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GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE BILL [*LORDS*]

Second Sitting

Tuesday 9 February 2016

(Afternoon)

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STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chair: Ms Karen Buck

† Argar, Edward *(Charnwood)* (Con)
† Barclay, Stephen *(North East Cambridgeshire)* (Con)
† Bardell, Hannah *(Livingston)* (SNP)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Brown, Alan *(Kilmarnock and Loudoun)* (SNP)
† Churchill, Jo *(Bury St Edmunds)* (Con)
† Creagh, Mary *(Wakefield)* (Lab)
† Esterson, Bill *(Sefton Central)* (Lab)
† Flint, Caroline *(Don Valley)* (Lab)
† Frazer, Lucy *(South East Cambridgeshire)* (Con)
† Howell, John *(Henley)* (Con)
Lewis, Brandon *(Minister for Housing and Planning)*
† McKinnell, Catherine *(Newcastle upon Tyne North)* (Lab)
† Mackintosh, David *(Northampton South)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Pawsey, Mark *(Rugby)* (Con)
† Solloway, Amanda *(Derby North)* (Con)
† Soubry, Anna *(Minister for Small Business, Industry and Enterprise)*

Joanna Welham, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 9 February 2016

(Afternoon)

[Ms Karen Buck *in the Chair*]

Enterprise Bill [*Lords*]

Clause 1

Small Business Commissioner

2 pm

Bill Esterson (Sefton Central) (Lab): I beg to move amendment 38, in clause 1, page 1, line 11, at end insert—

'(c) to consider complaints from small businesses relating to their access to finance, and, where the Commissioner considers it appropriate, to make recommendations to the Secretary of State about measures that should be taken to improve small businesses' access to finance.'

This amendment would extend the remit of the Commissioner to receive complaints about the access of small businesses to finance, and would enable the Commissioner to make recommendations to the Secretary of State about measures to improve small businesses' access to finance.

The Chair: With this it will be convenient to discuss the following:

Amendment 39, in clause 1, page 1, line 11, at end insert—

'(2A) The complaints at subsection 2(b) include complaints from

(a) small businesses relating to cash retentions and

(b) construction firms regarding cash retention by companies.'

This amendment would make it clear that the Small Business Commissioner's remit included complaints from small businesses about cash retentions and from construction firms about cash retention by other companies.

New clause 12—*Payment practices: protection of retention monies in the construction industry*—

'(1) Any clause in a construction contract or related contract enabling a party to withhold retention monies shall be of no effect unless, upon their withholding, the monies are deposited forthwith in a retention deposit scheme authorised by the Secretary of State.

(2) Where a clause is rendered ineffective under this section any retention monies already withheld and not placed in a retention deposit scheme must be refunded in full to the party providing them.

(3) For the purpose of section (1) the Secretary of State shall make regulations to govern arrangements for establishing and operating retention deposit schemes.

(4) Arrangements under section (3) must be arrangements under which a body or person ("the scheme administrator") undertakes to establish and maintain a retention deposit scheme ("the scheme").

(5) The regulations made under section (3) must include requirements relating to—

(a) the selection and appointment of the scheme administrator;

(b) the funding and management of the scheme; and

(c) the release of retention monies from the scheme.

(6) Where the Secretary of State is satisfied that a proposed scheme complies with the regulations made under section (3) he may give authority for the proposed scheme to operate as a retention deposit scheme.

(7) The Secretary of State may delegate his power under subsection (6) to the Scottish Government, Welsh Government and Northern Ireland Executive.

(8) The monies held in the scheme must solely be retention monies and any interest accruing on the monies.

(9) In this section—

"construction contract" has the same meaning as in the Housing Grants, Construction and Regeneration Act 1996.

"retention monies" refers to monies which are withheld from monies which would otherwise be due under a construction contract, the effect of which is to provide the paying party with security for the current and future performance by the party carrying out construction operations of any or all of the latter's obligations under the contract.'

This new Clause would require retention monies provided for within construction industry contracts to be placed in an approved retention deposit scheme.

New clause 16—*Information on the Enterprise Investment Scheme and Seed Enterprise Investment Scheme*—

'The Secretary of State must publish information and guidance, for investors, about the Enterprise Investment Scheme and the Seed Enterprise Investment Scheme.'

This new Clause would place a requirement on the Secretary of State to publish information and guidance on the availability of Enterprise Investment Scheme and the Seed Enterprise Investment Scheme, which provide tax relief for investors in early stage small businesses.

Bill Esterson: Welcome to our deliberations, Ms Buck. It is a pleasure to serve under your chairmanship.

This group of amendments and new clauses covers access to finance, cash retention, the enterprise investment scheme and seed enterprise investment scheme, and how they relate to the small business commissioner. When we talk about the small business commissioner's remit being extended to cover complaints about access to finance, it is not so much about dealing with specific complaints about specific funding applications, but about having someone who will listen to small businesses' concerns about access to finance, who can signpost them to help them navigate the system—one of the roles that the Government do envisage for the commissioner—who can take complaints about flaws in access to finance and who can advocate at a high level for small and medium-sized enterprises, something which the US Small Business Administration does extremely well.

In the 2014 Department for Business, Innovation and Skills small business survey, 39% of SMEs said that they had difficulty in getting the money they wanted when applying for finance. For microbusinesses, that figure rose to 42%. It was 32% for small businesses and 25% for medium businesses. Some 48% of SMEs had difficulty accessing finance through bank loans. For Government grants, it was 53%. It seems odd that the small business commissioner's remit would be so narrow as to overlook such a basic issue faced by so many SMEs. Most small businesses who talk to me say that late payment is the No. 1 issue, but that is closely followed by a lack of access to finance, as borne out by the Federation of Small Businesses, which is why this is such a potentially important area of interest for somebody called a small business commissioner.

If the commissioner is to offer a signposting service, although that is not what is needed on late payments, it would certainly suit the question of access to finance, particularly when it comes to the opportunities of peer-to-peer lending and Government contracts, because SMEs cannot navigate the system and do not know what is available to them. As the Chair of the Business, Innovation and Skills Committee told us on Second Reading last week:

"The problem of access to finance remains a pertinent issue for firms, which is why the Select Committee has launched an inquiry into it. If the Bill's purpose is to make the UK the best place in Europe to grow a business, why does it not tackle access to finance? If the Government are serious about ensuring growth, why does the Bill not put in place measures to facilitate an expansion of scale-ups to power employment and economic growth?"—[*Official Report*, 2 February 2016; Vol. 605, cc. 837-838.]

Lord Mitchell, using his vast experience in business, spoke on the matter during deliberations in the Lords and discussed the problems in various Government schemes, saying that there had been good growth in non-Government schemes, but not so much in Government initiatives. He said that the market for alternative finance had grown, but

"largely as a result of the paralysis of the high street banks"—[*Official Report, House of Lords,* 3 March 2015; Vol. 760, cc. 129-130.]

Challenger banks have made good progress—Metro Bank and Aldermore, and Santander, if it can be regarded as a challenger bank, are changing the landscape. Peer-to-peer lending has taken off and is providing an interesting opportunity for many small firms. The changes are welcome and most hon. Members would accept that the traditional high street banks have not done the job of providing good sources of finance, to smaller businesses in particular, over many years. Having alternative sources of finance stepping in is welcome.

We need to know what is happening, and this is where the opportunity for the small business commissioner comes in. We need to know whether what is happening or what is changing is adequate.

