

# **MEETING OF THE PARLIAMENT**

Wednesday 9 September 2009

Session 3

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# CONTENTS

Wednesday 9 September 2009

## Debates

Col.

|   |       |
|---|-------|
| <b>TIME FOR REFLECTION</b> .....  | 19347 |
| <b>BUSINESS MOTIONS</b> .....   | 19349 |
| <i>Motions moved—[Bruce Crawford]—and agreed to.</i>  |       |
| <b>CHILDREN'S HEARINGS (LEGAL REPRESENTATION) (SCOTLAND) AMENDMENT RULES 2009 (SSI 2009/211)</b> .. | 19350 |
| <i>Motion moved—[Michael McMahon].</i>  |       |
| The Minister for Children and Early Years (Adam Ingram) .....                                       | 19350 |
| Karen Whitefield (Airdrie and Shotts) (Lab).....  | 19352 |
| Elizabeth Smith (Mid Scotland and Fife) (Con) .....   | 19355 |
| Margaret Smith (Edinburgh West) (LD) .....  | 19357 |
| Kenneth Gibson (Cunninghame North) (SNP) .....  | 19359 |
| Ken Macintosh (Eastwood) (Lab) .....  | 19361 |
| Christina McKelvie (Central Scotland) (SNP) .....   | 19362 |
| Claire Baker (Mid Scotland and Fife) (Lab) .....  | 19364 |
| Robin Harper (Lothians) (Green) .....   | 19365 |
| Robert Brown (Glasgow) (LD) .....   | 19366 |
| Elizabeth Smith.....  | 19368 |
| Rhona Brankin (Midlothian) (Lab).....   | 19368 |
| Adam Ingram .....   | 19370 |
| <b>DEMENTIA STRATEGY</b> .....  | 19374 |
| <i>Motion moved—[Shona Robison].</i>  |       |
| <i>Amendment moved—[Cathy Jamieson].</i>  |       |
| <i>Amendment moved—[Ross Finnie].</i>   |       |
| The Minister for Public Health and Sport (Shona Robison) .....                                      | 19374 |
| Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab).....  | 19378 |
| Ross Finnie (West of Scotland) (LD) .....   | 19381 |
| Mary Scanlon (Highlands and Islands) (Con).....   | 19383 |
| Christine Grahame (South of Scotland) (SNP).....  | 19385 |
| Irene Oldfather (Cunninghame South) (Lab).....  | 19388 |
| Sandra White (Glasgow) (SNP).....   | 19390 |
| Tom McCabe (Hamilton South) (Lab) .....   | 19393 |
| Robert Brown (Glasgow) (LD) .....   | 19394 |
| Maureen Watt (North East Scotland) (SNP).....   | 19396 |
| Lewis Macdonald (Aberdeen Central) (Lab).....   | 19398 |
| Ian McKee (Lothians) (SNP).....   | 19401 |
| Marilyn Livingstone (Kirkcaldy) (Lab) .....   | 19402 |
| Ross Finnie .....   | 19403 |
| Jackson Carlaw (West of Scotland) (Con) .....   | 19404 |
| Dr Richard Simpson (Mid Scotland and Fife) (Lab).....   | 19407 |
| Shona Robison .....   | 19410 |
| <b>BUSINESS MOTIONS</b> .....   | 19414 |
| <i>Motions moved—[Bruce Crawford]—and agreed to.</i>  |       |
| <b>POINT OF ORDER</b> .....   | 19416 |
| <b>DECISION TIME</b> .....  | 19417 |
| <b>SONGBIRD SURVIVAL</b> .....  | 19422 |
| <i>Motion debated—[Jamie McGrigor].</i>   |       |
| Jamie McGrigor (Highlands and Islands) (Con) .....  | 19422 |
| Elaine Murray (Dumfries) (Lab) .....  | 19425 |
| Jim Hume (South of Scotland) (LD).....  | 19426 |
| Robin Harper (Lothians) (Green).....  | 19428 |
| Nanette Milne (North East Scotland) (Con).....  | 19429 |
| Liam McArthur (Orkney) (LD) .....   | 19430 |
| The Minister for Environment (Roseanna Cunningham) .....  | 19432 |

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## Scottish Parliament

*Wednesday 9 September 2009*

[THE PRESIDING OFFICER *opened the meeting at 14:00*]

### Time for Reflection

**The Presiding Officer (Alex Fergusson):**  
Good afternoon. As always, our first item of business is time for reflection. Our time for reflection leader today is Elaine Duncan, the chief executive of the Scottish Bible Society.

**Elaine Duncan (Scottish Bible Society):**  
Presiding Officer, members of the Scottish Parliament and friends, in 1809 a small group gathered less than a mile from here. They met to constitute a society to promote

“the circulation of the scriptures at home and abroad”,

especially among the poor in Scotland. Thus the Edinburgh Bible Society, now the Scottish Bible Society, was formed.

The early 19<sup>th</sup> century was a time of turmoil coupled with opportunity. Across Europe the Napoleonic wars raged, while technological advance meant that transport opened the possibility of travel to the new world. This period saw the formation of many great missionary societies and charities, some of which still flourish today. Moved by concern for the plight of their fellow human beings in Britain and beyond, people put faith into action.

Through our sophisticated 21<sup>st</sup> century eyes, the well-intentioned actions of those people of God may seem old-fashioned, even misguided, yet their passion for justice, compassion for the poor and integrity of heart echo through two centuries. The values that they held dear—values that drove them to sacrifice time, energy and resources—we see woven into our mace, the foundation on which contemporary Scotland is built. People motivated by wisdom, justice, compassion and integrity are surely what our nation needs in 2009.

We also live in a time of turmoil and opportunity. The global village offers young Scots limitless employment and leisure opportunities, yet we also see the turmoil of poverty, the breakdown of community and the repetitive patterns of addiction and abuse. We face a new world of possibility, but many of today's problems are rooted in the same issues the 19<sup>th</sup> century reformers faced.

The Bible is rich as a source of wisdom for a healthy society—you would expect me to say that, wouldn't you? However, it also teaches that the best drafted laws, the finest education system and the most caring welfare structure are powerless to

change human nature. Legislation, education and care cannot eradicate greed, envy, jealousy or selfishness. Although this ancient text contains wisdom for government, a society based merely on the Old Testament laws and the New Testament morality is no utopia. Rather, the Bible confronts us with the reality of the human condition and our need to engage with the living word of God in the person of Jesus Christ.

As the Scottish Bible Society celebrates its 200<sup>th</sup> birthday, we are encouraging the people of Scotland to rediscover the truth and relevance of Scripture. We want people to be stirred by the passion and commitment shown by the 19<sup>th</sup> century men and women whose discovery of the source of wisdom, justice, compassion and integrity propelled them to be world changers and life bringers. We also want them to experience an inner transformation through a personal encounter with Jesus Christ, the living word. May he inspire and energise you through this session of Parliament.

## Business Motions

14:05

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of business motion S3M-4805, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on suspension of standing orders.

*Motion moved,*

That the Parliament agrees that, for the purposes of allowing up to 60 minutes to debate motion S3M-4811 on Wednesday 9 September 2009, the second and third sentences of Rule 10.4.4 of Standing Orders be suspended.—[*Bruce Crawford.*]

*Motion agreed to.*

**The Presiding Officer:** The next item of business is consideration of business motion S3M-4803, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revised business programme.

*Motion moved,*

That the Parliament agrees the following revision to the programme of business for Wednesday 9 September 2009—

delete

*followed by* Public Petitions Committee Debate: Inquiry into Public Petitions Process

*followed by* Scottish Government Debate: Dementia Strategy

and insert

*followed by* Debate on the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211)

*followed by* Scottish Government Debate: Dementia Strategy—[*Bruce Crawford.*]

*Motion agreed to.*

## Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211)

**The Presiding Officer (Alex Fergusson):** The next item of business is a debate on motion S3M-4811, in the name of Michael McMahon, on behalf of the Parliamentary Bureau, on consideration of a Scottish statutory instrument, the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211).

*Motion moved,*

That the Parliament agrees that nothing further be done under the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211).—[*Michael McMahon.*]

**The Presiding Officer:** We are extremely tight for time and I have no time to take out of the next debate, so members must adhere strictly to the times that they are given.

14:06

**The Minister for Children and Early Years (Adam Ingram):** I welcome the opportunity to discuss in Parliament new arrangements for making available state-funded legal representation for relevant persons in children's hearings, by way of a Scottish statutory instrument that was made in June and which I will refer to as the SSI.

As some members will be aware, the matter has been discussed at length at the Education, Lifelong Learning and Culture Committee. As I have already done at committee meetings, I make clear the Government's commitment to protecting and promoting the principles and ethos of the children's hearings system. The system is all about the best interests of the child, and the SSI will help to ensure that that remains the case.

By way of background, the SSI ensures that relevant persons may be provided with free legal representation to assist them in a children's hearing if that is necessary to ensure their effective participation in the decision-making process. A relevant person is usually the child's parent, but it can be other people who have a close involvement in the child's life. The Scottish Government made the concession in the context of a legal challenge in which an individual argued that the absence of provision for state-funded legal representation breached their rights under the European convention on human rights. The Court of Session has not yet issued the judgment in the case, so I am sure that members will understand if I do not go into details about its particular circumstances. However, the Scottish Government has already accepted that the absence of any

provision whereby a person could apply for state-funded legal representation before a children's hearing if they were unable to participate effectively without such representation was incompatible with articles 6, 8 and 14 of the convention.

That rationale applied to any relevant person who was unable to participate effectively at a children's hearing without legal representation. Therefore, the Government decided to act quickly—as soon as it was clear that there was a legal requirement to make available assistance in certain circumstances—to ensure that any relevant person who was incapable of participating effectively in a hearing because of their physical or mental capacity had the possibility of legal representation if their individual circumstances merited it. That is why the Government took the unusual but legitimate and justifiable step of breaching the 21-day rule by bringing the SSI into force the day after it was laid in Parliament in June.

The SSI provides an interim route through which such provision can be made proportionately and quickly; the regulations are carefully restricted and we see no less intrusive way of resolving the difficulty. However, I propose to include a permanent scheme in the children's hearings (Scotland) bill that I plan to introduce to Parliament early in the new year. As such, nothing in the statutory instrument ties the Parliament's hands in relation to the children's hearings (Scotland) bill. If evidence suggests that the arrangements introduced by the SSI do not work, we can look to revisit them in the bill.

I move on now to emphasise what the consequences will be of annulling the SSI. I place on record my deep disappointment that the Education, Lifelong Learning and Culture Committee chose to support the motion to annul and potentially jeopardise support to some of Scotland's most vulnerable people. I have spoken to the committee at great length about the fact that the SSI is no longer about securing a right of representation; that point of law has already been conceded and I ask you to bear this in mind today.

The main issue boils down to the fact that the committee seems determined to remove a measure that simply prevents the most disadvantaged people in Scotland from being further disadvantaged. Relevant persons can already have legal representation at hearings if they can afford to pay for it. I have repeatedly made that hugely important point, which the committee has failed to recognise. So, I ask, are you as a Parliament really going to say to a person who does not have the capacity to participate effectively in proceedings about their child, "You

can't pay so you can't have help"? I urge you to vote against annulment of the SSI.

I make it clear that voting to annul the SSI will not prevent from coming forward cases in which relevant persons need support. It will, however, prevent some of the key people at hearings from accessing the support that they require and are entitled to in meeting their basic human rights. Annulment will not magically remove those people from the system.

**David McLetchie (Edinburgh Pentlands) (Con):** Before the minister concludes, can you give us the Government's view on the legal effect of passing the motion today? Is it the case that the SSI would cease to have legal effect as from today and that the law would therefore revert to where it stood before you laid the SSI?

**The Presiding Officer:** I remind all members to speak through the chair and not to each other directly.

**Adam Ingram:** Yes, Mr McLetchie is correct in his interpretation. Following a vote by the Parliament to annul the SSI, we would have to revoke it with immediate effect as of tomorrow. That would remove the current rights of relevant persons and, as the member is undoubtedly aware, it would also call into question the children's hearings system and its ability to make disposals in line with the ECHR.

**The Presiding Officer:** You must conclude, minister.

**Adam Ingram:** I will just make this point. In 2002, state-funded assistance for children was introduced. The SSI simply extends that state funding to relevant persons—primarily parents—in certain circumstances. I very much hope that members see how a decision to annul the SSI could seriously affect those who might need legal representation. If, for example, a relevant person is assessed as having the language ability of a child of six and a half, the literacy skills of an eight-year-old and the numeracy skills of a six-year-old, how can we honestly expect them to have their say and to put across their perspective without help and support? We have a moral duty to support them.

**The Presiding Officer:** I say to the minister that as I extended his time, I might have to reduce his time for winding up.

14:14

**Karen Whitefield (Airdrie and Shotts) (Lab):** One of the few things on which Adam Ingram and I will agree this afternoon is that it is truly regrettable that it has become necessary to debate this motion to annul in the Parliament. I firmly believe that, had the minister shown a

willingness to listen and respond to the serious concerns that have been raised by the chairs of Scotland's children's panels and by the majority of members of the Education, Lifelong Learning and Culture Committee, today's debate would have been unnecessary, but he seems determined to ignore those concerns and appears to be more focused on attacking those who raise them than on responding to them constructively. However, I am pleased that, today, he changed his tone slightly from the one that he used at committee yesterday.

Members raised a number of concerns at last week's committee meeting. They focused primarily on the potential for the instrument to introduce a much more legalistic approach to the children's hearings system. The minister attempted to allay those fears by stating that that would not be the case and that the measures would apply to only a handful of cases. When pressed, he initially agreed with Kenny Gibson that there would be about 12 to 20 cases a year, but when he returned to the committee yesterday the number had risen to 250 cases a year. However, anecdotal evidence that I have received from panel members and reporters throughout Scotland leads me to believe that the number will be far higher. Some reporters have told me that the wording of the instrument means that at least half of the cases that they deal with could be affected.

For me, that is worrying. If ministers and civil servants can so badly misjudge the impact of the instrument, how can we have confidence when we are told that it will not lead to the children's hearings system becoming increasingly legalistic? Equally, how can we—or the minister, for that matter—have any confidence about the affordability of the instrument? If his department has budgeted for 10 to 20 cases a year but the actual number is many hundreds, what impact will that have on his department's budget and on local authorities?

During the minister's contribution to the committee's debate yesterday, he tried to imply that there was a strong level of disagreement about the SSI among panel members and chairs throughout Scotland. I have to say that the minister really needs to get out more. Yesterday, I spoke to Phillip White, the chair of the Argyll and Bute panel, who said:

"The introduction of this SSI will undoubtedly lead to the whole complexion of the children's hearings system changing from child friendly to legalisation and the focus on the child will be lost in the ensuing legalese. Any changes to the system must ensure that we get it right for every child."

A panel member from Glasgow told me:

"I do not understand why the Government is so determined to rush into this measure. I am very concerned

that this will change the child-centred nature of our hearings system."

That member was John Anderson, who is depute chair of the Glasgow panel. In addition, similar concerns have been raised with me by chairs and panel members from throughout Scotland, including Ena Williamson of West Dunbartonshire, Irene Allison of North Lanarkshire and Shona Lynn from Dundee. Let me make it clear that those panel members and chairs came to me and my colleagues to express their concerns.

Scottish National Party members have accused me of playing politics with the issue. If listening to and representing the concerns of panel members is playing politics, I am guilty as charged. If trying to ensure that the rights of the child remain paramount within the children's hearings system is playing politics, I am guilty as charged. If asking the Government to justify the rationale behind the instrument is playing politics, once more, I am guilty as charged.

I repeat for the record that neither I nor any of the people who have contacted me want the Government to ignore the issue of legal representation of parents and carers. No one wants any parent or carer to be unable to engage in a hearing that will take decisions about their child's future. However, is the Government's proposal the best way to deal with the situation? I do not believe that it is.

**Aileen Campbell (South of Scotland) (SNP):** Will the member give way?

**Karen Whitefield:** No, I am not going to give way. I am sure that the member is going to speak.

Would it not have been much more effective to engage with stakeholders on the issue and deliver appropriate change in partnership with them? That is what the previous Administration did in 2002. We did not rush in and draft a change that would have had unforeseen consequences.

Yesterday, the minister claimed that the Government had to act because of a court ruling. However, the Government is pre-empting that ruling, because it has not yet been made. It would have been far better if the Government had awaited the ruling and, during that time, constructively engaged with and consulted people about how we ensure that parents and carers are properly represented and engaged in the hearings process.

For the minister to warn that annulling the instrument would leave panel members open to potential ECHR challenges was at best misleading and at worst blatant scaremongering that could have caused needless anxiety to panel members. Why is the Government acting in this way?



Because the minister has failed to engage effectively and work with others.

**The Presiding Officer:** The member must close now.

**Karen Whitefield:** I stress that panel members and volunteers are asking the Parliament to respond to their concerns. We should take a breath and ensure that we get any changes to the children's hearings system right, so that we can ensure that it continues to be the jewel in the crown of our legal system.

**The Presiding Officer:** I warn members that the closing speech from Labour may have to be curtailed.

14:21

**Elizabeth Smith (Mid Scotland and Fife) (Con):** I do not doubt for a moment that it is one of the principal duties of the Parliament and its Government to uphold the principles of the ECHR as they scrutinise relevant matters of justice. It is also their duty to uphold the principles of the Scottish justice system, including those that underpin our different tribunal processes.

For the past week, members of the Education, Lifelong Learning and Culture Committee have been asked to scrutinise the arguments of the Scottish Government and of Ken Macintosh on his motion to annul the statutory instrument. At the end of that process, which involved a vote at yesterday's committee meeting, I chose to abstain on the ground that I did not have sufficient information to judge whether the instrument should remain in force or be annulled.

I will be very specific. First, and most important, the matter hinges on a ruling in the Court of Session that is yet to be made. Voting in favour of the instrument would pre-empt that legal ruling, and would mean that the Scottish Government was asking a committee of the Scottish Parliament to scrutinise a proposal without the benefit of the certainty of the ruling. The minister assures us that that is not the case, because he has been formally advised about what the legal ruling will be: namely, the Scottish Government will lose its case.

The minister argues that both the Court of Session and Scottish Government ministers have a duty to ensure that the principles of the ECHR are upheld, which undoubtedly is the case, but I challenge the Scottish Government to produce the unequivocal evidence that the legal opinion that it has presented to the members of the Education, Lifelong Learning and Culture Committee and to Parliament this afternoon is correct.

It is incumbent on the Scottish Government to explain fully exactly why it has conceded the case

prior to the legal ruling being made. I understand that in at least one other case when a Scottish Government predicted the outcome of a Court of Session ruling, it was in fact wrong. On that basis, is it right for the Scottish Government to attempt to force committee members into believing that the outcome of the appeal is certain? Past experience suggests that that is not the case.

Secondly, there is the issue of conflicting legal advice. The minister clearly asserted that if members of the Education, Lifelong Learning and Culture Committee voted to annul the instrument, various individuals—including members of children's panels—could find themselves in breach of ECHR regulations. However, my impression, having sought legal advice, is that that is simply not true: only the Scottish Government can be in breach of ECHR regulations. I am disturbed that other committee members may have received conflicting legal advice on what I would have thought was a very straightforward matter of fact: either those bodies can be in breach of the ECHR or they cannot. The time that has been spent on establishing the truth of the matter has not been helpful, especially for those who do not have the privilege—or should I say the curse—of a legal background.

Thirdly, I have had great difficulty in assimilating some of the minister's responses to questions at committee sessions. At the committee meeting on 1 September, I asked him to confirm whether or not there would be implications for the conduct of children's hearings if the instrument were approved. He replied:

"Clearly, the instrument will have a significant impact in that a parent in the circumstances defined by the criteria will have legal representation, which they do not have at present."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 1 September 2009; c 2619.]

However, in the next breath he cautioned me that the instrument was a separate matter from the children's hearings bill, which is designed—and is about to be redesigned—to change the procedures that govern children's hearings. Likewise, the minister said in his opening statement at that meeting that there would be an "interim route" and that a "permanent scheme" would be proposed at a later date. That implies that changes are to be made.

