to the Damages (Asbestos-related Conditions) (Scotland) Bill should be debated. I am glad to say that the discussions that I had with business managers at that time were conducive.

Bill Aitken (Glasgow) (Con): Having considered this matter as fully as he can, is the minister in a position to reassure Parliament that this is the proper way of going forward and that, if we agree to this motion, the matter will receive the proper consideration that it deserves?

Bruce Crawford: I thank Bill Aitken very much for his intervention.

At the Parliamentary Bureau meeting, all business managers very properly raised a number of concerns about the financial resolution, particularly with regard to its impact on the insurance industry and the availability of appropriate information and figures from a variety of sources. We also had a very useful discussion about how, in the light of the Justice Committee's report, we could properly address the issues. Given Jackson Carlaw's very helpful amendment, business managers were happy to proceed in the way that we are going to this afternoon.

I hope that at decision time we can all agree to the financial resolution, which was well examined by the Justice Committee. The committee carried out a very useful examination of the legislation's complicated nature, questioned a lot of witnesses and produced a very considered report that contains a lot of detail. In such circumstances, we had no option but to proceed with the financial resolution.

Of course, the financial resolution does not necessarily need to be agreed to today to ensure that the bill completes stage 1 successfully—that can be done at a later date. However, whatever happens, we must ensure that the financial resolution is agreed to at some point, because otherwise it will be difficult to allow the bill to proceed from stage 1. [*Interruption.*] I hope that the whole Parliament is in a position to agree that the financial resolution is—if I guess correctly what is happening behind me—the best thing that has ever happened since sliced bread.

I hope that members understand why I have gone on at some length on the matter and that Parliament will be pleased to pass the business motion.

I move,

That the Parliament agrees the following revision to the programme of business for Wednesday 5 November 2008—

after

followed by	Stage 1 Debate: Damages (Asbestos-related Conditions) (Scotland) Bill

insert

followed by	Financial Resolution: Damages (Asbestos-related Conditions) (Scotland) Bill

The Presiding Officer: Amazingly, no member has asked to speak against the motion. [*Laughter.*]

Motion agreed to.

Damages (Asbestos-related Conditions) (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-2796, in the name of Fergus Ewing, on the Damages (Asbestos-related Conditions) (Scotland) Bill. I invite all members who wish to speak to press their request-to-speak buttons.

We had quite a lot of time available for the debate; now we just have a bit of time available. [*Laughter.*]

14:39

The Minister for Community Safety (Fergus Ewing): I thank my parliamentary colleague Mr Crawford, not least for his ingenuity, and I apologise for being late.

First, I thank Bill Aitken and the Justice Committee for its scrutiny of the Damages (Asbestos-related Conditions) (Scotland) Bill and its stage 1 report. I also thank everyone who gave oral and written evidence to the committee and those who provided the Government with information, particularly in response to our consultation on the partial regulatory impact assessment.

I know that several representatives of the campaign groups are in the gallery, anxiously awaiting the Scottish Parliament's decision on the general principles of the bill. I thank Tommy Gorman and Bob Dickie, who are two of the leading campaigners, for meeting me last week. The Cabinet Secretary for Justice also met campaigners from Clydeside Action on Asbestos.

The origins of the bill are well known. Pleural plaques have been regarded as actionable for more than 20 years, but a House of Lords judgment on 17 October last year ruled that, in the absence of symptoms, the condition does not give rise to a cause of action under the law of damages. That judgment is not binding in Scotland, but is highly persuasive. It has caused consternation among those who have been exposed to asbestos, and among their representatives, including MSPs. Indeed, concern appears to go wider than that. Let me quote the remarks of two of the judges who were involved in the judgment. Lord Scott said:

"the conclusion that none of the appellants … has a cause of action against his negligent employer strikes, for me at least, a somewhat discordant note."

Lord Hope said:

"I share the regret expressed by Smith LJ that the claimants, who are at risk of developing a harmful disease and have entirely genuine feelings of anxiety as to what they may face in the future, should be denied a remedy."

In sum, the judgment led to a palpable sense of injustice. When the application of the law appears to result in injustice, it is the duty of legislators to address the situation.

Against that background, there was a great deal of consensus when the issues were debated in Parliament last November. The cross-party concern that exists was reflected in a range of well-informed speeches. I hope to maintain a similar consensus today.

The purpose of the bill is straightforward: it is to keep things as they have effectively been for the past 20 years, and to ensure that people who have been negligently exposed to asbestos and have developed a symptomless asbestos-related condition continue to be able to raise a claim for damages in Scotland. The bill meets that policy objective while making the minimum incursion into the general law of delict.

Many people in Scotland will be unfamiliar with the term "pleural plaques". Pleural plaques are scarring of the pleura—membranes that surround the lungs. The Scottish Government understands and accepts that pleural plaques in themselves are generally not and do not become debilitating; they do not in themselves give rise to physical pain. However, for the reasons that I gave in my oral evidence to the Justice Committee, the Scottish Government's view is that pleural plaques are not a negligible injury. They are and ought to be seen as a material injury for the purposes of the law of delict. Pleural plaques that are associated with exposure to asbestos signify a greatly increased lifetime risk of developing mesothelioma and a small but significantly increased risk of developing bronchial carcinoma, compared with the risk for the general population. Indeed, an eminent medical expert who gave evidence to the House of Lords, Dr Robin Rudd, has said:

"People with pleural plaques who have been heavily exposed to asbestos at work have a risk of mesothelioma more than one thousand times greater than the general population."

Let us not forget that, in areas that are associated with Scotland's industrial past, people with pleural plaques are living alongside friends who also worked beside them and are witnessing the terrible suffering of those who have contracted serious asbestos-related conditions, one of which is mesothelioma. That can cause genuine and understandable anxiety that they will suffer the same fate. We cannot ignore that or turn our backs on those who in the past contributed to our nation's wealth. Therefore, we intend to do two things: we intend to explore options for alleviating anxiety by improved provision of information and

advice; and, through the bill, we intend to preserve the right to seek redress from employers or the insurers of employers whose negligent breach of a duty of care led to asbestos exposure and consequent scarring of the membrane around the employee's lungs.

Employers and insurers have registered concern about the costs that they may incur and the implications for our economic competitiveness. We understand that concern, but we believe that it is seriously exaggerated. To give one example of that exaggeration, the Association of British Insurers suggested that 30 per cent of United Kingdom asbestos exposure and asbestos-related disease may occur in Scotland. However, the ABI has not yet given us any evidential basis for that assertion, whereas we were able to provide the committee with clear evidence from the Health and Safety Executive demonstrating that the level is closer to 10 per cent. We know that successful economies require a competitive business environment. We are working to foster such an environment, but we believe that economic growth on its own does not give a complete picture of the success of a nation. We should balance the need for business-friendly policies with actions that protect the people who contribute to our nation's wealth. That is partly what we mean by the economy being sustainable.

Given what I have said, it should come as no surprise that, as well as warmly welcoming the committee's endorsement of our objectives and of the principles of the bill, I agree with the committee that the bill's financial implications must be understood fully. Specifically, I appreciate why there was a recommendation that, ahead of stage 3, the Scottish Government should revisit the estimates that were given in our financial memorandum. We are doing that. We are already seeking further information from insurers and from the actuarial profession's United Kingdom asbestos working party. We aim to analyse any new information carefully and to report the results to Parliament in good time. On that basis, I see no need to resist Jackson Carlaw's amendment. I should say that the actuarial profession itself has admitted that

"it is difficult to make a sensible estimate".

Therefore, it is unlikely that any amount of work would lead to absolute clarity and unanimity. For now, my view is that our financial memorandum is as clear and robust as it could have been, in the circumstances.

One aspect on which I have less confidence is the UK Government's position on the pleural plaques liabilities of its departments. The UK Government suggests—although so far it declines to tell us definitely—that it could invoke its statement of funding policy and, in effect, make the Scottish Government pay for its liabilities. In a debate about principles, I do not propose to dwell on that aspect. It is certainly no part of my agenda to pick a fight with the UK Government on this sensitive topic.

Richard Baker (North East Scotland) (Lab): Does the minister accept that the UK Government has not ruled out a discussion, at the very least, on the issue with the Scottish Government, and that constructive dialogue between the Scottish Government and Westminster in the next few weeks should be a priority?

Fergus Ewing: Yes. I welcome that intervention and the approach that it signifies. I will be happy to engage fully with all parties on the issue so that we can—as I hope—achieve consensus among all parties that the UK Government should continue to meet its responsibilities in the future, as it has done in the past.

I hope that all members will follow the recommendation of the Government and the committee and support what will be a short but vital piece of legislation that will provide justice to all those who have been negligently exposed to asbestos and who go on to develop a related condition that, although symptomless in general medical terms, is nevertheless not negligible in human terms.

I move,

That the Parliament agrees to the general principles of the Damages (Asbestos-related Conditions) (Scotland) Bill.

The Presiding Officer: I call Jackson Carlaw to speak to and move amendment S3M-2796.1. Mr Carlaw, you have up to 11 minutes.

14:49

Jackson Carlaw (West of Scotland) (Con): I am in some consternation, Presiding Officer, having received just before 1.30pm a call—which, on any other day, would have been welcomed whole-heartedly—to advise me that I would have 11 minutes to speak in the debate, which dreaded fact you have just confirmed. My first duty is therefore to serve notice that I am unlikely to avail myself of the whole 11 minutes. However, I suspect that my discomfort is as nothing to that which was painfully experienced by Bruce Crawford just a moment ago. I commend him on his unexpected masterclass on the techniques and talents that are required to give classic spin its head.

I will start by beginning at the end. Almost the first consideration of members in this third session of the Scottish Parliament was to secure the support of all parties and a willing Scottish Government to ensure that the only drugs that are available—or that are likely to be available—to

alleviate in any way the suffering of people who are afflicted with the terminal asbestos-related condition mesothelioma continued to be available, whatever the deliberations of the National Institute for Health and Clinical Excellence elsewhere. That objective was clear-cut and was, without doubt, an early example to me of how parties working together in the Scottish Parliament can act decisively, and the objective was achieved. That came after the extraordinary partnership in previous parliamentary sessions, in which I was not a participant, and which again drew support from all sides of the chamber, leading to the earlier legislation, the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007.

What goes around comes around, for it seems that our business in this matter is never quite concluded. Following the decision of the House of Lords in October last year, this Parliament was rightly afforded the opportunity—in a members' business debate that was secured by Stuart McMillan—to discuss the implications that, although they might not be binding in Scotland, are nonetheless persuasive, with the seemingly inevitable consequences already resulting. That earlier debate gave voice to our indignation at the consequential injustices that arose from the ruling.

What was again striking on that occasion was the cross-party—indeed all-party—dismay at the course of events. It is worth re-reading the many speeches in that specially extended debate. They are a testament to the acute suffering of individuals, to the frustration that many have felt in the face of obduracy, and to the unswerving commitment of organisations such as Clydeside Action on Asbestos and individuals in the community and this Parliament since 1999 and before then. I, too, join the minister in welcoming interested representatives to the chamber today. Not one speech in that debate was made without obvious feeling. I expect that several members who spoke then will also do so today. It might reasonably be observed on second reading that, in the wake of the perceived shenanigans at that point, passions were naturally aroused. That is the case not least because of the many examples—to which members can bear witness—of impacts on the lives of too many families of the painful suffering and death of those who have been unfortunate enough to endure mesothelioma, the seemingly random nature of its development and the understandable anxiety that is caused in anyone who is diagnosed as having pleural plaques.

I was struck by Gil Paterson's reflection in that previous debate on his experiences as an employer in the Scottish retail motor industry. Such was my experience in a Glasgow-based family concern that was established in the early 1920s and which operated for 80 years thereafter in the burgeoning motor industry, from the earliest Ford products, through the war effort, to the development of the heaviest of commercial vehicles and on to the explosion of the individual retail market.

On a previous occasion some time ago, the minister referred to my "car-selling days". In truth, the industry is far more multifaceted than that: we sold motor products of all shapes, sizes and applications. We supplied parts, routinely serviced cars, vans and trucks and we repaired badly damaged products. We took care and pride in the welfare of our employees and we acted on the best practice and advice. However, having traded continuously on a site that was established in the early 1920s, we found that time proved that the industrial knowledge of those early days was ignorant of many things that were learned later; for example, lead in petrol, the dangers of prolonged exposure to fumes and the asbestos time bomb.

However, like Gil Paterson, whatever efforts we made as employers were underpinned by comprehensive insurance to ensure that any unforeseen injuries that occurred saw the needs of our people properly met whenever that proved to be necessary. We certainly did not expect our insurers to abdicate their responsibility or, worse still, having met claims in a fashion or by some precedent for many years, to then set that practice aside in a bloodier and less honourable age. What particularly irked me in our earlier debate was the seeming eye to a chance of the Johnston v NEI International Combustion Ltd case and the judgment that brought to an end established grounds for compensatory claims.

That is not to ignore the technical concerns of some about precedents that the bill might set. However, neither would it have been appropriate to allow those concerns to have derailed its progress and, in any event, addressed as they are, we agree with the general principles of the bill. In the amendment that I will move, we provide Parliament with the opportunity to give voice, if the amendment is agreed to, to the concerns that the Justice Committee noted about the financial memorandum.

What we seek to achieve with our amendment is reasonable but crucial; simply put, it is the securing by this Parliament of the widest and best-informed judgments and estimates as to what the financial consequences of the bill might prove to be.

Mr Swinney is not known for being louche with his cash, or rather with the Government's cash—or, quite possibly, with both. I am not sure whether Fergus Ewing is equally tight. However, it seems reasonable for the Parliament to avoid standing accused of producing damning, wild and self-serving estimates without having to hand—subject

to the considerable difficulties involved—the best possible estimates of our own.

For the moment, the Justice Committee appears to believe that the more likely costs rest somewhere in between the hyperbole of some representations that were made to the committee by the insurance industry, the even greater speculation in some media and the smaller Government calculation.

Given that Westminster is not cracking a whip of its own to take a principled stand, it is surely appropriate to pursue the committee's view that the potential cost to the Scottish consolidated fund should be clear, and to establish whether UK departments might be inclined to invoke the statement of funding policy, which is the explicit requirement to fund any costs arising to UK departments from Scotland-only legislation. I anticipate that that will be amply demonstrated by Bill Aitken when he talks about the Justice Committee's report. As he will illustrate, many of the workplaces where exposure to asbestos was prevalent were in the public sector. Potential consequential claims on them following the passage of the bill cannot be based on wishful thinking. I welcome the minister's measured acceptance and recognition of that possibility and his willingness to discuss matters reasonably and as widely as possible.

It is arguable that, by creating a clearly defined legal right to compensation, rather than using custom and practice, the legislation might in all probability lead to an increase in the numbers that are diagnosed and a further increase in the number of compensatory claims. Both the process of diagnosis and a potential subsequent claim will have an incremental cost attached. Surely we must not allow ourselves to be in ignorance of the best possible evidence on these matters prior to stage 3. If we are to match our moral ambition—as is, I believe, our collective intent—with our duty to act responsibly, we should understand properly the likely costs. I welcome the minister's willingness to do so.