Lord Mitchell gave the example of a start-up company from Merseyside, similar to the one I quoted earlier. A start-up company director found access to government funding so incomprehensible she gave up searching—a young entrepreneur with a tech start-up in the north-west, a prime example of the sort of start-up the Government have said repeatedly that they want to help to get off the ground. When she ran her postcode on the Government site she was presented with several hundred schemes for Wales and Scotland. When she entered her details for updates on suitable funding schemes she could bid for, she received a call from a company that wanted several hundred pounds upfront, not to help her put together bids, but to navigate the Government website on her company's behalf, and email her with a list of schemes she could bid for. Many companies exist to charge start-ups for understanding the Government funding scheme for them. While this is clearly an example of entrepreneurialism on one level, I suggest it says more about the difficulties in navigating the Government's funding processes.

A small business commissioner would be in a very strong position to represent the interests of small businesses, especially start-ups, when it comes to championing their interests on access to finance, whether from Government or elsewhere. Traditional lending is not doing the job that it needs to do. Alternative finance is a major opportunity and the small business commissioner should be a part of that.

Research undertaken by Everline and the Centre for Economics and Business Research towards the end of last year found that although small businesses have big growth plans for 2015, they are unable to carry them out due to a lack of finance and talent with the right skills. In the current market, most SMEs will only approach larger banks when seeking finance, even though the process can be time consuming and the rejection rate is about 50%. Those small businesses have the potential to drive growth and employment in the UK but are hampered by not only a lack of finance but a lack of confidence in trying to access the working capital they need—more than half think that traditional lenders are not interested in lending to them, and they may well be right, given the feedback that I have received.

Although a large number of alternative finance providers are willing to lend, and might also have more suitable product solutions, small business owners often are not even aware of their existence. As a result, small businesses need support to increase their knowledge of other finance options and prevent banks from always being the default choice. That should ultimately improve the supply of cash flow to viable small businesses who need additional working capital to aid growth, fill a cash gap or take advantage of a market opportunity.

How can we improve access to finance for small businesses? There is clearly a significant demand for easier access to finance for small businesses. To date, the market has been dominated by banks, whose products are often not adequately tailored to the specific requirements of small businesses. Particularly problematic are short-term cash flow needs, which demand a level of control and flexibility around speed of access and repayment timeframes that simply is not available from traditional lenders.

The small business commissioner could provide two things, if we are considering the scope of the office, both of which sit logically with the signposting and advocating approach that the Government want the office to take. They both also offer a shift from a person who reacts to complaints to one who actively supports SMEs and helps them to grow. The first thing it could provide is an accessible signposting service that offers clear advice to SMEs about the finance options available to them and helps them to capitalise on alternative funding, similar to that offered by the Small Business Administration in the United States. The other provision is also similar to what is offered by the US system. It would give the interests of small businesses on the issue of access to finance a real voice before Government. So much of the problem is not about whether the money is there or not, but about making sure that the Government do the right thing in making SME funding available. The Public Accounts Committee report in 2013 made many of the same points: SMEs do not know what is available to them, or their appeal rights, and the Government are not doing enough to link them to finance options.

Let me move on to cash retentions. Cash retentions in the construction industry are a particular problem of late payment covered by this group of amendments. They have been particularly problematic over many years, particularly for smaller firms in the supply chain. For example, a firm in my constituency, Jenkins, showed

[Bill Esterson]

me the shelf full of files of cash retentions from contracts it has been involved in—some of them reaching back two or three years or more, some five, six or even 10 years.

Lucy Frazer (South East Cambridgeshire) (Con): I am looking at the amendments—does the hon. Gentleman think that they are really necessary? Clause 1(2)(b) refers to "payment matters", and clause 4(4) defines "payment matter" as relating to a request for payment, which generally relates to a question of supply. Is it not possible to say that cash retentions, which are in effect a request for payment, are included in the Bill? Would that definition not give some flexibility to the small business commissioner to focus on what really matters to him, whether that is late payments per se or some aspect of late payment?

Bill Esterson: That is an interesting point. I am sure that the Minister will have some theories in response to that intervention. This was debated at length in the Lords, and the Minister there accepted that cash retentions are an important, separate set of issues. I am sure the Minister will talk in detail about why the Government have agreed to set up a review of the issue and make proposals. These are very much probing amendments to consider this particularly acute issue of late payment within the construction sector. That is why we have tabled the amendments and why the Lords spent so long on this issue and a similar amendment.

Cash retentions in the construction industry are withheld as a form of security to encourage firms to return to remedy defects. In practice, the prime motivation for the withholding can be to improve the working capital of the withholding party. In our deliberations this morning, we talked about some of the problems of late payment being used as a form of working capital, or to support treasury in the public sector; a similar point applies in the construction sector. Cash retentions are ultimately funded by small and medium-sized enterprises in construction supply chains. Each year, small businesses lose millions of pounds of retention moneys because of upstream insolvencies or because they give up chasing the release of the moneys. New clause 12 is designed to ring-fence retention moneys by placing a statutory obligation on organisations withholding retentions to deposit moneys in a retention deposit scheme. It should be noted that retention moneys legally belong to the party from whom they have been withheld. They are required to be released to that party—half on handover of the work and the other half normally 12 months later. In practice, the period is considerably longer. I mentioned Jenkins, a firm in my constituency where that has often been the case, but where it is common for it to take three or four more years.

Subsection (1) of new clause 12 states that unless the party withholding retention moneys deposits them immediately in a deposit retention scheme, any contractual clause enabling such withholding has no legal effect. Any moneys previously deducted must be returned in full. Construction firms already have a statutory right under part 2 of the Housing Grants, Construction and Regeneration Act 1996 to suspend their work for non-payment. The retention deposit scheme could be modelled on the tenancy deposit schemes introduced by regulations issued under the Housing Act 2004, as amended by the Localism Act 2011. Currently, three tenancy deposit schemes are Government-approved. Landlords of shorthold tenancies must place tenants' deposits in one of these schemes. Tenants' deposits are provided as security for the performance of the tenants' existing and future obligations; retention moneys serve the same purpose.

One of the schemes is run by a not-for-profit enterprise. The Dispute Service Limited, not surprisingly, operates a scheme called the Tenancy Deposit Scheme. The scheme held—at least when my notes were written—more than a million deposits. It is funded by the interest earned on the deposits and any excess profit is channelled into a charitable foundation to be used to raise standards in the letting sector of the property industry. I am informed that the CEO of the scheme has already expressed his interest in expanding the scheme for the purpose of depositing retention moneys. Therefore much of the new clause reflects the requirements of the Housing Act 2004 in so far as they relate to tenancy deposit schemes.

2.15 pm

The new clause gives power to the Secretary of State and to the devolved Administrations, if the Secretary of State decides to devolve that power, to introduce regulations for the purpose of approving prospective retention deposit schemes and their governance. The regulations will need to address other matters—for example, the resolution of disputes over the release of retention moneys. Statutory adjudication in the construction industry already exists under the 1996 Act. Furthermore, certain construction contracts may need to be excluded from the scope of the regulations, such as domestic householder contracts. The Act excludes domestic contracts and a number of other types of contract.

The new clause would transform an industry in which most of the added value is provided by small firms. With retention moneys properly protected, small firms will be able to offer the moneys as security for further lending to improve cash flow, helping them to grow and improve their productivity. Furthermore, it will reduce the huge losses suffered by those firms as a result of upstream insolvencies and having to give up chasing an outstanding retention. More than £3 billion of retention moneys are outstanding at any one time. Ultimately, that sum is financed by small firms in the industry. This new clause would give them the protection and security they need and deserve.