I believe that all members of the Parliament, including the minister, wish to protect the central ethos of the children's hearings system—a system that has served Scotland well and which enshrines the principles of the Kilbrandon report. That ethos is clearly at the heart of the representations that we have received. I ask all members to think carefully about the matter.

14:25

**Margaret Smith (Edinburgh West) (LD):** The Liberal Democrats are unwavering in our support of the children's hearings system. We have a system that puts the interests of Scotland's children at the heart of its proceedings, maintains a philosophy of trying not to be adversarial and is grounded in the Kilbrandon ethos of a welfare-based system for looking after children in need. Education, Lifelong Learning and Culture Committee members of all parties have been vociferous in their support for the individuals who work within the system, particularly the panel volunteers who dedicate their time to ensuring that decisions reflect the needs and rights of the children involved.

Our first major concern about the content of the instrument relates to its potential to erode the long-standing ethos of the children's hearings system. It may also lead to the overlegalisation of the system by stealth, to the detriment of children and others involved. The Government maintains that the rules cover a specific group of people—we were told that it would be “a handful”—and that the impact on the system is therefore minimal. The chair of the children's panel chairmen's group disagrees with that assertion. Last week, he wrote to the Education, Lifelong Learning and Culture Committee, urging members to annul the instrument. He said that it would have

“a profound effect on the way Children's Hearings are conducted.”

The minister has since had to concede at committee that the “handful” could amount to around 250 people a year. At a meeting at the Parliament last week, children's panel chairs told committee members that the first few weeks of operation have shown that numbers may exceed even the minister's revised estimate. Anecdotal evidence from panel members indicates that the number of legal representatives who have been appointed since the instrument came into force in June amounts to more than a quarter of the estimate, with 36 being appointed in four weeks in Glasgow alone. The Government has no idea of the numbers involved and therefore no idea of the cost of this state-funded representation. Every day in our courts, individuals are faced with challenges to their rights, but we do not open up free legal representation to all.

There is no debate about the need for vulnerable adults to be represented at children's hearings when they lack the capacity to represent themselves effectively. We do not wish to deny anyone that right. Our concern is the efficacy of the instrument in ensuring that that—and only that—is the consequence of implementation.

As I made it clear at committee, we agree that adults with incapacity or mental health needs

should be supported in that way. However, the drafting of the instrument goes much further than that. Last week, we asked the Government to resubmit a tighter instrument, because the current drafting makes it clear that the measures apply to a much wider group than the Government would have us believe. For example, it covers cases that involve parents' rights. The instrument is also more widely drawn than the 2002 rules on legal representation for children, which were introduced following a decision of the Court of Session and full consultation.

I understand from panel members that they do not feel that they have had the relevant training to allow them to decide whether an individual requires assistance. Such implications not only jeopardise the rights of the child in proceedings but risk delays in the system, particularly given the previously highlighted shortages in the number of legal representatives. It is unlikely to be in anyone's best interest for hearings to be delayed while panels try to find the level of legal representation that is required under the instrument.

Our second major concern relates to the Government's handling of the issue. The Government has justified the breach of the 21-day rule by saying that it has been presented with an “emergency”. In a letter to the committee, it said that there is a “clear view” of the Court of Session. That is misleading. The Court of Session has taken no decision thus far and there is therefore no detail of the ruling, including detail on what the Government may be required to do. I fail to see why any decision would necessitate such urgent action that it requires the Government to bypass consulting those who work in the system or to disallow proper parliamentary scrutiny of such a significant change.

The action that the Government is taking is totally different from that which the Government took in 2002, when a case had been lost. Having heard the concerns of panel chairs and others about the instrument, why does the Government not feel that it is worth while reconsidering it? Why is the Government not taking the time to get it right? Surely it should ensure that it does not replace one legal problem with a host of others. Why does the Government feel that it is acceptable to breach the Education, Lifelong Learning and Culture Committee's right to proper scrutiny and to fob us off with misinformation and vague answers?

There is a willingness on all sides to get this right for Scotland's children. I urge the Government to withdraw the instrument and to let us think again.

14:29

**Kenneth Gibson (Cunninghame North) (SNP):**

The children's hearings system is unique to Scotland, combining justice and social welfare. It has proven to be extremely effective and something that we should cherish. However, as with many systems, when humans enter the equation, flaws can emerge. A prime example is the Miller case, which highlighted the need to provide children who met specific criteria with free legal aid. In 2002, that issue was dealt with by providing said legal aid. More recently, a similar issue was highlighted.

It is surely a matter of natural justice that the most vulnerable people in our society should obtain free legal representation if it is difficult for them, perhaps because of mental incapacity, to fully or effectively participate in a children's hearing. There are two main reasons for that. The first is that, as outlined on the Scottish Government web page about the children's hearings system:

"The participation of the child and family members (or 'relevant persons') in discussing the best course of action is seen as essential in allowing all issues bearing on the child's welfare to emerge and in enlisting the support of children and families for the measures decided upon."

Surely denying free legal representation to relevant persons who are incapable of participating fully in a hearing would breach that fundamental aim of the hearings system.

Secondly, by not providing free legal representation to the aforementioned relevant persons, the hearings system would be operating in direct contravention of the European convention on human rights, including, as we heard in the committee, article 6, on the right to a fair trial; article 8, on the right to respect for private and family life; and article 14, on the prohibition of discrimination. I am sure that members agree that denying human rights for a moment longer would be an insult to the proud tradition of Scots law and the hearings system itself.

For those reasons, an extension of the 2002 rules should grant not only children but other relevant persons free legal representation should their individual circumstances merit it.

I am aware of scepticism about this change in the hearings system, which we have heard about in some depth this afternoon, and which some argue is both legalistic and challenges the original ethos of the entire hearings system. In my view, such claims are wholly inaccurate. If a child or parent was able to obtain their own lawyer to represent them at a hearing, they could do so. There have always been lawyers in children's hearings.

Since 2002, there have been state-funded lawyers for some children at hearings, and research has shown that that has had no negative impact on the ethos of the robust children's hearings system, which is strong enough to accept a change that will impact on significantly less than 1 per cent of cases. Qualitative research notes that lawyers attending hearings respect the system's non-adversarial nature, while noting that panel chairs have the authority to insist that that ethos is protected.

Furthermore, given that legal representation is already allowed where a parent, child or other relevant person can pay for it, refusing to provide free legal representation for those who genuinely require it but cannot afford it would, in effect, exclude Scotland's most vulnerable adults from fully and effectively participating in hearings and would lead to decisions affecting their families being made on the basis of affordability.

Given that, by law, the issue had to be resolved as quickly as possible, adequate consultation took place with statutory consultees. In addition, I understand that Mr Ingram offered on no fewer than three occasions to meet members of the Education, Lifelong Learning and Culture Committee to brief them. However, that was not communicated to members by the convener of the committee.

The hearings system was operating in contravention of the ECHR, which could not continue. It was essential that we acted to address the problem. In doing so, we have also protected and enhanced the fundamental principles and original ethos of Scotland's unique and valued children's hearings system.

**Karen Whitefield:** On a point of order, Presiding Officer. Is it appropriate for a member of this Parliament to provide inaccurate information suggesting that an approach was made to me, as the convener of the Education, Lifelong Learning and Culture Committee, offering briefings on the SSI? I have asked the minister to write to me confirming when those approaches were made—no such approaches were made. It is unhelpful for members to perpetuate an untruth in this place.

**The Presiding Officer:** As the member knows, what members say in the chamber is not a matter for me to rule on. I am not in possession of all the facts and figures and I must therefore leave the matter until the member receives the letter from the minister.

We are now eating seriously into the time for this debate.

14:34

**Ken Macintosh (Eastwood) (Lab):** We find ourselves in unfamiliar territory this afternoon. Most of us are used to raising the odd serious concern about subordinate legislation, but this is certainly the first time I have asked colleagues to move against a statutory instrument. What is even more unusual is the subject matter, given that I believe that most of us, from all parties, would regard ourselves as friends of the children's panel.

This is an issue on which I would have expected and hoped we would unite. Instead, we have had this week's descent into somewhat bad-tempered bickering. However—and although I do not agree with the minister's somewhat apocalyptic language this afternoon—I, too, was pleased to hear the more temperate tone in which the minister and, indeed, Kenny Gibson, couched their remarks. I wish to concentrate on areas in which I believe there is genuine disagreement. I hope that there is room for the Scottish Government to manoeuvre to address the concerns that clearly exist.

The rules will introduce state-funded legal representation for adults—parents and guardians—who require such support

“to effectively participate in a Children's Hearing”.

As the Education, Lifelong Learning and Culture Committee sat last week to consider the proposed changes, we received a letter from the children's panel chairmen's group asking us not to approve the SSI. The letter confirmed what many of us had picked up from constituents, from letters and e-mails and from other panel members and reporters. As Karen Whitefield highlighted, there is great unease among those who know and work in the hearings system that the whole ethos of its being a lay-administered system of child welfare and justice could get lost in moving to an overly adversarial and legalistic focus on parental rights.

**Brian Adam (Aberdeen North) (SNP):** Given the reasonable way in which Ken Macintosh is making his argument, does he not accept the minister's point that there are, between now and the introduction of the bill, a few months in which it will be seen in practice whether all the apocalyptic things will happen or not? Does he accept that that is a reasonable time for dealing with the matter and a reasonable way in which to do so?

**Ken Macintosh:** The minister has claimed that not to proceed would leave us in breach of the European convention on human rights. As the committee has discovered, however, there has been no legal ruling, no ECHR judgment and no decision from the Court of Session or anyone else. There has also been no consultation on the potentially far-reaching proposal. There is little certainty as to how many cases will be involved or

how many parents will require legal representation.

Perhaps what is most pertinent is that few of us, and few people outside Parliament, understand the need to rush the rules through. Panel members, reporters and even solicitors have questioned whether the Scottish Government has got the SSI right, yet the Parliament is expected meekly to accept the minister's assertion of the need for urgency, with no court ruling to back him up. I believe that the Education, Lifelong Learning and Culture Committee and the Parliament have no choice but to annul the instrument and to ask Scottish ministers to rethink their approach to the matter. Lest there be any doubt, I do not question the need to support vulnerable parents, particularly if there are worries about diminished capacity. We must ensure that all parties can participate effectively at children's hearings, but any proposals must be fully scrutinised.

Members might be interested to hear that, since we raised our doubts over the SSI at committee last week, I have been contacted by the solicitor whose case at the Court of Session appears to have provoked ministers into action. She believes that, by allowing the panel to appoint a solicitor only from its approved list, ministers will not even meet the needs of vulnerable parents. What if those parents already have their own legal representative? Should they be forced to accept the appointment of a solicitor with whom they have no relationship?

Because there has been no consultation on the proposal, there has been little time to assess fully how wide ranging the reforms might turn out to be. The minister's vague assertions on numbers, on which we are supposed to base a decision, do not fill me with any confidence. The minister should take a leaf out of the former Administration's book from 2002, pull back the reforms, consult widely and bring the proposal back to Parliament.

**The Presiding Officer:** Before calling the next member, by way of fair notice I inform all closing speakers that they will each have to reduce their speaking times by one minute.

14:38

**Christina McKelvie (Central Scotland) (SNP):** It is important that we leave party politics behind when considering this issue, which is about vulnerable families and child protection. It serves Scotland's interests better if we leave party badges outside.

Let us be clear about what annulment today of the statutory instrument will do: it will remove a provision that has been in place since June this year. We cannot have a slopping-out situation all over again. We are talking about the provision of

legal advice, at the state's expense, to adults who are obliged to attend a children's panel but who are incapable of understanding or taking an active part in the proceedings without a solicitor or advocate to act on their behalf. The decision is made by the chair of the panel, who observes that the person is in need of legal assistance. The provision is intended for people who cannot themselves afford such assistance.

The principle of access to legal assistance at hearings is not new. People who can afford legal representation have always been able to be accompanied by a solicitor. The SSI addresses an injustice that has been embedded in the system and to annul it today would be to say that Parliament thinks that although people who can afford a solicitor should be entitled to representation, vulnerable members of our society—people who are most in need of a solicitor's assistance—who cannot afford to pay should be denied the help that is available to people who have bigger bank accounts.

Such an approach runs counter to the basic principles that we expect to find in Scotland, and I think that it runs counter to the intentions of nearly every member, if not all members, of the Scottish Parliament. A rights-based system that enshrines the United Nations Convention on the Rights of the Child and the ECHR is best for Scotland. I will strive to achieve such a system. It is regrettable that those lofty ideals appear not to have triumphed on this occasion.

We should legislate before there is a problem, not after the fact. Committee members said that the SSI should not remain in force because the minister could not tell us exactly how many people it will affect, but if one person's rights are breached, that will be one person too many for me. The minister gave a ballpark estimate that was deemed to be inadequate, but no minister of the current Government, the previous Executive or the pre-devolution Governments has ever been able to predict the exact number of legal aid cases there would be in the coming year. We expect much of our Government, but we should not expect clairvoyance.

The committee heard that some people think that children's hearings might be changed if the SSI remains in force. However, at last week's reception in Parliament I spoke to a number of panel chairs, and I have spoken to another panel chair in Glasgow, who told me that the measure is not only necessary, but good. The only change is that people who are vulnerable and poor have the same access to legal assistance as people who can afford it.

We measure society by the way in which it treats its most vulnerable people. Let us be clear: we are talking not about changing how the children's

hearings system operates but about fairness and justice. Panel chairs have the power to appoint when it is deemed necessary to do so, and they have the protection of knowing that they have adhered to the principles in the ECHR. The SSI removes unfairness, undoes an injustice, imports decency into our legal provisions and makes our society better. I urge members carefully to consider what to do and to vote to allow the provision to continue.

14:42

**Claire Baker (Mid Scotland and Fife) (Lab):**

This is a serious debate on a proposal to annul an SSI, which no member takes lightly. It has been suggested that members who have raised concerns about the SSI have done so out of party-political bias, but such a suggestion undermines the Education, Lifelong Learning and Culture Committee, whose members have approached their work seriously. The minister's comment to the committee yesterday that it had sunk to "a new low" was unfortunate, and demonstrated that he was not listening or responding to concerns that had been highlighted. I hope that in today's debate we can at least listen to the arguments.

The matter is complicated, but I want to approach it simply. Not one member of the committee disagrees that there should be appropriate support for vulnerable parents or carers when they are involved in important decision making about a child's future. Not one member does not think that when there is a breach of the ECHR, action must be taken to address it. However, the question is whether the SSI properly addresses those needs.

Committee members received representation from the children's panel chairmen's group prior to last week's meeting. In its letter, the group made it clear that the introduction of the changes that the SSI had brought about was flawed, and the group specifically asked us not to approve the SSI at this point. It is clear that panel members lack confidence in the changes and that there has been a lack of training and information for panel members on when and how to make the decision to appoint legal support. That has led to concern that the changes will undermine the ethos of the children's panel system and introduce an increasingly legalistic approach.

There are concerns that the rushed introduction of the SSI has meant that there has not been proper consultation on, or consideration of, the impact of the changes. The minister said that there was consultation of the Administrative Justice and Tribunals Council, but it is clear that the process has been inadequate in comparison with the process that was followed when state-funded legal support was introduced for some children. The

concerns that panel members expressed demonstrate that the SSI would have benefited from greater involvement of stakeholders and panel members.

The minister argues that the rush has been necessary, but we have as yet had no judgment from the Court of Session. It is a complicated matter, and I understand that the discussions on the current legal case seek to determine what level of support needs to be provided, and by whom. There are concerns that the Government's proposal presents problems—such as who would be appointed for legal support and whether that person would be known to, and familiar with, the family—rather than providing a definitive solution. The Government is pre-empting the court judgment, but part of the problem is that there has been no opportunity to explore those issues.

It is disappointing that the minister has continued to state that there is a risk that panel members would be in breach of the ECHR. I believe that that is not the case. As I understand it, panel members have to comply with the law as it is and, with no decision from the Court of Session, cannot be in breach.

The Government has handled the SSI badly with the committee and with panel members. It has rightly delayed the introduction of the children's hearings bill on the basis that it wishes to get it right; the committee asked it to take the same approach with the SSI. The change must, of course, be timely but it must also be right and the committee has not been persuaded that the SSI achieves that.

14:46

**Robin Harper (Lothians) (Green):** Like many other members, I would have liked at least another week to think about the issue, but we are where we are. Irrespective of the result of the court case, the question is before us today: do we give the help that parents who have learning disabilities require when they come before panels? My answer to that is now very much in the affirmative: they must receive that help, and receive it as soon as possible.

The questions that I had when I entered the chamber for the debate have largely been answered.

**Ken Macintosh:** Will the member give way?

**Robin Harper:** No, I cannot take an intervention; I have only four minutes. I ask Ken Macintosh to hear me out.

As a former panel member, I respect the panels absolutely for their dedication to taking non-adversarial decisions for the benefit of children, and to children alone being at the centre. I was

concerned about possible overlegalisation, but I have been reassured that the measure will apply in only 1 per cent of cases. Even if there was an element of overlegalisation, there is only one way to help the affected parents, which is to give them the assistance that they require.

However much the help costs, the parents still require it, so the money must be found. I am far more concerned about a lack of budgetary support for social services to carry out the disposals that the panels make. That has been a continuing cause of concern for the past 30 years.

I was worried about panel control, but that question has been answered. In every case, the panel chair will have control over whether assistance is granted, which means that there will be a possibility of informed intervention.

I would very much have liked more time, because 24 hours is not enough to make up my mind on such a serious issue. It has given me limited opportunity to consult organisations, although those that I consulted were extremely helpful. The guidance that I received was—shall we say—variable and I have been left making up my own mind, as MSPs should anyway.

Patrick Harvie and I will vote with the Government at 5 o'clock.

I have left the closing speakers a minute each.

**The Presiding Officer:** We come to closing speeches. I call Robert Brown. I must hold you to about three minutes, Mr Brown.

14:49

**Robert Brown (Glasgow) (LD):** Robin Harper said that he had only 24 hours to decide on the matter. Unfortunately, 24 hours was also the time the whole country had to consider it when the statutory instrument was introduced in the first place.

The issue is important, but there is, as the Government has suggested, no division between the parties on the principle, but there is a division between them on the practice. The issue is not so much whether lawyers would be able to represent some clients in some limited situations, but whether a door has been opened through which a phalanx of lawyers will gallop, doing damage to the basis of the system.

As a lawyer by profession and former Deputy Minister for Education and Young People, I am probably one of the only members who has represented people at a children's hearing—I might say, on an ex gratia basis—so I know a little of the background. As others do, I accept that there are sometimes cases in which the parent is unable to participate fully in a hearing without

assistance—there is no division in the chamber on that principle. I also accept, despite being a lawyer, that more legalisation and more and more lawyers for more and more parties is not a good thing, because that can lead to formalisation and delay, which are highly undesirable, being stimulated across the system. We need look only at industrial tribunals to see the difficulties of that approach.

The problem is not those aspects, but that the SNP Government has decided to shorten the consultation time and to do without consultation on an issue that goes to the heart of the children's hearings system and its ethos; that it has done so before the relevant judgment has even been issued by the court; and that the minister tells us that he cannot go into detail on the court's decision for what he described as understandable reasons. I have no doubt that the minister has done that for the best motives, but Governments are sometimes too keen on what is seen as the smack of firm Government: no messing about, no time-wasting consultation and no testing of proposals before the people who know best. In fairness, I would not have expected that from this particular minister, but it is in contrast to the previous Administration, which rightly took its time over the 2002 changes.

There is no question but that the rules, which members have before them to read, are extremely widely phrased. They are not as limited as the minister puts out. I could make a case under them for legal representation for pretty much any parent who has a child before a hearing and in which a supervision order or something stronger was a possibility. I would be surprised if something more focused could not be defined. I wonder, too, about the alternatives—for example, using the Adults with Incapacity (Scotland) Act 2000, as Ken Macintosh suggested to the committee, or supporting people to be better able to participate in the proceedings by way of advocacy or in some other way. It does not necessarily follow that the only way forward is by legal representation in all cases.