I turn now not to technicalities but to the issue at hand. Others will no doubt set out the medical facts of the condition of pleural plaques. I will confine myself to acknowledging that they are asymptomatic in character. Having pleural plaques is not a guarantee that one will develop asbestosis or mesothelioma, but it is a prerequisite and, as the minister stated, it increases the chances of that by 1,000 times. As such, those who are identified as having pleural plaques will inevitably be anxious in the face of the certainty of a grim prognosis should either condition follow.

I welcome the recognition that the we hope unique circumstances surrounding pleural plaques will be properly restricted in the bill. We can therefore accept that this exceptional bill is not a fresh precedent to be exploited. That treads on legal complexities that others will, I imagine, discuss with more authority, but the restriction sets aside the one potential objection to our proceeding with the bill.

Throughout the Parliament there is a determination to act. We can all share that ambition, but we should also all share a collective duty to ensure that all the consequences of the legislation that we might approve are fully understood—or, at least, that we understand them to the best of our ability. I call on the Scottish Government to ensure that that is so and I invite the Parliament to support the amendment in my name.

I move amendment S3M-2796.1, to insert at end:

"but, in so doing, notes the terms of the Justice Committee's Stage 1 report, in particular the concerns expressed with regard to the Financial Memorandum, and calls on the Scottish Government to provide the Parliament with a more detailed analysis of the likely cost implications, from such information as is available to or can be obtained by the Scottish Government, prior to the Bill being considered at Stage 3."

The Presiding Officer: I said at the beginning of the debate that we have a little time in hand, so I am happy to offer at least the next three speakers up to 10 minutes each. I invite Bill Aitken to speak on behalf of the Justice Committee and remind him that he has up to 10 minutes.

14:58

Bill Aitken (Glasgow) (Con): I reiterate my declaration of interests, which is recorded in the Justice Committee's minute of 9 September. I also reiterate the commitment that I gave at that time: that I would not be inhibited in any respect in acting as I consider fit.

I know that members will have read the Justice Committee's report, but I will in any case do them the courtesy of expanding briefly on the history of the matter at hand.

The genesis of today's debate is the case of Johnston v NEI International Combustion Ltd. For many years, people who suffered from the condition known as pleural plaques were able to make claims on the ground that there had been negligent exposure to asbestos in the course of their employment. They were not high-value claims, but insurers, influenced by the rise in settlements and in associated legal costs in particular, eventually resisted them.

After sundry procedure in the English courts, the House of Lords determined in October last year that sufferers would no longer be able to institute actions for compensation in respect of such

claims. As has already been said, the House of Lords decision is not binding in Scotland, but it is persuasive, and at least one Court of Session action—Helen Wright v Stoddard International plc—has failed as a result of the application of the Lords' ruling.

The matter first came before the Parliament by means of a members' business debate introduced by Stuart McMillan. Feelings ran high, which was understandable although, as events were to prove, perhaps a little unwise. For my own part, I perhaps acted with unusual prescience in indicating that any further parliamentary process should be based on a clear, cool and forensic examination of the facts. In any event, the Government announced an intention to legislate in November last year and within two months issued a regulatory impact assessment on the potential impact on industry employers and Government departments.

The Government's response was speedy and humane, but although we can all have 20:20 vision in hindsight, the committee is critical of the truncated consultation process that was followed. That view is shared by, for example, the Law Society of Scotland, and there can be little doubt that a more measured approach to the consultation process might have enabled the Government and the committee to deal more adequately with problems that have subsequently come to light. No one doubts the Government's good intentions in this matter, but if a fuller consultation process had been followed a number of the complex issues that have come to the committee's attention would have been brought out much earlier.

In any event, the committee moved to consider evidence from a variety of witnesses, including the Association of British Insurers, the Forum of Insurance Lawyers, academics, medical professionals and representatives of pleural plaques sufferers. We also heard from the Scottish Government and, in particular, from Fergus Ewing, the Minister for Community Safety. The committee records its appreciation and thanks those who gave evidence.

The evidence enabled the committee to establish the nature of the condition known as pleural plaques. As Mr Ewing said, pleural plaques are a scarring of the pleura or lung tissue caused by exposure to asbestos fibres. One great tragedy of post-war industrial Britain has been the impact of asbestos-related conditions, which have resulted in claims that, in total, have been settled for billions of pounds but, more important, in considerable ill-health, suffering, shortened life expectancy and, frequently, painful death. Against that background, it is hardly surprising that this is such an evocative issue.

Pleural plaques are, however, an asymptomatic condition; someone can have pleural plaques all their life and not know it. Most sufferers are diagnosed following medical exploration of other conditions and injuries. The condition does not necessarily lead to anything more sinister. It is not that pleural plaques will result in the sufferer's developing asbestosis or mesothelioma, but equally one cannot develop such critical illnesses without having pleural plaques. The committee had little difficulty accepting that people who are diagnosed as having pleural plaques will suffer anxiety and concern.

The legal position is that, to make a recovery in accordance with the law of tort, it is necessary to demonstrate loss or injury. In the simplest example, someone at work who falls off a faulty ladder and breaks his leg can demonstrate an unsafe system of work and personal injury and therefore make a successful claim. The issue with pleural plaques is different, and the committee concluded that changing the law would undoubtedly change the law of tort—albeit on this limited basis only.

Such a change cannot be undertaken lightly, and it is important to stress that, in doing so in this case, we act on the basis that the wording in the bill is restricted to asbestos-related conditions of the type in question. The bill is not the thin end of the wedge in respect of asymptomatic conditions generally, and the rationale is simply to return the law to the position that applied prior to the Johnston determination. It also recognises the peculiar, if not unique, circumstances surrounding asbestos-related conditions in Scotland.

The most complex aspect of the matter, and the one that caused the committee the most concern, is finance. The committee had difficulty accepting the evidence that the insurers provided. In our view, they made an overestimation. We also had serious concerns about the adequacy of the Government's financial memorandum. A number of figures are still flying around. Some cannot possibly be accurate; others may be.

We have to consider the potential impact on the Scottish consolidated fund. For example, one figure that is flying around is that the total UK cost of claims could be £4.8 billion. I cannot say whether that figure is right or wrong. The insurance industry gave evidence to the effect that 30 per cent of the potential liability could apply in Scotland. I do not accept that, but at the same time and bearing in mind the profile of Scottish industry, I accept that we cannot simply apply a pro rata calculation on the basis of population.

We also have to remember that many of the workplaces in which people were exposed to asbestos were in the public sector. Yards on the upper Clyde were nationalised in the 1970s and

remained in public ownership until the early 1980s. Rosyth and the former Yarrow shipyard in Glasgow—the latter of which Glaswegians will remember as the Navy yard—were always in the public sector. We must also remember that council and health board direct works departments carried out work that would have led to asbestos exposure. That has to be borne firmly in mind.

The statement of funding policy makes it clear that where Scotland increases the liabilities, the Westminster Government can look to Scotland to meet those liabilities from the Scottish consolidated fund.

Robert Brown (Glasgow) (LD): Bill Aitken may be aware of the figures, which are worth bringing into the debate. Between 1981 and 2005, 25,716 people died of mesothelioma in Great Britain, of whom 2,617 were in Scotland. The figures for other asbestos-related cases over the years are similar. Does he agree that that suggests that the number of cases in Scottish is proportionate to the population?

Bill Aitken: I remain uneasy, but the extent of that unease is not considerable. The pro rata calculation is 10 per cent; taking account of the industry profile, my calculation is that a figure of 12.5 per cent would be more accurate. The argument remains that we have to recognise that public sector involvement in claims will inevitably be higher in Scotland than in other parts of the UK. It would be unfortunate if our efforts to attempt to do something to assist pleural plaque sufferers impacted elsewhere.

We have to appreciate that the impact of a substantial call on funds to pay for claims could be considerable. I am pleased that the minister has acknowledged that it is essential that we obtain the fullest possible further information. If the matter is not reconciled, it is difficult to see how the Parliament can proceed as we wish to proceed at stage 3.

Although it is not for me or the committee to direct the Government down any particular route of inquiry, it should commission actuarial research to ascertain the likely number of claims and the impact not only on the public sector but on the private sector. We also have to consider the impact on the national health service of a significant increase in demand for diagnostic checks.

It is essential that the Westminster Government make a statement of intent on its stance on the application of the statement of funding policy. I have written to ministers down south on several occasions—the matter is now on the public record—as did the convener of the Finance Committee but, thus far, the Government down south has not clarified the position. I say in the strongest possible terms that it is vital that we have clarification under that heading before we pursue the matter further.

Given the history of asbestos injuries to which I have referred, there is considerable and unanimous sympathy for pleural plaques sufferers. We want to help, but we cannot do so on the basis of a blank cheque. There is considerable unease about the potential liabilities involved and the impact that they would have on public services, apart from anything else. If the bill is to proceed, as we hope it will, the Government must provide the appropriate reassurance and remove that unease.

The Presiding Officer: As members will realise, 10 minutes is a fairly elastic description of the time that is available to speakers in the debate. I call Richard Baker, who also has an elastic 10 minutes.

15:10

Richard Baker (North East Scotland) (Lab): Thank you, Presiding Officer—I will try to be as elastic as I can.

The Parliament has a proud record of standing up for people in Scotland whose lives have been affected by exposure to asbestos at their workplace. On a number of occasions, we have heard about the devastating impact that that can have on individuals and families. During consideration of the bill, we have heard about the stress and anxiety that inevitably follows a diagnosis of pleural plaques. I welcome the fact that ministers have introduced the Damages (Asbestos-related Conditions) (Scotland) Bill; it will come as no surprise that today the bill will receive Labour members' support.

In the previous session, my colleague Des McNulty led a debate on the impact of asbestos-related diseases. He proposed a member's bill on compensation for the relatives of sufferers of mesothelioma, which prompted the Scottish Executive at that time to introduce the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill and to ensure its rapid passage through Parliament, steered by Cathy Jamieson and Hugh Henry. The Damages (Asbestos-related Conditions) (Scotland) Bill continues that important work and is a hugely important step forward. As members have indicated, the bill arises from cross-party concern about the impact of the House of Lords ruling of 17 October last year.

In a debate led by Stuart McMillan, members from all parties expressed concern about the impact of the Lords' decision, which overturned the established position of 20 years that, where there has been wrongful exposure, individuals diagnosed with pleural plaques can pursue an

action. I am pleased that that cross-party approach has continued in the Justice Committee. The committee is to be congratulated on its careful scrutiny of the bill, which involved looking at a range of aspects of the bill's impact and informed its recommendation to Parliament that the bill is a proportionate response to the House of Lords judgment.

The committee received compelling evidence on the impact of pleural plaques from Clydeside Action on Asbestos and from my trade union, Unite, which has campaigned long and hard on the issue. In its submission, Unite referred to the experience of one of its members in Stonehaven, in my region of the North East, who said:

"Pleural Plaques is a time-bomb. The Doctors could call me tomorrow to tell me I have mesothelioma and sufferers have to live with that prospect every minute of every day. It's undoubtedly deteriorated my quality of life ... I'm more worried, anxious, lethargic .... my health is poorer."

With such a toll on individuals, it seems incredible that it should be suggested that those with responsibility should walk away. Although there has been cross-party support for the bill, there was not unanimous support in the evidence that was submitted to the committee. In particular, the Association of British Insurers has opposed the bill; it has made the case that pleural plaques do not lead directly to mesothelioma—the same case that was made in the House of Lords. Even if that is accepted, there is still the fact of the scarring that results from exposure to asbestos; in those cases, it must be proven that there was wrongful exposure.

I welcome the minister's comments on education about the impact of pleural plaques, but the argument that education, not compensation, is the answer does not wash. It is not enough to say to someone who suffers the kind of mental anguish that is described by the member of Unite whom I cited that their pleural plaques will probably not lead to mesothelioma, when so many sufferers have seen many former colleagues suffer the terrible fate of developing that dreadful and deadly disease. The minister referred to the evidence of Dr Rudd, who said that the risk of developing mesothelioma by those who have pleural plaques because of exposure to asbestos is 1,000 times greater than it would otherwise be.

I am surprised that insurers have challenged the bill's legal competence, particularly given the Law Society of Scotland's submission in support of it, in which it stated that it was competent for the Scottish Parliament to amend the law in such a way and that there are examples of precedent.

The main area of contention, to which the convener of the Justice Committee has just referred, is cost. That is why we have a reasoned amendment to the financial memorandum; it reflects the committee's concerns about the greatly differing cost estimates that the Scottish Government and the insurers provided. To be frank, some of the insurers' more spectacular estimates seem wild in light of the evidence from Thompsons Solicitors, which has long experience of bringing such cases. The amendment reflects the fact that ministers can provide only such further financial information as it is possible for them to obtain. That point is particularly pertinent when it comes to evidence to support the higher cost estimates. In any event, I do not believe that those estimates will bear much further scrutiny and I am confident that, when we debate the bill at stage 3, we will have enough information to make the right decision and that the bill will be passed.

I note that although it is still necessary to resolve whether the UK Government will make payments or whether UK ministers will invoke the statement of funding policy, the UK Government has in no way closed the door to discussion. I hope that further constructive dialogue on the issue is possible between the Scottish Government and the UK Government. The latter has been consulting to find its own way forward but the Scottish Parliament needs clarity because we in Scotland have agreed that the bill provides the best way for us to ensure that, despite the House of Lords judgment, sufferers of pleural plaques can bring cases.

Whatever debates we have had and whatever further information we receive on the financial memorandum, I am hopeful and confident that parliamentary consensus will continue throughout the bill's progress through Parliament, to its conclusion at stage 3. If victims of pleural plaques have been wrongfully exposed to asbestos, it is important that they are recompensed by the people who are responsible. It is fair and reasonable that they should be, particularly given the emotional trauma that a diagnosis of pleural plaques brings with it—I am sure that many people who are in the public gallery would be able to give us personal evidence of that. That is why the Parliament should once more act to support those who are affected by exposure to asbestos, why it should build on what it has already achieved on that important matter of justice and why the Labour Party will support the bill today.

15:18

Robert Brown (Glasgow) (LD): In these days of economic and financial crisis, it is easy to downplay the legacy of the industrial diseases that still plague Scotland and blight the lives of many people as an unwelcome aftermath of the days when manufacturing industry, rather than financial services, were the identifying mark of Scotland's economic success. Exposure to asbestos—the

fear, damage and loss that go with it—is at the top of the list. It is a curse that can strike individuals, families and communities 40 years after they were exposed.

Asbestos-related diseases are characterised by the way in which they strike at whole communities that have worked in shipbuilding, construction or engineering. In those industries, brother has followed brother and son has followed father in contracting asbestos-related diseases; wives and girlfriends who washed overalls have been exposed; employers' negligence or breach of statutory duty is arguably more culpable than in any other branch of industry; and the main disease—mesothelioma—is nastier and more certainly terminal than almost every other.