Fifty-two years ago, a Government report, the Banwell report, recommended the abolition of retentions. Twenty-two years ago, a joint construction industry/Government report, the Latham report, recommended that cash retentions should be protected in a trust account. The Select Committee on Business, Innovation and Skills recommended, in 2002 and 2008, the phasing out of the cash retention system because it was outdated and unfair to small firms. Agreeing this amendment would finally realise all those ambitions, as well as helping the Government to realise the ambition of zero retentions by 2025.

New clause 16 addresses the enterprise investment scheme and the seed enterprise investment scheme. Both schemes deliver to the firms taking part in them. They were introduced by the previous Labour Government and, for the firms involved, are very successful, particularly

in sectors such as tech, where the seed enterprise investment scheme is extremely important. However, very few business people and very few advisers, either accountants or lawyers, are aware of the schemes. That is the reason for tabling new clause 16. Again, if we talk about signposting being a prime responsibility of the small business commissioner, these are exactly the kinds of schemes that would fit very well into those responsibilities.

As we said earlier, this is an opportunity to boost enterprise and provide opportunities for small businesses to gain access to much-needed finance, particularly in start-up and in the early days. Everybody in this Committee and across the whole House would support opportunities to boost small business to grow the economy. Giving the commissioner that responsibility would be extremely helpful. On the matter of the enterprise investment scheme and similar schemes, the Institute of Directors was very supportive of giving this responsibility to the commissioner. It made the same point that not enough of its members are aware of the opportunities that exist and agrees there is potential for improvement.

The Chair: I am not minded to allow a stand part debate on clause 1. If any Members want to make any general remarks, this would be the right time for them to do so.

Alan Brown (Kilmarnock and Loudoun) (SNP): It is a pleasure to serve under your chairmanship, Ms Buck. I want to focus on the issue of retentions, which relates to amendment 39 and new clause 12. I spoke about retention on Second Reading, and one of the reasons I wanted to serve on the Bill Committee was to push for this.

We have already had two votes—very much partisan votes—on amendments that I had imagined were uncontroversial. This is a major issue for the industry, so I was hoping for some cross-party consensus on these amendments. I note the intervention from the hon. and learned Member for South East Cambridgeshire, which seemed to be an intervention against new clause 12 and amendment 39. If the setting up of the new small business commissioner was a way of addressing this long-standing issue, I do not think the business experts would be lobbying so hard for these amendments to resolve it. Also, if this was a method of dealing with it, it seems strange that the Government should set up a review specifically to looks retentions. That seems counterintuitive to me.

Just to recap the main issues, retentions are basically to do with a cash-flow problem. Retentions usually equate to about 5% of the cost of a job, which is held until the end of the maintenance period, which is usually a year after completion and commission of the main job. That 5% quite often equates to the profit margin, especially for small companies, so if major companies are not releasing these retentions, then companies do not have access to their profits. That is a major cash-flow issue, and it does not take a genius to see that if there is no profit, there is no company in the long run.

We heard earlier that up to £3 billion can be held at any one time in retentions. Last year, £40 million was lost due to insolvencies—that is, one company going bust that was holding retentions that were due to other companies. Those companies lose that money and, of course, end up paying off workers.

The cash-flow issue also means that companies cannot invest in training and apprenticeships. I tried to draw a parallel on Second Reading, in that one good aspect of the Bill is the attempt to create new apprenticeships in England and Wales, yet retention actually prevents the creation of apprenticeships in the engineering industry. These are specialist apprenticeships, which can lead to rewarding and well paid jobs. We should be doing everything we can to sustain that industry, to sustain those jobs and that training.

The suggested model is for a retention deposit scheme, modelled on a tenancy deposit scheme. This accords with housing legislation in this country and legislation in other countries that, as we have heard, have already looked at resolving the matter of retentions. Retentions in trust still provide a waiver over subcontractors who pay cash retentions. It is still a method of getting subcontractors back on site if there are defects to be fixed, or it provides money that can be accessed to pay for the defects. More importantly, it means that subcontractors can get the money that is legitimately due to them.

I urge Members to think carefully about amendment 39, which would help to address the question of cash retentions, and new clause 12, which would resolve the matter once and for all.

Hannah Bardell (Livingston) (SNP): It is a pleasure to serve under your chairwomanship, Ms Buck.

I want to speak briefly to amendment 38 and new clause 16. Small and medium-sized enterprises have a vital role in driving the UK's economic recovery, and it is a vital task of Government to ensure that finance is available to them to encourage investment and growth.

We welcome the findings of the British Business Bank's small business finance markets report, which was published this month. It paints an encouraging picture of lending to small businesses in the past year, with an increase in equity finance for smaller businesses—there was growth of 43% in the year to October 2015. Bank lending, which continues to be the main form of finance for smaller businesses, continues to improve too, but obviously there are still significant challenges there.

However, as was mentioned earlier, 56% of smaller businesses are looking to grow their turnover this year. It is essential that suitable finance should be available to support those growth ambitions and that the Government should not rest on their achievements of the past year. By accepting the amendment, which we support, the UK Government would give the small business commissioner the power to champion lending for small businesses and to make constructive recommendations to the Government on how to encourage lending to SMEs.

As for new clause 16, we recognise that new rules were introduced for venture capital trusts, enterprise investment schemes and seed investment schemes by the Chancellor, and that the scheme would be a mechanism for incentivising investment in small enterprises. Again, we support the new clause, and encourage the Government—I hope we can see some cross-party consensus—to bring forward details and guidance about the availability of the scheme. What we are talking about is somewhat of a marketing exercise, but it is a

[Hannah Bardell]

question of getting the information out. All too often—certainly when I worked in the private sector, in the oil industry—the schemes that were available were various. Companies were not aware of what was available. It is important that we market schemes and put them out there, so that as many companies as possible take up opportunities.

The Minister for Small Business, Industry and Enterprise (Anna Soubry): It is a pleasure to serve under your chairmanship, Ms Buck. I join the hon. Member for Sefton Central in welcoming you to your Committee Chair role for the first time. I am sure that we will all do all we can to make your experience one that you will remember enjoyably.

I will speak to the amendments—and oppose them—beginning with cash retentions. We had an extremely good debate just the other week in Westminster Hall. It was called by the hon. Member for Upper Bann (David Simpson), who rightly brought the matter before the House yet again. It is fair to say that there is absolute cross-party agreement about the need to reform cash retentions in the construction industry. I am very open about it: I think they are outdated and I do not think they are fair. They are particularly unfair to small businesses.

If the Committee will forgive me, let me say that the amendment has come too soon, and the reason is the work we are doing. We have set up a full review, and I am grateful to the Construction Leadership Council. Andrew Wolstenholme, the chief executive of Crossrail, is overseeing a full review of cash retentions in the construction industry. His work will not be completed until some time in March. His review will then come forward with recommendations.

It could be that the trust—an idea that I am familiar with—is the best way to make sure we sort out the problem of cash retentions, but there are other ideas that were debated in Westminster Hall. For example, a better way to do it might be some sort of bond scheme. Many hon. Members will be familiar with that from section 106 agreements in our work in our constituencies. To make sure that roads in housing developments are completed, the developer has to put money into a bond scheme.

There may be merit in what is being proposed, but now is not the time to do it. I think that the hon. Members for Livingston and for Kilmarnock and Loudoun have come to it too soon, because there may be alternatives. It may be that, as a result of Mr Wolstenholme's review, other things might need to be added to legislation in the future. I think it has come too early, though I have huge sympathy for where it is going in its thrust.