It appears that the minister has been a bit surprised by the reception that the SSI got—the tone of the exchanges at the committee left a good bit to be desired. However, it is time for him to recognise that the practice needs to be got right, that he got it wrong and that—dare I suggest it?—he must make a tactical withdrawal. The measure needs full consideration and a proper look at the options and, indeed, the numbers. The minister needs to come back, either in the proposed bill or after due reflection, with an improved offering. It is right for members today to annul the SSI.

14:52

**Elizabeth Smith:** I regret that we have got to this state of affairs. I agree with Robert Brown that there were some unedifying performances throughout the proceedings over the past two weeks.

It is extraordinary that there has been such an inexcusable lack of clarity on key points. It is also extraordinary that, given that some of the related tribunal issues were first flagged up back in 2001, we have had to wait eight years for another very important case in the sheriff court to create such a major headache. To put it bluntly, just why does the Scottish Government find itself in this position?

What is most important, however, is the question of the legal imperative, which is the central issue with which we must deal. Is it definitively the case that the Scottish Government has no other option, and no option in this particular timescale? As we understand matters, the Scottish Government conceded the case because the overwhelming weight of legal advice to it was that it was in breach of ECHR requirements. We also understand that, even though there is not yet a Court of Session decision, any failure to sanction representation is now open to challenge and may have serious consequences for the validity of decisions that are taken by children's panels. In short, we are told that there is a legal imperative to act and that the SSI must remain as an interim measure, pending the passing of the forthcoming children's hearings bill. That being the case, we will, with reluctance, vote against annulment at decision time.

14:54

**Rhona Brankin (Midlothian) (Lab):** I commend the members of the Education, Lifelong Learning and Culture Committee for the detailed consideration that they have given to the issue and for the difficult, but correct, decision that they made yesterday to annul the statutory instrument.

Previous speakers have referred to the indecent haste with which the Government has tried to force through the SSI. I share those concerns. Having studied the committee's deliberations, I am far from certain that the Government has given adequate consideration to the potential impact that its proposals could have on Scotland's respected children's hearings system.

As others have mentioned, members of children's panels have grave reservations about the proposals. The children's panel chairmen's group, which represents all panel members throughout Scotland, had such deep concerns about the move to a more adversarial system that it wrote to the Education, Lifelong Learning and

Culture Committee to ask that the SSI be annulled. Are we just to disregard that opinion?

Confusion exists even at ministerial level about how many cases will be affected each year if the SSI is not annulled. At last week's meeting of the Education, Lifelong Learning and Culture Committee, the Minister for Children and Early Years said that the changes will affect roughly six to 20 cases per year. At this week's committee meeting, members were given another guesstimate from the minister. In less than a week, the number of cases that will be affected by the proposed changes leapt from six to 250. Although Robin Harper was told that the minister expects that 1 per cent of cases would be affected, the minister told the committee yesterday that the total would be 0.5 per cent. It will be interesting to see whether the minister can tell us in his summing-up speech what the actual figure will be—perhaps he has a different idea today. Such confusion does little to reassure those who believe that the SSI is being railroaded through, with little thought for the consequences.

We have heard again today that the instrument must continue in force to ensure that the Scottish Government complies with human rights legislation, but the case in question is still before the Court of Session. Once again, the minister has failed to make a compelling argument for rushing the instrument through. I echo the concerns of members who called for the legal advice to the minister to be published in full.

Many members have talked about the huge amount of concern throughout Scotland about the possibility of a fundamental change to the children's hearings system. Many members have met and listened to children's panel members and reporters, who simply do not understand why the SSI is being rushed through without consultation and before the Court of Session judgment has been issued. For the minister to accuse politicians of playing politics, of not standing up for children and of being opposed to legal representation is an insult to the many panel members the length and breadth of Scotland who are concerned about the issue. Panel members give of their time and energy to our children's hearings system, and care deeply about Scotland's most vulnerable children and their families.

The Education, Lifelong Learning and Culture Committee is not at fault. I believe that the committee has acted correctly in the face of a Government that has botched the SSI from the start, just like it has botched the children's hearings bill. I urge members to put Scotland's children's panel system before their party affiliation. Members should support the motion in the name of Michael McMahon.

14:58

**Adam Ingram:** Let me say to Rhona Brankin that my legal advice was sent to members of the Education, Lifelong Learning and Culture Committee prior to yesterday's meeting.

On a number of points, members should be clear in their minds before reaching a decision on how they vote this evening. First, as Robert Brown said, lawyers are already involved in the children's hearings system, and have been involved since its inception without damage being caused to its ethos. Secondly, the point of law in the court case has been conceded. Irrespective of whether the Court of Session's judgment has been issued, the Scottish Government has conceded in open court that there was a breach of the ECHR. That breach is rectified by the SSI, which is tightly drawn. I put it to Robert Brown that the Court of Session is under no obligation to issue such a tightly drawn ruling. Thirdly, regardless of whether Parliament chooses to annul the SSI, children's panels will continue to need to hear from relevant persons who cannot effectively participate in hearings without legal representation.

**Robert Brown:** Will the minister take an intervention?

**Adam Ingram:** I am sorry, but I have only a few minutes.

That takes me to the central point of today's debate, which is not legal representation, but who should foot the bill. I, for one, am not prepared to tell people who find themselves to be in need of support, but do not have the means to pay for it, that they cannot have help. This Government is committed to helping the disadvantaged—not to presiding over a two-tier system in which those who have resources can pay for legal representation while those who are already in a vulnerable situation have that situation compounded by their inability to access support.

**Margo MacDonald (Lothians) (Ind):** Will the minister give way?

**Adam Ingram:** Very briefly.

**Margo MacDonald:** Does the minister anticipate at what point he will be able to say how much expenditure will be incurred?

**Adam Ingram:** I am sure that any expenditure will be coped with by existing budgets.

I return to matters on which members should be clear in their minds, the fourth of which is that the SSI is not linked directly to reform of the children's hearings system. Conflation of the issue that we are discussing with concerns surrounding the draft children's hearings bill is unhelpful, and it is a red herring. I have heard those concerns and have talked to many more people than Karen Whitefield



has. Over the past three to five months, I have travelled up and down the country, from Shetland to Dumfries, to engage with children's panel members and chairs, children's reporters and many others in the children's hearings system. I have heard their concerns. Parliament will have a chance to consider the bill in due course.

The bill is of relevance to the present discussion in that it will provide an opportunity for further consideration to be given to the issue of state-funded legal representations. The SSI assists us in dealing with an on-going breach of the ECHR, but as part of our on-going engagement on the bill, we can—indeed, I would be happy to—explore whether there might be alternative ways in which state-funded legal representation can be provided to relevant persons going forward.

The key phrase is “going forward”. Looking to primary legislation is very much the long-term fix. For now, we need to ensure that those who appear before a hearing today or tomorrow and who are in need of support have equal access to that support. That is why the SSI is required now. It is required to ensure that we continue to protect the rights of the child, as well as the human rights of others.

**Karen Whitefield:** On a point of order, Presiding Officer. During the minister's winding-up speech, he advised the chamber that he had provided the Education, Lifelong Learning and Culture Committee with his legal briefing. I have a copy of the letter, which totals three pages, from the minister that was provided to the committee in advance of its meeting yesterday. It gives an explanation of his reasoning for dealing with the matter as he has, but no legal advice is included. He led the chamber to believe that he had provided the committee with that information. Would it be in order for the minister to retract those comments and to clarify the situation for the chamber?

**The Deputy Presiding Officer (Trish Godman):** Does the minister wish to clarify that for the chamber?

**Adam Ingram:** Ms Whitefield has not covered herself in glory in this whole debate. I will leave it at that.

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** On a point of order—

**The Deputy Presiding Officer:** I will answer Karen Whitefield's point first. It is a debating point. I gave the minister the opportunity to respond, but he did not.

You have to be very careful about the time. You have exactly—

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** On a point of order, Presiding Officer.

**The Deputy Presiding Officer:** Cathy Jamieson has one first.

**Cathy Jamieson:** Thank you, Presiding Officer. This is a very important issue. My understanding is that it would have been quite a departure from normal practice had the minister chosen to circulate the legal advice. It is important to know whether he circulated the legal advice.

**The Deputy Presiding Officer:** That is a matter for the minister. I gave him the opportunity to answer and he has answered.

**Mike Rumbles:** On a point of order, Presiding Officer. I believe that this is not a matter for the minister but a matter for Parliament. It is not a debating point. Everyone, including the minister, accepts that he informed Parliament that he had provided the committee members with his legal advice. The committee convener has confirmed to Parliament that he did not do so: that is a matter of fact. I hope that the Presiding Officers will reflect on that, come back to the chamber and say whether the minister did what he said he did. I am talking about a matter of fact, not about a debating point.

**The Deputy Presiding Officer:** The point was initially a debating point. I gave the minister an opportunity to respond, which he did. The Presiding Officers will reflect on the matter—Mike Rumbles is right about that.

**Margo MacDonald:** On a point of order, Presiding Officer.

**The Deputy Presiding Officer:** Is it the same point of order?

**Margo MacDonald:** It pertains to the same matter.

I came to the debate to learn, and the issue that is being discussed seems to be a central point. It might be in order for a motion without notice to be lodged to carry this business over to another meeting. That would give the minister time to reflect and decide whether the legal opinion can be provided.

**The Deputy Presiding Officer:** The Parliamentary Bureau can still do that if it wishes to. That is not a matter for me at the moment.

**Tricia Marwick (Central Fife) (SNP):** On a point of order, Presiding Officer. You are right. The matter is not for you, and it is not a matter for the Parliament. If anybody has any complaints about the minister's behaviour, routes are available to them to make their complaint. However, the matter is certainly not for you or Parliament.

**The Deputy Presiding Officer:** I will repeat what I have said. I gave the minister an opportunity to respond. I will take the matter back, and the Presiding Officers will reflect on what the convener of the Education, Lifelong Learning and Culture Committee has said and the minister's response. We will consider the minister's letter and check whether any such evidence was given.

**David McLetchie:** On a point of order, Presiding Officer.

**The Deputy Presiding Officer:** This is my day.

**David McLetchie:** For the sake of clarity, the minister provided to the committee in the way of legal advice an extract from the legal opinions of two of the judges who gave the judgment in the Miller case.

**Cathy Jamieson:** That is not the same as legal advice.

**David McLetchie:** That is what I am saying. It is not the same thing as the Government's legal advice. It was an extract from an earlier judgment. The minister was wrong to call it legal advice. He should apologise to Parliament for that and acknowledge that legal advice was given in the form of the previous judgment. That is the fact of the matter.

**The Deputy Presiding Officer:** I have already said what I intend to do. I have not changed my mind.

## Dementia Strategy

**The Deputy Presiding Officer (Trish Godman):** The next item of business is a debate on motion S3M-4797, in the name of Shona Robison, on a dementia strategy.

15:08

**The Minister for Public Health and Sport (Shona Robison):** I am pleased to open this debate on dementia for the Scottish Government, and I welcome the representation from all parties in the chamber. I recognise the support that all members offer to those with dementia and their carers.

Dementia is an illness that usually develops slowly. It causes impaired memory, thinking and judgment. It predominantly affects those over 60 and is a major cause of disability for elderly people. If people live longer in Scotland, more people will be affected by it. We project that the number of people with dementia will increase from around 70,000 in 2009 to 127,000 in 2031. Therefore, the number will close to double in just over 20 years.

Nearly every person who has or develops dementia will have a partner, children and friends, whose lives may also be transformed by the onset of the illness. It is estimated in work done by the European Union that, for each person with dementia, on average three other people are directly affected. It is a life-changing event for everyone who is concerned with their care. The illness will affect all of us, either directly or indirectly.

People with dementia require a range of services over the course of the illness, from initial information and support following diagnosis, to more intense treatment and care in the community, and to residential and long-stay care in some cases. The cost of that care is not insignificant. Alzheimer Scotland suggests that the overall cost of dementia in 2007 was between £1.5 billion and £1.7 billion, which is an average of £25,000 per person per year. Those figures include the costs of national health service and social work care, housing and the significant and valuable informal care that is provided by family and friends.

The Government gave a commitment to make dementia a national priority for Scotland, and we have been working to make that a reality. That commitment is reflected in our national target on early diagnosis, in our funding of activity on post-diagnostic support and the raising of public awareness and in the guidance that has been issued on care in acute and accident and emergency settings. We are committed to

publishing a dementia strategy for Scotland next spring, and I am keen to hear the views of Parliament as we take that work forward.

The work to develop the strategy is already well under way, with five work streams that focus on different aspects of the improvement challenge that we face. The first work stream is consideration of how we can offer effective treatment and manage challenging behaviour without inappropriate recourse to anti-psychotic medication. The work stream directly responds to the issues that were raised in the "Remember, I'm still me" report, which was published earlier this year by the Scottish Commission for the Regulation of Care and the Mental Welfare Commission for Scotland. It will also consider the effective implementation of part 5 of the Adults with Incapacity (Scotland) Act 2000, which the Parliament passed to protect the rights of those who lack capacity.

The second work stream focuses on assessment, diagnosis and patient pathways. It builds on the work that is already under way in taking forward integrated care pathways for dementia and the work that is being pursued with health boards and general practice on early diagnosis. It considers both the different services that will be required by a patient over time and the process by which they move through the system.

The third work stream will consider the general service response to dementia when people with dementia come into contact with general health services. We know that accident and emergency services can respond poorly to people with dementia and that people with dementia are more likely to be admitted inappropriately. Similarly, the care that people with dementia receive in general hospital settings is not always of the standard that we would like it to be. We believe that we can improve systems, skills and knowledge and, through those improvements, produce better outcomes for people with dementia.

The fourth work stream focuses on rights, dignity and personalisation. It is a key area for improvement, as it brings together both the legal context and the culture and behaviours of the people who provide care and treatment for those who have dementia. Our objective is to improve the knowledge and understanding of those who provide services so that they are better able to maintain people's dignity and provide more humane care and treatment. We want to embed the idea of personalisation into services, so that people will continue to see the person and not the disease. We also want to explore how we might use standards more effectively to promote quality improvement and how we can use the new scrutiny arrangements in the Public Services Reform (Scotland) Bill and the arrangements that

will be brought forward under the proposed patients' rights bill to secure better outcomes for those who have dementia.

The fifth work stream is consideration of health improvement, public attitudes and stigma. We know that some health improvement activities that people can engage in, such as taking exercise and being careful about what they eat and drink, reduce the likelihood of developing some, although not all, forms of dementia. We also know that work on the physical health of those who have dementia will improve both their life expectancy and their quality of life. Beyond that, the work on stigma and public awareness will contribute to the creation of a society in which those who have dementia and their carers are not shunned, ignored and misunderstood but regarded with respect and compassion.

**James Kelly (Glasgow Rutherglen) (Lab):** I note the announcement of the five work streams. Will the minister consider addressing the concerns that exist about the 3,000 people in Scotland who have Parkinson's disease dementia? There are worries that they do not have any clear pathways into appropriate care, so I ask that consideration be given to those people in the strategy.

**Shona Robison:** I was going to say that all the issues and comments that are raised during the debate will be fed into the work on the strategy to ensure that they are responded to and considered appropriately by all the groups and organisations that are involved in that on-going work.

Finally, I should mention that the work to develop the strategy is also supported by the mental health benchmarking project, which is already in place. The benchmarking project will develop our understanding of activity and performance data in relation to services for those with dementia.

We have established those work streams following consultation with the cross-sector dementia forum, which I established in 2007. We believe that they reflect the main challenges that we face, but they are not intended to constrain or exclude consideration of other issues. Indeed, we agreed with the Convention of Scottish Local Authorities and other partners earlier this year to take forward a strategy for reshaping care services for older people, and progress with that—which I will bring to Parliament later this year—will tie in closely with the work to develop the dementia strategy.

We are committed to issuing a short consultation paper by the end of this month, and we will use that to support engagement across the country on the issue of dementia to ensure that the strategy that we produce reflects the challenges and expectations of the nation.

As I said earlier, I am keen to hear today the issues that are on members' minds and to learn what members want us to take account of in the production of the strategy. I know that many MSPs have direct experience of caring for people with dementia, as well as the knowledge that comes from helping constituents through the health and care system. I assure members that the comments from this debate will be fed into the work streams.

I am happy to accept the Liberal Democrats' amendment, which quite rightly focuses on standards of care. I am also happy to commit to producing the strategy by April 2010.

I ask members to reflect on whether the Labour amendment is in danger of pre-empting the work streams and the consultation. Given my assurance that the comments that are made during what I hope will be a consensual debate today will be fed into the process, I am not sure that it is helpful to focus the strategy on particular areas at this stage when those issues will be debated and discussed as part of the on-going work on the strategy.

We have embarked on a shared endeavour, which we are taking forward with clinicians, carers and those with dementia. We know that the outcome will be richer because we are taking that approach. I am keen to be as inclusive as I can be. Each of the work streams is chaired by someone from one of the organisations that we are working with, and we have not constrained them with regard to who they can work with or what they can consider.

We will play our part in committing to providing leadership on this work. There will be hard decisions to make: we cannot do everything all of the time, and resources are finite. We know that change takes work and time. Improving how a whole system works and orientating it to the needs and interests of the individual service user—the personalisation objective—is a huge endeavour.

As I said at the outset, we have established dementia care as a national priority in Scotland. That commitment must be measured against the improvement in the quality of care that people with dementia experience. We are committed to delivering on that commitment, and I call on the Parliament to support us in that work.

I move,

That the Parliament recognises the work that is being taken forward by the Scottish Government to establish dementia as a national priority, working in partnership with the NHS, local government, voluntary sector organisations such as Alzheimer's Scotland, the Scottish Dementia Working Group, regulatory and scrutiny bodies including the Mental Welfare Commission, the Social Work Inspection Agency and the Care Commission and experts from the Dementia Services Development Centre at the University of Stirling, the Royal College of Psychiatrists, the Royal College of General Practitioners and the Royal

College of Nursing to improve the care, treatment and support available to those with dementia and their carers and welcomes the commitment to publish a dementia strategy for Scotland in spring 2010.

15:18

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** The recent "Panorama" programme on care for the elderly highlighted a number of difficult issues. It raised the issue of dignity for the elderly to the top of the political agenda, which is where it should stay.

In the weeks before the programme was shown, I dropped in on an elderly constituent who was still living in his own home. I found him sitting on a commode in his living room as he could not get back to his chair. He was waiting for the next visit from the support workers. Where is the dignity for an elderly man sitting in a room that has become not only his living room but his bedroom, his bathroom and his toilet? In the previous debate, there was a lot of talk about human rights. I will let members draw their own conclusions about the comparison between my constituent's human rights and the human rights of, for example, those in our prisons.

I left that house angry and upset that, despite all our efforts to care for people in the community, there are still too many elderly citizens who are, essentially, being warehoused in their own homes. Of course, not all elderly people have dementia but, for those who do and their families, we need to focus on the added pressures of getting all this right.

This week, I also chanced to visit a family at the very time their 93-year-old mother returned home from a stay in hospital. They were angry at the way in which she had been taken from the ward and left, confused, in a hospital corridor for a number of hours while waiting for an appointment in a different department. She was in her nightclothes and not properly attired to sit in a hospital corridor.

The family was also upset because the mother had been taken off her usual medication on admission, which had added to her confusion. They told me that she had missed out on being washed because she had not spoken up when patients in the ward were asked the general question, "Who's to get a bath?" She had not eaten properly as the procedures for flagging up her confusion and the fact that she might need assistance had not been followed. Although the family praised the nurses, who had stepped in to do what they could, they held in complete disdain a system that did not seem to have the basics in place to deal sensitively with an elderly woman who showed signs of dementia.

I am glad that in her speech the minister recognised that we need to do more to get these things right. After all, in debating the issue, we must remember that dementia is going to affect more people, who will require services to meet their needs.

At this point, I pay tribute to Irene Oldfather for leading work in the cross-party group on Alzheimer's. I doubt that anyone else in the Parliament has her knowledge of, passion about or commitment to this issue. Indeed, she has been speaking out on it for a number of years, even before it became a public issue.