The consequences of asbestos exposure include pleural plaques, which are the subject of the debate. The condition is one of several that are dealt with in this limited bill. It is asymptomatic and, according to the medical evidence, does not cause mesothelioma, but, in the words of Unite, it is the calling card for the development of more serious and terminal asbestos-related illness. That is why the Justice Committee found that the risk of people with pleural plaques developing mesothelioma is many times greater than that in the general population and that the resultant effect on people's lifestyle and sense of wellbeing is substantial and adverse. It is also why the committee was not persuaded by the suggestion from eminent medical sources that the anxiety felt by those diagnosed with pleural plaques can be allayed by appropriate medical explanations. Too many people in too many communities, particularly in Glasgow and the west of Scotland, have had sad family experiences to the contrary.

As a lawyer, I know that hard cases make bad law and I am interested in the logic and coherence of Scots law, developed as it has been from case to case over many years. I do not have any doubt that the decision of the House of Lords in Johnston v NEI International Combustion Ltd, delivered just over a year ago, was legally correct. The judges said, on the basis of agreed medical evidence—that is an important point—that pleural plaques cause no symptoms and impair no function. They cause no other diseases and do not reduce life expectancy. They do not therefore amount to an injury or to compensatable harm as defined by the law as it stands.

I believe, however, that justice was not represented by a decision that flew in the face of real experience and overturned the accepted and commonsense position that had endured for 20 years: that pleural plaques were compensatable. I was persuaded by, and supported, the campaign to overturn the Johnston decision, and I welcome the Scottish Government's decision to legislate on the issue. In passing, I pay tribute to the extensive work done on the issue by Clydeside Action on Asbestos and other campaign groups.

I want to address three consequential matters, some of which have been touched on and others of which have not. The first is whether the bill is consistent with the usual principles of the law of delict. The convener of the Justice Committee, Bill Aitken, dealt with that in part. The committee took the view that it was a departure from the normal law, but one that was narrowly defined, had no effect on other conditions and was proportionate and just. My view is reinforced by the fact that the bill is supported by the Law Society of Scotland and the Faculty of Advocates, although not of course by all solicitors or all advocates. I mention in passing that although anxiety by itself is not normally enough to establish harm and causation, once harm has been established, anxiety sounds in damages. Accordingly, the legal point might be viewed as fairly narrow and technical in any event.

The second point is to press the minister further on whether the Lords' decision and their reasoning as amended by the bill has any effect on the likely judicial approach to valuing the quantum of damages. We do not want to amend the right to damages in this instance, only to have a further dispute on the level of damages that would result and the amount of damages appealed again through the system. We had some engagement on that in committee, but the minister might want to give further reassurance on the matter. The bill gives no guidance on it and I am not convinced that it establishes a clear right to damages at the previously accepted level or, indeed, at any particular level. I hope that the minister will look closely at that before stage 2.

The third point is the financial consequences of the bill, which is the biggie in this debate. As Bill Aitken mentioned, matters were not helped by the inadequate consultation process that was undertaken in the lead-up to the bill. Some issues might have been flushed out and others might have been dealt with more satisfactorily at an earlier stage. The committee found the financial area the most difficult one, and it was not satisfied by the evidence that we received from the Scottish Government, the claimants' representatives and those of the insurance industry that their figures were an adequate representation of the bill's likely costs.

Our worry is heightened by the possibility, which as we have heard has still not been clarified, that the UK Government might invoke the statement of funding policy because of the perceived financial effects on Government liabilities arising from the defence industry and others. It would be unsatisfactory to pass legislation without having greater clarity on those issues, which also more

directly affect the finances of the Scottish Government and local authorities.

I did not previously realise—I am indebted to the ABI for the information—that the Johnston case was originally brought or stimulated as a test case by lawyers acting for the Department of Trade and Industry, which of course carries the residual liabilities for actions and liabilities for former nationalised industries. As we have heard, they are a significant component of the industry liability in this regard. The DTI was joined only later by the insurers, who no doubt saw some advantage to their finances in this matter.

We have had a full assessment by the UK Government of its prediction, which differs greatly from that of the Scottish ministers, but in the light of the information about the origin of the Johnston case there is perhaps some qualification to be made as to the independence or otherwise of the UK Government in its assessment of this matter.

My view is that of the committee, which is that the costs of the bill are likely to be greater than is suggested in the financial memorandum. Settlement levels might be lower than they have been, there seems no need for legal costs to be as high as the suggested £8,000 when we have, in effect, an agreed basis for settlement of suitable cases, and the Law Society of Scotland has provided information on the scale of settlement for extrajudicial fees that are applicable in such cases, but I do not accept the wilder predictions of the insurance industry. Although the evidence points to the Scottish share of UK claims being roughly proportionate to the population rather than the higher proportion that has been suggested—I agree entirely with Fergus Ewing on that point—it is credible that a settled legal situation might lead to a rise in the number of claims, as others have argued.

I do not accept the proposition, advanced by the insurance industry, that the bill infringes its property rights. Undoubtedly the industry's bill for asbestos claims will be bigger than it would have been without it, but the costs will be essentially the same as they would have been without the House of Lords legal judgment, from which the industry was happy enough to claim savings.

In my view there will be no difference in principle if this Parliament sees fit to restore the previous position through legislation, but it is vital that the minister re-examines the available evidence and makes a comprehensive attempt to assess realistically the effects of the bill in the light of all the figures that have been exposed by the committee's inquiry and beyond. There may be some merit in the convener's suggestion that actuarial inquiry should be made. If necessary, the minister should recast the financial memorandum, although that is in a sense a subsidiary matter. I welcome his reassurances, but I want to make it clear that he would make a serious mistake if he believed that the financial memorandum is just a cosmetic exercise. It is not; the financial memorandum is a proper financial exercise that is fundamental to the work and duty of the Parliament.

This is a just bill. It will right a significant wrong. It will bring justice to many people who have legitimate worry, anxiety and impairment of wellbeing—substantial harm in anyone's language—as a result of significant negligent or wrongful acts of omission by their former employers. The Government must do its job properly, too, by founding this act of justice on a solid and defensible financial base. In passing the bill at stage 1, the Parliament must know that it will have a clear idea before stage 3 of how much in broad terms the bill will cost private industry and the public purse at all levels.

I have great pleasure in supporting the general principles of the bill.

The Deputy Presiding Officer (Trish Godman): We move to open debate.

15:27

Stuart McMillan (West of Scotland) (SNP): I am happy to take part in the debate both as a member of the Justice Committee and as the member whose motion on pleural plaques was considered in the members' business debate last year to which others have referred. Coincidentally, today's debate takes place in the same week one year on from that members' business debate, which was attended by 24 MSPs of all parties. I was grateful for their support and for the speeches that they made. The fact that the debate had to be extended because so many members wanted to contribute shows the importance of the issue to the Parliament.

I am delighted that the Scottish Government introduced the bill after listening to the arguments that were put forward by campaign groups such as Clydeside Action on Asbestos, whose members, along with other campaigners, I welcome to the public gallery today. Their campaign for justice has been on the stocks for some time because they were aware of the impending outcome of the House of Lords ruling. The ruling was issued on 17 October last year, but targeted campaigning had taken place in preparation for that decision which, unfortunately, favoured the insurance companies over sufferers from pleural plaques.

I have had meetings with Clydeside Action on Asbestos on several occasions. At one of those meetings, I agreed with colleagues Gil Paterson MSP, Bill Kidd MSP and Councillor Kenny McLaren to take the issue to last year's Scottish

National Party conference. At the conference, I proposed a resolution—it was seconded by Gil Paterson and passed by acclaim—to highlight to the Scottish Government that the SNP is full-square behind justice for pleural plaques sufferers.

The bill will do something remarkable, in that it will not effect change but keep the status quo. It does not ask for a change in the law. For 20 years, pleural plaques sufferers were able to claim for damages, but the insurance companies fought that in the courts. Unfortunately, last year, the House of Lords agreed with the insurance companies and they won their case. That prevented others from claiming damages. Although the House of Lords decision is not binding in Scotland, it is persuasive enough that it will be adhered to, as has already been the case.

I am delighted that Kenny MacAskill and Fergus Ewing have listened to the arguments and agree that justice should be upheld. For that, they will always have my gratitude.

The stage 1 report is unequivocal in its support of the general principles of the bill; that is stated in paragraphs 153 and 155. Some issues still need to be addressed, but the committee was unanimous in its support for the principle that those who suffer from pleural plaques should have access to justice. The written and verbal evidence that the committee received was of great assistance. It also provided a confusing picture at times, particularly when it came to the financial aspects. I do not think that I am speaking out of turn to say that there was a heavy dose of scepticism when the committee was presented with financial evidence from the insurance industry about the projected costs of the bill. That was probably also the case with the information that we got from the United Kingdom Ministry of Justice.

There were also questions about how accurate an estimate the financial memorandum to the bill is—if there can be such a thing as an accurate estimate. The committee has tasked the Scottish Government with providing further clarification on the financial memorandum, and that has already been discussed today. It is only right and proper that any legislation that passes through this or any other Parliament should have information about its costs that is as accurate as possible. Earlier, the minister said that the Government is looking into that in more detail and will provide more information in due course. I look forward to seeing that.

I think that the statement of funding policy will continue to be debated between the Scottish Government and the UK Government, judging by the correspondence to date. Unfortunately, that has some way to run before the issue is fully resolved.

The committee also commented on the consultation process that the Scottish Government used; Bill Aitken mentioned that. Our recommendations about the consultation are in paragraphs 15, 16 and 17. There is no doubt that consultation on any bill is vital, and this bill is no different. However, some of the consultation responses are disappointing. I was disappointed that North Lanarkshire Council and Angus Council did not back the proposals.

During the evidence session on 2 September, it was said that

"plaques are a good thing and do not cause harm."—[*Official Report*, *Justice Committee*, 2 September 2008; c 1025.]

The thud of committee members' jaws hitting the table was thunderous. The witness continued with a further explanation of that statement, but by that time the genie was out of the bottle. Pleural plaques are markers of exposure to asbestos and they are scarring on the pleura. Furthermore, they signify an increased risk of developing mesothelioma, as we have already heard today. That does not tell me that pleural plaques are "a good thing".

Asbestos-related illnesses affect the whole of Scotland. They affect people who have worked in heavy industry such as shipbuilding on the Clyde and house building throughout the country. However, they also affect family members who have inhaled asbestos particles from overalls. I have met a lady who suffers from pleural plaques because of that.

I welcome the bill and the Justice Committee's report on the bill. The Parliament has a chance to ensure that people in Scotland have a right to justice, and the Scottish Government should be commended for that. I hope that the UK Government gets on board and follows the lead to ensure justice down south as well. I support the bill and look forward to its becoming law at some point in the future.

Finally, once again, I commend the campaigners, including Clydeside Action on Asbestos, for their tireless work in highlighting asbestos-related injustices, and I commend the Scottish Government for introducing the bill.

15:34

Des McNulty (Clydebank and Milngavie) (Lab): As the member who represents Clydebank, the issue of asbestos has been with me since my first election. In fact, my predecessor, Tony Worthington, who was the MP for Clydebank, spent many years taking up such issues on behalf of the Clydebank Asbestos Group and Clydeside Action on Asbestos. Those issues were generated

by the fact that the insurance industry kept trying to find new ways of taking away compensation.

That is the reality of the history of campaigning on asbestos. The insurance industry has continually sought to reduce its liability to the people who are victims of asbestos. It has been the campaigning organisations, such as Clydeside Action on Asbestos, the Clydebank Asbestos Group and the Tayside group, as well as the trade unions, which have played a vital role in the fight, and which have kept up the pressure to ensure that we as elected representatives do the right thing.

I am pleased that, by and large, the Parliament has done the right thing. We have extended rights to compensation to the families of sufferers of mesothelioma, which is the most aggressive and life-limiting form of asbestos-related disease. The relevant legislation was agreed to unanimously. We have ensured that licensed treatment that offers hope or succour continues to be made available in Scotland and have set an example to the rest of the UK, which I am delighted that it has followed. The intention of the bill that we are debating today is to overturn the House of Lords ruling that denied compensation to people who are afflicted by pleural plaques as a result of exposure to asbestos.

The occurrence of asbestos-related disease is not random—it is not evenly distributed throughout the population. It particularly affects people who have worked in the shipbuilding and engineering industries, many of whom, certainly in Clydebank, know one another. If one goes to the annual general meeting of the Clydebank Asbestos Group year after year and looks round the room, one will see that someone who was there the previous year is no longer there. All the people in that situation have friends, relatives and workmates who have suffered from a variety of asbestos-related diseases. We cannot tell them that pleural plaques are not linked to other forms of asbestos-related disease because they know perfectly well the history of the onset of such disease.

When the insurance industry tells us that pleural plaques are "a good thing", as Stuart McMillan mentioned, not only do MSPs' jaws hit the floor but people who really know about asbestos-related disease—people who know what has happened to their comrades, friends and workmates—say, "That is absolutely not right." We know that, by and large, the people who have pleural plaques are those who end up in the category of people who suffer from dreadful diseases such as asbestosis and mesothelioma.

When the insurance companies gave evidence to the Justice Committee, in essence, they sought to deny that people who have pleural plaques have suffered any injury. It is true that someone who has pleural plaques does not face a death sentence in the way that a mesothelioma sufferer does. Pleural plaques arise when the body responds to the irritation that is caused by a particularly dangerous type of foreign body—asbestos fibres.

The victim of pleural plaques is fortunate if he or she does not contract one of the more serious asbestos-related diseases, but the person who exposed them is responsible whatever the prognosis. The fault is caused by the negligent exposure of the individual to asbestos. It is the fact that people were negligently exposed to asbestos that gives rise to the danger to their health. I believe that those who were negligent or their successors or their insurers should be expected to pay compensation for such actions once it can be demonstrated that the victim has been affected, regardless of whether they have been diagnosed as suffering from a life-threatening condition such as mesothelioma or a condition such as pleural plaques that, at present, does not appear to have symptoms.

Jackson Carlaw: When Mr McNulty poses the case as he does, he sounds extremely combative, but does he accept that the negligence that took place under certain employers was not wilful negligence? In some cases, injuries arose as a result of action that was not known to be negligent at the time but which was proved to have been negligent only subsequently.

Des McNulty: That is a matter that is dealt with by the courts. There is abundant evidence that some of the bigger employers knew quite a lot about the impact of asbestos and continued to expose people to it even though they understood some of the potential consequences. People feel strongly that the damage that is done to them should be recognised and compensated.

Paul Martin (Glasgow Springburn) (Lab): Does Des McNulty agree that asbestos was a banned substance pre-1965 and that it has been known as a poisonous substance since 1892?

Des McNulty: That is right. It is important that we acknowledge the damage that has been done to people. There are people still alive who will be victims of asbestos, and there are people who have died who have been victims of asbestos. It is important to the campaigners, relatives and families that the situation is acknowledged. That is often more important to people than monetary compensation. They want the fact that they, or their friends or relatives, have been damaged by exposure to asbestos to be acknowledged by the courts.