2.30 pm

Hannah Bardell: I am grateful to the hon. Lady for her comments. I appreciate that we are in the middle of a review, but is she not tempted to put this in legislation, given there is such support for it across the parties and the industry? I met with the specialist contractors association recently. We are talking about businesses that are going out of business because of this issue. I wonder whether the hon. Lady would consider a pilot scheme—perhaps we will write to her collectively.

Anna Soubry: Everybody is jumping too quickly. Let us have the review. One of the big mistakes we make in this place, whichever party is in control, is that we often rush into legislation in a knee-jerk way. What is important is that we all agree there are problems that need to be solved. Let us trust Mr Wolstenholme to do a thorough review and come up with recommendations. Those will then go out to public consultation. If legislation is needed, we can draft that, with, it is hoped, cross-party support—that would be marvellous. We can then make sure that we address every single feature of it and get the right result for our construction industry.

Jo Churchill (Bury St Edmunds) (Con): May I say what a pleasure it is to serve under your first chairpersonship, Ms Buck? I want to say how much I concur with the Minister. I have run a construction firm for over two decades and retention has blighted that industry for that time. If we rush at this and get the wrong solution, we will merely be knotting the ball of wool in a different place. That will not serve any construction firm well, small or large. I welcome the review and look forward to being able to work on a cross-party basis, because we all have builders and we all need builders and small businessmen to work with those large companies, so that the system is not sclerotic but works well.

Anna Soubry: I absolutely agree with my hon. Friend. Only yesterday I met somebody with whom I specifically discussed the problem of the retention scheme and the adverse effect it has on small businesses. I hope that this matter would not necessarily need to be pushed to the vote, if only because we are in agreement. We are all going in the right direction, but now is not the time.

Alan Brown: I hear what the Minister is saying about not rushing in with a knee-jerk solution, but let us not be kidded: this problem has been around for a long time. It is not that this solution came from nowhere recently; it has been mooted before. Is it not the case that when the Bill was in the other place, an amendment was tabled that effectively put a review on a statutory footing in the Bill, which was not passed? Therefore it seems a bit contradictory that we are now having a review. How can we have any comfort that the review is going to come to something? The opposite of a knee-jerk reaction is a Government review that kicks things into the long grass. I am not saying that the Minister wants to kick it into the long grass, but there is always a risk that things get delayed and delayed. We want to do something now, but how can we get a firm commitment that it is going to happen?

The Chair: Order. I gently reinforce the fact that we must have short interventions, not speeches.

Alan Brown: Apologies, Ms Buck.

Anna Soubry: I know that we do not know each other well, but the hon. Gentleman can be assured that this Minister gives absolutely her word that this matter is not going to be kicked into any long grass. In fact it is very short grass, which has only just grown, because the review will be completed by March and then recommendations will go out to public consultation. If legislation is required as a result of that consultation, I will be happy to be the Minister to take that through.

I do not wish to chide the hon. Gentleman, but he may not realise that there is a statutory adjudication scheme already in place for disputes in relation to the construction retention problem that we know is there. That system does exist. I know that small businesses often do not want to go to the adjudicator because they are fearful of complaining about a big business and souring relations—they fear that future business relations will be damaged—but it must be said that the system does exist. I wanted to put that on the record.

Kevin Brennan (Cardiff West) (Lab): Until the Minister made that point, I think the whole Committee was with what she was saying about legislating in haste and repenting at leisure, but she then seemed to say not that she was looking forward to legislation in the next Queen's Speech—which seemed to be the road she was going down—but that she thought what was already in place might well be adequate. Is that what she is telling the Committee?

Anna Soubry: No—the hon. Gentleman knows I do not mean that. Do not be silly.

Kevin Brennan: If not, she must clarify it on the record. That is why we are here. She does not need to look at the clock every five minutes. We need to hear it and have it on the record.

Anna Soubry: Some might say I was being slightly patronised there, Ms Buck, but I am sure that that was not the hon. Gentleman's intention. There will be a review, which will report in March, from which a series of recommendations will go out for public consultation. I am very keen that we reform the retention system in the construction industry. If anyone wants me to repeat that, I will say it yet again, because I have said it not only in this Committee, but in the Westminster Hall debate last month: it needs reforming and we need to get on with it. I could make the point that some people were in government for 13 years and did not deal with the problem, but that would be churlish of me and I would not do such a thing. Nevertheless, the point I am making is that there is an adjudication system to help those companies that suffer.

I have also conceded that I am told on very good authority that, for reasons that we know and understand, the existing system is not working as we would like it to. In any event, I think it is out of date and unfair and it needs sorting out. I would be delighted to be the Minister who sorts it out once and for all, so that we have a modern, fair system that protects those who need to take care of all the snags and things that come to light after a build has been completed and, at the same time, ensures that the money is there so that they can make good any defects. There is a way to sort it out. It might not be what is proposed in the amendment—there might be a better way to do it—but those are exactly the things that the review will explore.

Amendment 38 specifically says that the new small business commissioner would consider complaints relating to access to finance, not complaints about whether or not small businesses have knowledge about the various schemes. One of my predecessor's achievements was bring together as many of the Government's schemes as possible through one portal: the British Business Bank. If someone wants access to finance, they can go to their bank or to their accountant and ask for advice, or they can seek the advice of the Federation of Small Businesses. Equally, they can google it, and one of the results will be the British Business Bank, which gives all the details of all the various schemes, not only those operated by the Government—start-up loans being an extremely good example—but also advice on peer-to-peer lending, the angel schemes, crowdfunding and so on. We are beginning to see a real change in the amount of information available, especially from that one-stop-shop, the British Business Bank, so that small businesses know where to go if they are looking for finance.

The amendment, though, is about small businesses' complaints about their access to finance. With respect, the Financial Ombudsman Service already deals specifically with such complaints. Were we to extend the role of the small business commissioner, all we would be doing is duplicating an existing system that everyone seems to accept is working well. As I said earlier, we learned from the consultation that the one thing no one wants is the duplication of services.

The Financial Ombudsman Service is working well, and it has respect. Small businesses can go there to make their complaints; Members may well have referred their constituents. We already have exactly the device required. I argue strongly that expanding the remit of the small business commissioner would not be appropriate when it comes to finance, because we already have a very good system. Small businesses are within the remit of the Financial Ombudsman Service if they have a turnover of less than €2 million and fewer than 10 employees. So it is there for the microbusinesses.

The Financial Conduct Authority is currently consulting on whether even more small businesses should be given access to the FOS. The FOS analyses the complaints it receives from microbusinesses and reports on them every year. It also publishes occasional stand-alone reports, such as, in August 2015, "Micro-enterprises and financial services—a review of complaints", which had the express purpose of highlighting areas of good practice and promoting change where it is needed. Access to finance for businesses is also regularly considered by Select Committees.

With respect, I really believe that the amendment would represent an unnecessary extension of the remit of the small business commissioner. Again, we must make it very clear that the primary function of the small business commissioner is to address the big problem that all small businesses complain about, which is late payment. That is where I want his or her focus and resources to be.

I turn to other matters. I think I have dealt with cash retentions in the construction industry, but I want to deal with the other amendment, which deals with the enterprise investment scheme and the seed enterprise investment scheme. Details are already published, with guidance and information, on gov.uk. We in BIS support and complement this work with promotional activity. Again, with respect, I really do not think the amendment is necessary, because what it wants to achieve is already being done.

I think that is it, unless there is anything else I need to add. I ask for the amendment on cash retentions to be withdrawn because I honestly think we are going to make huge progress very quickly and we are all on the same page. I respectfully suggest that the other amendment

[Anna Soubry]

is just not needed: we do not need to extend the remit of the small business commissioner in this way, because others are doing the job very well for small businesses.