One rather ironic aspect that has already been acknowledged is that, as we have become more successful in dealing with serious illnesses such as cancer, heart disease and stroke, more people are living longer and are therefore more likely to suffer from dementia. We know, for example, that by 2027 the number of people of pensionable age is projected to rise by 25 per cent to nearly 1.2 million and that the number of elderly people aged 75 or over is due to rise by 61 per cent. It is also projected that by 2031 there will be around 114,000 people with dementia in Scotland, which is an increase of 75 per cent. Indeed, Alzheimer Scotland has described such figures as epidemic.

It goes without saying that we need to start planning now for that eventuality. We must ensure that all older people can play full and active roles in our society, wherever and for as long as possible. When they need it, they should get the very best care and support. Delivering that will require changes in policy and thinking, and I believe that the Alzheimer Scotland consultation on a charter of rights for people with dementia represents a very useful step in trying to change both.

It is for that reason that the Labour amendment specifically mentions the work of Alzheimer Scotland. We are not seeking to limit or constrain the debate in any way—I hope that the minister will take that on board—and I am sure that all members will want to congratulate the organisation on the role that it has played and will continue to play.

We on the Labour benches believe that we have a strong track record on and a long-standing commitment to social justice for our elderly citizens. For example, we brought in free personal care, free bus passes and central heating schemes for the elderly; we set up the Scottish Commission for the Regulation of Care and the Stirling University dementia services development centre; and we introduced the Adults with Incapacity (Scotland) Act 2000, the Regulation of Care (Scotland) Act 2001, the Community Care and Health (Scotland) Act 2002 and a whole range of other initiatives that we believe have helped to

take things forward. However, we know that much more needs to be done, particularly for the elderly population and those who are unable to speak up for themselves and need us to represent their interests.

For example, we must address issues related to support for families, such as access to regular respite care. Carers will rightly point out that it is one thing to have their needs assessed but quite another to have such an assessment carried out when there are no resources to support them in their task. As we know, we must ensure that dementia sufferers, their families and indeed all who access care services are aware of the help to which they are entitled and that they are able to receive.

We have heard about what happens in hospitals, but we also need to examine the care that dementia sufferers receive in care homes. I repeat that we must ensure that we are not simply warehousing these people; they must have adequate physical activity, mental stimulation and a good-quality environment to give them the life that we would want.

After the Mental Welfare Commission for Scotland made unannounced visits to 16 wards that provide long-term nursing care for people with dementia, it produced a report that drew particular attention to the need to improve the quality of the physical environments that are provided for dementia patients and to ensure that patients are not simply confined to the ward, but are instead off ward at some stage. The commission's review of patient files found that some patients, despite being physically able, had not crossed the hospital threshold for more than two years and that many more had not been out in the previous year. That is not the quality of life that we want for our elderly.

We need specific care guidelines that take account of the particular needs of people with dementia. As we are considering radical solutions and new models, we should give more thought to, and invest more resources in, not-for-profit models in which patients and their families can be genuinely involved in the decisions about the care that is provided. There are good models of such care co-operatives that we can draw on. I visited one recently south of the border in which the users of the service were members of a co-operative, which employed the care staff who looked after them. Very good work is also done in the voluntary sector in Scotland. For example, the South Ayrshire Dementia Support Association provides excellent day facilities and support, but it is constantly struggling for funding to continue the service.

The plan to produce a strategy is welcome. I hope that the strategy will focus on improving the quality of care to give people with dementia the

dignity and fairness that they deserve. However, the strategy must be backed up by resources, as has happened south of the border. When I worked in social work and for Who Cares? Scotland, I used to say that the benchmark should be whether we would be happy with the quality of care if it was for our own kids. It might be tempting to use our relatives as a similar benchmark for elderly care services, but it would hit home harder if we projected ourselves into the future. How many of us would want to live in the care homes that we visit? How many of us would like to be prisoners in our homes because sufficient resources were not available to support day facilities? It is time to bring the care of people with dementia into the 21<sup>st</sup> century. I sincerely hope that the strategy will come up with a radical approach.

We support the Liberal Democrat amendment, which aims to ensure that a specific timescale is put in place. I hope that the minister will give due consideration to the Labour amendment.

I move amendment S3M-4797.2, to insert at end:

“; notes the consultation undertaken by Alzheimer’s Scotland in the form of road shows, focus groups and an online questionnaire to inform a charter of rights for people with dementia; calls on the Scottish Government to recognise the priorities identified by stakeholders for early and easy access to diagnosis, support to enable people to live at home for as long as possible and higher quality of care provided in all care settings by specialist dementia staff so that people with dementia can reach their full potential; further notes the publication of the National Dementia Strategy for England in February 2009, supported by £150 million, and the importance placed in it on the role of dementia advisers and specialist dementia care staff to support people with dementia from diagnosis to end of life, and calls on the Scottish Government to ensure that sufficient resources are made available to support the Scottish strategy.”

15:27

**Ross Finnie (West of Scotland) (LD):** The title of that chilling report “Remember, I’m still me” has a particular resonance for Liberal Democrats because, philosophically, we believe that, if we concentrate the solution on the individual, we are much more likely to produce the right solution for the population as a whole—and we do not believe that the converse is true. That is particularly the case with dementia, as a person-centred approach is essential to developing a strategy that will ensure that individual sufferers receive the appropriate level of care and support. As the minister and Cathy Jamieson pointed out, the scale of dementia is frightening. Cathy Jamieson referred to the possibility of a 70 per cent increase in dementia in the next 20 years, which is alarming. We know about the issue and we know that we must address it.

On the motion, we are all happy to recognise the work that the Government is doing in collaboration with a range of expert bodies. We are happy because we, as a Parliament, agreed the terms of reference that are to be applied in developing the strategy. It is important to remind ourselves of that because, although the minister made a plea for us to give additional examples—and we are of course happy to do that—nothing fundamental has happened since we agreed the terms of reference that should prevent the working group from getting on with the job of delivering.

At that time, we all agreed with the minister that we needed

“to develop actions and policies that respect and promote the rights and dignity of people with dementia, in accordance with the principles of the Mental Health (Care and Treatment) (Scotland) Act 2003”,

which is another measure that the Parliament passed. We all wanted there to be early diagnosis and a better response to dementia that includes post-diagnostic support and information for carers. We wanted improved quality of care, treatment and support wherever they are provided. We wanted improved training and knowledge of the workforce to include those in general health and social care settings, such as accident and emergency units and GP surgeries. We wanted improved arrangements and resources that need to be put in place to ensure effective delivery of the proposed changes. Of course, we wanted the minister to take account of the findings in “Remember, I’m still me”.

I say to the minister that, although I am happy, as always, to co-operate in light of any additional information or examples, I am bound to say that Liberal Democrats do not believe that there has been a material change since we agreed those terms of reference. I hope, therefore, that we can proceed to some resolution on the matter, which is why we lodged our amendment.

With all due respect to the minister, our amendment seeks to remove the slightly self-congratulatory tone of her motion—we welcome that she has agreed to do what we all agreed that she should do. The minister has taken that in good part and I am grateful to her for that. We also wanted to impose a more specific timetable. The motion refers to spring—well, what is spring?

**Mary Scanlon (Highlands and Islands) (Con):** It is daffodils.

**Ross Finnie:** Yes, indeed, but daffodils might not appear until later on and, as we all know, we did not quite get the barbecue summer that we were all looking for. If the date for delivery were April, we could at least have a sensible debate. It is much more important, as we state in the amendment, for the minister to look at the wider

community as she develops the strategy, and actions need to be put in place as she does so. We cannot simply wait until next April before we address the wider issues. I know that a lot of work is being done in that regard, but frankly we still have to make progress on some of those issues.

Many of the issues identified in “Remember, I’m still me”, which did not deal with dementia exclusively, are live in the community. Cathy Jamieson narrated examples of such issues in her remarks, and I am sure that we could all narrate—as others will—examples of people with dementia who are still lacking in fundamental care. Many of us watched with horror the BBC documentary to which Cathy Jamieson referred.

I find it slightly difficult to take exception to the Labour amendment. I am bound to say that, as Alzheimer Scotland is part of the working group and therefore working on development of the strategy, it is difficult to imagine that that organisation would withhold information from its survey.

I am glad that there has not been too much emphasis on how precisely the strategy will be resourced because that will be a matter for future debate—the Government will announce the strategy, it will be bound to announce how much it is prepared to allocate to it, and it will be for Parliament to debate and decide whether it regards that amount as sufficient. Indeed, the Government has been given notice in the Labour amendment, which calls on it to finance the strategy sufficiently.

I move amendment S3M-4797.1, to leave out from “welcomes” to end and insert:

“calls on the Scottish Government to work with these stakeholders to ensure that the highest standards of care are achieved for those with dementia in care homes, in the community and in hospital and to publish a dementia strategy for Scotland no later than April 2010.”

15:34

**Mary Scanlon (Highlands and Islands) (Con):** As a member of the cross-party group on Alzheimer’s, I, too, commend Irene Oldfather for the excellent work that she has done on the issue. Cathy Jamieson’s speech also prompts me to mention that I visited an old friend in Montrose during the recess who said that she feels very guilty about the carers’ coming in. She was made to feel guilty because she needed care. That is not where we want to be.

I have a little list of concerns for the minister. A good starting point for the debate is the Government’s health improvement, efficiency, access and treatment target that states:

“Each NHS Board will achieve agreed improvements in the early diagnosis and management of patients with a dementia by March 2011.”

In response to that, Audit Scotland wrote in its “Overview of mental health services”:

“It is not possible to comment on whether the target will be achieved as it is not clear how earlier diagnosis and management of people with dementia will be recorded or how improvement will be measured. The target is vague and clearer definitions and guidance are required”.

I hope that the dementia strategy that is to be published in April will be more focused and clearer, and that in the long term it will be more effective.

**Shona Robison:** It might help Mary Scanlon to understand the target if I explain that it is linked to the number of people with a diagnosis of a dementia on the GP dementia register. The onus is then on the GP, with monitoring from the health board, to ensure that there is a regular review and assessment. That ensures that the person is known about and that their case is managed.

**Mary Scanlon:** I am stating the concerns of Audit Scotland, which I think are legitimate concerns in the long run.

Of course, a service for patients can be improved only if it is fully staffed. Audit Scotland highlighted the number of long-term vacancies for consultants in old-age psychiatry in Highland and Lanarkshire. Its report also told us once again that services need to be joined up. How often have we heard that?

One of my main concerns today is that that position comes against a background of serious cuts in social work services. In Highland—the area with which I am most familiar—social work has to find more than £17 million of cuts in the next three years as part of an overall budget cut of £80 million. That has affected the charge for home help call systems, which has increased from £28 a quarter to £65. One independent care home in the Highlands has increased its charges to those who are self-funding by 33 per cent in order to make up the shortfall in council funding. I have problems with the continuing situation in which two people in the same care home can be charged different amounts for the same level of care. One elderly service user has gone through £35,000 of savings in the four years for which she has been in the home, and her home is now on the market to pay for future care.

Yesterday, Highland Council decided to fill up its own homes and, in the interim, is refusing to refer to the independent sector, which is cheaper but of the same quality. In the midst of the recession and the quest for efficiency savings and high-quality services, why is it acceptable for councils to pay £350 to £450 more per person per week for

people to be placed in council homes rather than in the independent sector, given that both reach the same quality standards? For example, Highland Council pays £464 for an independent home but £819 for a council home. Argyll and Bute Council pays £357 for the independent sector but £817 for a person in a council home. In the minister's area, Dundee, the figures are £454 for the independent sector but £826 if the person is in a council home. I would have thought that the Cabinet Secretary for Finance and Sustainable Growth would wish to discuss that issue alongside quality services and value for taxpayers' money, given that a person in a council-run home is funded about twice as much as a person in the independent or voluntary sector.

We need more preventive care to reduce the demand on accident and emergency services. We should also do more to offer families direct payments to ensure that they have the freedom to choose their care and ensure that they get the required time allocation.

As the "Panorama" programme showed us, there is no doubt that elder abuse is a concern, particularly at a time when more elderly people are dependent on carers and visitors rather than on the support of their family and friends. The problems include physical or verbal abuse and carers who do not always follow the standards and guidelines, particularly in relation to nutrition and personal care. Such things can be difficult to prove when a person becomes very dependent and is unable to make judgments and remember incidents clearly.

The minister mentioned covert medication—on the path to improving care and treatment, much more work needs to be done in that area, as "Remember, I'm still me" highlights. I hope that the minister will consider having one GP practice per care home, given that people are placed in care homes from a wide geographic area and are unlikely to see their own doctor following admission. That should help to reduce remote prescribing—sometimes of covert medicines—by GPs.

The Scottish Conservatives support the Government's motion and the Liberal amendment—to ensure that spring is in April. The Labour amendment is very specific about dementia advisers and specialist staff; we do not wish to be too prescriptive, and we would prefer to concentrate on better dementia training for all appropriate staff.

15:41

**Christine Grahame (South of Scotland) (SNP):** The Parliament has a good track record in its legislative endeavours with regard to care of

the elderly and other vulnerable groups. However, as we know, legislation is not a panacea, and the debate is about what happens on the ground.

We all appreciate that dementia is a dreadful degenerative disease that is distressing for the individual—who may well have insights, particularly in the early stages of the disease—and for their family and close friends. However, members have recounted instances—I think we have all heard of such instances—of people who are simply parked in a chair and left to sit there all day, imprisoned in their own home or in a care home. I note that 40 per cent of those with dementia are in care homes, which means that 60 per cent are being cared for at home, often by an elderly spouse who does not even know that they are a carer but just gets on with it. The minister was quite right to raise that issue.

The onset of dementia can be delayed by appropriate therapies and medication, but I note that most of the funding is United Kingdom-reserved. However, I welcome the fact that the Government has put in substantial funding—I believe £1 million is to be spent on dementia expert groups. That is the approach we must take—we must not always be firefighting in the chamber; instead, we should seek things that will assist in defending against, and perhaps eventually eradicating, dementia.

I wonder why only some 30,000 of the 66,000 people who are estimated to have dementia are on GPs' books, as the minister said. I suspect that in some cases the family are protecting the individual from being diagnosed, either knowingly or simply by covering up, in the gentlest of fashions, the results of increasing memory loss by helping them more than they used to. Such behaviour has a lot to do with stigma, which used to be attached to cancer, but mercifully no longer is. We have faced up to that darkness, but people still attach stigma to dementia or Alzheimer's. Once we get over that stigma, perhaps more people will begin to recognise that dementia is what an elderly parent or spouse is facing.

I have looked at the Alzheimer Scotland's assessment of current provision. It is a fair assessment, as I know from looking at my own case book, that notes that councils have waiting lists for day care and that people with dementia are not always being assisted to carry out tasks so that they can maintain skills and a level of independence and self-respect—the warehousing to which Cathy Jamieson referred.

There has been a tightening of thresholds in many councils in relation to the provision of funds and the number of hours that are provided per service. I say to Mary Scanlon—I will make the only political point in the debate—that the UK Government spends millions of pounds each week



on wars that it will never win, and I would rather that it took our troops out of Iraq and Afghanistan and used that money UK-wide to provide proper health care services for our vulnerable and elderly. That would be a far better use of our tax money.

Members have referred to medication. We have been down that road before with the pill in the sandwich—covert medication—or medication that is not logged and never reviewed and which can leave people sitting unnecessarily inanimate and unable to partake in any events round about them. I support Mary Scanlon's proposition that GPs be allocated to care homes, so that people do not have that anonymity.

As others have said, in looking at a strategy, we need to see the person. As one gets older—and I say this as a pensioner—one appears to become invisible. People look at you and say, "There goes a pensioner." Well, I will not be called a pensioner; I am Christine Grahame, I am me, I am very difficult, and I will stay like that. It is the same for everyone—we are all individuals and I hope that we are all difficult and stay like that. The trouble for someone who is identified as having dementia is that they are seen as a dementia sufferer: they lose all their character and their sense of who they are. However, there is no reason why people should treat them in that way.

Things that do not cost money are terribly important—for example, our attitudes towards those who suffer from dementia. I agree with Ross Finnie: if we do it right for the individual, we do it right for the community.

**Robert Brown (Glasgow) (LD):** Does the member agree that the issues of attitude and culture feed into questions of covert medication, people being left to sit and so forth?

**Christine Grahame:** Indeed. That is why I said that I agreed with Ross Finnie on the need to get it right for the individual. I am not turning into a Liberal Democrat, but—

**Ross Finnie:** You have a long way to go.

**Christine Grahame:** He does not want me. I withdraw my application.

Each person with dementia is unique. They should have a choice even in simple matters such as whether they want milk or sugar in their tea. Their carers should find that out, rather than making assumptions. Someone with dementia should not be called by their first name if they do not like that. Equally, they should not be touched if they do not like that, and people should not make assumptions about how they should dress. Little things matter a great deal.

I turn to cultural values. If a carer is dealing with someone from another culture and they are not sure what to do, they should find out. Carers

should not do things in a way that would be an affront to someone. There is a simple rule in all of this: we should act with courtesy at all times. The person may not understand what is being done, but their family will take pleasure in such courtesy. The simple acts of saying please and thank you or asking, "What would you like?" are important. Many of us will not have experienced that sort of attitude in relation to the care of our family members. Indeed, many of us know that only when we put our foot down did things change. Once one person begins to work in a professional way, their attitude can become infectious, even to the point that it becomes good practice.

15:47

**Irene Oldfather (Cunninghame South) (Lab):** I ask members to reflect on the fact that, as we participate in this debate, there are elderly people with dementia in care homes and hospitals across Scotland who, despite being physically able, have not been outside for two years. They sit disinterested or sleep in a lounge with a television blaring out, having been given inappropriate medication to sedate them and manage their illness. Members have spoken in those terms, but I find such descriptions incredibly shocking.

We are talking not about the overexaggerated writings of an MSP or freelance journalist who is out to grab a quick headline story; we are talking about the sad facts of life for some elderly people with dementia. We know those facts from the work of professionals who have revealed them in their detailed inspections of care delivery over a period of time in a range of settings across Scotland. In all, some 30 care homes have been inspected, including those that, at first glance, looked tempting enough to make people believe that a reasonable standard of care was provided within. The authors of "Remember, I'm still me" from the Mental Welfare Commission for Scotland and the care commission concluded that, in more than 50 per cent of care homes, staff had to be told that the care that they provided was not good enough.

Just one example of a system failure would be one too many. Regrettably, the fact is that "Remember, I'm still me" is the most recent in a long line of professional reports on how we as a society are failing our older people. My colleague Cathy Jamieson referred to the "Older and Wiser" report. Following unannounced visits to 16 hospital wards, its authors found that people with dementia were confined to a life indoors and that there were major inadequacies in the physical environment in which the older people not only lived but ended their lives.

"Pressure for change", a care commission report, found that in every single home that it investigated there were serious failings in the

standards of care in relation to the prevention and treatment of pressure ulcers, which are especially distressing for people with dementia, who might lack the capacity to articulate their distress and discomfort.

"My Home Life", a Help the Aged report, suggested that half the people in care homes spend most of their time asleep, socially withdrawn or inactive.

Perhaps most heartbreaking of all were the many examples in "Hungry to be Heard"—an Age Concern England document that was submitted as part of the consultation on the English dementia strategy—of people in homes being given inadequate assistance with eating and drinking.

I recognise that not all care is as bad as that described in those examples, but I know that there are failings, even in homes that we think are providing a reasonable level of care. I make no apology today for calling for change that is matched by appropriate resources, as set out in our amendment.

I welcome the debate. I also welcome the minister's commitment to have the strategy in place by spring, or Easter, 2010 and to take on board the points raised by colleagues today. Given the scale of the problem that we face, the strategy is long overdue.

The minister mentioned the cost to the economy. It is valid to put such figures on the record, but no amount of money can compensate for the human tragedy that this disease represents for families who have been robbed of twilight years with their loved ones.

That brings me to the Alzheimer's consultation, which was held over the summer to inform the work of the cross-party group on Alzheimer's on a charter of rights. I clarify for Ross Finnie that that work is separate from the dementia strategy. I hope that our amendment gives voice to the views that were expressed by hundreds of stakeholders in that consultation on what carers, sufferers and professionals would like from a charter of rights and a strategy. The minister knows about the work that the cross-party group is doing on finalising the charter of rights. I hope that the charter and our views will inform the Government's developing strategy.