There should be a higher level of compensation for those with mesothelioma to take account of the seriousness of the impact. Mesothelioma is fatal in

every case and it is a particularly pernicious form of cancer. However, those with pleural plaques have also been affected by exposure to asbestos, and the impact on them should also be recognised. A proportion of those who have pleural plaques will develop asbestosis or other life-threatening bronchial conditions. That predicted impact is a source of anxiety to those people.

No one who is not exposed to asbestos will get a life-limiting asbestos-related disease. The responsibility of the companies and insurers stems from their negligence in allowing people to work in an environment that it was known was likely to damage their lungs. It is the fact of exposure rather than the extent of damage that is the cause of liability. There is not a no-damage excuse for negligence, especially when there are physical signs of exposure. Damage has occurred, and the issue for the courts should be how much damage has occurred and how that should be reflected in the amount of compensation.

The insurers have suggested that the passage of the legislation will open the floodgates to a hugely increased number of compensation actions. It may well be that there is a slight increase, perhaps partly as a result of publicity generated by the bill. However, the records that have been made available by Frank Maguire of Thompsons Solicitors, which deals with 90 per cent of asbestos cases in Scotland, show that there is a clear pattern in the number of pleural plaque cases emerging in this country. There is no reason why, once the backlog of cases has been dealt with, we will not continue to have the pattern pointed to by Mr Maguire. My one caveat is that the epidemiological evidence suggests that the peak number of those contracting asbestos-related diseases may not be reached until 2015. The time bomb of past exposure to asbestos is still exploding.

I am delighted that the bill has been introduced. The Parliament has not failed victims of asbestos in the past. We have done the right thing before and we are doing it again. I commend the Government for introducing the bill, and I encourage members on all sides to support it and, in particular, its principles at stage 1.

15:43

Nigel Don (North East Scotland) (SNP): It may come as little surprise—at least to some members of the Justice Committee—that I will take a slightly different tack. We all agree on the principle of the bill. We defend what we are doing as a matter of policy—other members have done that, and I am happy to endorse it—but the committee has struggled to rationalise it as a matter of law. Because we can rationalise it as a matter of policy, that has not worried the committee. I shall try to find a basis of law in the most unlikely place, namely the House of Lords judgment in Johnston v NEI International Combustion.

It will come as a surprise to discover that within their noble lordships' judgments lie the bones of an analysis by which they could have arrived at completely the opposite answer. By assembling some of those bones, I hope that I shall be able to provide us with a skeleton that will give us a satisfactory basis for the bill. I am not suggesting that the noble lords got it wrong. I am not even qualified to stand in front of them and put that case. It is of course axiomatic that a unanimous decision of the House of Lords is law.

However, my analysis considers what might have been, on the basis of what their lordships said in their judgment. Because the analysis must be brief, I will say at the outset that nothing I say is intended to be critical of their lordships or of the counsel who brought the case. If anything that follows appears to be critical, please take what I have just said as my statement of intent. An important point about anxiety also comes up in the case, but I do not think that I shall be able to cover it this afternoon, so I shall not try.

My fundamental point arises from the fact that the cases covered by the judgment were brought in England under the law of tort, for which, in Scotland, read "delict". I will quote from Lord Scott, omitting a couple of phrases that do not alter the sense. In paragraph 74 of the judgment, he said:

> "In my opinion … a cause of action in tort cannot be based on the presence of asymptomatic pleural plaques, the attendant anxiety about the risk of future illness and the risk itself. It cannot be so based because the gist of the tort of negligence is damage and none of these things, individually or collectively, constitutes the requisite damage. But the conclusion that none of the appellants … has a cause of action against his negligent employer strikes, for me at least, a somewhat discordant note. Each of the appellants was employed under a contract of service. Each of the employers must surely have owed its employees a contractual duty of care, as well as and commensurate with the tortious duty on which the appellants based their claims. It is accepted that the tortious duty was broken by the exposure of the appellants to asbestos dust. I would have thought that it would follow that the employers were in breach also of their contractual duty. Damage is the gist of a negligence action in tort but damage does not have to be shown in order to establish a cause of action for breach of contract. All that is necessary is to prove the breach."

The fundamental point is that, to sue successfully for breach of contract, one does not need to prove damage, only that there was a breach of contract.

Those of us who have been exploring these issues will appreciate that the accepted medical evidence is that pleural plaques are not injurious in themselves. Because they are internal and hidden, they are not a disfigurement and are thereby not actionable. The biggest legal problem derives from

the fact that the leading cases at first instance proceeded on the basis that plaques were the injury.

In his summary in paragraph 3 of the judgment, Lord Hoffmann pointed out that, in the case of Church v Ministry of Defence in 1984, Judge Peter Pain had said that there was damage caused

"by the asbestos passing through the lungs and causing the plaques to form."

A month later, in Sykes v Ministry of Defence, it was enough that there had been a

"definite change in the structure of the pleura".

Three years later, in Patterson v Ministry of Defence, plaques, the risk of future disease, and anxiety became the basis of the action.

Lord Hoffmann said in paragraph 6:

"Since these decisions, claims have regularly been settled on the basis that pleural plaques are actionable injury."

However, Lord Rodger said in paragraph 84:

"The asbestos fibres cannot be removed from the claimants' lungs. In theory, the law might have held that the claimants had suffered personal injury when there were sufficient irremovable fibres in their lungs to cause the heightened risk of asbestosis or mesothelioma. But the courts have not taken that line."

It seems to me that the courts could have arrived at the solution that we now to seek to impose by statute as a matter of policy, first, if they had recognised that the relevant damage is the presence of asbestos in the lungs and not the presence of plaques—plaques are merely evidence of asbestos, and, incidentally, the only evidence that we can get—and, secondly, if they had considered the cases as breaches of contract of employment. The presence of foreign bodies in the lungs would surely have been adequate evidence of a breach of the common-law duty to provide a "safe system of work", which was the legal formula in English law that preceded legislation on health and safety.

The minister and I have referred to Lord Scott's discomfort. I cannot help feeling that their noble lordships could see the unsatisfactory nature of the decision that they were required to reach. Lord Mance had the last word in the final paragraph:

"In agreement with both Lord Hope and Lord Scott, I also note that the scope of an employers' contractual liability might require examination in another case, but it has not and cannot be examined in this case."

It seems to me that their lordships understood that, if the case had been brought under contract law, they could have reached a more satisfactory answer. They could see that the answer that they produced was unsatisfactory. I hope that my analysis will provide some comfort to members that we are legally doing the right thing.

15:50

Cathy Peattie (Falkirk East) (Lab): Pleural plaques may be benign in the strict medical sense, but there is nothing benign about someone knowing that they have had sufficient exposure to asbestos to develop the condition. There is nothing benign about someone knowing that such exposure means that they are at a considerably greater risk of developing mesothelioma than people who have no asbestos-related symptoms. There is nothing benign about the impact of pleural plaques on someone's physical and mental wellbeing. Therefore, I do not accept the generalisations about pleural plaques being harmless.

My husband has pleural plaques and thickening. He has always had a healthy lifestyle, he never smoked and he always worked and kept fit, but he has problems with shortness of breath, is prone to chest complaints and had to retire early. Those things are not life threatening, but I object to such symptoms being dismissed as medically trivial. I do not consider internal injuries such as scarred lungs—with or without symptoms—to be medically trivial; nor do I consider the negligence of employers who have exposed workers to asbestos to be medically, ethically or legally trivial.

The case against compensation focuses on the lack of a proven causal relationship between pleural plaques and fatal asbestos-related diseases. It is said that correlation is not a proof of cause and effect, but that argument is a red herring. It is not a question of whether pleural plaques lead to mesothelioma; the fact is that they share a common cause. Pleural plaques may not cause mesothelioma, but the exposure that causes them also puts people at a much higher risk of developing serious diseases.

Dr Robin Rudd notes:

"People with pleural plaques who have been heavily exposed to asbestos at work have a risk of mesothelioma more than one thousand times greater than the general population."

It is all very well to say, as the chief medical officer does, that it is the level of exposure to asbestos that matters. The chief medical officer also notes that, although there is no easy test for such exposure, it

"would be reasonable to assume that the vast majority of mesothelioma cases do have plaques".

Not wanting to be too sweeping, however, the chief medical officer maintains that

"there remains the possibility of a patient developing mesothelioma but not having any plaques."

Let us face it: pleural plaques are indisputable evidence of membership of a high-risk group. It does not matter how many times people are told

that pleural plaques will not significantly affect them; they are bound to see that that is nonsense when they are clearly affected. Any attempt to dismiss or brush aside the significance of pleural plaques as benign is unlikely to change that. If the situation is to be explained honestly to those who are affected, it must be accompanied by an appraisal of future risks that those who are opposed to compensation would have them believe are somehow unrelated to their pleural plaques.

Dr Rudd also comments:

"It is the discovery of the plaques that has led to the situation in which an explanation of the future risks is necessary. For those who have been heavily exposed to asbestos the truth about their future risks is not in fact reassuring. To be told your present condition is benign but there is a 10% risk that you will die prematurely of mesothelioma and that your risk of lung cancer may be 40% or more, as in the case of a heavily exposed smoker, is not likely to set your mind at rest."

Given the difficulties that those making claims have always experienced, we must be very careful with this legislation. The considerable body of evidence used by those who believe that pleural plaque sufferers should not be compensated was drawn primarily from the insurance industry. Insurance companies and their lawyers are masters of obstruction and any dubiety in a claim provides a platform for endless challenges and delays. The families of victims are all too well aware of the cruel torture of the game of waiting, delaying and diversions that companies play with all the legal weaponry at their disposal to avoid paying out any sooner or any more than is absolutely necessary. We should not add to their arsenal and, as we have heard today, we must find a way around the finance issue to ensure that it does not become a barrier. As the bill progresses through Parliament, we must take care that it does what we want it to do.

I congratulate Clydeside Action on Asbestos, Unite and the other unions that have campaigned so hard for this legislation. I urge the Parliament to do the right thing and support the bill.

15:56

Gil Paterson (West of Scotland) (SNP): I well remember the meeting with members of Clydeside Action on Asbestos that Stuart McMillan referred to. When they told me about their case and campaign, I was convinced by their arguments. To me, the story was simple: a person—or, indeed, a group of people—is unwittingly exposed to and damaged by asbestos; and someone is responsible and must be held accountable.

For many years, that is exactly how the law worked. People who had been damaged by exposure to asbestos and could prove that through the presence of pleural plaques would be entitled to compensation. I might add that, at a mere £8,000, the compensation was not a king's ransom. Nevertheless, the important point was that their injury was recognised by the courts.

In October 2007, after a concerted campaign by representatives of those who, in one form or another, were responsible for the damage done by asbestos, everything changed. Workers—and, in many cases, their families—who had been exposed to asbestos and had developed pleural plaques had their right to compensation overturned by the House of Lords. Can anyone imagine the situation of workers who had been kept in the dark by their employers about the effects of inhaling asbestos—and, even worse, who brought home to be washed clothes containing the asbestos particles that, in time, would kill their loved ones—now having to come to terms with the House of Lords closing the door on recognition of and compensation for the very pleural plaques that were often forerunners of worse to come?

The House of Lords turned the clock back in more ways than one. It took us back to an era in which industrial barons could operate with impunity and workers, including children, had no recourse to compensation when damaged by the industrial process. The law protected the barons, not those whom they damaged. History, unfortunately, has a habit of repeating itself.

The logic behind the House of Lords ruling is that as contamination by asbestos causes only internal scarring and no visible damage, and as no ill effect follows from the scarring of a person's lungs, there is no need for compensation. I do not agree with that at all. Never mind the physical damage to the lung, what about the psychological damage that those with pleural plaques commonly suffer? They have to live with that experience, witness its effects on others and see their friends and former workmates fall to life-taking illnesses. Those people worry about their future, what will happen to them, what their injuries will lead to and who is to look after their families. It is no wonder that they suffer psychological damage. Of course, not all of them contract life-threatening illnesses, but their common worry is, "Who is going to be next?"

We should make no mistake about the importance to sufferers of recognition that a wrong has been done and that someone will do something about it. People who have, through no fault of their own, been damaged to the point that their life is threatened need our support. It is shameful in the extreme that recognition of their injury, which there was for so long, has been taken away.

I am proud of the swift action that the Scottish Government has taken, which has been well received. I am equally proud of the mostly unreserved support that has been shown across the chamber for enacting the bill. It is good that the Parliament has stood firm on the notion that there would be a miscarriage of justice if the House of Lords ruling was allowed to stand, but there are other profound reasons for backing the bill.

To its shame, the Westminster Government meekly accepted hook, line and sinker the bad judgment that the House of Lords made. Westminster MPs decided to turn their backs on the victims of pleural plaques. The Scottish Parliament is united and determined to reverse the House of Lords ruling, and has embarrassed or twitched the conscience of Westminster MPs, forcing them to rethink their position on pleural plaques. Therefore, the campaign by Clydeside Action on Asbestos to seek or, I should say, to continue the right to claim compensation for those who suffer from pleural plaques, although aimed at the Scottish Parliament to affect the law of Scotland, has done an enormous service not only for individuals and families in Scotland, but for sufferers in other parts of the United Kingdom whom Westminster abandoned. As we progress the bill in Scotland, let us hope that our actions will cause something positive to happen quickly in England.

Most folk think that a person who has been damaged by asbestos must have been involved in heavy industry in some way. We must dispel that notion. Workers who are involved in repair work, such as joiners, electricians and plumbers, are at risk. In some cases, few such workers have a clue that asbestos is evident while they work. Even teachers who have never been near an industrial site die as a result of asbestos-related illnesses every year. When the trace work is carried out, there is conclusive evidence that they were contaminated in class. Therefore, the issue is not only a heavy industry concern; the effects of asbestos reach across society. I hope to expand on that point in the chamber on another day in the near future.

I want to address a point that was well made by Jackson Carlaw. My family business is involved with the car industry. Most folk think that cars are welded together and that is it, but modern cars are somewhat different. They have been changed because of the accidents that can happen as a result of vehicles' rigidity. Adhesives and bondings are used in constructing them so that when the car crumbles, the person inside will be protected. Those materials are, of course, often very toxic. My business not only supplies such goods; we have technical advisers who go out and demonstrate them. Therefore, I put on the front line individuals whom I know extremely well and have worked with for a long time. We know what we are doing and how to do it and a duty of care is involved, but something could happen that we were unaware of. If that happened, I would not expect to walk away from my liabilities. Similarly, I do not expect anything different for sufferers of pleural plaques. Therefore, I whole-heartedly support the bill.

16:04

Jackie Baillie (Dumbarton) (Lab): Like other members, I welcome the bill. The clash of arguments and discordant voices sound in the Parliament many times, but just as often the Parliament rings with the sound of agreement and the quieter but perhaps more powerful murmur of assent. I am pleased that there is agreement on this occasion.

As others have said, the bill will remove the obstacle of the House of Lords ruling and provide for compensation to be given, as it once was, to those who develop pleural plaques. In my humble layperson's view, that is without doubt absolutely the right thing to do. I will not attempt to explain in any great detail or to second guess the House of Lords ruling in the case of Johnston v NEI International Combustion Ltd. Far better people than me have considered those matters. I commend to the Parliament Bill Aitken's cogent explanation, the Justice Committee's report and the interesting alternative view that Nigel Don proffered. However, I am clear that, although the judgment relates to England and Wales, there would be an impact in Scotland, in that it is persuasive in our courts.