Bill Esterson: Let us deal with access to finance and the EIS and seed schemes. The Minister needs to read the whole of amendment 38 to consider where it is going. If the word "complaints" were replaced by the word "representations", it might be easier to follow. The point is for the commissioner to make recommendations to Government about improving access to finance; that is the intention behind the amendment, as I thought I had explained. That is also in the explanatory statement that came with the amendment, but I will not pursue the point by pushing it to a vote.

When the Minister says that late payment is the priority, I understand that. Clearly, one has to start somewhere and that is what the Government want to do. However, as I said in my opening remarks, the second issue—it is a very big second issue—is access to finance. It is really important that we get to grips with that as well. Please understand the importance of the amendment and what it is driving at.

The Minister commented on the schemes and their advertisement on the gov.uk website. I understand that. The point I made earlier was that not enough businesses are finding them. That is why if the small business commissioner has a signposting role, he or she should use it as much as possible. Perhaps the Minister will take that away and consider it.

Anna Soubry: We want the small business commissioner to have his or her own website, and I want there to be portals—the hon. Gentleman understands these things—so somebody can click on something that says "access" and go through to the various information. That is terribly common on so many websites, so I want there to be that sort of access. The hon. Gentleman makes a very good point, and we agree that one-stop shops are the way to get information about a lot of this work out there.

2.45 pm

Bill Esterson: That is a fair point. I will come back to some of the challenges and our concerns about the portals. Many small businesses do not use the web, so encouraging greater digital use is one of the many challenges for the Government.

There is great concern about retentions. The amendment has cross-party support, and hon. Members who spoke made their points extremely well. Often, between 2.5% and 5% of moneys are retained under the cash retention system, so it is massively difficult for small businesses to be as effective as possible. The hon. Member for Kilmarnock and Loudoun made a point about businesses not taking part in apprenticeships and not investing in the future as a result of the scale of retention.

Hannah Bardell: Does the hon. Gentleman agree that it is important that the review and these proposals are added to the Bill before Report?

Bill Esterson: It is incredibly important that that happens as quickly as possible, but SNP Members are in the same position as us: we are ultimately dependent on the Government for this to work, so we have to take the Minister's bona fides. She is now on the record as saying that she will take action. I made the point that the recommendation was first made 52 years ago and it has been made on numerous occasions since. The problem is that businesses do not understand why we are waiting and why the Government and Parliament are taking so long to act. It is probably not until we come to this place that we start to understand why.

The Minister said it is too soon. A similar point was made in the Lords, and Labour peers accepted similar comments from Baroness Neville-Rolfe. We will wait and see for now, but if the review is finalised in March, the Bill's Report stage may happen at about the same time.

I leave this thought with the Minister: if there is the opportunity, will she consider tabling amendments to take that into account? Let us challenge her Department and officials to table such amendments on Report to satisfy Members on both sides of the House. With that, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn,

Clause 1 ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 2

SMALL BUSINESSES IN RELATION TO WHICH THE COMMISSIONER HAS FUNCTIONS

Question proposed, That the clause stand part of the Bill.

Bill Esterson: The clause deals with the definition of small businesses. I do not intend to detain the Committee for long on this subject, but it is important to consider what it says. There have been wide-ranging debates in the Lords and here about what the small business commissioner ought and ought not to do. The clause, which defines the small business commissioner and who they will serve, is an opportunity to reflect on the importance of exactly that remit.

Although debate on the Bill has covered a variety of issues, I believe that on both sides it has had at its heart the recognition of the value of small businesses to the UK economy. Members across the House have had an opportunity to offer valuable support to the companies and entrepreneurs that fall within the definition laid out in the clause. The debate is an opportunity to speak about the importance of small businesses, but the Bill carries an opportunity to boost the prospects of companies all over the UK.

What are we talking about when we lay down these technical definitions of a small business? There are now thought to be 5.2 million small businesses in the UK. They employ 48% of the UK's workforce and, on the back of sheer hard work, account for 33% of private sector turnover. The definitions laid out in the clause single out incredibly hard-working people. My wife still runs a small business and is a constant reminder to me of how much effort and how many sleepless nights it takes to start, grow, run and maintain a business—all those things and more. The Bill is for those who deserve our support on late payment, which is one of the most vexing issues facing small businesses today and one that we simply have not done enough to resolve. It is also one of the issues that my wife lobbies me on almost daily.

The Bill presents us with an opportunity radically to change the outlook for some of the most important contributors to our economy. It offers the small businesses in the definition some level of support or guidance on late payments, but it could serve the business owners or the budding entrepreneurs also captured in the definition who have brilliant ideas but do not have the knowledge base needed to grow. It could serve the businesses that are struggling with not only late payments but investment challenges, ongoing legal disputes, access to finance, lack of mentoring and difficulties with public sector and private sector clients.

The clause captures a body of people whose challenges go far beyond late payment and who need far more than supportive words and signposting to systems that, as time has shown us, simply have not tackled the problem. All the challenges they face are tackled by specialists in big companies, but the definition in the clause demarcates a group who largely are so busy keeping the wheels of local economies turning that they do not have time to be legal or financial experts. The Bill is an opportunity for us to provide them with real support.

Beyond the technical definitions laid out in the clause are the owners of 5.2 million small UK businesses. If they are not watching this debate, they will still feel over the coming months and years the outcome of whether we focus on limited support for the specific challenge they face or whether we take this chance to offer meaningful answers to some of the key issues that stifle their growth and prosperity—and by extension, the growth and prosperity of the local economies in which they operate.

We would like the small business commissioner's remit to go much further than the one in the Bill. Even if we just focus on late payments, it does not take a great deal of prodding of the definitions to see how limited the scope of support is. One fifth of UK small businesses—more than 1 million firms—have experienced or come close to insolvency as a result of a total estimated by BACS to be £26.8 billion in outstanding late payments. Sage estimates a significantly higher figure—I cannot remember it.

Catherine McKinnell (Newcastle upon Tyne North) (Lab): It was £55 billion.

Bill Esterson: I thank my hon. Friend. The Government's proposed small business commissioner is likely, according to the Government's own predictions, to help just 500 small businesses a year. The commissioner will serve as a signposting service to mediation services that already exist and have failed to deal with the crippling problem of late payment in the past. In fact, it was the Minister's colleague, the hon. Member for Huntingdon (Mr Djanogly), who said on Second Reading:

"On capacity, the new £1.1 million SBC website should handle 390,000 disputes from 70,000 businesses, yet the SBC will deal with only 500 complaints a year. That gives rise to the question of what will happen with the rest of the disputes and what the real impact of the proposal will be. Could the site cope with the workload of significant numbers qualifying for assistance? That remains unclear."—[*Official Report*, 2 February 2016; Vol. 605, c. 828.]

That is just the website, which the Minister mentioned. The small business commissioner will employ only a handful of staff, and there is nothing in the Bill to say that they will be legal, financial or even business experts.

We have to be honest when we look at the definitions laid out in the clause. The aspiration to support small business is lofty and laudable, but it prompts a question: without the legal clout of the Australian small business commissioner or the wide-ranging agreement with the US Small Business Administration, and without anything like the budget or staff numbers of either of them, how many such companies is the legislation actually likely to help?

Anna Soubry: I will keep this as short as I can, because I do not think that there will be a vote on the clause.

I agree with a large part of what the hon. Gentleman says. The clause defines small businesses that may access the commissioner's functions as those with a headcount of fewer than 50 people. Financial thresholds may also be applied under secondary legislation—for example, if it transpires that there are businesses with relatively few employees, but high financial worth. They might be excluded from the commissioner's scope, because our emphasis is small business.