There simply is not the time to go into the detail of the results of the consultation, but it is fair to say that one of the recurring themes was the importance of training and raising professional awareness. I want to share a few representative quotations from carers. One said:

"I would like to see compulsory training on dementia for all staff providing personal care in care homes".

That is not rocket science; it is simple, but it is just not happening.

Another said:

"I would like to try to change the way of thinking and doing of the care home that my mum stays in."

Another said:

"Going into care should be a positive choice, at the moment it is a last resort."

Someone with dementia, who still had capacity and communication ability, and who was perhaps speaking up for others, said:

"I would like to be treated as a person."

People see the need for change, but they still feel powerless to act, which has to change.

Staff training and their understanding of dementia are seriously inadequate. All too often, care is undertaken by the lowest-paid and least-trained staff. There is also a view that someone who cares for people who are physically frail is somehow qualified to deal with people who are mentally frail. Such thinking is akin to asking someone with a first aid certificate to be responsible for a patient on life support—it is simply not appropriate. It would not happen in any other discipline or with any other client group, yet we allow it to happen to some of the most vulnerable in society.

**The Deputy Presiding Officer:** You should be finishing now.

**Irene Oldfather:** I wanted to say something about specialist dementia carers and dementia advisers, which people called for in the consultation, but I simply do not have time.

Today is a starting point. Setting out a strategy on paper is the easy bit; implementing it, resourcing it and effecting real change is the hard bit. Each of us has a role to play in ensuring that that happens. I believe that there is a will throughout the chamber to change things.

**The Deputy Presiding Officer:** I am sorry, Ms Oldfather, but you have to finish.

**Irene Oldfather:** We have a responsibility to ensure that reports such as those that I mentioned are consigned to the history books where they belong and that, in a modern Scotland, there is a culture of change that will sweep away the stigma. We must speak up for our most vulnerable citizens.

15:54

**Sandra White (Glasgow) (SNP):** I pay tribute to Irene Oldfather for the sincerity that she shows on this issue. We sometimes travel together on the train from Glasgow to Edinburgh and we have long

conversations about it. I know that her heart is very much in it. Christine Grahame is indeed a pensioner, and today is her birthday, but I will not tell members what age she is.

As convener of the cross-party group on older people, age and ageing, today's subject is of particular interest to me—as it is to fellow members of the cross-party group and to others. I take this opportunity to thank the minister for her attendance at today's group meeting, at which we discussed the forthcoming Scottish older people's assembly, which is to be held on 2 October in the Parliament. I hope that many attending the debate today, whether members or people in the public gallery, will have the opportunity to attend that assembly, which I think will be very important.

It has long been a goal of the cross-party group and other interested groups and individuals for older people's voices to be heard and for their needs to be addressed, and I am happy to say that I believe we are making real progress in that regard. Today's debate and the forthcoming publication of the Government's dementia strategy demonstrate that older people's voices are at last beginning to be heard. The older people's assembly will serve as the perfect platform for that to happen. Much of the proposed programme is directly related to the needs of an ageing population, its health, wellbeing and quality of life, and I hope that the older people's assembly will have the opportunity to feed into the Government's dementia strategy. Perhaps in her winding-up speech the minister will confirm that that will happen.

Much has been said about the medical causes of and possible remedies for the syndrome. Although remedies are, of course, to be welcomed, we must ensure that any strategy aims to provide whatever support is necessary to delay or minimise the onset and symptoms of dementia. A key aspect is the need for older people to lead active, engaging and rewarding lives, at home and in care homes—it is important that we address the situation in care homes in that regard.

I will give one example of why it is very important for people to lead an active life, whether in their home or in a care home. I regularly have the pleasure of visiting the Wing Hong Chinese elderly centre in Garnethill in Glasgow, where I frequently come off second-best at table tennis. Members might not think that that is very surprising, given my size and stature, but someone with a much greater stature—the First Minister—has also found himself on the wrong end of a ping-pong ball at the centre, having lost to a gentleman of 93 years of age. I have seen some of the most mentally and physically active older people I have ever come across in that centre. They are absolutely amazing—93 years old, on a

treadmill, playing ping-pong or checkers, or out digging the garden. That is fantastic.

We need to focus on the subject of keeping older people mentally and physically positive in their outlooks. I believe that, as a direct result of their being mentally and physically active, older people can lead as full a life as possible and remain as full of life as possible. If we are to achieve our aim of improving the lives of older people, we must seriously consider how we can provide the stimulation and activity that are needed to promote healthy lives and mental wellbeing. I hope that the minister can address that point, which I know will be mentioned in the strategy. She said that she will take on board the issues that we raise, and it might be a good idea for her to visit the Wing Hong group and perhaps get a game of table tennis with that 93-year-old man, too.

As Irene Oldfather and others have said, there are people sitting in care homes doing nothing. There are gardens and equipment at some homes that are never used, and that situation has to be addressed seriously. Such cases have been brought to me, and I have seen others with my own eyes. I have visited care homes, not just when my mother was in one but through the cross-party group on older people, age and ageing. I have been shocked and angered to see some of the care that people receive. It is admirable to look towards better regulation and a higher standard of care in the sector—I would welcome those. However, I believe that it is by empowering older people—the service users in care homes—that we can achieve some form of lasting change. I would like the minister to talk about that when she sums up.

I recently spoke to Professor Alan Miller, the chair of the Scottish Human Rights Commission, about the human rights situation in many care homes. I was encouraged by the commitment of the commission to empowering people in care homes to understand their rights. We discussed the establishment of a human rights champion, who would be nominated by their peers and would ensure that everyone in the peer group understood their rights and had representation. I would be interested to hear the minister's thoughts on the idea, which she might feed into the strategy.

Dementia can affect any of us and it is imperative that there should be early diagnosis and treatment. We must improve care, treatment and support for people who have dementia and the people who care for them. As Irene Oldfather, Christine Grahame and Mary Scanlon said, we must ensure that there is understanding and knowledge of dementia, not just among the medical profession but among people who care for

or simply know people who have the condition. Then we will be able to have a proper strategy that we can work with.

**The Deputy Presiding Officer (Alasdair Morgan):** Time is such that I will have to cut members off when they reach their time limits.

16:01

**Tom McCabe (Hamilton South) (Lab):** Several years ago I worked in social work and saw at first hand the devastating effect that dementia can have on individuals and the loved ones who often care for them. It was scary to see how people who were fit and healthy in every other respect seemed to be cut off from their previous lives, and it was heartbreaking to watch the relatives try to come to terms with a very different person.

It is estimated that almost 70,000 people in Scotland have dementia. Given the lack of co-ordinated knowledge, the figure could easily be higher. By dint of simple demographics, we know that the figure will increase substantially during the next 20 years.

There are two aspects to the issue. They are intrinsically linked and one is just as important as the other. One aspect is how we organise our sophisticated health care regime to provide the best in care and stimulation for the unfortunate victims of dementia; the other is how we support the loved ones who carry the enormous burden of care. All too often we do those people a disservice and we leave them feeling confused and isolated. If we do not radically improve our treatment of carers it will be impossible—I stress “impossible”—adequately to care for the individuals who can no longer safely care for themselves.

As the recent reports by the Scottish Commission for the Regulation of Care and the Mental Welfare Commission for Scotland demonstrated, and indeed as too many reports have demonstrated, institutional care all too often falls short of providing the dignity that people need and deserve. Not institutions but individuals—relatives, friends and loved ones—deliver the care and dignity that are needed, but they can do so with any hope of having a life of their own only if we support them, place full value on their efforts and acknowledge that without them there can be no dignified solution for people who have this awful condition.

During the past few weeks we have heard much from various quarters about our nation's values, in particular compassion. One could be forgiven for thinking that we are a bit too eager to praise ourselves when we read the reports from the care commission and the MWC. The findings that Irene Oldfather mentioned are worth repeating. Some

patients have not crossed their hospital's threshold for two years. Is that not a form of imprisonment? Half the residents in the care homes that the care commission considered do not have the opportunity to be taken outside. Every home that the care commission visited was failing in its treatment of bedsores. In nearly a third of homes, patients are covertly given medicine to manage their conditions. In this country of plenty we cannot go through a day without hearing about human rights. Which eager set of lawyers is looking after the human rights of people whom we are medicating without their knowledge or permission?

Clearly, many things need to be done and there is a long way to go before we can pat ourselves on the back. A national strategy is one of those things, but it is only one of them. National strategies can, of course, be doubled-edged swords. I know from bitter experience that we are good at strategies. Indeed, we are excellent at glossy strategies. They come in very handy when we demonstrate how forward thinking we are and are an excellent aid when we tell conferences attended by the great and the good that we are well ahead of the curve but, all too often, they do not live up to the hype. We all know that actions make the difference—sustained, determined actions that are rooted in the right to care and dignity. Let us judge ourselves on those and not only on the production of yet another well-meant, glossy document.

I concur with Mr Finnie's concerns about the spring. Our dear friends in the civil service can use the seasons as very elastic concepts indeed. Let us hope that we are talking about early spring for the production of the strategy.

16:06

**Robert Brown (Glasgow) (LD):** I have been impressed by the speeches of those members of all parties who have preceded me in the debate. It has been an excellent debate and many knowledgeable speeches have been made.

It has frequently and famously been said that a society is to be judged by how it treats its old people. I think that we all agree that Scotland has a long way to go in its treatment of dementia sufferers.

Dementia affects more and more people. In part, it is a product of improved medical services and better lifestyles that lead to a longer lifespan, which is good in many ways. We heard about the estimated 69,500 sufferers. That figure is set to rise to 127,000 by 2031, which is not all that far away, and 6 per cent of people over 65 are affected. On that measure, eight of our number in the Parliament can expect to be affected by dementia in future.

That is an illustration of the national numbers, but the figures are also stark at local level. In Glasgow, there are an estimated 6,676 sufferers—I do not know how such precise estimates are made, but those are the figures—and, in South Lanarkshire, 3,390. A percentage of those people are also under 65, which has not been much stressed. The numbers pose great challenges, not only for health and social care services but, more particularly and more immediately, for families and carers. Tom McCabe was right to dwell on the importance of support for carers, who hold together not only the whole system but the health of individuals.

In June, we received the report called “Remember, I’m still me”—produced jointly by the care commission and the Mental Welfare Commission for Scotland—on the provision of care in residential homes. It seemed to me at the time, and still does today, that it was one of the few, stark, totemic reports that are immediately and obviously definitive. I lodged a motion and asked some parliamentary questions on the matter, which is little enough. I am pleased that the Scottish Government has accepted the report in its entirety and is to produce a dementia strategy, although it is disappointing that it has been deferred until the spring. There is a great deal for the strategy to do. Like most things, it will not be cost free, but a good deal of the challenge is to do things differently and better. There are a number of big must-dos.

We must change culture and attitude. Irene Oldfather talked about changing the way that we think and do. That is absolutely right. As the report demonstrates, sufferers remain people. They must, as far as possible, continue to make decisions and be responsible for their own lives although, as the condition develops, they cannot always continue to be entirely independent. The responsible carer is affected profoundly, which can be difficult, demanding and frustrating for family, medical and social care staff alike.

The disease alters people’s perspective and their attitude to the world and can be accompanied by frustration and aggression. Sufferers can get lost and disoriented in place and time. They can be vulnerable to people who come to the door or who ring up on the phone selling windows or kitchens or, even worse, with more fraudulent intent in mind.

There can be a bizarre side. Somebody told me not so long ago that there are no smoking problems in care homes because some people forget that they ever smoked. There are, however, big problems with people forgetting to turn off the cooker, put on the gas fire properly or keep themselves warm. Accidental fires are an issue.

None of that is easy to handle, but we need more understanding, expertise and respect. I heard of a case recently involving an elderly man suffering from dementia. He was a private person and was quiet and content in his own home, but he did not like the intrusion of carers into his personal space, so he became agitated and aggressive when they came to look after him, which led to the withdrawal of the care and the suggestion that it was time for him to go into a home. I do not want to make a judgment on that—I am no expert on such matters—but it seems to me that training and understanding were required, rather than the man moving into a care home, with all the issues that that involves.

Attitude underlies other issues. No less than one third of those surveyed for the report were taking anti-psychotic medication. That is helpful in some cases, but it is known to increase the risk of stroke. The official advice is that it should not be prescribed for mild or moderate psychotic symptoms. Many people were not having their medication reviewed and—Mary Scanlon touched on this—medication was being prescribed without the person being seen by a doctor. Few people had a planned annual GP check. Linked to that is the covert use of medication, from which all sorts of other issues arise, such as the lack of adequate recording of ways in which medication is used to manage challenging behaviour. The plain fact is that many care home staff, even managers, often have a poor understanding of the legal safeguards and powers, or the role of welfare guardians, which is basic stuff for anyone working in the field.

There is also the issue of planned activity—or the lack of it, I should say—outside the care home. When doors are locked, it is rare for personal plans to refer to that or to why that was the case. To put it another way, lots of elderly people are locked up in their rooms without justification. The key message is that activities that are tailored to their needs must be an integral part of a person’s life in residential care.

There are many other issues in that regard, such as transport facilities, support for voluntary groups and the need for psychiatric and mental health support for people over 65, which is an issue across the country. There is much to be done in that regard. Let it truly and increasingly be said of our society that old people, particularly those with dementia, are comfortable, stimulated and cared for in the Scotland of the 21<sup>st</sup> century. That is the challenge for the strategy.

16:12

**Maureen Watt (North East Scotland) (SNP):** Like Irene Oldfather, I come to the issue from the personal situation of having had a relative who suffered from dementia. My mother suffered from

dementia for several years before she died, so I hope that I do not introduce too much emotion into my speech. It was ironic that she died suffering from dementia. When I was a child we did not have the awareness that we have now of Alzheimer's and dementia, and I recall elderly relatives who would be recognised as getting gey raivelled or being a bit dottled. At that time, they usually died of something else before dementia became the main issue. I remember their instructing us, because they were practical farmers, that we were just to take them out. As members can imagine, that was because they did not want to be seen in that state. Of course, doing what they suggested was totally out of the question, and I will not stray into the end-of-life debate today. However, that was their attitude.

We do not really know what goes on in the minds of dementia sufferers. Like other sufferers, my mother had moments of complete lucidity, but would then retreat into the dark world of dementia. That is why research is so important, as is early diagnosis, and making family members and others aware of the early signs of dementia. I know that the stroke leaflet has been well received. People have mentioned to us that it has come through their door and that, having read it, they can now recognise the signs of stroke. I ask the minister whether something similar can be done for dementia.

It is important, too, to recognise the different forms of dementia—vascular dementia is different from Alzheimer's disease—and that sufferers require different medical treatment and care strategies. In addition, elderly and not-so-elderly sufferers should be allowed, as far as possible, to stay in their own environment for as long as possible. That is not possible in many cases because their behaviour means that their dignity and safety is compromised, so the security of a care home environment is the only option.

Like others who have been directly affected, I know the huge burden that is put on carers of dementia sufferers. We owe a great deal of gratitude to all those who are involved in providing such care. It is absolutely vital that on-going training is made available for carers and others who are involved in the running of care homes and day care centres.

As more research into dementia is done, more guidance becomes available on how to enhance the quality of life of sufferers. As the minister and others have mentioned, that is not only about diet and physical activity but how to provide mental stimulation. As others have said, it is not acceptable that any care home resident should be left sitting all day in the same chair watching television. Different and stimulating environments should be provided through, for example, outings

and taking people for fresh air in the garden. In the care homes that I have visited, I have noticed how important it is to have many people who come in as, for example, a volunteer manicurist or hairdresser. Encouraging relatives to come in to give manicures or facials or to talk to the old people about old photographs is an important way of enhancing the quality of life of dementia sufferers.

Many members have mentioned the widespread and inappropriate prescription of medication, which is totally unacceptable. In some incidents, such as where the patient is distressed and wandering, it may be necessary and in the patient's own interests to prescribe antipsychotic drugs. However, as Robert Brown and others said, such prescriptions should be made only after consultation with the patient's GP.

I commend the work that is being done by the University of Aberdeen, which is at the forefront of research into Alzheimer's and dementia. A team that is headed by Professor Tibor Harkany is studying how nerve cells communicate with each other and is looking for biomarkers—biological clues—that might diagnose people who have the condition. Professor Harkany's team is trying to find out what causes brain cells to become damaged in Alzheimer's sufferers. In looking for new ways to diagnose the disease, the team is looking for new targets at which future drug treatments could be aimed.

I also want to mention groups such as Banchory's Forget Me Not Club, which allows carers and others to have some free time and lets dementia sufferers meet and be involved in different social interactions. Local schools raise funds for that club and encourage pupils to volunteer to help out there. I also want to mention—

**The Deputy Presiding Officer:** I am afraid that the member's time is up. I am sorry.

16:18

**Lewis Macdonald (Aberdeen Central) (Lab):** Developing a national strategy for mental health services that shifts the balance of care is important but, as members have said, it is not enough by itself. Such a strategy needs to be reflected in action on the ground. That has certainly been the case at Aberdeen's Royal Cornhill hospital, where care for people with dementia has moved into the community, to the benefit of all concerned.

Woodgrove nursing home has been a very good symbol of that change. Built 12 years ago in what were the grounds of Cornhill hospital, operated by Voluntary Service Aberdeen with support from the local authority and funded by transferred NHS resources worth around £800,000 a year,

Woodgrove nursing home has been involved in providing specialised nursing care to people with dementia outwith a hospital setting. Woodgrove has been an exemplar of shifting the balance of care.

When I visited the dementia services development centre at the University of Stirling a few years ago, I was struck by the enthusiasm of Professor June Andrews and her colleagues for practical examples of specialised care such as Woodgrove. Indeed, the dementia services development centre was involved in setting up Woodgrove as a beacon project in specialised care. That positive view was also expressed clearly by the care commission in its 2005 report, which gave a long list of strengths at Woodgrove and few areas where improvement was required. There was praise from families for the care provided by VSA and the helpful attitude of staff.

Sadly, as the minister will know, that exemplary provision is no more. I wrote to ministers in July last year after I had been contacted by relatives of residents at Woodgrove, who were concerned about plans to downgrade the home from provider of specialist care to provider of general care. I pointed out that Woodgrove had been custom built for precisely that client group, and that it had become home to people with severe dementia who benefited hugely from the dedication and expertise of the nursing staff, and who would otherwise be likely to end up back in hospital. The minister may recall her reply of 31 July last year, in which she said that it was

“outwith the remit of the Scottish Government to intervene in such decisions.”

VSA's decision to downgrade Woodgrove was taken on financial grounds. In the midst of its financial crisis, Aberdeen City Council was not willing to continue to provide the funding that a specialist home required, despite the transfer of national health service resources for that purpose. VSA was not willing to continue to fill the funding gap.

**Maureen Watt:** Does the member accept that the closure of Woodgrove by VSA has nothing to do with the council and that the council's position on the matter has never changed? Does he also accept that Woodgrove is now not up to the standard that is required for dementia sufferers and that in Aberdeen we have a new facility called Rubislaw Park, where there are 40 beds specifically for sufferers of the condition?

**Lewis Macdonald:** I do not accept for a moment that the closure of a home that receives all its funding for the care of people with dementia from Aberdeen City Council through the transfer of NHS resources has nothing to do with the city council; it is directly to do with the city council.

Sadly, no one was prepared to take responsibility for addressing the issue. VSA went ahead and notified the care commission, on 18 December last year, that it would no longer provide specialist care at Woodgrove. Thankfully, it did not propose to remove all 40 residents of Woodgrove, many of whom had severe dementia, but in spite of the best efforts of the staff union, Unite, the downgrading brought with it the loss of a number of excellent and experienced nurses, while the client group remained broadly the same.

None of the agencies concerned acted to prevent the downgrading and none of them found a way to deal with the problems that that created. Instead, there has been a failure to agree among the agencies that are responsible for setting the standards, providing the funding and delivering the care for residents. Aberdeen City Council wanted to base funding on individual assessments of residents' needs. VSA argued for staffing that reflected a mix of specialised and general care requirements. The care commission was extremely concerned about the impact of the loss of experienced nursing staff and insisted on a staffing schedule that prioritised the welfare of those residents who continued to suffer from severe dementia.