As Bill Aitken rightly said, in the case of Helen Wright v Stoddard International plc, the judgment has had an impact. Lord Uist, who presided over the case, used the House of Lords ruling to conclude that pleural plaques caused no harm at all. Quite simply, we need to fix that. I agree absolutely with the minister that we need to return to the situation in which workers who have pleural plaques can claim compensation. When all is said and done, that is ultimately what matters.

I gently suggest to Gil Paterson that he is wrong in his analysis of Westminster and UK Government activity on the matter. I am pleased that there is growing support at Westminster to do the same as we are doing in Scotland. An increasing number of MPs support the introduction of legislation to reverse the effect of the House of Lords decision. Equally, I am pleased that the Ministry of Justice is working on that by consulting on whether changing the law of negligence would be appropriate.

Gil Paterson: I acknowledge the member's point that Westminster MPs are picking up the

cudgel, particularly the Scottish ones. My point was that, in the first instance, they turned their backs. They are coming to the game because of this Parliament's action and the way in which we are conducting ourselves.

Jackie Baillie: I hope that the member will agree that the issue is to encourage the right action. The bill has come about not only as a consequence of the Parliament, but because of the considerable effort of many outside the Parliament, including the Clydebank Asbestos Group, Clydeside Action on Asbestos, Thompsons Solicitors and the trade unions. Stuart McMillan has been involved, and my colleagues Des McNulty and Duncan McNeil have pursued the issue diligently. When my Westminster colleague John McFall MP is not giving the banks a hard time on the Treasury Committee, he has been unswerving in his support for the victims of asbestos-related conditions, on issues such as the availability of the drug Alimta for the treatment of mesothelioma and compensation for sufferers of pleural plaques. All those people, including the minister, have contributed to our reaching this point today, and they should be commended for that.

I acknowledge that there is a different view. I have considered the evidence that insurers have presented. It gives an interesting insight into their thinking, but neither the Government nor the committee is persuaded, and nor am I. Compensation for pleural plaques has been awarded for more than 20 years. Although I acknowledge the right of insurers to bring test cases before the courts and the House of Lords, it is equally the province of the Parliament to ensure that compensation can continue to be paid.

I am glad that the minister has accepted Jackson Carlaw's reasoned amendment, because it is essential that we bottom out the costs that are contained in the Scottish Government's financial memorandum. Doing so will allow us to reduce the margin of uncertainty to an acceptable level and will enable dialogue between the respective Parliaments. I agree with Richard Baker that the costs suggested by the insurers appear—dare I say it?—to border on the creative. Equally, there is a divergence on the number of pleural plaques claims. All of that can now benefit from further scrutiny.

Robert Brown was absolutely right to outline the impact of asbestos on whole communities. All members probably know someone who is affected by an asbestos-related condition. Those conditions are particularly prevalent in the west of Scotland. Issues arise, such as whether the condition is a result of a brief employment or a lifetime's; which of a number of industries, including shipbuilding, construction and engineering, was involved; and whether the employment was in the public or private sector. Those are all important considerations, but they are not the central issue that is before us. For me and the Parliament, the issue is one of justice.

Des McNulty is absolutely right. Let us not forget that pleural plaques are brought about by exposure to asbestos that can and does lead to terminal illness. That exposure was negligent and people with pleural plaques should be compensated. This afternoon, we go a long way towards setting the situation right.

16:10

Bill Kidd (Glasgow) (SNP): I thank the Justice Committee for its report and my colleagues in the chamber, who have conducted today's debate in the dignified manner that the subject calls for.

The Association of British Insurers has said:

"Insurers are committed to paying fast, fair and efficient compensation to people who are injured or made ill as a result of their employer's negligence; in 2006, our members paid out over £1.2 billion in employers' liability claims."—[*Official Report*, House of Commons, 23 January 2008; vol 470, c 461WH.]

That is fair and clear. However, it has also been said, and it will be repeated, that when people are exposed to asbestos through employment, they are exposed to the considerable risk of developing pleural plaques, asbestosis and mesothelioma. That exposure will have been as a result of the manufacture of chrysotile or its use by employers in construction, shipbuilding and other industrial processes. Secondary exposure of workers' spouses and children only compounds the problem of the insidious nature of white asbestos.

Who is to blame for the illnesses of all those who have been exposed to such material? Surely such exposure must be a result of employers' negligence. By implication, the only people who can provide recompense, albeit of a paltry amount, are the insurers of those employers, as stated by the ABI in the quotation. So where is the problem?

The idea is that workers and/or their families who are injured or made ill by exposure to asbestos as a result of employers' negligence make employers' liability claims, and then justice prevails. However, that does not happen. The insurers have decided that they will take the premiums but renege on their part of the deal. They challenge whether pleural plaques—the scarring and thickening of the thin membrane that covers the lungs and the lining of our chests—can be considered to be an injury.

Pleural plaques are an indicator of considerable exposure to asbestos, which has been shown to be a major factor in the development of other related illnesses, such as asbestosis and

mesothelioma. If someone has witnessed their family, friends and work colleagues develop such serious and life-taking illnesses, they might be excused for demonstrating a little anxiety about or possibly even fear of the same thing happening to them. That is especially the case when, as the minister and other speakers have mentioned, Dr Rudd, the leading expert on asbestos-related illness, was quoted as saying:

"People with pleural plaques who have been heavily exposed to asbestos at work have a risk of mesothelioma more than one thousand times greater than the general population."

That would make me anxious, as anyone with pleural plaques has every right to be.

The idea that those with pleural plaques are just uninformed and worrying needlessly or that pleural plaques are really a sign that lungs are healthily forming scabs over invasive asbestos fibres is an insult and takes a diabolical liberty with the feelings of the ordinary men and women who made this country's wealth with the sweat of their brows.

It has been my privilege to get to know the men and women who, through Clydeside Action on Asbestos, have campaigned for justice—for themselves, their families and for others whom they do not even know. I am proud to be on their side in this struggle for compensation for the injuries caused to their bodies by the insidious scourge of white asbestos.

The insurance companies' view is that pleural plaques are asymptomatic thickening and scarring of the lining of the lungs—so what. Pleural plaques are a non-malignant disease—so it does not matter. Pleural plaques do not cause any symptoms or disabilities—so there is no cause for concern. What a disgraceful attitude.

How many of the insurers put their hands up when I asked them recently whether they would volunteer to contract such a benign condition during the course of their employment? Not one did so, and I do not think that any of the rest of us would do so either.

If someone has pleural plaques, they are more likely to develop asbestosis and mesothelioma. No one knows who is going to develop those killer diseases, so those who have plaques have every right to be anxious. Their lungs have an unnatural scarring that is caused by exposure to a dangerous material. Those people got that condition by working hard in order to raise their families. They paid their taxes and helped our industries to reach the stage at which they could pay big insurance companies to compensate employees financially when required.

The Association of British Insurers says that there is a duty on its part, and on the part of its members, to pay out when there has been employer negligence. There has been employer negligence when exposure to asbestos has caused scarring to workers' lungs.

This Parliament will deliver on its duty to our people; by doing so, it will set an agenda that I hope will cause the London Government to give serious thought to reversing the House of Lords decision that affects people with pleural plaques in England and Wales.

16:16

Bill Butler (Glasgow Anniesland) (Lab): I support the motion in the name of the minister. As deputy convener of the Justice Committee, I put on record my appreciation of the stunning work of the clerking team and the invaluable assistance of the Scottish Parliament information centre in the stage 1 scrutiny process that the committee undertook.

The need for the bill arose from the House of Lords judgment on 17 October 2007, in which it ruled that asymptomatic pleural plaques do not give rise to a cause of action under the law of damages. That judgment reversed more than 20 years of precedent and practice. In effect, the ruling meant that those who suffered anxiety as a result of the presence of pleural plaques could no longer pursue damages against the industries that had left them exposed to asbestos dust in a breach of their common-law duty of care and of various statutory duties under health and safety at work legislation. That was the direct consequence of the part of the Lords ruling that said that the mere presence of pleural plaques in the claimant's lungs was not a material injury capable of giving rise to a claim for damages in tort, or, in Scotland, delict.

Unsurprisingly—and quite rightly—there was a public outcry about the Lords judgment. It was variously described as disturbing, scandalous and bizarre. It was certainly viewed—correctly in my opinion—as manifestly unjust, and I congratulate the present Scottish Government on introducing the bill in response to widespread public concern to correct the error.

The Justice Committee's stage 1 report makes it plain that their lordships were fundamentally mistaken in their view. We should not pretend otherwise; we should be plain about that.

In paragraph 71 of the report the committee states its belief that

"it is right and proper that pleural plaques sufferers should be able to continue to pursue compensation",

given that for the past 20 years damages have been awarded to those exposed to asbestos. The

committee found that nothing presented in evidence undermined that precedent.

In paragraph 72, the committee states its view that, for people with pleural plaques, the

"risk of developing mesothelioma is many times greater than that of the general population. Furthermore, the Committee considers that the resultant effect on the lifestyle and sense of wellbeing of those diagnosed with pleural plaques is substantial and adverse."

Consequently, the committee—again, correctly in my view—was

"not persuaded by the suggestion that the anxiety felt by those diagnosed with pleural plaques can be allayed by … medical explanations."

On the question of injury, my colleagues and I agreed in paragraph 84 of the report that

"pleural plaques, as an internal physiological change, could be considered an injury under Scots common law. The Committee also notes that the effect of the resultant anxiety on a pleural plaques sufferer could be deemed injurious to their wellbeing."

The committee was unanimous in its view that the bill will not

"overturn or undermine this law generally as the Bill is expressly restricted to asbestos related conditions",

as the convener said in his opening remarks.

We agreed that, thus, the bill

"represents a proportionate response to the House of Lords judgement."

I hope that members will agree that the stage 1 report is proportionate, not only in the particular recommendations to which I have referred but in its entirety. The committee found the evidence put forward by sufferers and their supporters compelling, and I pay tribute to, among others, Clydeside Action on Asbestos and Unite, the GMB and other trade unions.

Let me be plain: the bill is necessary because their lordships made a profoundly wrong decision—a decision that, in effect, found in favour of employers who had negligently or recklessly caused their workforce to be exposed to asbestos in the pursuit of profit, and against the innocent victims of those employers' recklessness and neglect. That is wrong.

Who are the victims? They are our fellow citizens, who spent their working lives in the shipbuilding, construction and fishing industries. They are the Rosyth dockyard worker who was exposed to asbestos, with no protection of any kind, over two and a half years in the late 1950s. They are the retired pipe fitter from Leith who was never told of the dangers and who was forced into early retirement at the age of 53. Those are the victims: real people, whose real lives have been affected and blighted.

The Lords' decision left 214 people whose cases are in court, and more than 400 others whose cases have still to be heard, in a judicial no-man's-land. At any time, insurers acting on behalf of employers could move to have the cases thrown out by the Court of Session. Indeed, that has happened in one instance, but we as a Parliament can prevent further such injustice from being visited on the innocent victims and their families, who have already had to endure so much.

We can do that by acting together as the Parliament of Scotland. The previous Labour-led Executive found space in its legislative programme for Parliament to pass the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007. That act rightly attracted the unanimous support of the Parliament. It showed that we can act across party boundaries when we know that a wrong needs to be righted.

We must act once again as a united legislature to remedy an injustice. We must restore our fellow citizens' right to compensation in respect of pleural plaques and—this important point has not yet been mentioned—reserve their right to make a further claim for compensation if, tragically, they go on to develop other, fatal, asbestos-related conditions.

I hope that members of all parties and none are united on the matter. The people of Scotland demand that justice be done, and they are right to do so. The people of the UK make the same demand, and they are right, too. I hope that work is done effectively in all the Parliaments on this island. Let us heed the wishes of the people and support the bill at stage 1.

16:23

Duncan McNeil (Greenock and Inverclyde) (Lab): It can be difficult to say anything that is new—even more so on occasions, such as today, when there is agreement among members on what should be done—but I wanted to take part in the debate.

It is appropriate to thank the committee and others for all the work that has been done on behalf of people in my community who will directly benefit from the bill. We again have the opportunity to stand on the side of asbestos victims. The sad fact, which the committee recognised, is that former heavy industrial communities, such as my own in Greenock and Inverclyde, have suffered badly. They are all too familiar with the injustice that victims and their families have had to face in seeking the compensation that they deserve.

Members, including Richard Baker, have acknowledged the role and achievements of the Parliament. Since its establishment, we have

challenged the inequities one by one. We have highlighted the insurance industry's delaying tactics and its attempts to spin out cases to avoid or reduce liability, which would happen if the person in question were to die before settlement. We have exposed the use of the blanket denials that, for example, forced victims to prove that the QE2 was built at the John Brown yard at Clydebank.

The change in court rules has seen the fast-tracking of cases that are brought by those who are terminally ill. As Bill Butler said, a new act will make it easier for mesolothemia victims and their families to be compensated properly. Another step in that direction will be taken if the general principles of the bill are agreed at decision time. If we go on to pass the bill, we will ensure that pleural plaques sufferers can pursue claims for damages.

We need to remember that the chamber can do that only with the support of Clydeside Action on Asbestos and our friends in the trade unions. We also need to remember Frank Maguire—who has not been mentioned in the debate and who will be embarrassed to be mentioned now—for all his work and the support that he has given members across the parties in tackling the issue and making things easier for those involved. I stress the word "easier"; although we have made it less difficult for people to get compensation, we should remember that it is still not easy for them to do that.

On Monday, I made a statement—over the telephone, but I will sign it off later—to the legal representatives of a family in my constituency, one of whom is an ex-foreman with whom I worked. The statement established where he worked, for whom and with whom, all of which are requirements if a claim is to be progressed.

Last week, I worked on a case with an old friend, Joe McLaughlin; he is now an elderly man, but was formerly a full-time official in my area. A family had contacted me because they had had great difficulty in establishing a family member's work record. As these old pairt people do, Joe had kept records from 50 years ago. A phone call to my friend resulted in the branch contributions from 50 years ago—it was a delightful and satisfying moment. I could not wait to tell the family.

As I said, it is difficult to say anything new. I am delighted that we are making progress. We are discussing a measure that is not only historic in nature, as Gil Paterson alluded; people out there today are still being affected. It is worth noting for the record the hidden killer campaign that the Health and Safety Executive has mounted in recent weeks. The HSE is reminding us that asbestos continues to be a major problem—it is a hidden killer that takes the lives of 20 people a week. More people die of asbestos-related disease in the UK than die in road accidents.

The campaign reminds us that, despite the fact that asbestos has been banned for a considerable time, people such as joiners and electricians are still being exposed to it. The HSE reckons that there are still 500,000 non-domestic buildings that contain asbestos. People out there continue to work in difficult circumstances. In addition to working on behalf of the victims of the past, parliamentarians have a role to play—with our friends in the trade unions and campaigners—in highlighting the dangers of the present. People are still in danger of being exposed to asbestos, but if we get things right, we will avoid compensation claims and wrangles over the law.