I think Lord Mendelsohn talked about the "asymmetry of power"; the measure is about small businesses, especially very small businesses—the actual definition for small business is 250 employees, but we are taking that down to 50 and fewer, because those businesses simply do not have the sort of power that other, bigger businesses have. We want to redress that and to change the balance.

Perhaps the small business commissioner will not at the moment deliver as we all want them to deliver, but it is a terrifically good beginning to have someone in situ specifically looking after the needs of small businesses, concentrating on the primary role—I will be boring by repeating this—of tackling the problem of late payment, because that is the big issue that troubles the majority of small businesses. The commissioner will be their champion.

I hope to be—I like to think I am—the champion of small businesses, and that is why I was appointed. I do not know whether there has been a small business Minister before and, although I do other things as well—I seem to do everything—the emphasis is on small business. I actually sit in Cabinet because the Prime Minister wanted a Minister with responsibility for small businesses at the Cabinet table—unfortunately, he could not find one, so he got me. No! To be serious, that is why the role was created.

I am so proud that we will have the small business commissioner as the small business champion, especially for late payment. I do not think that there will be any dispute about the clause.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

General advice and information

Bill Esterson: I beg to move amendment 40, in clause 3, page 3, line 10, at end insert—

"(d) tax rates, allowances and thresholds of relevance to small business owners."

This amendment would extend the general information and advice that may be published by the Commissioner to include tax rates, allowances and thresholds of relevance to small businesses.

The Chair: With this it will be convenient to discuss the following:

Amendment 41, in clause 3, page 3, line 10, at end insert—

"(e) guidance on payday loan rates and their appropriateness."

This amendment would extend the general information and advice that may be published by the Commissioner to include information about payday loans.

Amendment 43, in clause 3, page 3, line 29, at end insert—

"(5B) The Commissioner must publish, or give to small businesses, general advice or information about the relationship between the Small Business Commissioner's complaints scheme and any other legal remedy available to a complainant."

This amendment would require the Small Business Commissioner to give general advice or information to small businesses about the relationship between the Small Business Commissioner complaints scheme and any other legal remedies available.

Amendment 44, in clause 3, page 3, line 43, at end insert—

"(9A) Where a recommendation is made under subsection (8), the Commissioner may take the relevant action in response to the recommendations where she sees fit."

This amendment would give the Small Business Commissioner the power to act directly on recommendations he has made.

New clause 14—*Guidance for local authorities*—

"The Commissioner must prepare and publish guidance to local authorities outlining—

(a) the functions and services she may offer to small businesses, and

(b) related to the complaints process."

This new clause would require the Small Business Commissioner to provide information about her functions and services to local authorities.

Bill Esterson: The group of amendments and new clause 14 look at tax rates, payday loans, the small business commissioner's complaints scheme and other remedies, at ensuring that the commissioner has power to act on his or her recommendations, and at providing information to local authorities.

We want the small business commissioner to have not only a broader remit as the office develops, but greater powers to investigate, to mediate and to advocate for small businesses on regulation and legislation. If the Government want the commissioner to be a signposting service, we at least need the remit for it to be broader. The start would be to equip the commissioner with the tools to advise and signpost on the main issues that matter to small businesses—we talked about access to finance in our debate on the last group of amendments—so that the commissioner can in turn equip entrepreneurs with the knowledge necessary to access the support available to them. The amendments deal with some of those issues.

3 pm

Along with business rates, late payment and access to finance, what are the major challenges for small businesses? I suggest that, especially for start-ups, they include tax, short-term cash flow and investment. Until recently, 90% of lending was accounted for by the five dominant high-street banks. Access to credit is comparatively difficult in the UK compared with in the US, where, as of 2012, bank lending accounted for just 50% of lending to SMEs. The fact that the situation is changing is a good thing, but to account for the pace of change, we need to equip small businesses with the knowledge and understanding to make the right choices for their companies. Peer-to-peer lending, community finance, asset lease, invoice finance and payday loans make up a confusing array of options of which too many SMEs have a limited understanding and limited opportunities to find out more from an impartial source. In the US, the Small Business Administration offers a gateway for small businesses to understand their finance and borrowing options.

It is heartening that small businesses largely reject the option of payday loans. A 2012 study by BDRC Continental's business opinion omnibus found that only 6% of SMEs would be likely to use them, while the rest were put off by the cost. Almost a third wanted to stick with traditional lenders, and a quarter were conscious of the poor reputation of payday lenders. However, payday loan companies have tried to get small businesses' attention. Four years ago, Wonga launched an instant cash-flow solution with a representative annual percentage rate of 4,214% at exactly the same time as lending to business fell by £4 billion and the Federation of Small Businesses found that more than half of small businesses could not access credit. Restrictions were placed on payday loan companies' practices, and the rate of interest they can charge has improved immeasurably thanks to campaigning on both sides of the House, but they are still not exactly an advisable form of business finance.

Educating small businesses and supporting entrepreneurs to make informed decisions about finance with regard to investment, bank lending, payday loans and peer-to-peer lending is inextricably linked to the small business commissioner's central remit under the Bill: late payments. Sandwiched between late payments to customers and outgoings to their own suppliers, many SMEs find themselves trying to bridge a cash-flow shortfall for days or weeks at a time. They face difficulty in accessing finance from the banks and are not clued up about alternative finance options. They cannot get their customers to pay up; they have their own payments to settle, tax to pay, business rates to cover and so on; and then a company such as Wonga offers loan access within 12 minutes. That is how the vicious cycle of payday loans can take hold, as it does with consumers.

While small businesses are struggling to access bank lending, they are failing to grow a business that would be of enormous interest to an investor with the incentive of the enterprise investment scheme. The point is that focusing narrowly on late payments does not do justice to the financial challenges that small businesses face. I shall cover a range of amendments that would significantly broaden the remit of the small business commissioner, as we think that such a holistic service—a model operated in different ways in the US and Australia—would be a good way of doing things. At the very least, the remit should be widened to offer a broadened signposting service for SMEs on the pros and cons of the different types of lending and investment available and where to find them. The amendment would also extend the general information and advice that the commissioner may publish to include tax rates, allowances and thresholds of relevance to small businesses.

Amendment 44 would give the commissioner the power to act directly on recommendations that he or she has made. On amendment 43, small businesses face a bewildering maze when it comes to legal remedies.

The small business commissioner, without offering any legal counsel, would be an ideal candidate to make things simpler for them.

On new clause 14, small businesses play a critical role in local economies. Correspondingly, local government has a vested interest in the success of these drivers of local prosperity and a vital role to play in supporting their growth and resilience. Economic development is a discretionary service in local government. With council services being so thoroughly undermined by Government cuts, there is undue pressure on councils to scale back anything beyond their statutory services, which has a direct impact on the support given to local businesses.

There are good examples of councils playing an important role in supporting local business, and indeed the Local Government Association plays a vital part in spreading examples of best practice. When councils are under budgetary pressures, sharing best practice and keeping small business support on the agenda in that way is invaluable, but, faced with growing financial constraints, local authorities have no choice but to prioritise. When everything from adult social care to local schools and library services are under threat, it is no surprise that investment in small business support and money on partnership with stakeholders, such as local enterprise partnerships, come under intense pressure.