Last week, the board of VSA decided to abandon its negotiations and announced its decision to close Woodgrove in three months' time, apparently without giving prior notice to anyone else. That news certainly came as a bolt from the blue for residents and their families, who had been told that adequate care could be maintained at Woodgrove despite its downgrading. That has proved to be wrong. They had also been told that there would be no need to uproot their loved ones—that, too, has proved to be wrong.

Over the past few days, I have spoken to all the agencies involved, including the city council—which has said that it will make contact with relatives—the NHS, the care commission and VSA. None of them has said that the decision to close Woodgrove was its responsibility; they have all said that it was down to someone else. However, none of them has denied that Woodgrove's closure is a tragedy for the development of specialised care for people with dementia and for the implementation of a dementia strategy. They have all said that they are willing to keep talking to find a way to resolve the issues and, hopefully, to reach a different outcome.

Of course, it would be useful if the minister were to clarify where responsibility for such decisions ultimately lies but, above all, I want to take the opportunity to ask her if she will now intervene—not to overrule the decisions of voluntary organisations or local councils, but to bring

together all the parties involved in the fiasco and to find a solution. Woodgrove has been a symbol of shifting the balance of care. I want it to be that again, not a symbol of a chasm between strategy and implementation.

**The Deputy Presiding Officer:** I am afraid that I must restrict the remaining two speakers in the open debate to three minutes each.

16:24

**Ian McKee (Lothians) (SNP):** The sad truth is that we have not been very good at caring for folk with dementia. All of us must have met constituents for whom support has, sadly, been ineffective or even totally lacking when it has been most needed. All of us must have met the relative who was not allowed to sit in on a consultation—patient confidentiality, you know—despite the fact that, on leaving the consulting room, the patient could not remember a single word that had been said. Community care has been totally out of sync with the care that has been provided in hospital, transport home has not arrived or has kept patients waiting for hours, and there has been a lack of moral support for spouses or children who have found that caring has taken up more and more of their lives, and has interfered with their work, leisure activities and even their relationships.

I will put forward one or two thoughts on the subject. First, what has been proposed is great, but we must avoid taking an approach that is a little top down. The stakeholders who have been mentioned—local government, working groups, regulatory bodies and so on—are important, but they are not nearly as important as the real experts: those with dementia and those who are close to them who care for them. There can be HEAT targets, strategies and so on, but we will achieve little unless we have the confidence of those who are intimately involved.

Confidence is important. I have mentioned before in the chamber that when I started work as a general practitioner in Edinburgh, we had an enlightened specialist in geriatric medicine, Professor Williamson, who made a habit of reassuring carers that the moment they encountered difficulties, either he or a member of his team would immediately visit and sort things out. They did so, and the result was that the carers looked after relatives at home for longer and kept them out of hospital.

People with dementia and, perhaps more important, those involved in their day-to-day care must not only be given support; they must be used as a valuable source of local specialist advice. They are the specialists. What often goes wrong in the field is not the good intention, the well-

meaning strategy or the comprehensive service; rather, tiny, vital flaws often prevent good-quality support from being given.

I have mentioned a few things that can go wrong. Those things are often due simply to slight errors in co-ordination or a lack of foresight. Local managers and administrators should cease regarding comments when such incidents occur as complaints; rather, they should treat them as vital information that will inform their future actions. I know carers who have loads of useful information to pass on but have not had the opportunity to do so. In dementia care more than in almost any other field, the devil is in the detail, so the detail demands our intensive scrutiny.

Finally, I acknowledge the contribution to the debate of earlier speakers who, by taking far longer than their allocated time, managed to curtail the final speeches in the open debate to three minutes each. I am sure that what they had to say was much more important than what we had to say.

16:27

**Marilyn Livingstone (Kirkcaldy) (Lab):** As a member of the cross-party group on Alzheimer's, I, too, pay tribute to Irene Oldfather for all the work that she has undertaken for people throughout Scotland who suffer from Alzheimer's.

It has been predicted that the number of people in Fife who have dementia will increase by around 100 per cent by 2030, to 11,000. That presents great challenges for health and social care in Fife. Dementia and related conditions do not come about overnight. Residents and their families have to be managed and supported through the processes of change.

Continuity is needed in social care. Dementia sufferers should receive all the care that they require continuously without the disruption of the consideration of additional support or funding. I urge the Scottish Government to use the upcoming dementia strategy as an opportunity to provide local authorities with adequate funds so that residents are not disadvantaged.

Fife Council's policy of increased charges and the eligibility criteria changes that have been made have exacerbated an increasingly difficult situation in my constituency and throughout Fife. They have resulted in 500 fewer people in Fife receiving much-needed support.

Funding has yet to be announced for a dementia strategy in Scotland, but Alzheimer Scotland has estimated that a minimum of £15 million is required to match the equivalent funding that has been secured in England. If dementia is truly a national priority for the Scottish Government, a



significant financial commitment must be made to help to improve the quality of the care and treatment of those affected. As a member of the cross-party group on Alzheimer's, I urge the Scottish Government to acknowledge the breadth and depth of the consultation on the charter of rights by Irene Oldfather and Alzheimer Scotland, and to consider seriously its content on funding issues and care homes. Purpose-designed accommodation is important in that respect, as is the quality of staff training.

The cross-party group on Alzheimer's has considered a number of alternatives to the current care home model to enhance care for people with dementia. I hope that the Scottish Government will consider embedding those in its strategy. Elderly people will benefit from a move away from the congregation of many elderly people in one home towards a model that involves care and clusters. A not-for-profit model could be considered. I hope that the minister will take a serious look at that. I also believe that a serious look should be taken at co-operative solutions and urge the minister to ask Co-operative Development Scotland to have a serious look at how those could be taken forward. Staff in care homes are, all too often, paid low wages. Many homes use a high number of bank staff and there is inappropriate training, as other members have said.

The Scottish Government has a duty to the 67,000 people in Scotland who have dementia to address the issues of funding and the quality of care that is provided in our care homes. It also has a duty to the next generation of elderly people to incorporate into the dementia strategy provisions to ensure the best possible care.

16:30

**Ross Finnie:** The debate has been constructive and, by and large, consensual. The only political point was perhaps made by Christine Grahame, who had to leave the chamber after her speech in order to go back to her birthday party.

Mary Scanlon made an interesting point, which was subsequently developed, about the inconsistencies in the levels of care and financial support that are provided. The matter is not often given enough attention.

I acknowledge Irene Oldfather's long-held and sincere contribution to the development of a dementia strategy. She narrated, at some length, a range of examples—some very up to date—of the difficulties that are faced by dementia sufferers. Other members did likewise, which underlined the litany of failure that was recognised in the report "Remember, I'm still me." We can continue, regrettably, to bring to the minister examples from our constituencies that only

emphasise the fact that "Remember, I'm still me" was real and that the whole Parliament has an obligation to address the problems. The sooner that we do so, the better.

To avoid misunderstanding, I advise Irene Oldfather that I was aware that the Alzheimer Scotland work on the consultation was done for the cross-party group. The point that I was trying to make was that, as Alzheimer Scotland is part of the ministerial group, I would be astonished if it did not communicate the outcome of that work to the Government. Nevertheless, she was right to point that out just in case it does not.

Tom McCabe was the first to emphasise—although others had referred to it—the need for support for carers. The point was taken up by Maureen Watt, Robert Brown and Ian McKee. In other debates, we have all emphasised the important role that carers play in our society and the fact that, all too often, they are ignored in the equation. Ian McKee cited the example of a colleague who gave specific support to carers, which had a positive effect and impact on the patients. That issue must be looked at.

The debate has been useful, but it does not take us much further. We have had the opportunity to restate, with some clarity and unity, our deep concern for the continuing litany of failure that exists regarding the care of those who have dementia. We are happy to support the Government's work and the direction of travel, but that work must be carried out with urgency and determination so that spring does not become an elastic definition. Next April, we must know what is happening because we all share the minister's deep concerns. We need to know what the Government's plan is and how it will be implemented.

16:35

**Jackson Carlaw (West of Scotland) (Con):** Like many, I owe a great debt to my grandmother. She had the gift of storytelling and a lifelong interest in events and current affairs. Her memories, vividly retold, of the evacuation during the war of her young family through treacherous waters by convoy to Canada, of the abdication, of the loss of the Titanic and of her brother's experiences in Moscow during the Bolshevik revolution, with summary executions and bodies strung up from almost every lamp post, were a fascinating window on nearly a century of history.

My grandmother could be rather startling, too. Her matter-of-fact, inside knowledge that she knew—with a certainty that most commentators lacked—that Labour would not win the 1992 election was conveyed to me over lunch in a popular restaurant. She said, "Jackson, Neil

Kinnock was never going to win. After all, in the final analysis, no one was going to vote for someone to be Prime Minister who couldn't buy himself a decent suit." Maybe it really was the suit what won it. More acerbic was her view that Alex Salmond is so smug he would cheerfully drink his own bathwater. That is now accepted universally by the First Minister's opponents and—as I know from conversations in this place—by some of his friends, too.

Therefore, it has rested on my conscience since my grandmother's passing in 1996 that her final few years were blighted by a constant battle with dementia, broken up by occasional blinding shafts of lucidity, when she would experience the knowledge that this was so. It seemed to me that, surely, if there could be remission—however brief—there could equally be a cure. On her 90<sup>th</sup> birthday, when I asked her how she felt to be 90, she replied, "I wouldn't recommend it."

There is no disguising the affluent circumstances of my own upbringing and the ability that that gave my family to do all that we could for her in those final years. However, it was not lost on me that there were countless others for whom similar circumstances must have been wretched. Therefore, although we must be exceptionally careful not to attach blame to any individual in the business of caring, who can be surprised by the findings of the report this year of the Mental Welfare Commission and the care commission? That report bleeds into our consciences because we all know that we all knew. Throughout the debate, members of all parties have made references to experiences that must surely stop us all short. Cathy Jamieson and Mary Scanlon gave graphic examples in their powerful opening speeches. The minister was right to call the report "deeply shocking". However, candidly, did any one of us expect to be other than deeply shocked?

Irene Oldfather emphasised the immediacy of the issues that we are discussing. I commend her on the breadth of her remarks, and note that the points that she made were firmly re-emphasised later by Tom McCabe.

Throughout the debate, and in the motion, tribute has been paid to numerous organisations that are doing heroic work. In particular, we must recognise the essential value of developments in understanding the simple changes that can be made to houses to allow many people to stay at home. That is not always possible but, where it is, it is invariably the preferred option of most people, and highly practical advances have been achieved, as those who visit the dementia services development centre at the University of Stirling will have witnessed.

However, our way forward must be on the basis of waking up all those whom we represent to some pretty unpalatable truths. In the first few weeks of joining this Parliament, I attended a dinner with members from all sides on the way forward with regard to dementia. As we live longer, so too will the incidence of dementia in all its forms increase. It will come to almost every family as the norm and not the exception. Further, we must add to that a phenomenon the reach of which we cannot yet foresee—the growing incidence of dementia in the population at a younger age. At that dinner, it was suggested that we cannot know what the longer-term consequences of drug misuse will be, even among recovered addicts and casual users. We were told with some certainty that there is no magic pill around the corner, and that whatever breakthrough we might hope to see could be at least 15 years away.

Scottish Conservatives welcome all that the Government has set forth today. However, it is set forth at the most troubling of times, for just as we appreciate the changing demographics and the longer survival of our fellow citizens, so too do we face an immediate decade of challenging austerity. That is singularly depressing, because it is an inescapable fact that a dementia strategy of which we can be proud has to be labour intensive, and labour-intensive care carries a huge financial cost. However, there is no room for any additional huge financial cost. To find the resource, we will have to examine our health service with a determination to find treatments and proactive health care approaches that reduce the existing burdens elsewhere. Let me set aside for a moment any party-political point and say that, although I do not support some of the Government's plans to tackle the scourge of alcohol consumption, I accept that ministers are pursuing those policies precisely because they recognise the huge burden that alcoholism places on the national health service, and the need to tackle that problem if we are to match our fine words on dementia with effective actions.

Alcohol is not the only issue that must be dealt with. We need to be brave with NHS reform if we are to release the resources that treatment of those with dementia might require. The worry is that if we do not, the financial pressures might prove so great that our flagship achievement—free personal care for the elderly—might itself come under intense scrutiny.

I said earlier that we had to wake people up to unpalatable truths. I think that we might need to be blunt and honest about this: of course Government wants to do more and of course as politicians we recognise the need for such action. However, Scotland needs to accept that our living longer means that every family and many of those who have lived or have raised children alone will have

to anticipate a direct experience of a loved one in need of care. Social patterns mean that fewer people will live together to take care of one another, and we can easily underestimate the importance of that reality. Care is something that we will all have to share. It cannot become the sole responsibility of the state, and to pretend that it can is to deny an open discussion on the future shape of our community life. We need to be prepared and that cannot be achieved by our being surprised by events; we need to be educated in that respect.

I wish ministers well in that work. They will enjoy our support; after all, our approach must be consensual. However, it cannot be denied: the simple title of the carers handbook, "Coping with Dementia", might sum up the challenge but it belies its true scale.

**The Deputy Presiding Officer:** I call Dr Richard Simpson. You may have no more than nine minutes.

16:41

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** Thank you very much, Presiding Officer.

I want to start with a little bit of the history of this issue, which I do not think has really been mentioned so far. Maureen Watt alluded to the fact that back in the 1960s depression and dementia were not understood as separate entities. It was not until Martin Roth—later Sir Martin Roth—produced in that decade his seminal paper showing depression to be different from dementia that we began to understand the process. Indeed, as Maureen Watt said, we now realise that there are multiple types of dementia and if we are to achieve what every member has said that they wish to achieve we must never forget that these are different entities that require different approaches. As a result, we need to look carefully at not only the individual but the conditions.

In that respect, Robert Brown pointed out that we should not forget about early dementia. Down's syndrome is still associated with a very early stage of dementia, and there are many people who have early dementia through a variety of causes. For example, CJD and its new variant can occur at any age.

In 1976, I was proud to be a member of the mental health programme planning group that led to the Timbury report, which was the first major report on dementia in Scotland. Professor Timbury warned that dementia would be the next great challenge to face after the scourges of heart disease and cancer began to be tackled significantly. However, given that he substantially underestimated the number of people who would be suffering from dementia today, I am not sure

that the current projections of 110,000 or 114,000 people suffering from dementia in 2031 fully take into account the fact that life expectancy is increasing at the rate of about two and a half months a year and that the rates of dementia in older people are very significant.

The thrust of Professor Timbury's report was that people should be managed in the most domestic-style setting that was possible and that they and their families should be supported in that respect. The report was published at a time when the Conservatives were addressing the issue of long-term beds more or less by privatising them and putting them into the care home sector. As we know to our cost from reports such as "Remember, I'm still me", those care homes have never really been able to address the dementia problem to the extent that any of us would wish.

When Labour came to power in 1997, one of its priorities was to try to address the problems of mental health. I am not saying that we were totally successful across the board, but at least with the mental health framework we got stakeholders together and set targets for implementation.

In the time that we were in power with the Liberals, we achieved quite a lot. For example, the Scottish intercollegiate guidelines network guideline 22 in 1998 and the more comprehensive guideline 86 in 2006 are important in clinical terms. We also put in place the current legal framework. The provisions in the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Act 2007 were based on the Millan principles and are all important considerations, although I hope that in her review the minister will consider some aspects of the overall framework.

Members have mentioned the role of carers in the management of this condition; indeed, as Tom McCabe made clear, they are fundamental to the approach that we need. The commitment to respite care is important for carers and dementia patients. I pay tribute to the Government for the commitment of an additional 10,000 hours of respite care—I think that it is 10,000 hours.

**Shona Robison:** It is weeks.

**Dr Simpson:** Sorry. I was not sure about that, which is why I had a question in my voice. It sounds much better as weeks. That is important.

As members have said, the Labour Government established the dementia services development centre at the University of Stirling, which is now under the leadership of Professor June Andrews. The centre has done an enormous amount to draw together a body of work and research on which to base practical implementation. I draw members' attention to the report "The Forth Valley Dementia

Project", which describes one of the last projects that was funded by the Labour-Liberal Government. The project was based on bringing together staff, carers and others and the report is a vital document that should inform the strategy. More important, it has practical suggestions for implementation. There are 37 ideas for simple measures that could be adopted now and which have been adopted in Forth Valley NHS Board. There are another 34 ideas that were regarded as being more difficult to adopt, yet for each one the report indicates how it has been dealt with.

There are also seven ideas that staff regarded as difficult to introduce, but some of them have been introduced already. I pay tribute to the Government for that. It was suggested that we should have a HEAT target, although it was thought that that would be difficult and would take time. However, we now have a HEAT target. Another idea that was thought to be difficult was the introduction of effective respite care and holidays for users, but that has also been funded. Two of the seven ideas that were thought to be difficult to implement have already been implemented.

Members from across the chamber have paid tribute to Irene Oldfather for her work in the field, which is only right. Her contribution and discussions in the Labour Party led us to lodge our amendment. We do not seek to disrupt the consensual approach that has been evident in the debate, but certain important points could be drawn from Alzheimer Scotland's work and in respect of advocacy. I was slightly disappointed by the minister's response that, although elements of that work are useful and important and will feed into the strategy, it does not provide much added value and that the proposed charter can be subsumed by the forthcoming patients' rights bill. I am not sure that that is the appropriate answer.

As Tom McCabe and others have said, simply having a strategy will not be enough. The issue is about implementation, and the devil in the detail of that implementation will be difficult. I will list some other concerns that members have raised. Christine Grahame referred to the need for early diagnosis and the lack of early support. An Audit Scotland report has made clear that the trend in social care is a steady move away from supporting people who have conditions in the early stages and towards supporting those who have complex and serious conditions. That is all very well, and I understand it in a situation of cost restraint, but it has the effect of leaving carers unsupported. Good support is provided through groups such as Crossroads Caring Scotland with its 49 local branches, which has not been mentioned in the debate. As a general practitioner, I found such support absolutely crucial for my patients. Tom McCabe, Robert Brown and Maureen Watt all

referred to the need to support carers with respite. That is crucial to their sense of wellbeing.

**Mary Scanlon:** The member talks about more money going to more complex cases, which we all support, but does that raise a concern that not enough preventive work is being done?

**Dr Simpson:** We are not capable of preventing the condition, but we can prevent its progress. Early care and support can lead to that.

A couple of additional issues are important. Several members, including Ross Finnie and Irene Oldfather, mentioned training. Good training is fundamental for staff in all settings, but it is also important for carers. If carers are trained properly, their capacity to support is even greater. We must also deal with the lack of stimulation and physical activities in care homes and wards. It is important that people can get out of their care home or ward when they are still physically fit to do so.

Time is constrained, and I appreciate that members' speeches have been cut short.

**The Deputy Presiding Officer:** Time is not constrained; it is up, as they say. I am afraid that the member must sit down.

**Dr Simpson:** I thank Ian McKee for supporting our amendment and ask for members' support for both amendments as well as the motion.

16:50

**Shona Robison:** I welcome the many positive contributions that have been made during this important debate. Members have shown their knowledge of the issues and their compassion for those who have dementia and the people who care for them.

It is clear that there are no easy solutions and that the improvement of services requires hard work and, to quote Tom McCabe, action. We have already begun that work in advance of the publication of a dementia strategy, the strands of which I outlined in my opening speech. We have worked with the dementia forum and others to identify and take forward work to improve services.

I have acknowledged before and acknowledge again the work that has been done by Irene Oldfather and the cross-party group on Alzheimer's. I look forward to the outcome of their work on a charter of rights for people with dementia and will be happy to discuss that work with them further in due course.

As many members have mentioned, we have in place a national HEAT target for the NHS, which is to increase the number of people with dementia who have a diagnosis and are recorded on GP registers. As many members have said, diagnosis is important as it gives access to other services,

such as physical health check-ups, carer assessments, treatment and medication, where that is required. Diagnosis was not always seen as valuable; for too long, clinicians and others were reluctant to diagnose because they believed that little could be done to respond to dementia effectively.