I appreciate being able to speak in the debate. I thank the committee for all its work.

16:29

Robert Brown: The debate has been an excellent one. We have heard contributions from across the chamber and from a number of different perspectives. Some members spoke with passion: Cathy Peattie, for example, spoke from personal circumstance. Other members, including Nigel Don and Bill Aitken, spoke analytically but not without belief in the cause that is being pursued in the chamber. It was appropriate that Duncan McNeil, with his talk of communities, his personal experience and the wider context of health and safety issues in Scotland, should have been the last member to speak in the open debate.

As many members have said, this is a just cause. It is the proper business of the Scottish Parliament to put right injustice in the way that we are doing in the bill. It is also right that the matter should be analysed properly, that the remedy should be effective and that we should know its implications in cost terms. I reiterate my earlier point about the level of damages and the need to avoid the potential of further dispute after the bill has been passed, which could delay sufferers' rights. I continue to have concerns about that.

I will concentrate on the figures. Those are made up of the level of damages or costs, which is the multiplicand; the number of cases annually; future predictions of the number of cases, which may peak at a certain point; and the percentage of UK cases that occur in Scotland, which we have discussed previously. Linked to those factors are the implications for the private insurance industry and for government—both local government and national Government in Scotland and at Westminster.

Consideration of some of the compensation figures that have been suggested illustrates the

difficulty of arriving at satisfactory figures and the need for fresh analysis by the Government. In the UK Government's paper, a compensation figure of £5,000 to £7,000 is mentioned. That is the original figure from 1987 or thereabouts, when the first cases came before the courts. It is suggested that the typical figure in England and Wales may now be substantially higher—£11,500 to £13,400. The Scottish Government has proposed a figure of £8,000, which is based on figures from 2003-04; that is another complication. It is worth mentioning that in the Rothwell case, which mutated into the Johnston case as it went through the courts, the figure was assessed at £4,000. I assume that that estimate was based on the medical evidence that was available to the Court of Appeal and the House of Lords. All the figures relate to provisional damages for situations involving pleural plaques. The range of figures that I have given shows the difficulty of arriving at a judgment on the measure for such damages.

Earlier I touched on the question of legal costs. The Scottish Government has assumed pursuer's costs of £8,000 and defender's costs of £6,000, but I think that those estimates are too high. The Law Society of Scotland, which was asked specifically about the point, gave evidence that a settlement for damages of £9,000 to £11,000 will produce an extrajudicial settlement fee of £2,125 plus VAT and outlays for medical reports and records. In undefended cases, which I think pleural plaques cases will be once the bill has been passed, it does not seem reasonable to arrive at costs of £8,000 for the pursuer and £6,000 for the defender. There are uncertainties that are capable of a degree of resolution. It is not the job of the minister or the Parliament to fix the amount, but it is ministers' job to indicate, from the advice that they have received from officials and from legal advice, that there is a clear basis on which judges can apply the effect of the law. That is the point that I am trying to make.

I do not want to go into the number of cases, which is a much more complicated issue. Ministerial correspondence contains a great deal of evidence on the progress of personal injury actions and shows that over the past few years the number of asbestos-related actions that have been raised in court has remained fairly steady: there were 164 such actions in 2003, 270 in 2004, 287 in 2005, 325 in 2006 and 279 in 2007. That is a relevant point. There is also information on the number of Scottish cases of mesothelioma, lung cancer with asbestosis and pleural thickening that have been subject to the industrial injuries and disablement benefit scheme. In the past few years, they have accounted for 10.4 per cent, 12.2 per cent and 5.3 per cent of Great Britain cases. That points to a level of cases that bears some relation to Scotland's share of the UK population, as does the number of instances of death from mesothelioma.

Those things need to be sorted out. However, although we need to have a clearer idea on those points, it does not take away from the fact that the background to the bill is the need to do justice for the sufferers of pleural plaques. That is why, like other parties in the Parliament, the Liberal Democrats back the bill. It is a just and proper bill. It puts right an injustice, whatever the legal arguments that we have analysed in the course of the debate. I look forward to the Scottish Parliament agreeing today to the general principles of the bill and the financial memorandum. I also look forward to the further debates that we will have on the detailed issues at stages 2 and 3.

16:35

John Lamont (Roxburgh and Berwickshire) (Con): The debate has been interesting, not least because the principles behind the bill have caused me to give the issue a considerable amount of thought. As we have heard from a number of members, the bill's purpose is to deal with whether someone who has been negligently exposed to asbestos in the course of his employment can sue his employer for damages on the ground that he has developed pleural plaques.

We have heard from a number of members about the awful effects that asbestos-related illnesses can cause—in particular, I note the personal experiences of Cathy Peattie's husband, which she mentioned in her speech. I do not think that any of us would dispute the distressing and disturbing effects of such diseases, but I have some concerns about what the bill might do from a legal perspective and about the considerable uncertainty surrounding its financial impact.

We can say that the bill simply attempts to replicate the practice from 1980 to 2005, when damages were awarded to claimants who had developed pleural plaques. We can also say that those people who go on to develop serious illness as a result of their exposure to asbestos should have a claim in law for damages. However, like Nigel Don, I believe that we should move cautiously to overrule what the House of Lords determined in the Johnston case. The law lords gave careful consideration to the law of damages, and their judgment reversed more than 20 years of practice. I am sure that they did not take that decision lightly. They ruled that, as pleural plaques cause no symptoms, do not cause or lead to other asbestos-related diseases and do not shorten life expectancy in themselves, their mere presence in a claimant's lungs is not a material injury capable of giving rise to a claim for damages.

Mr Don asked whether the issue could be dealt with under contract law rather than under the law of delict—or tort, as it is in England. I suspect that claimants always pursue the route of tort or delict because of the level of damages available under that area of law compared with that which is available under contract law.

I read with some interest the medical opinions that were submitted to the Justice Committee that pleural plaques do not, in themselves, cause any symptoms in sufferers. However, once diagnosed, they are likely to cause anxiety that something more serious may develop in future. The question is whether that should be sufficient in itself to entitle the sufferer to compensation.

There were two clear views in the evidence that was submitted to the committee on that point. In the debate, members have focused predominantly on only one. Witnesses such as those from Clydeside Action on Asbestos took the view that the bill was an opportunity for sufferers to get some form of redress against those who had negligently exposed them to asbestos. The alternative view of the insurance industry and some lawyers is that compensation should not be available simply because someone has come into contact with asbestos. There was concern about the impact that the bill would have on the law of Scotland, in that it would open up the opportunity for other people who became aware that they were at a greater risk of an injury in the future to make claims.

Other members focused on the reasons why we should support the bill. As devil's advocate, if nothing else, I will focus on the alternative view. I have a lot of sympathy for the view that making compensation available for pleural plaques when they have no negative effect on health runs counter to the Scots law of delict and could open the way for more widespread challenges to other longstanding legal principles on which we have relied in the past. That causes me quite a lot of nervousness.

Bill Butler: Which view does the member agree with?

John Lamont: As I said, I am simply putting forward different views from different aspects of the debate. Today's debate has focused on one side, but the Justice Committee took a much more balanced approach. I simply express reservations and concerns, from a lawyer's perspective, on the effect that the bill might have on the law of Scotland.

I am not saying that the bill would necessarily have such an effect. However, we need only look at the unintended results of the introduction of the Human Rights Act 1998 by the UK Parliament to see how the bill, if enacted, might unravel into results that we might not have intended.

I want to look briefly at the financial implications, which are probably at the core of my concerns. That issue was raised by a number of members, but not by them all. The Justice Committee noted considerable differences in the estimates that were provided by the Scottish Government and by the insurance industry regarding the number of pleural plaques claims that were likely to arise in Scotland in any given year. The insurance industry and the Government—if the latter is being honest—have great difficulty in accurately predicting the number of future pleural plaques claims. There is uncertainty regarding how many people have been exposed to asbestos; of those who have been exposed, there is uncertainty regarding how many will develop pleural plaques; of those who have developed pleural plaques, there is uncertainty regarding how many will be identified as having pleural plaques; and of those so identified, it is uncertain how many would make a compensation claim. There is also uncertainty over the value of a claim, with the claim's inflation being a particular issue for the insurance industry.

I agree that it will always be difficult to predict accurately the costs that are involved in implementing such bills. However, if we are simply replicating what the law was prior to 2005, surely there should be a clear indication of the likely costs. The Scottish Government should have clear and verifiable estimates, as should the insurance industry.

Bill Kidd made a number of points about the insurance industry. The important point to make is that the issue is not just the insurers; there is a big issue for the Scottish Government, which is the employer in a number of cases and which will have to pay out as well.

I am happy to support the motion as amended by Jackson Carlaw's amendment. However, there are financial issues that must be fully considered before the bill can be progressed.

16:42

Paul Martin (Glasgow Springburn) (Lab): We have heard a number of powerful and thoughtful speeches. I give special recognition to Des McNulty and Duncan McNeil, who with others have campaigned on the issue since the Parliament's formation. I am proud of the stance that the Parliament is, I hope, taking. However, given what John Lamont said, I am not sure of that. I take it, though, that the Conservatives support the bill.

We are taking a stance on behalf of the hard-working men and women throughout Scotland who have been negligently exposed to asbestos. Like

others, I pay tribute to the role that unions such as Unite have had, alongside Clydeside Action on Asbestos, in addressing the serious challenges that claimants face.

The key word for me during this stage 1 debate has been "negligence". To all those who protest against and oppose the bill, particularly the insurance companies, I say that we would not be here were it not for the fact that—I direct this point to Jackson Carlaw—employers exposed their workers to asbestos. Indeed, it has been known since 1892—this fact has been clarified—that asbestos is a poisonous substance. The Justice Committee received written evidence that industry leaders on some occasions deliberately ignored and, indeed, hid the dangers of asbestos. That written submission has not been contested. It is important to take that into consideration, while entering into the spirit of consensus on the issue and ensuring that we take it forward.

The more that I consider the issue, the more concerned I become about the way in which men and women have been labelled a problem by the insurance industry. Let us be clear: the claimants are victims. The problem is with those employers who exposed the victims to asbestos. I refer to the evidence that we received from the insurance industry. Perhaps it is not surprising that it raised concerns that the enactment of the bill would result in insurance premiums increasing. However, from the evidence that we received, I believe that that view is speculative and has little effective written evidence to support it.

During an evidence-taking session, I asked Dominic Clayden—the director of technical claims at Norwich Union Insurance Ltd—the following question:

"So it is possible that there will not be an increase in premiums."

Despite his having provided us with significant written evidence advising that there would be an increase in insurance premiums, he admitted in his response:

"There may not be, but if the bill is enacted, it will create an upward pressure on premiums in Scotland."—[*Official Report, Justice Committee*, 2 September 2008; c 1032.]

I cannot help observing that another pressure on premiums may be the massive legal costs that the industry has incurred as a result of raising 10 test cases in England and Wales. Perhaps the industry's vigorous and aggressive approach towards dealing with those claims has raised the possibility that insurance premiums might be increased.

Several witnesses on various occasions said, "Of course, this is an emotive subject." Of course the subject is emotive. It is emotive for those who have been exposed to asbestos and for their worried families. They should make no apologies whatsoever for being emotive.

What compounds such feelings of anxiety is that the insurance industry's answer to the problem is to educate claimants to condition them into thinking that they need not worry any further about their condition. Once again, I cannot help observing from my recent experience of submitting a life assurance form, for which I was subject to the usual interrogation process that many of us will have experienced, that the insurance company did not say that I need not advise it of particular medical conditions. As I recall, I was interrogated about, and had to submit details on, every possible medical condition. If the insurance industry advises that information on pleural plaques need not be submitted in a medical insurance application form, I am sure that we will be able to take the issue forward.

As several members have said, pleural plaques are not visible. The disease causes irreversible damage to the lining of the lung such that, if it involved visible tissue, compensation would obviously not be denied. The fact that pleural plaques do not affect a person's external appearance should be irrelevant.

On the financial memorandum, it is not often that I disagree with Bill Aitken but I am not uneasy with the challenges that we face in respect of the bill. Of course the Parliament's role is to scrutinise any legislation that is introduced, but the challenges that the bill presents are no different from those that we face with every piece of legislation that is introduced. Let us be clear on one thing: the political will of the Parliament is to proceed with the bill. I believe that that view will prevail.

I read with interest the *Hansard* report of the debate that was secured by Jim Sheridan MP. In a powerful speech, he used his personal experience of having worked in Glasgow's shipyards to provide an account of the irresponsible attitude of employers. He said:

"I remember times when we could see asbestos dust floating in the air. The foremen would tell us to carry on working because it would not do us any harm. I do not blame the foremen or managers, because they were only doing as they were told."—[*Official Report, House of Commons*, 23 January 2008; vol 470, c 460WH.]

That is the account of a man who personally experienced the shipyards.

In conclusion, we on the Labour benches believe that the bill deals with an industrial legacy of which Scotland's employers should be ashamed. It is important that we use this opportunity to put that shameful legacy behind us.

16:49

Fergus Ewing: The debate has been very positive. I cannot recall one in which there has been such consensus in the chamber—that is to be welcomed by us all. Jackson Carlaw set the tone when he made clear his support for the bill. Throughout the debate, we have had thoughtful, passionate and moving contributions. Particularly in respect of the latter, we heard from Cathy Peattie about how this matter has touched her family. We heard passionate contributions from the two Bills—Butler and Kidd—and I hope that it is not too mischievous of me to reflect in passing that any matter upon which Jackson Carlaw and Bill Butler manage to unite to some extent is—

Robert Brown: A miracle.

Fergus Ewing: Yes, it is something approaching a miracle, as Mr Brown said.

It is my duty to apply myself to some of the serious points that were made in the debate, not least of which are the committee's criticisms. I start with the criticism of the consultation, which Bill Aitken properly mentioned when he opened for the committee. I acknowledge the concerns about our consultation approach. We did move quickly, but I maintain that were right to do so and, in practice, we had little alternative. It is important to recall that the circumstances were unusual and that 20 years of precedent had been set aside. The UK Government moved swiftly to announce that it would not legislate straight away. In such circumstances, it was important to get clarity in Scotland, not least, as Bill Butler pointed out, for those whose cases are in limbo. We need to provide clarity for those people who are waiting in the legal system limbo. As a lawyer, I know that delays in legal cases are hard enough for clients to deal with, but when the delay is induced by Parliament, it only makes things worse.

We moved quickly to consult on a partial regulatory impact assessment from February to April, as is recorded in paragraph 12 of the financial memorandum. That was a fair attempt at as detailed and thorough a consultation as we could muster. Not everyone replied to it by any means, but we received solid contributions, not least from the Law Society of Scotland, that supported the bill and our approach. There was a great deal of support for our general approach. So, although the committee had its criticisms, I hope that it appreciates that there were reasons for moving swiftly and that we believe that we were right to do so.