The LGA has found that funding pressures will create a £14 million gap annually in council finances by 2019-20. Councils are ambitious to do more to help small businesses, but Government cuts mean that the pressure is to do more with less and less every year. The abolition of the RDA's regional Business Link services in 2011 left a significant gap in SME support for provision locally. Nationally, the axe under the Business Growth Service will also punch a hole in locally accessible support for businesses to grow. New clause 14 is designed to help with that. It is designed to help small businesses not only directly but indirectly, by giving much needed support and guidance to local authorities in their efforts to help local companies.

Local authorities are at the coalface when it comes to local businesses. They often encounter small businesses or start-up companies that would otherwise never even know that assistance was available to them. By signposting to the small business commissioner, local authorities at the very least have an extra weapon in their arsenal as they try to support the local economy by advising and assisting small businesses.

New clause 14 boils down to ensuring that people talk to one another and that resources and expertise are pooled to offer the best possible service for small businesses. Ensuring that people talk to one another seems so obvious an idea, it is hardly worth putting in legislation.

Anna Soubry: Hear, hear!

Bill Esterson: I thought the Minister might say that. However, we have included it precisely because it does not seem to happen every time. After the introduction of the Groceries Code Adjudicator, both the GCA herself and commentators found that the take-up of her services by suppliers was hampered by the fact that not enough people knew about her and the services she provides. It is a simple issue of communication, or good marketing, but it takes more people than the postholder himself or herself to ensure that an awareness that they exist and an understanding of what they do reaches more than 5 million small businesses.

On a whole host of issues that we will come to later in another new clause, it seems that the Government are going to great lengths not to learn important lessons from the introduction of the Groceries Code Adjudicator. This is a simple one: make sure people know that the office exists and use the local authorities as an ideal vehicle for raising that awareness. Raising awareness is not done straight from the small business commissioner and it is not currently done from the Groceries Code Adjudicator to the many people they are trying to help. That would not be possible, given that, under the small business commissioner, we are talking about reaching more than 5 million companies. By equipping local authorities with the understanding of the post, they need to triage small local businesses into signposting the small business commissioner where appropriate, and in that way we can make light work of spreading the news. The website on its own will not do it. Local authorities will also no doubt appreciate that, not least because it will plug the gap left by so many of the Government's cuts to councils and to national schemes designed to give advice to small businesses.

Anna Soubry: In resisting the amendments I will put the following arguments. The commissioner will give small businesses general advice and information that would be helpful for their dealings with larger businesses. I have given one such example as portals through websites. Many of us as Members of this place have our own websites, so we are more than familiar with how best to talk to constituents and provide them with information. We know that there are ways to do it that never existed before, but that will be for the commissioner to decide. I respectfully suggest that we do not need to write all this stuff down in legislation. We can allow him or her to use the abilities that they will undoubtedly have to ensure they provide the services and the general advice and information that they believe will best suit small businesses.

The commissioner will also direct to relevant bodies and sources of assistance, as I described. Our consultation showed that there is widespread support for that function, and that small businesses—I think the hon. Gentleman will agree—do not always know about the services available to them. The commissioner will address those information gaps. For example, I have no doubt that some small businesses will contact the small business commissioner with a complaint about a utility company. The small business commissioner will ensure that their complaints go to the right place, such as Ofgem or Ofcom. We all know small businesses that have huge problems accessing superfast broadband or have difficulties with their landline, BT and so on. The commissioner can give them direct access at the click of a mouse or a button to Ofcom. I have already talked about the financial services ombudsman, which is another way of helping small businesses to resolve problems and disputes.

The commissioner will not cover specific issues such as taxation, because such information and advice is already available. Nobody wants duplication. I am confident that good advice is available, so why would we double it up and confuse people further? The commissioner's information will be sensibly integrated with other sources of business advice—as I said, access to finance is a very

[Anna Soubry]

good example. The commissioner will decide what advice and information will assist small businesses. It can already include his or her own schemes and remedies.

I agree that awareness of the commissioner is crucial. However, he or she will be best placed to decide how to promote their services. I will absolutely trust whoever is appointed, because part of the skill set I expect them to have is the knowledge of how to get out there and ensure that everybody knows about them.

I recognise that the payday loans market has caused serious problems for consumers, but, with respect, I do not think it should be in the Bill because we took the action that was needed to address it in the previous Parliament. The Financial Conduct Authority's more stringent regulatory regime is already having an effect on the payday loan market. It found that the volume of payday loans fell by 35% in the first six months of regulation, even before a cost cap was introduced last year.

The commissioner's power to make recommendations about the information that the Secretary of State gives simply allows for different ways of providing information. The commissioner already has the power to publish and provide information.

New clause 14 is a good example of bad legislation. We do not need legislation to tell people to talk to one another. While the hon. Gentleman was talking about it, I wrote down off the top of my head what local authorities can and should do—many are already doing these things—to support small businesses. They should ensure that they have good, sensible business rates; create the right environment; free businesses from unnecessary regulation and undue checks; support high streets with imaginative parking by, for example, providing access for wheelchairs and buggies; ensure their local plans, core strategies and planning matters are small business-friendly; and support the high streets and all of the wonderful small businesses that we have in our constituencies. Finally—as I said, this is just off the top of my head—they should ask whether planning applications include access to superfast broadband. Good digital technology must be at the heart of their planning decisions and everything they do as local authorities.

I respectfully suggest that that sort of legislation is not needed. Local authorities, with few exceptions, know how best to work with small businesses, but it is not their job to give them advice. It is their job to create the right environment in which they can thrive and grow. That is why I urge everybody to reject the amendments.

Bill Esterson: The Minister talked about constituents contacting us via our websites. I have constituents who contact me via my website, too. I have an electorate of something like 68,000. *[Interruption.]* That is quite a small electorate, but not all 68,000 contact me via my website.

3.15 pm

Anna Soubry: I am sorry; I did not say that they contact me via my website, but I understand how websites work and how they can disseminate information and enable people to access the information they need by way of portals. Obviously, an MP's website does not have many portals, but we are all familiar with how websites operate in a modern world so that people can get the information that they need. That is all I am saying.

Bill Esterson: We can also measure how many people are looking at a website. I do not have the technical know-how to do that, but some do. I know that 68,000 people do not visit my website or anything similar to that, and 250,000—the borough's voting population—do not visit Sefton Council's website, either. I do not think that websites are therefore anywhere near the answer to providing access to the small business commissioner.

The Minister talked about new clause 14, which is not about getting local authorities to work on how they access business, much as I want them to do all the things that she talked about. I do not disagree with that, but that is not what the new clause is about. It is actually about ensuring that local authorities know that the small business commissioner exists and what he or she does so that they can work together to improve life for small businesses. It is a shame that she did not grasp that.

On tax, in my experience most small businesses want to pay tax; they just want to ensure that they pay the right tax. Whether that is true of some rather larger businesses, we can all speculate from time to time. To pay the right tax, however, businesses sometimes do not find that the advice from HMRC is what they need. In the Lords, we heard an example of a business attending a seminar organised by HMRC so that it could get its tax right and when, having followed HMRC's advice, it approached HMRC to say what it thought it should be doing, HMRC disagreed and said:

"We are not bound by our own advice".—[*Official Report, House of Lords,* 26 October 2015; Vol. 765, c. GC137.]

That was something of a shock to the company, which had invested all that time and effort in dealing with its tax affairs in an attempt to pay the right level of tax. That is why it is important that the small business commissioner is involved in helping businesses to understand tax rates and to pay the right tax so that they are not dependent on HMRC, which does not always act as we might reasonably expect. As that was a probing amendment, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Bill Esterson: I beg to move amendment 42, in clause 3, page 3, line 29, at end insert—

"(5A) The Commissioner may assist small businesses by taking an active and direct role in resolving, mediating or facilitating the resolution of disputes."