Similarly, people themselves were reluctant to seek diagnosis because, although they could readily identify the challenges that it could bring, such as exclusion, stigma and the potential loss of freedoms such as holding a driving licence—a point to which Christine Grahame referred—they could not see the benefits. I think that the situation is changing and we have recently completed a pilot media campaign in Dundee, which was focused on raising public awareness of dementia. The outcomes of that pilot suggest that, with information and signposting, people are more likely to seek help earlier.

I will take into consideration Maureen Watt's suggestion that we produce a leaflet that is similar to the stroke leaflet that has been distributed.

As Richard Simpson pointed out, the evidence shows that seeking help earlier results in people maintaining capability and capacity for longer and it allows them to stay in their own home, in familiar surroundings, for longer. It also allows the health and care systems to work with carers to enable them to manage the process for longer and with less stress.

As many members have pointed out during the debate, information and support for people with dementia and their carers are crucial. We are still learning about the best ways to organise and deliver post-diagnostic support and information. We have commissioned three local projects, which are being led by Alzheimer Scotland and the dementia services development centre at the University of Stirling, exploring different approaches to providing interventions, support and information following first diagnosis. The projects are taking place in Renfrewshire, Shetland and Lothian and we will use them to learn how best to organise and provide post-diagnostic support.

We have also updated and published "Coping with Dementia—a practical handbook for carers" as well as "Worried about your memory?" and "Facing Dementia: how to live well with your diagnosis", and we are making those publications available throughout Scotland. Those are high-quality resources that have been produced in association with service user organisations and which I hope will help people who have had a diagnosis.

As I said in my opening speech, our work on dementia overlaps and interacts with other work, such as our work on palliative care, carers, self-

directed care and shifting the balance of care and the work that we are doing collaboratively with local government on the future of care for older people. Jackson Carlaw was right to point out that that will require an honest discussion with the public about the role of the state, the family and the community in the care of older people.

**The Deputy Presiding Officer:** Order. Too many conversations are going on.

**Shona Robison:** I turn to some of the other points that have been made during the debate. Cathy Jamieson mentioned the role of Alzheimer Scotland, which is, of course, a key leading organisation in taking the strategy forward. The consultation that it undertook is forming part of the consideration that the work streams are taking forward.

Ross Finnie said that we needed to move quickly on some of the issues in "Remember, I'm still me". I reassure him that I speedily met the care commission and the Mental Welfare Commission to put in train action that will deal with some of the immediate issues, and that work is continuing.

Mary Scanlon made a number of points. The one that I want to pick up on was about GP practices being linked to care homes. We are getting better at that. The Royal College of General Practitioners is keen, and it proactively approached me to talk about how it can help to facilitate that. That work is also continuing.

Christine Grahame mentioned the chief scientist office funding of more than £1 million over the next three years to aid research into dementia. That is important on two fronts. It might help us to find a cure, and the fact that that work and research is going on also gives families hope.

I confirm to Sandra White that the older people's assembly will be able to feed its comments into the strategy.

Maureen Watt mentioned the training of paid and unpaid carers, which is indeed important. Many members mentioned the lack of mental stimulation, which is another important area. We have funded the elderflowers initiative, which is an innovative programme that goes into hospitals and other care settings to work with people with dementia. If members have not seen it in action, I suggest that they do so, because it does amazing work.

I reassure Ian McKee that the involvement of dementia service users and carers is important and they are represented in each of the five work streams.

**Lewis Macdonald:** I mentioned Woodgrove nursing home in Aberdeen, which was one of the first specialist care homes for people with

dementia and is supported by the dementia development centre. I would be grateful if the minister would confirm that she is prepared to take steps to encourage the agencies that are involved in supporting and regulating that work to talk to each other so that the home is not closed due to a failure to join up the care commission standards with local government funding, which has clearly been the source of the trouble in that case.

**Shona Robison:** I told Lewis Macdonald in writing that that is a matter for local resolution, which is the view that he would have taken when he was a minister with the same responsibilities that I have now. I reiterate Maureen Watt's point about the Rubislaw Park care home, which is run by crossreach and which provides excellent care. I would have thought that Lewis Macdonald would welcome that.

I am proud to have been able to open and close this afternoon's debate on a dementia strategy. I welcome the support for the work that was offered by members in all parts of the chamber. I welcome their comments and challenges, which are based on a shared commitment to seek the best for people with dementia and their carers in Scotland. Let us get on with the job in hand. I certainly look forward to working with members as we do so.

## Business Motions

16:58

**The Presiding Officer (Alex Fergusson):** The next item of business is consideration of business motion S3M-4804, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, which sets out a business programme.

*Motion moved,*

That the Parliament agrees the following programme of business—

Wednesday 16 September 2009

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Health and Sport Committee Debate: Pathways into Sport and Physical Activity

*followed by* Business Motion

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 17 September 2009

9.15 am Parliamentary Bureau Motions

*followed by* Scottish Government Debate: Diageo

11.40 am General Question Time

12 noon First Minister's Question Time

2.15 pm Themed Question Time  
Europe, External Affairs and Culture;  
Education and Lifelong Learning

2.55 pm Scottish Government Debate:  
Scottish Road Safety Framework

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Wednesday 23 September 2009

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 24 September 2009

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  
Health and Wellbeing

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.*

**The Presiding Officer:** The next item of business is consideration of business motion S3M-4806, also in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, on the stage 2 timetable for the Schools (Consultation) (Scotland) Bill.

*Motion moved,*

That the Parliament agrees that consideration of the Schools (Consultation) (Scotland) Bill at Stage 2 be completed by 30 October 2009.—[Bruce Crawford.]

*Motion agreed to.*

## Point of Order

17:00

**The Minister for Children and Early Years (Adam Ingram):** On a point of order, Presiding Officer. I want to clarify the circumstances behind the points of order that were raised at the end of today's debate on the motion to annul the Scottish statutory instrument on legal representation at children's hearings.

In the course of the debate, I indicated that I had provided the Education, Lifelong Learning and Culture Committee with the Government's legal advice on legal representation for relevant persons in the children's hearings system. For clarity, I confirm that what I provided was the Government's legal position on the issue. As Cathy Jamieson MSP helpfully pointed out during the debate, under the ministerial code, neither the facts nor content of Government legal advice can be publicly released. Presiding Officer, I wish to apologise to you and to other members if my inadvertent description of that as legal advice meant that I was not as clear as I would have wished.

**The Presiding Officer (Alex Fergusson):** I am grateful to the minister for that clarification, and I consider the matter closed.

## Decision Time

17:01

### The Presiding Officer (Alex Fergusson):

There are four questions to be put as a result of today's business.

The first question is, that motion S3M-4811, in the name of Michael McMahon, on the Children's Hearings Legal Representation (Scotland) Amendment Rules 2009, be agreed to. Are we agreed?

**Members:** No.

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

### FOR

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Foulkes, George (Lothians) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gordon, Charlie (Glasgow Cathcart) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hume, Jim (South of Scotland) (LD)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Kelly, James (Glasgow Rutherglen) (Lab)  
 Kerr, Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Ken (Eastwood) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McArthur, Liam (Orkney) (LD)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mulligan, Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Elaine (Dumfries) (Lab)  
 O'Donnell, Hugh (Central Scotland) (LD)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Park, John (Mid Scotland and Fife) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stewart, David (Highlands and Islands) (Lab)  
 Tolson, Jim (Dunfermline West) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brocklebank, Ted (Mid Scotland and Fife) (Con)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Keith (Ochil) (SNP)  
 Brownlee, Derek (South of Scotland) (Con)  
 Campbell, Aileen (South of Scotland) (SNP)  
 Carlaw, Jackson (West of Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)  
 Constance, Angela (Livingston) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Don, Nigel (North East Scotland) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Christopher (Mid Scotland and Fife) (SNP)  
 Harvie, Patrick (Glasgow) (Green)  
 Hepburn, Jamie (Central Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kidd, Bill (Glasgow) (SNP)  
 Lamont, John (Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)  
 Marwick, Tricia (Central Fife) (SNP)  
 Mather, Jim (Argyll and Bute) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West of Scotland) (SNP)  
 McGregor, Jamie (Highlands and Islands) (Con)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Paterson, Gil (West of Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Salmond, Alex (Gordon) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)  
 Somerville, Shirley-Anne (Lothians) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)



Thompson, Dave (Highlands and Islands) (SNP)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

**The Presiding Officer:** The result of the division is: For 60, Against 65, Abstentions 1.

*Motion disagreed to.*

**The Presiding Officer:** The next question is, that amendment S3M-4797.2, in the name of Cathy Jamieson, which seeks to amend motion S3M-4797, in the name of Shona Robison, on dementia strategy, be agreed to. Are we agreed?

**Members:** No.

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

#### FOR

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baillie, Jackie (Dumbarton) (Lab)  
 Baker, Claire (Mid Scotland and Fife) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Finnie, Ross (West of Scotland) (LD)  
 Foulkes, George (Lothians) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Annabel (West of Scotland) (Con)  
 Gordon, Charlie (Glasgow Cathcart) (Lab)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (East Lothian) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hume, Jim (South of Scotland) (LD)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Kelly, James (Glasgow Rutherglen) (Lab)  
 Kerr, Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 MacDonald, Margo (Lothians) (Ind)  
 Macintosh, Ken (Eastwood) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McArthur, Liam (Orkney) (LD)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Tom (Hamilton South) (Lab)  
 McConnell, Jack (Motherwell and Wishaw) (Lab)  
 McInnes, Alison (North East Scotland) (LD)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Mulligan, Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Elaine (Dumfries) (Lab)

O'Donnell, Hugh (Central Scotland) (LD)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Park, John (Mid Scotland and Fife) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stewart, David (Highlands and Islands) (Lab)  
 Tolson, Jim (Dunfermline West) (LD)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Whitton, David (Strathkelvin and Bearsden) (Lab)

#### AGAINST

Adam, Brian (Aberdeen North) (SNP)  
 Aitken, Bill (Glasgow) (Con)  
 Allan, Alasdair (Western Isles) (SNP)  
 Brocklebank, Ted (Mid Scotland and Fife) (Con)  
 Brown, Gavin (Lothians) (Con)  
 Brown, Keith (Ochil) (SNP)  
 Brownlee, Derek (South of Scotland) (Con)  
 Campbell, Aileen (South of Scotland) (SNP)  
 Carlaw, Jackson (West of Scotland) (Con)  
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)  
 Constance, Angela (Livingston) (SNP)  
 Crawford, Bruce (Stirling) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Don, Nigel (North East Scotland) (SNP)  
 Doris, Bob (Glasgow) (SNP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 FitzPatrick, Joe (Dundee West) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gibson, Kenneth (Cunninghame North) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harvie, Christopher (Mid Scotland and Fife) (SNP)  
 Hepburn, Jamie (Central Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kidd, Bill (Glasgow) (SNP)  
 Lamont, John (Roxburgh and Berwickshire) (Con)  
 Lochhead, Richard (Moray) (SNP)  
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)  
 Marwick, Tricia (Central Fife) (SNP)  
 Mather, Jim (Argyll and Bute) (SNP)  
 Matheson, Michael (Falkirk West) (SNP)  
 Maxwell, Stewart (West of Scotland) (SNP)  
 McGrigor, Jamie (Highlands and Islands) (Con)  
 McKee, Ian (Lothians) (SNP)  
 McKelvie, Christina (Central Scotland) (SNP)  
 McLaughlin, Anne (Glasgow) (SNP)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMillan, Stuart (West of Scotland) (SNP)  
 Milne, Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Paterson, Gil (West of Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Salmond, Alex (Gordon) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Elizabeth (Mid Scotland and Fife) (Con)

Somerville, Shirley-Anne (Lothians) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow Govan) (SNP)  
 Swinney, John (North Tayside) (SNP)  
 Thompson, Dave (Highlands and Islands) (SNP)  
 Watt, Maureen (North East Scotland) (SNP)  
 Welsh, Andrew (Angus) (SNP)  
 White, Sandra (Glasgow) (SNP)  
 Wilson, Bill (West of Scotland) (SNP)  
 Wilson, John (Central Scotland) (SNP)

#### ABSTENTIONS

Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)

**The Presiding Officer:** The result of the division is: For 62, Against 62, Abstentions 2.

In accordance with convention, I vote against the amendment.

*Amendment disagreed to.*

**The Presiding Officer:** The next question is, that amendment S3M-4797.1, in the name of Ross Finnie, which seeks to amend motion S3M-4797, in the name of Shona Robison, on dementia strategy, be agreed to.

*Amendment agreed to.*

**The Presiding Officer:** The next question is, that motion S3M-4797, in the name of Shona Robison, on dementia strategy, as amended, be agreed to.

*Motion, as amended, agreed to,*

That the Parliament recognises the work that is being taken forward by the Scottish Government to establish dementia as a national priority, working in partnership with the NHS, local government, voluntary sector organisations such as Alzheimer's Scotland, the Scottish Dementia Working Group, regulatory and scrutiny bodies including the Mental Welfare Commission, the Social Work Inspection Agency and the Care Commission and experts from the Dementia Services Development Centre at the University of Stirling, the Royal College of Psychiatrists, the Royal College of General Practitioners and the Royal College of Nursing to improve the care, treatment and support available to those with dementia and their carers and calls on the Scottish Government to work with these stakeholders to ensure that the highest standards of care are achieved for those with dementia in care homes, in the community and in hospital and to publish a dementia strategy for Scotland no later than April 2010.

## Songbird Survival

**The Deputy Presiding Officer (Trish Godman):** The final item of business is a members' business debate on motion S3M-3411, in the name of Jamie McGrigor, on songbird survival. The debate will be concluded without any question being put.

*Motion debated,*

That the Parliament is aware of the concerns of many bird lovers throughout the United Kingdom about the decline of the songbird population; notes research that suggests that over the last 40 years many species of songbird have seen a reduction in numbers of 50% or more with some species declining by over 90%; recognises that a number of factors have led to these declines and that these should be considered by policymakers, and commends individual birdwatchers and bird groups in the Highlands and Islands and elsewhere in Scotland for their role in recording species' numbers and the work of organisations such as Songbird Survival that campaign to raise awareness of the threat to our songbird species and ensure the creation of a balanced biodiversity.

17:05

**Jamie McGrigor (Highlands and Islands) (Con):** I am very pleased to introduce this members' debate this evening. I think that it is the first debate that we have had on songbirds. I thank members of all parties for signing my motion. The level of cross-party support and the number of signatories demonstrate the real interest in and concern about this subject. I declare an interest as a member of the Royal Society for the Protection of Birds and am glad to see its representatives in the gallery for the debate. I also welcome to the Parliament a number of supporters of the excellent campaigning charity Songbird Survival, including its Scottish trustee John Haddington.

At the outset, I will set out the scale of the problem that we face following the decline in most of our key song and garden bird populations over the past 30 to 40 years. The evidence is frightening. Over that period, Songbird Survival suggests that bullfinch and yellowhammer numbers have gone down by 50 per cent and the song thrush—the “wise thrush” that sang its “careless rapture” in Robert Browning's famous poem “Home Thoughts, from Abroad”—is down by more than 50 per cent.

Indeed, the situation for some species is worse than that. The melodious and incredibly distinctive song of the skylark is heard less often these days—skylark numbers are down by 59 per cent. Like the yellowhammer and linnet, which are also in decline, the skylark is on the RSPB's red list of species. Likewise house sparrows and tree sparrows, which in my youth were considered to be common birds, are on that endangered list with declines of 69 and 80 per cent respectively.

Starling numbers are down by 82 per cent and corn bunting numbers are down by 84 per cent. Worst of all, the lesser redpoll has seen a decline of a staggering 90 per cent.

In many parts of the Highlands and Islands, which I represent, farmers and crofters and those who have worked on the land for generations complain to me about not only the decline of the peewit, curlew and golden plover but, in some areas, their very extinction. When I started farming in Argyll in 1974, the song of lambing time was that of the curlew, peewit and golden plover. They would wheel around one's head in flocks, trying to lead one away from their nests. Later in the year, one would see them in even greater numbers with their young. Farming methods in my area have hardly changed since those times, but the birds are virtually gone.

My motion refers to a number of factors that have led to these declines. I will address one factor that many of my constituents have raised: the increase in predator numbers. I refer not only to mammals but to birds of prey and other birds such as crows and magpies. I am absolutely against any wildlife crime such as the indiscriminate poisoning of raptors. The subject is one of real controversy, but I make no apology for raising an issue that merits an open and balanced debate and full consideration by policy makers.

Most people will accept that, due to the agri-environmental schemes of the past 10 years, the farming, crofting and land management sectors have seen an increase in the type of habitat that our songbirds need. However, at the same time, the decline in species numbers has not been halted. Indeed, in many cases, the decline is more pronounced. We have to look at other contributory factors. What is the reason for the decline in species numbers if not predation by hawks, crows and ground mammals? We have to find out.

I commend to members the 2006 "Review of the Impact of Mammalian Predators on Farm Songbird Population Dynamics" by Professor Roy Brown of the University of London. Professor Brown concludes that predator activity, whether taking young or adult birds or destroying their eggs and nests, has a significant negative impact on songbird and other farm bird populations. Indeed, he found that mammal predation may be the "dominant" factor. Among other predators, he refers to domestic and feral cats, grey squirrels, brown rats, hedgehogs, stoats, weasels, foxes and mink.

Today, I received a message that Arctic terns have returned to long-abandoned nests in the Hebrides following the cull of alien mink. As is obvious, that is a good thing.

The 2006 report also suggests that, where there are high levels of sparrow-hawk and kestrel activity, up to 85 per cent of all songbird nests may be predated. I remember that, when I was a boy, my mother found an unconscious sparrow-hawk that had flown into the telephone wires. She and I nursed it back to health over some weeks and then we let it go. Much to my mother's chagrin, she later saw it emerging from a honeysuckle bush with a fully grown blackbird in its talons, which it had taken off a nest of young blackbirds. She wondered whether she had done the right thing by rescuing it. Nobody who has witnessed, as I have, the speed and stealth with which a sparrow-hawk can attack the residents of a bird-table could fail to be amazed by that B-52 of the bird world.

The reintroduction of other bird of prey species such as sea eagles and red kites means that there is even greater predator pressure on our declining songbird populations than there was in previous decades. Some species of raptors are now at historically high levels, beyond anything previously recorded. Constituents have questioned whether the threat to our songbird species, which are a key part of our biosphere and culture, is given enough or indeed any consideration by those who campaign so vigorously and successfully for the reintroduction of birds of prey. I have sympathy with their concerns and believe that the interests of all our bird species, and not just birds of prey, need to be fully taken into account. Are ministers prepared to look further into the issue of raptors and respond to the concerns of bird lovers throughout the country?

On mammal predation, I suggest that we could all play our part in preventing cats from taking songbirds by keeping our cats in at night or perhaps even attaching bells to them to make them more obvious. I point out that I have a cat—I am a great cat lover.

I am fascinated by the latest experiment at Langholm, where the feeding of predators and raptors is taking place, especially at times when songbirds are nesting. I have witnessed areas where, thanks to that practice, raptors and songbirds can live side by side. It is extraordinary how properly managed estates produce a far greater variety of songbird life than areas that are not managed at all.

As I have said, I utterly condemn any wildlife crime or indiscriminate poisoning. However, I say to the RSPB that it is the trade union for birds and I ask it to please support all its members, not just the cannibal ones.

I hope that today's debate can provoke discussion on how we can halt, and reverse, the decline in our songbird populations before it is too

late and we lose the critical mass necessary to sustain healthy populations.

The Scottish Government has a key role to play, working with the voluntary sector and individual birdwatchers who care so much about our smaller birds. We must strive to achieve a diverse and balanced biosphere that ensures appropriate protection for the songbirds that have played such a key part in our environment, culture and history for so many generations and which, if we act now, can continue to do so in future.

17:13

**Elaine Murray (Dumfries) (Lab):** I was happy to sign the motion when it was lodged in February. We have had a family membership of the RSPB since my children were very young, and I always do what I can by feeding and carrying out habitat management—or perhaps non-management—to support populations of passerines and other small birds in my garden, for which they reward me by messing up my garden furniture and not showing up on the RSPB's big garden birdwatch day.