Robert Brown properly raised the issue of quantum. If the bill becomes law, how much will be awarded to future claimants who have pleural plaques as a result of their employers' negligence? As Mr Brown knows, the bill does not address quantum—the amount awarded to any particular litigant—because that is properly a matter for the courts. It is not for Parliament to lay down how much an individual should be awarded because, even among those who have pleural plaques, there are differences. Every litigant who goes to court is in different circumstances. They will be different ages and have different life expectancies. One of the features of pleural plaques is the long latency period; it can take 30 years for the condition to be diagnosed in some cases. All cases are different and it would be difficult to set out on the face of the bill a formula for calculating quantum. It would be a departure from the laws of delict, to which many members have referred in general terms.

However, the bill will follow Parliament's consensual approach. Members may have amendments that they wish us to consider, and I will meet any member of the Parliament—or anyone who is listening to the debate—who thinks that they can improve the bill. My officials will study carefully any serious proposal.

It is our understanding that, prior to the House of Lords judgment, the courts understood that pleural plaques caused no physical symptoms, but awarded compensation for the anxiety that sufferers felt. That being the case, in our view the rationale for awarding quantum should be the same after the passage of the bill as it was before the House of Lords ruling. We see no reason to assume or to speculate that the approach that is followed in future will be different from that which was followed in the past.

The issue that, rightly, has prompted the most comment concerns the financial estimates. Let me restate what I said at the outset of the debate. Although detailed work has been done to provide estimates that are as sound as it has been possible to produce, further work has been initiated to provide reassurance that those estimates are far more robust than the insurance industry claims them to be. I will inform Parliament of the outcome of that further work on the estimated cost of the bill as soon as I can.

That said, it is not unreasonable for me to point out that the provisions of the financial memorandum from paragraph 11 until the end are extremely detailed. Members might not be surprised to learn that I spent some considerable time on those paragraphs. Not many members have had the opportunity to go into each of them in detail—time has perhaps not permitted them to do so—but they provide the best possible estimate of the likely costs.

Paragraph 13 says:

"There is no reliable way of estimating how many individuals who have pleural plaques as a result of

negligent exposure to asbestos will ultimately make a claim."

We admit that we are not trading in certainty. There is no mathematical formula that we could apply; were there any such formula, I would fear for the fate of people who have the condition because they would know when they were likely to meet their maker. That would be a chilling mathematical formula; however, no such formula exists.

It is clear that there is a degree of uncertainty about future numbers of pleural plaques claims, but I want to give a brief description of the rationale that we applied as we set about the task of preparing the financial memorandum, on which the debate has centred. It is extremely simple—we examined the claims that were made over the past few decades. We looked at how many cases were pursued, how many went to court and how many were settled. We reached the best figure that we could arrive at. We appreciate the assistance of the Scottish Court Service and of Thompsons, the firm that has acted in about 90 per cent of the cases in question. We met them and studied the figures, which are in the financial memorandum.

The same is true of the estimated cost of £8,000 a case, plus legal expenses. That is the best figure that we could get. We did not get figures from the insurance companies, which said that their figures were commercially confidential. I hope that members will agree that we have done our best in the financial memorandum, and I thank my officials for their efforts.

I will conclude by mentioning some of the other issues that have been raised. It will be a good thing if the bill is agreed to when it moves to stage 3. As many members have eloquently said, it will redress an injustice. I am immensely heartened by what Richard Baker said in his intervention at the beginning of the debate about his willingness to engage with us in further constructive dialogue with the UK Government in relation to its statement of funding policy. We can return to the issue. I will be happy to meet Richard Baker and representatives of all other parties on that issue.

Although this Parliament is standing up, as many members have said, for the people of Scotland; is cognisant of our industrial heritage; and is aware of the problems and ills of the past, about which members such as Gil Paterson spoke movingly, we in the Scottish National Party would like every person in the UK who has pleural plaques to be able to pursue their claims, and we very much hope that where the Scottish Parliament leads, Westminster will follow.

Damages (Asbestos-related Conditions) (Scotland) Bill: Financial Resolution

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-2797, in the name of John Swinney, on the financial resolution in respect of the Damages (Asbestos-related Conditions) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Damages (Asbestos-related Conditions) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b)(ii) of the Parliament's Standing Orders arising in consequence of the Act.—[*Fergus Ewing.*]

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

Business Motion

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-2820, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 12 November 2008

2.00 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 1 Debate: Scottish Parliamentary Pensions Bill
followed by	Financial Resolution: Scottish Parliamentary Pensions Bill
followed by	Scottish Government Debate: Scottish Economy
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

Thursday 13 November 2008

9.15 am	Parliamentary Bureau Motions
followed by	Scottish Labour Party Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Rural Affairs and the Environment; Justice and Law Officers
2.55 pm	Scottish Government Debate: Scottish Futures Trust
followed by	Legislative Consent Motion: Energy Bill – UK Legislation
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

Wednesday 19 November 2008

2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Government Business
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

Thursday 20 November 2008

9.15 am	Parliamentary Bureau Motions
followed by	Scottish Government Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Finance and Sustainable Growth
2.55 pm	Scottish Government Business
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business—[*Bruce Crawford*.]

Motion agreed to.

Parliamentary Bureau Motion

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of one Parliamentary Bureau motion. I ask Bruce Crawford to move motion S3M-2821, on approval of a Scottish statutory instrument.

Motion moved,

That the Parliament agrees that the draft International Criminal Court (Remand Time) Order 2008 be approved.—[*Bruce Crawford.*]

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

Decision Time

17:00

The Presiding Officer (Alex Fergusson): There are four questions to be put as a result of today's business. The first question is that amendment S3M-2796.1, in the name of Jackson Carlaw, which seeks to amend motion S3M-2796, in the name of Fergus Ewing, on the Damages (Asbestos-related Conditions) (Scotland) Bill, be agreed to.

Amendment agreed to.

The Presiding Officer: The next question is, that motion S3M-2796, in the name of Fergus Ewing, on the Damages (Asbestos-related Conditions) (Scotland) Bill, as amended, be agreed to.

Motion, as amended, agreed to.

Resolved,

That the Parliament agrees to the general principles of the Damages (Asbestos-related Conditions) (Scotland) Bill but, in so doing, notes the terms of the Justice Committee's Stage 1 report, in particular the concerns expressed with regard to the Financial Memorandum, and calls on the Scottish Government to provide the Parliament with a more detailed analysis of the likely cost implications, from such information as is available to or can be obtained by the Scottish Government, prior to the Bill being considered at Stage 3.

The Presiding Officer: The next question is, that motion S3M-2797, in the name of John Swinney, on the financial resolution in respect of the Damages (Asbestos-related Conditions) (Scotland) Bill, be agreed to.

Motion agreed to.

The Presiding Officer: The next question is, that motion S3M-2821, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on the approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

Digital Switchover

The Deputy Presiding Officer (Trish Godman): The final item of business today is a members' business debate on motion S3M-2759, in the name of Jeremy Purvis, on digital switchover. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes that the UK's digital TV switchover commences with the switchover of the Selkirk transmitter on 6 and 20 November 2008 in the Border TV region; believes that digital is a positive development within television but is concerned that the Switchover Help Scheme, established to give practical support to those people expected to have the most difficulty in making the switch to digital TV, has been subject to doubts over its effectiveness, and expresses further concern that, with the Border TV region having the highest percentage of viewers receiving their television signal through relay transmitters, the switchover will create a two-tier service with more than 50% of viewers in the Borders able to access only 50% of digital channels.

17:02

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I apologise to those members whom I am detaining from the by-election campaign. I suspect that they will be en route once this debate concludes.

The viewing public will experience the biggest changes to broadcasting in a generation shortly after midnight tonight, when the first major stage commences of the full switch of the Selkirk transmitter in my constituency to digital television signals. Some viewers already receive digital television from the transmitter, and Whitehaven in Cumbria has already switched. However, with the switch of Selkirk and its 11 relay transmitters, the south of Scotland will be the first and the biggest region of the United Kingdom to switch.

Since the UK Government decided that the Borders TV area would be the first to be switched over to digital, my Westminster colleague Michael Moore has led the campaign to ensure that viewers in the Borders have received proper information and are involved in the decision-making process. He deserves commendation for his work supporting community activists and representatives, voluntary groups, broadcasting professionals and many others with direct or indirect interests, to ensure that the benefits of digital are exploited for Borders viewers and any disadvantages are militated against.

This week, the Secretary of State for Culture, Media and Sport visited the Borders and, during our recent debate on the Scottish Broadcasting Commission, I and other representatives raised with the Minister for Europe, External Affairs and Culture concerns about the switchover.

At one minute past midnight tonight, the Selkirk transmitter will be switched off and it will remain off until 6.30 am—or earlier—when BBC2 will be broadcast fully on digital. Some of the relay transmitters may configure automatically, but, by 10.30 am tomorrow, all relay transmitters are due to be broadcasting BBC2 in digital format.

All digital boxes will have to be retuned for viewers in the area. People receiving their signals through their digital box will then have to switch between analogue and digital signals for a fortnight, before the second switchover on 20 November. In some regards, that will be a bigger switchover. At one minute past midnight, the Selkirk transmitter will again be switched off. The transmitter and all the relays are due to be broadcasting fully digital signals by 4 pm the following day. Again, all boxes are due to be retuned. It is worth noting that that applies to each box for each television and video recorder. Viewers have had to purchase both boxes, and they will have to be retuned twice.

The two stages of the switchover will make the region the first to be fully broadcasting digital television. Digital UK has been proactive in spreading the message on the need to buy the boxes and on the processes involved as digital switchover starts. However, inevitably, some people will not have received the literature, seen the broadcast captions on their televisions, seen the local advertisements, or seen the poster banners that are displayed across the Borders.

For those who have had difficulty in purchasing and installing proper equipment, a help scheme has been established by the UK Government. The scheme was welcomed warmly; the fact that Sky was the successful bidder was welcomed less warmly. Concerns have also been expressed that the choice of equipment for the scheme, although of high quality, was the most expensive. For elderly people wishing to purchase and install the box, it has worked out considerably more expensive than a box simply bought from a high street retailer.

Constituents have approached me concerning the operation of the scheme, customer service and a lack of flexibility. To be fair, I should say that I have also had constituents commending the scheme. However, a recent report on the scheme showed that take-up was just 65 per cent. It has not been uniformly successful.

Concerns have also been expressed that the design of the scheme could have involved at a much earlier stage the excellent network of community, voluntary and charitable bodies in the Borders that have worked so hard to ensure that

the people whom they support are aware of the switchover and are supported through it.

In addition to the people who have had difficulty with the technological changes, there remain people in the Borders—in my constituency and in John Lamont's constituency—who have had real difficulty receiving any terrestrial TV signals at all. I know about that, because I am one of them. In a letter that I received only this morning, a constituent highlights the fact that the difficulty of receiving signals in rural areas is often not taken into consideration by the UK Government. He lives in Innerleithen and his letter concerns the Innerleithen mast. He says:

"My house is amongst the closest to that mast but because the mast is sited on the reverse slope of Caerlee we receive no signal from it. Indeed, because of the local topography, we receive no signal from Peebles or Selkirk either."

That point highlights one of the issues that affect rural areas such as the Borders. Some people may have received a poor signal but will now be able to receive a better digital signal; and most people will be able to receive a better signal through their existing aerial and therefore receive a much better service; but some people will, regrettably, still not be able to receive any terrestrial TV signals.

Viewers who will receive their signals through the Selkirk transmitter will receive the full signal of six mux coverage after switchover. Mux is the abbreviation for multiplex. Viewers receiving signals through relay transmitters will receive three mux coverage—known as "freeview lite". Across the Borders region as a whole, only 51 per cent of households can currently receive digital TV signals through an aerial. After digital switchover, that will go up to 98 per cent, which is positive. However, crucially, of those households only 53 per cent are predicted to receive the full freeview line-up of 48 channels. Elsewhere, only 20 channels will be available. The forecast of 47 per cent—for viewers in my area and in the rest of the Borders TV area who will receive only half of the digital service—is the highest in the United Kingdom. The area closest to our figure is south Wales, which has 70 per cent coverage and therefore 30 per cent lack of coverage. The situation is simply not acceptable to the 47 per cent of viewers who will receive a secondary service. They pay exactly the same licence fee as everyone else.

The UK Government's response—that people should not really complain, as the 20 channels that they will receive are the most popular ones—is glib. It is especially glib in the context of the review of the Office of Communications—Ofcom, the regulator—on public service broadcasting. One of the options that Ofcom is still considering is the provision of public funding for some digital channels—including some smaller digital channels—that could provide public service broadcasting as part of their package. Those may include a Scottish digital channel, which is the favoured option of the Scottish Government. However, one of those channels—or the part of the channel that public money will go to—will not be receivable by half of the viewers in the Borders.

The switchover is exciting. It is the biggest change, and I wish the engineers well in their work in Selkirk tonight—and, indeed, on 20 November. I ask the Scottish Government to do what it can, working with the UK Government, to support Borders viewers who have already been jolted by the loss, in the new year, of full local news coverage—an issue that has been raised several times in the Parliament. I ask the Government to ensure that the breadth and quality of the digital offering that those viewers will receive, as the first viewers, will be the same as in other parts of the UK. They pay the same licence fee and should receive the same digital signal and service. A two-tier service is not acceptable to the Scottish Borders and should not be acceptable to the Scottish Government or the UK Government.

17:11

Ted Brocklebank (Mid Scotland and Fife) (Con): I congratulate Jeremy Purvis on securing this debate on an important subject.

As we have heard, Whitehaven in Cumbria became the first place to go through the process of having its television sets switched to the digital format in 2007. The Border region will be the second place to embrace digital with the switch-off of the Selkirk transmitter, starting tomorrow. The digital revolution will completely replace analogue TV transmission all over the UK by 2012.

It does not bode well that Ofcom's report into the digital switchover shows that an average of 90 per cent of households in the UK will be able to receive 40 channels after the switchover, whereas the figure drops to just 53 per cent of households in the Borders transmission area. As Jeremy Purvis's motion states, the Border TV region has the highest percentage of viewers who receive their TV signal through relay transmitters—I understand that 11 transmitters are involved. As the Border region has the lowest percentage of households that can receive digital TV through an aerial—just 51 per cent—half of Borders viewers will not know whether their preparations for the digital switchover have been successful until the switchover takes place tomorrow and on 20 November. That is unacceptable, and I know that Ofcom is aware of the problems.

My colleague John Lamont will say more about the problem of reception in the Borders area. I will

concentrate on the more positive aspects of the digital switchover. Broadcasting is a reserved matter, therefore many of the decisions relating to the new digital communications world will be made at Westminster. I believe that broadcasting should continue to be reserved, but in line with the recommendations of the Scottish Broadcasting Commission I also believe that, in the post-digital era, the Scottish Parliament should be much more involved in deciding what is seen on TV screens here in Scotland and how network funding is allocated and disbursed in Scotland.

There is little doubt that digital is fairer for all viewers. Today, one in four households—especially in the remoter parts of Scotland—cannot get digital television via their aerial, and many still cannot get Channel 5. It is also true that the decision of the BBC trust not to put MG Alba, the new Gaelic digital channel, on freeview has meant that the channel cannot develop its viewership at the pace that it would like. I hope that, long before the complete digital switchover in 2012, that decision will be reversed, especially in view of the new channel's astonishingly encouraging viewing figures.

With the switching off of the analogue broadcasting system, we can boost the digital system and provide a greater choice of affordable digital options. Digital TV is, of course, more efficient because it can carry many more channels than analogue TV, which frees up the spectrum for a whole host of TV, radio and information services. I hope that one of those will be the new Scottish digital channel, which was originally proposed by the Scottish Conservatives in our submission to the Scottish Broadcasting Commission and is now the main plank in the commission's recent recommendations.

A new digital channel would provide a welcome boost for Scottish viewers and the TV production sector north of the border, including the hard-pressed Scottish independents. Although there is debate about the funding methods for the new channel, there is little doubt that large sums will be realised through the sell-off of the digital spectrum. Conservatives believe that the fairest funding method would be a combination of public and private investment, which might include funding for the development of city or regional TV news and current affairs opt-outs around the new channel's core schedule. Such an approach could give us the genuine regionality that ITV can no longer provide, not only in the Borders but elsewhere in Scotland.

One other bonus from the digital switchover that was highlighted in a speech made earlier this week by the Conservative leader is that the BBC was given additional licence fee moneys to cover the change to digital, but it now seems likely that considerable sums will be left over after the switchover. A national debate on the BBC's future is rapidly gaining momentum, but David Cameron has already given notice that, notwithstanding whatever else is decided about broadcasting, a future Conservative Government would look favourably on using digital leftover money to cut the BBC licence fee and kick-start competing media and internet companies, including, one would hope, some in the Borders.

Although there are genuine local concerns about transmission following the digital switchover, the move has many potential advantages that should be welcomed by everyone who is interested in the future of Scottish broadcasting.

17:15

Christine Grahame (South of Scotland) (SNP): I, too, congratulate Jeremy Purvis on securing this very topical and important debate.

Earlier this year, I submitted to the Scottish Broadcasting Commission a survey that covered not only the provision of channels, including Border TV, but digital provision. In that survey, which was sent to 20,000 households and to which I received 7,000 responses, 54 per cent said that they were well informed about the switchover, 37 per cent said that they were not and 9 per cent were undecided. However, I want to draw a distinction between being informed about and being ready for the switchover, particularly where elderly people are concerned.

According to the latest figures, 52,000 households are covered by the Selkirk transmitter and its relays and, at the time of speaking, 10 per cent are still to convert to digital. Given that a high number of elderly people live in the area—indeed, the 2001 census revealed that 24,000 or 30 per cent of the population were pensioners—some very elderly, frail and vulnerable people are going to get lost in the process and will simply not know what is happening. As Jeremy Purvis has quite rightly pointed out, those people will lose their service when the switchover takes place.

Not that many elderly people will go on to the internet, but when I had a look at the Digital UK site I found the following lines:

"If you get a TV signal from a relay transmitter (Freeview) you need to toggle between analogue and digital."

I have no idea what toggling might be. With all the talk on that site about having to change the aerial and so on, very many elderly people who rely on their TV for their main companionship will simply be confused. I am sure that John Lamont will also mention this issue, but I subscribe to the view that certain areas will receive no service whatever.

Being aware is not the same as being ready. Indeed, only two days ago, Consumer Focus Scotland, which is tracking the experiences of more than 100 people in the Scottish Borders, said that viewers are not ready for switchover and highlighted the confusion that still reigns about what exactly is going to happen.

Why is this switchover happening? I am not going to be quite so benevolent towards the British Government, because this move is not purely about expanding choice. There is a clear vested financial interest in the Government's auctioning off of analogue channels in 2009. The money, which is estimated at between £5 billion and £10 billion, will go to the Treasury. Not only that, but the Treasury will also receive the VAT on the equipment that is needed to receive digital channels.

Other countries are switching over to digital, but some, including Holland and France, are not because of the costs. It is simply a mixed blessing, and we must not look at the move as if it is happening out of the goodness of the British Treasury's heart. A lot of money is involved, and I want some of it to go back to the Borders.

Why choose to roll out this switchover in an area that has a difficult topography, that has the lowest average wages in the country—according to last year's figures, the average weekly wage was £355 compared with the Scottish average of £436—and where 30 per cent of the population are elderly? The figures from Ofcom suggest that it will cost the average household in the Borders £132 to switch over two TV sets and a video. Many have not signed up to the help scheme—indeed, according to my figures, only 15 per cent have—and I do not know whether in these very straitened times of high energy bills and perhaps job losses people on very low incomes will be able to cover the cost.

As I have said, the switchover is a mixed blessing, and the huge caveat about it is whether the elderly, the vulnerable, those with impaired sight and others have had the financial help to which they are entitled and practical assistance in dealing with it. I ask the Treasury to put some of the money that it is scooping in from auctioning off the analogue spectrum into providing the Borders with full access to Scottish channels, particularly Scottish Television.

17:20

Pauline McNeill (Glasgow Kelvin) (Lab): I congratulate Jeremy Purvis on securing probably the most timely debate that we have had in the Parliament, given that the digital switchover is happening tonight.

The advantages of digital switchover are apparent. There will be higher-quality output and wider choice. However, I agree with Christine Grahame to some degree: there are also disadvantages that we need to work through, but they can be worked through. Most other countries are moving to digital—the trend is pretty much unstoppable—but we have the responsibility to challenge Ofcom and others on how smooth the transition will be. It is clear that things will be difficult for those who do not regard themselves as technical and that the transition will be a wee bit more costly than simply finding a SCART input in the back of a television. If there is only one such input, the person will not be able to use their video. The practical issues for people who are making the switch must be worked through with them, and we must ensure that the responsible agencies continue to do that.

The digital switchover will change the face of television as we know it. Some of us have already debated on the Ofcom panel the challenges and opportunities for the broadcasting industry and the issues that we need to work through. I agree with Ted Brocklebank: the Scottish Broadcasting Commission's report, which is excellent, is right to suggest that the Parliament should scrutinise broadcasting issues more. Perhaps it should share responsibility for doing so with Westminster.

For those of us who are interested in the technical side, digital signals can provide very high-quality output, but when a digital signal is lost, it is pretty much lost altogether. There is confusion about what people will get. Digital television is not the same as high-definition television—that is different. We must educate people a wee bit more about the television output that they will get, so that everybody understands the issues in the debate.

Labour has called for a review of what is happening with BBC Alba and freeview. It seems odd that the audience for BBC Alba will be assessed, but that a percentage of the audience cannot see the channel in the first place and will not be counted in the figures. I have lodged a motion on that matter, which I hope members will sign. People who should be able to see the channel should be counted when we are considering whether there would be value for money in ensuring that BBC Alba is available to more people who have an interest in Gaelic.

Jeremy Purvis was right to raise the issue of whether there is scope for other smaller digital channels to plug the gap. Whatever broadcasting changes we make, the channels must be available to all Scots. That will be technically challenging in parts of Scotland, but we must ensure that every Scot benefits from their licence in the same way. That said, I do not underestimate the technical challenges. I also support Jeremy Purvis's suggestion that the Scottish Government and the

UK Government should work through the issues, as some of them can be solved by working together.

We have debated before whether Scotland will get its share of the revenue from the old analogue provision. There should be a further debate about what we want to do with it. Should we, for example, fund a new Scottish digital channel? We have supported having such an important debate. We must ensure that the same problems do not arise and instead that all of Scotland is covered.

We are talking about the switchover to digital television, but there have been on-going discussions about digital radio switchover. I have not researched that subject in depth, but I know that there have been timetabling changes for the switchover to digital radio. More technical and problematic issues are involved. People do not understand that if there is a switch to digital radio, they will not be able to use every radio in their house, therefore different consumer and technical issues need to be discussed. We must ensure that we tune into those issues, because being able to use their radios is important to people.

17:24

John Lamont (Roxburgh and Berwickshire) (Con): I, too, congratulate Jeremy Purvis on securing this timely debate.

As we have heard, tonight, the Border TV region will make history by becoming the first area in Scotland and the second in the UK to switch from an analogue television signal to a digital one. However, rather than being a proud moment for the region, it could well be one of embarrassment, because reception in the Borders is among the worst in the UK. As Jeremy Purvis said, Ofcom has reported that the Border TV region has the lowest percentage of households that can currently receive digital television through an aerial, with a figure of just 51 per cent. Nearly half of the Borders population will not know whether their preparation for the switchover has been successful until the changeover happens tomorrow. That could create further complications when the switchover occurs, with confusion among the electorate muddling the switchover even more.

The changeover to digital television has been heralded as providing a wide viewing selection, with more than 40 channels available to the audience. One would think that all areas would be able to reap the benefits of such an improvement. However, although Ofcom reports that an average of 90 per cent of households in the UK will be able to receive the 40 channels after switchover, that figure does not hold true for the Borders, where barely more than 50 per cent of the population will be able to receive the 40 channels. The figure is significantly lower than that in the second-worst-served area, Wales, where 73 per cent of households will be able to watch all 40 digital channels. The reason for the discrepancy is that main transmitters, such as the one at Selkirk in the Borders, carry all six multiplexes, whereas relay transmitters, of which there are 11 in the Borders, carry only three multiplexes. That is disappointing for the Borders region and entirely unfair to the residents in my constituency and Mr Purvis's constituency of Tweeddale, Ettrick and Lauderdale. Yet again, the Borders is being short-changed.

As well as there being the obvious discrepancy in availability throughout the Borders, many unanswered questions remain about the digital switchover. For example, why can we not have local BBC Radio Selkirk news bulletins via digital audio broadcasting—DAB—radio after the switchover? That is yet another blow to the local news service. Furthermore, what is being done to protect the old bandwidth from being auctioned off to a commercial operator? I hope that Scottish Borders Council will fight for that valuable resource for the Borders—which will give more opportunity for local broadcasting, particularly local news—and will not allow the bandwidth to be sold to a large multinational company with no local interest in the Borders. The confusion from the digital switchover raises many questions that should have been answered long before now. I hope that the uncertainties will be resolved in the coming days and weeks.

As the Borders is one of the first UK areas to move to digital television, we should serve as the leader for the rest of the country. However, the example for the rest of the country will be one of what to avoid and will demonstrate how necessary it is to prepare a whole region properly for such an important change. At a time when the Borders could have been at the forefront of technology for the entire United Kingdom, we find ourselves a rather ill-prepared test case and a lesson for the country in the importance of organisation and preparation before such drastic changes are implemented.

17:28

The Minister for Europe, External Affairs and Culture (Linda Fabiani): I thank Jeremy Purvis for bringing the debate to Parliament. It is timeous because of the forthcoming by-election and the first part of the switchover in the Borders. As we have heard, the Selkirk transmitter will begin its switchover tomorrow, which is a major step in broadcasting in this country.

Members' speeches have been welcome. There is consensus, so I hope that we will all move

forward together to try to get the best possible outcome for people in the Borders and beyond. As has been said and as everyone is aware, digital switchover is reserved to the UK Government, and I understand that the matter was raised with UK ministers by MPs from the Borders and elsewhere in a debate at Westminster on 14 October.

Obviously, the Scottish Government is extremely keen for the switchover to go smoothly in Scotland. I have on a number of occasions met representatives of Digital UK to discuss progress and to press Scotland's case. I met Digital UK representatives on 29 October to establish whether the Selkirk transmitter switchover was progressing according to plan and whether, in its view, people in the Scottish Borders were ready for switchover. The response that I received was positive, and there was discussion about the pilot in Whitehaven in Cumbria. Digital UK's figures show that by August, 88 per cent of main sets in the Borders and 40 per cent of secondary sets were ready for switchover. The figure for main sets is now up at around 90 per cent.

Many areas of the Borders are served by relay transmitters, as we have heard, and the people who are served by them will not get the full service until much later. As has been mentioned here, we will not know until tomorrow the total effect of the switchover scheme, given the number of relay transmitters.

I understand the concerns that have been expressed by everyone. Digital UK has informed me that seven advice points will be operating—in Duns, Galashiels, Eyemouth, Hawick, Peebles, Jedburgh and Kelso. The centres will be open for three days, around both switchover days, and will be staffed by Digital UK and help scheme staff. The Digital UK call centres will be able to provide advice to anyone who cannot make it to an advice point. Scottish Borders Council and local voluntary sector groups will provide crucial support, and I hope that their support is visible. Christine Grahame was quite right to point out that a lot of people who say that they are aware of what is going on do not really understand what has to be done.

That brings me to the help scheme, which Jeremy Purvis mentions in his motion. The scheme was established to give help to those who need it most. The UK Government recently announced that the help scheme will be extended to all people living in care homes who have been, or will be, resident for six months. That change is welcomed by the Scottish Government. It came up at the Local Government and Communities Committee, and Shona Robison, on behalf of the Scottish Government, wrote to the Department for Culture, Media and Sport about the matter to ensure that people who receive free personal care will not miss out on the help scheme. I have been advised that the information pack was sent to everyone who was eligible for it. In the Scottish Borders, that covered 16,000 people. I also understand that reminders were sent out.

Uptake of the help scheme in the Borders, according to the most recent figures that I have, was about 15 per cent. However, the response rate among the eligible people whom I mentioned was much higher: about two thirds responded, either to accept or to say that they did not wish assistance. As Christine Grahame said, the situation might, however, become apparent when the time comes. People can access the help scheme beyond tomorrow. It will be open to eligible people until the switchover in the Border Television region is complete. That will be in July 2009, when the Caldbeck transmitter switches over.

I am very much aware of the concern that rural areas are receiving a poorer service. More people in such areas receive their television signal from a relay transmitter and, as Ted Brocklebank and John Lamont pointed out, some areas in Scotland and Wales suffer because of that.

The plan is for everyone in the Borders to continue to get public service broadcasting services. At this point, I will pick up on something that Jeremy Purvis said about any new Scottish digital channel. The Broadcasting Commission report recommended that that network should be carried, like all other public service broadcasters, on the public service broadcast multiplex. It should therefore be available to all. We should keep pushing for that.

Pauline McNeill and John Lamont brought up the subject of digital radio, and different issues must be discussed in that regard. I recently met DCMS, together with its agent, and the Government will respond to its consultation.

Digital switchover in the Borders is the first such exercise in Scotland following the pilot scheme in Whitehaven. We all hope that it goes well and we will keep our eye on it.

On working with the UK Government, I want everyone to be assured that discussions have been on-going. I will send a copy of the *Official Report* of the debate to Westminster to show that there is genuine concern to ensure that people are not disadvantaged. It will be useful for Westminster to see the strength of feeling about BBC Alba, for example, which is so important to us all—we really must push to have it on freeview.

Please be assured that, as far as I am concerned, the move forward with digitalisation is a joint initiative and Scotland's case will always be pressed by this Government. Anyone who feels that they can usefully contribute to that should not

hesitate to do so. I hope that all Borders representatives will keep us informed of their perspective on how things are progressing with the digital switchover.

Meeting closed at 17:35.

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