I have to admit that I had not heard of the organisation Songbird Survival, and I was quite unaware of its activities until a constituent who noticed that this debate had been scheduled got in touch with me, because they were rather annoyed that I had signed the motion. The lesson is perhaps that I should google organisations that I have not heard of before I sign motions that mention them.

Although I share the concerns of Songbird Survival and Mr McGrigor about the numbers of songbirds, it seems to me that Songbird Survival places undue emphasis on the role of predators and, in particular, unpopular predators such as grey squirrels, magpies and raptors, although it seems to excuse domestic and feral cats. I have been a cat keeper and cat lover for many years, but I am aware that some cats are extremely predatory when it comes to songbirds—I had one that was the very devil—while others are not. I should say to Mr McGrigor that red kites are carrion eaters, like vultures; they are not predators, so I do not think that they are responsible for taking out songbirds.

My constituent, who, incidentally, gave evidence during the passage of the Nature Conservation (Scotland) Bill, as well as to a United Kingdom parliamentary inquiry, stated in his e-mail:

"Songbird Survival is a very thinly disguised anti-raptor/pro-hunting lobby which repeatedly attempts to put forward the deeply prejudiced case against birds such as sparrowhawks, buzzards, peregrines and hen harriers ... with the idea of obtaining licences to kill such birds".

I hope that that is not actually the purpose of Songbird Survival.

The case for blaming raptors for the decrease in songbird numbers is not proven. In its briefing for the debate, the RSPB refers to an analysis of the common bird census between the 1960s and 2000. The evidence suggested that it was extremely unlikely that the presence of predators such as magpies or sparrow-hawks contributes to songbird population decline. Many other factors play a part, including agricultural intensification, pesticide use, reduction in habitat and food sources and climate change.

Although I am sure that Songbird Survival would not condone the illegal poisoning of birds of prey—Mr McGrigor has made it clear that he abhors that—the case that is argued against predators to some extent plays into the hands of those people who do. The motivation for obtaining licences to kill raptors is, I would argue, as much to do with the interests of sporting estates as it is with the survival of songbirds.

In that regard, and like Mr McGrigor, I draw members' attention to the Langholm moor demonstration project, which the minister and I had the pleasure of visiting recently—although I do not know whether the minister had as much time as I did to go out on to the moor and have a picnic.

**The Minister for Environment (Roseanna Cunningham):** I did.

**Elaine Murray:** Good.

The project is a partnership between Scottish Natural Heritage, Buccleuch Estates, the Game and Wildlife Conservation Trust, the RSPB and Natural England. It will run for 10 years, and it aims to demonstrate that raptors and grouse can coexist if the estate is properly managed for the needs of both. Obviously, the commercial interest will be an important factor for the estate. However, other ground-nesting birds as well as grouse also benefit from good management techniques. Although the Langholm project is not specifically about songbirds, I commend its approach in using science rather than prejudice in analysing the problem and assessing the solution.

17:17

**Jim Hume (South of Scotland) (LD):** I congratulate Jamie McGrigor on securing the debate. Like him, I declare a farming interest. I have also been the environment director for the National Farmers Union, a trustee for Borders Forest Trust and an RSPB member. I, too, condemn any wildlife crime.

We are lucky in Scotland to have such a diverse range of bird species, ranging from our seabirds to our almost unique red grouse, dotterels and golden plovers of the higher ground. Such diversity is due to the unspoilt and, I believe, well-

managed farm land that we have in Scotland. On my own family farm, Sundhope hill farm in the Yarrow valley, we are lucky to have a decent black grouse lek, and we have farmed and entered projects with the likes of the Tweed Foundation, the RSPB, the Borders Forest Trust and the Southern Upland Partnership in order to encourage that lek to survive. As well as that, those projects have helped salmon in their spawning ground in the area. Many other birds have benefited, including a healthy population of curlew, which we call whaups in our area.

I have witnessed changes in bird behaviour in my lifetime. Oystercatchers and cormorants are now common inland, although they were once never far from the seashore. We must be aware of natural changes, too. Farming with the natural habitat in mind is important and it is being done well, but there are other factors involved.

The first of those is the impact of predators on bird numbers. I recognise that there is a division among bird enthusiasts as to the quantifiable risk that is associated with predation from birds such as corvids—magpies included—and perhaps some raptors. From my own experience, predation does have a significant impact on the population of birds. Jamie McGrigor's motion uses the key phrase of "balanced biodiversity", which reflects exactly how it should be. As such, some humane control can take place that can reduce the problem.

No one is talking about a mass cull of crows—a crow is too wise for that to be a threat anyway—but rather an attempt to balance the scales. I realise that this view will be unpopular with many people, but organisations such as Songbird Survival are right to welcome further research into the relationship between predator and prey species.

It is not just songbirds that are under threat. I have personally seen a change in crow predation, with even healthy lambs being mobbed. There is nothing worse than coming upon a lamb that has had its eyes, bottom and tongue pulled out while it was still alive—and I will never forget finding a lamb that had been preyed on while it was halfway out of its mother. I sound a note of caution about the release of predators, whether they are winged or four legged. They are at the top of the ecosystem triangle, and we should bear in mind their effect on the environment, including on songbirds.

There is no doubt that songbird population decline is inextricably linked with development. Perhaps local authorities could put conditions on planning applications to ensure that green spaces are left in which to accommodate wild birds. If the proposed quarry goes ahead at Overburns near Biggar, many tonnes of gravel will be extracted

from Clydeside. Such development would surely lead to a decline in songbirds. Although there would be reclamation after the quarrying had taken place, the damage would have been done and it would take years to rebuild the wildlife population. We need sympathetic planning that makes the most of the green spaces that we have.

I commend the RSPB and the Scottish Ornithologists Club, which, respectively, have helped with the volunteer and farmer alliance and the south-east Scotland bird atlas. I welcome the motion and would correct it only by mentioning the biodiverse land of the south of Scotland and the work of the aforementioned groups.

17:21

**Robin Harper (Lothians) (Green):** I am quite worried by the inference that there is a serious problem with predators, which I take from repeated comments about not condoning the poisoning and killing of raptors.

Britain's gardens have a greater diversity of wildlife than does much of the countryside. I am a member of Buglife and the RSPB, so I look after my garden in such a way as to encourage bees and songbirds. Much of the countryside has been "trashed" by modern farming, according to at least one expert on urban ecology. Dr Ken Thompson, a senior research fellow at the University of Sheffield, thinks that even the smallest urban garden can contain a range of plants and insects that makes most farmland look like a "biological desert". It would be interesting for him to meet the professor from London to whom Jamie McGrigor referred.

Dr Thompson said:

"I know it's a heretical thing to say but most farmland would be improved by having a housing estate built on it from a biodiversity point of view ... If you're comparing gardens with the equivalent area of modern intensive farmland, gardens are much better."

Fields tend to be devoted to a single crop, but gardens are usually home to a greater variety of plant and invertebrate life. Dr Thompson led the biodiversity in urban gardens project in Sheffield, so he knows what he is talking about.

I am glad that Elaine Murray made her speech, because I had not come to this debate prepared to respond to the inferences that could be drawn from Jamie McGrigor's speech. He has seized on someone's comment that raptors make a significant contribution to the decline of songbirds, but that does not mean that raptors make a critical contribution. On top of the contribution of our monocultures in agriculture and the activity of some raptors, there are almost certainly significant contributions from global warming. For example, changes in the availability of insects at birds'

breeding times have often been flagged up, and there have been changes in the availability of other feeding matter, which is no longer present at the times when birds used to find it. I would resist any attempt to claim that raptors are the major reason for the decline in songbird numbers.

I apologise for having to leave the debate in a few minutes, but I must chair the meeting of a cross-party group at 5.30 pm.

17:24

**Nanette Milne (North East Scotland) (Con):** I, too, declare my membership of the RSPB and congratulate Jamie McGrigor on securing this debate on the decline of the songbird population, which is an issue of importance to the many bird lovers in Scotland.

As we have heard, several species of songbird have struggled to maintain their numbers in recent years. I will focus on one: the corn bunting, which is one of Scotland's fastest-declining birds and a species with special connections to the north-east of Scotland.

Corn buntings were once abundant throughout the British isles but have declined drastically since the 1970s because of changed cropping and intensive agricultural production methods. They are now a red-listed species in the United Kingdom, extinct in Ireland and classified with unfavourable conservation status due to declines throughout Europe.

Around 800 to 1,000 territorial males remain in Scotland, but several local extinctions have occurred during the past decade. Eastern Scotland now contains most of the outstanding Scottish population, but even there they have declined rapidly. A recent study shows an 83 per cent decline in singing males on sites in Aberdeenshire and Tayside between 1989 and 2007. A combination of factors—notably a preference for nesting in growing crops, a late breeding season and a seed diet that centres on grains—is likely to have made corn bunting populations especially susceptible to modern agricultural practices.

The staggering 83 per cent decline over the past 20 years was revealed by a study called "The Decline of Corn Buntings *Emberiza calandra* on east Scottish study areas in 1989-2007". It examined 30 sites in Aberdeenshire and Angus and was published in *Bird Study*, the journal of the British Trust for Ornithology. Dr Adam Watson—a well-known scientist in Aberdeenshire—who led the study with RSPB Scotland scientists, said:

"When I began this study in 1989, I knew that corn buntings were already scarcer than when I saw them as an Aberdeenshire schoolboy in the 1940s, but thought they might hold their own in the strongholds that remained.

Although it has been interesting to follow their numbers on the 30 areas, the huge decline has saddened and worried me. Many areas that held singing birds in the early years are now silent, as one local population after another went extinct. However, all is not yet lost and the government must urgently extend the targeted initiatives which have reversed declines on some farms."

To try to reverse that trend of decline, the RSPB set up an initiative called the farmland bird lifeline. The initiative is supported by Scottish Natural Heritage and with farm planning by the Farming and Wildlife Advisory Group Scotland. It has been running since 2001 and involves 37 farms in Inverness-shire, Aberdeenshire, Angus and Fife. Where there has been sufficient winter seed provision, such as winter stubble, and safe nesting habitats, such as hedges at the margins of fields, a positive response has been recorded from the corn buntings: on 23 farms that were involved between 2006 and 2008, there was a 40 per cent increase in singing males at management sites. That shows that it is possible to halt and reverse the decline in one species of songbird and that we must act now to ensure that other songbird species manage to sustain healthy populations.

Further research is needed into the causes of songbird declines, especially among woodland species and long-distance migrants. It is vital that we raise awareness of the plight of songbird populations and that we work together to ensure that they can thrive in the Scottish countryside in time to come. I commend Jamie McGrigor for bringing that important issue to the Parliament's attention.

**The Deputy Presiding Officer:** I call Liam McGrigor—sorry, Liam McArthur.

17:28

**Liam McArthur (Orkney) (LD):** You are just keeping me on my toes, Presiding Officer.

As my wife and eldest son are members of the RSPB, it is probably safest and prudent for me to declare an interest on the off-chance that we have been upgraded to a family membership.

I confess that, at the moment, my thoughts are centred less on songbird survival and more on Scotland's hope of world cup survival. With that in mind, I will keep my speech brief, although I will make a number of points on this important issue.

First, I add my congratulations to Jamie McGrigor on securing the debate and on his motion, which highlights well the stark reality for some of our songbird populations, which have experienced a dramatic decline in recent years. It rightly commends birdwatchers and bird groups—not only in the Highlands and Islands, as Jim Hume said, but throughout the country—for the work that they do in recording the state of various

bird species, not only our songbirds. As an aside, I observe that some of our most melodic birds are not, in fact, so-called songbirds.

Like other members—perhaps with the exception of Elaine Murray—I have been greatly impressed by the success of initiatives such as the RSPB's big garden bird watch, not least because it captures the imagination of the wider public and engages people of all ages in the necessary task of pulling together the most accurate picture possible of how our birds are faring. Of course, despite that public engagement, much of the responsibility for undertaking the fieldwork still falls to genuine birdlifers. Nowhere is that more evident than in my constituency, which is blessed with some of the most impressive and significant bird colonies in the world. I pay particular tribute to my friend Jim Williams, who regularly defies wind, rain and advancing years as he stomps across the Hoy hills gathering valuable data on red-throated divers and hen harriers, and numbers for other species. I find his efforts genuinely humbling.

I have no difficulty in lending my support to Jamie McGrigor's motion, but caution needs to be exercised when we draw conclusions from the songbird figures that he and others rightly highlight. Like Jamie McGrigor, I congratulate Songbird Survival on the work it does to draw attention to the plight of Scotland's songbirds and the research into the decline of certain species that it helps to fund, but I am concerned about its determination to lobby for changes to the law on predator control. I believe that that sends entirely the wrong signal and that at a point when Scotland is finally and slowly coming to terms with the need to treat wildlife crime seriously it is more than unfortunate. I do not think that it is overstating the case to suggest that such a signal could well be used by those whose motives are far from innocent to legitimise activities that have rightly been condemned by Jamie McGrigor, Jim Hume and every other member who has spoken in the debate, and which the Government and the previous Executive have taken steps to address.

More research is needed into the causes of songbird decline, especially the decline of woodland species and long-distance migrants, although it is clear already that seed-eating species have been hit hardest. In the main, that is because so few crops now contain enough weeds to keep such species going through the winter. In Orkney, the yellowhammer was the first species to become locally extinct—that happened back in the 1970s—and it was followed by the corn bunting, which Nanette Milne spoke about. It hung on in a couple of the north isles until about six or seven years ago but finally became locally extinct as a breeding species. More encouraging, though, is the fact that the fortunes of reed bunting and twite have been turned round through the provision of

bird crops. The RSPB has paid for some of those, but they are increasingly financed through a variety of agri-environment schemes.

Further research is needed, but maintaining habitats through suitable management schemes and working closely with farmers and land managers is key to addressing the problem. It will not be easy, but it pales in comparison with the task that faces Scotland's football team in the next few hours.

17:32

**The Minister for Environment (Roseanna Cunningham):** I, too, congratulate Jamie McGrigor on obtaining the debate, even if it now allows us to say that we have heard him debating birds in the chamber. Those of us who know him well enough will appreciate that.

Biodiversity is of critical value to the prosperity of our society. Indeed, I spent a good hour and a half yesterday chairing the biodiversity forum, so I have discussed within the past 24 hours some of the issues that underpin the motion. Biodiversity is also important to the welfare of our community. Songbirds are a treasure of nature. I think that every one of us feels the same. If we are unlucky enough to be awake for the dawn chorus, it is perhaps some consolation to listen to it while we are sleepless. It is an event of true wonder, unless we are trying to sleep. Nevertheless, it is the kind of thing that we would all be the poorer for if it did not exist.

I share the concern that is expressed in the motion about the long-term decline in bird populations. We have debated that issue in the chamber previously on a motion from Nanette Milne, although that was on seabirds. As well as the joy that songbirds give us, terrestrial breeding birds are a good indicator of overall biodiversity because they react quickly to variations in habitat quality through changes in breeding output, survival and dispersal. As the motion notes, an army of enthusiastic volunteers helps to keep the records of the numbers of birds, making them among our best-recorded species.

Members may know that one of our 45 national indicators is increasing the index of abundance of terrestrial breeding birds, which includes songbirds. I am pleased to say that that indicator is showing overall improvement and that the trend since the early 1990s is positive.

Within the index, the picture for songbirds is mixed. The good news is that over the period there have been increases in many species, including song thrushes and house sparrows. Less positive is the fact that certain species are still declining. Others have stabilised but are not yet showing recovery.

**Jamie McGrigor:** Will the minister do all that she can to support the agri-environmental schemes that suggest that late harvesting of crops in parts of Scotland is a good idea because that provides a lot of extra feeding for birds as they come into the winter?

**Roseanna Cunningham:** I will mention some of those schemes a little later. However, given the weather at the moment, I think that farmers are anxious to get the harvest in when they can. I am also not quite sure whether the member's suggestion raises other issues. The matter is slightly more complicated than simply delaying harvesting.

As I said, some species are increasing, some are declining and some are stabilising, so the overall picture is not clear. Even those species that have shown improvement in the recent past have some way to go before they return to the levels that were seen some 40 or more years ago. However, we can take some encouragement from the recent data.

There is a danger in having a too simplistic analysis—a point that was well put by Nanette Milne—given that changes in agricultural practice have no doubt contributed to the long-term decline in certain songbirds. There is no reason for us not to admit that. We all know that many hedgerows were lost due to the intensification of production, the loss of a mosaic of pasture and arable land and changes in cropping practices.

However, I think that we can now be confident that we have begun to turn the corner. Our farming and crofting communities are now our best asset in delivering improved habitats for Scottish songbirds through sustainable farming and crofting practices. To help to improve our songbird habitats, we are supporting our land managers through directly funded schemes under the Scotland rural development programme. We have also imposed mandatory cross-compliance conditions on all farmers who are in receipt of the single farm payment to ensure that there are no additional losses to important habitats. We are turning round the loss in hedgerows by providing a number of options through the SRDP and other related schemes.

On the point that was raised about the corn bunting, we are a little concerned that there were not enough observations to give a result in the breeding bird survey in Scotland. We recognise the importance of the bird, and that is why we have given the species its own funding package within the SRDP. However, we need the support of north-east farmers to retain what is an iconic species—perhaps I could pray in aid for that support Alex Johnstone, who is one of those farmers.

We also need to be careful about the figures. For example, the catastrophic decline in house sparrows in England from 1976 to 2004 was not clearly mirrored in Scotland. We need to be a bit careful about which declines and increases we are talking about. Between 1995 and 2007, the number of house sparrows in Scotland has increased—sometimes I think that they are all in my garden. We need to be a little bit careful about where the figures apply to and where the problems exist.

As I have discussed, we are seeing indications of recovery in Scotland in many of our songbird populations, including—although I do not want to overstay my welcome—swallows, house martins, grey wagtails, wrens, robins, blackbirds, song thrushes, mistle-thrushes, whitethroats, goldcrests, great tits, house sparrows, greenfinches and goldfinches. Skylark numbers have actually stabilised over that period. We need to try to get back to the higher numbers of skylarks that we had before, but the situation is not all doom and gloom and should not be presented as such.

I know that the Songbird Survival Trust has a particular view of the predation of sparrow-hawks, buzzards and so on in preventing a more robust turnaround in songbird numbers, but the broad consensus of informed opinion—as Elaine Murray referred to—does not seem to be on the trust's side. I am aware of comprehensive and authoritative reviews of the evidence that were published by the moorland forum in 2005 and by the RSPB in 2007—I will forgive the RSPB for its description of cats as non-native predators. We need to have regard to such published evidence. Both studies reached similar conclusions. In the words of the RSPB study,

“the evidence to implicate predators such as sparrowhawks in the declines of songbirds is very weak.”

It is clear that predators kill other animals—that is what makes them predators. In some circumstances, predation may affect populations of local species. However, the evidence that is currently available does not seem to support the Songbird Survival Trust's view that predators such as sparrow-hawks are an important factor in the overall populations of songbirds. I have seen sparrow-hawks in my garden trying to take down pigeons rather than songbirds, so the picture is perhaps more mixed than might at first be thought.

I will finish on a positive note. I support the motion's commendation of

“individual birdwatchers and bird groups in the Highlands and Islands and elsewhere in Scotland for their role in recording species' numbers”.

The commitment of those people to recording nature and to supporting schemes to improve



habitats and promote understanding is to be celebrated.

I echo Robin Harper's sentiments and express my own appreciation for the many gardeners across Scotland who encourage birds in their gardens through planting choices, feeding, the provision of nesting boxes and the application of benign neglect, which is always helpful, despite the mess that birds might make. It is an area in which the action of individuals can make a big difference to biodiversity. Advice is available from SNH and the RSPB for those who want to increase the attractiveness of their garden as a home for songbirds.

Next year is the international year of biodiversity, so I hope that we will build on the enthusiasm of conservation volunteers and make biodiversity something that we in Scotland can be proud of. We appreciate biodiversity, which must go across all species. I am grateful for the opportunity that the motion has provided to discuss the issue; I simply ask members to be careful not to rush to very simplistic answers.

*Meeting closed at 17:41.*



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