This amendment would give the Small Business Commissioner the power to take an active role in resolving, mediating or facilitating the resolution of disputes.

We are talking about the important topic of mediation and facilitating the resolution of dispute, which is sometimes known as alternative dispute resolution. The amendment looks to learn from what goes on in Australia and would provide the commissioner with the opportunity to insist on mediation as a better way of solving disputes between two business parties than going to court, for example.

In the foreword to the July 2015 BIS publication "A Small Business Commissioner", the Minister said:

"In Australia, the Victorian Small Business Commissioner is having a real impact on the ground."

She told us earlier about her meeting with him. One reason why that commissioner is having an impact on the ground is that he has so many more powers than is proposed in the Bill. One such power involves being able to insist on mediation and to ensure that unfair payment practices are dealt with on a case-by-case basis. That is not what is being proposed here. If the Minister really wants the United Kingdom's small business commissioner to match the performance we see in Australia, she must give them the same tools and powers to do the job.

The staff of the New South Wales small business commissioner are formally trained in mediation. In Australia, attendance at mediation may be legally required by a court, and the small business commissioner may insist on mediation after the initial consideration of the complaint. Any decisions or agreements reached during mediation are signed by both parties and are returned to the small business commissioner, who can hold them to account if they do not keep their side of the agreement. Mandatory mediation is vital as far as the Australian model is concerned. The office of the Australian small business commissioner says:

"Mediation is so successful that most of all matters referred to us for mediation are resolved prior to having a court decide the matter… The mediation process is essential in minimising the costs of business and commercial disputes."

Compulsory attendance at mediation in the Australian model is enshrined in the legislation that set up the New South Wales small business commissioner. Section 17 of the Small Business Commissioner Act 2013 states:

"If an application is made to the Commissioner for assistance in resolving a complaint or other dispute involving a small business and the Commissioner decides to deal with the complaint or dispute, the matter to which the complaint relates or the dispute may not be the subject of any proceedings before any court unless and until the Commissioner has certified in writing that alternative dispute resolution services provided by the Commissioner under this Act have failed to resolve the matter or dispute."

There are various other requirements in other sections of the Australian legislation. At a national level, the Australian small business commissioner has similar powers. The Australian Government are undertaking to absorb the role into the proposed small business and family enterprise ombudsman, but the legislation is clear about mediation.

The value of mandatory mediation is not only in enabling the small business commissioner to see a complaint through to resolution but in ensuring that both parties follow a process that minimises cost and the risk of the complaint ending up in court. The balance of power must not be so weighted against the small business supplier that it is put off pursuing a complaint for the lack of cheap, accessible dispute resolution, something which we discussed earlier. This is about fairness, ensuring a level playing field, reducing costs, and producing commercially realistic solutions to disputes, including those involving late payment. I look forward to hearing the Minister's response.

Hannah Bardell: Following on from the hon. Gentleman's comments, we also welcome, as we did on Second Reading, the creation of a small business commissioner, but as we said then and as we believe now, it is important that the commissioner has real power and teeth to arbitrate and to take on issues when they are brought to them, rather than just to give advice. The Federation of Small Businesses has said that it is important that the commissioner is endowed with real powers to assist small business. It is important for the integrity of the office of the commissioner that it is regarded by small businesses as a route by which they can achieve a meaningful outcome. The current suggestion of a commissioner making recommendations or highlighting particular cases is simply not enough if they are to gain a reputation as a small business champion. All too often, such bodies do not have the power to bring companies into line. If we want a fair system across the board, further powers, such as those in the amendment, are important.

Anna Soubry: It is important to refer to our consultation because it represents the voice of small business, and it showed us that small businesses want to understand what options are available through existing dispute resolution services. Small businesses have told us that there are plenty of existing resolution services and that we should not—here comes the word again—"duplicate" them. They need support to navigate the services more easily. The commissioner will provide general advice and information to raise awareness of alternative dispute resolution and direct firms to those approved mediators. Obviously, I am an old lawyer, though, of course, I was a criminal barrister, but one thing that has struck me about the changes that have occurred in the civil side of English law—I cannot speak for the situation up in Scotland—is the widespread use now of mediation, which means that people do not end up in court.

We know the cost of going to court, we know that it can actually be very traumatic. It is not just matrimonial or family matters; a business dispute can still exert a huge pressure, especially for a small business. There is a human as well as a financial cost. So the court system, certainly in England and Wales, has bent over backwards to encourage people to go to mediation, for all the very good reasons that I hope are obvious to everybody.

When we looked at the creation of the small business commissioner and what we were seeking to achieve, I was very keen to understand—I was worried, to be very honest—whether there were enough mediation services available to businesses in the event of a dispute. I was encouraged that there definitely are enough. So it is not the job of the small business commissioner to mediate, because, frankly, there are other people out there who will do the job and are doing the job.

I should say that I have not actually had the honour of meeting Mark Brennan, the Australian small business commissioner; unfortunately I could not attend the meeting, but I spoke to him at length on the phone. I will be very blunt about it: it was one of the best conversations I have ever had in this job. He spoke with all the frankness and robustness that I was hoping for—"This is difficult, you cannot legislate for this, but in tackling late payment, which is what this is all about, what we seek to achieve is to change the culture so that small businesses no longer feel the need to complain about this problem, because it does not happen, because we have changed the culture." At the moment there are already laws to prevent unfair terms and conditions in contracts, late payment penalties and so on. There is a code of practice and, of course, if someone has already signed up to a contract and somebody has, in effect, breached the contract, they can go to law.

[Anna Soubry]

So there are lots of protections there, but we want to change the culture so that people are not paid late in the first place.

Mark Brennan impressed on me that it is very difficult to legislate for this; this is why we are doing it in this way. He said, "The real power I have on late payments is that when I am aware of a trend or a practice by a particular business, I pick up the phone and speak directly to the chief executive". He said that nine times out of 10—I think it was actually more than nine times of out 10, if there is such a thing—the chief executive took the phone call. That is why we need to make sure we have somebody big business respects; there was no messing about, they took the phone call. He said that as soon as he said to the chief executive, "Do you know what your finance team are saying to a whole group of small businesses?", the chief executive said "What? They're doing what? This is not how this business works, I had no idea this was going on" and then he or she sorted out the problem.

That is the huge power of the small business commissioner in Australia and that is what I want ours to have. I want them to have the respect of businesses—so they will take the phone call and listen to what is being said—as well as the confidence of small businesses.

John Howell (Henley) (Con): My right hon. Friend is absolutely right to speak of the power of mediation. I happen to be the chairman of the alternative dispute resolution APPG. We had a meeting only the other evening on this, and I can assure her that she is absolutely right about the number of mediators that are available to deal with late payment disputes and other forms of dispute.

Anna Soubry: I completely agree with my hon. Friend.

Hannah Bardell: I recognise what the Minister is saying and that there is a range of mediation services. Does she not recognise, however, that in the example she gave where the small business commissioner could phone up the chief executive, it would force the hand and have greater power if he or she were able to say, "If you can't get this sorted out, we have an overarching power"?

3.30 pm

Anna Soubry: We can talk about powers, which will come up later in the Bill, but we are talking about remit. It is not the remit, in my view, of small business commissioners to offer services that are already available. They can point people in the right direction, but Members must be under no illusion about what the commissioner's role will be. If someone comes to the small business commissioner with a case that is within scope and says, "Will you mediate?" the commissioner will say, "No, I'm not going to mediate. You go off to mediation, but if you've got a complaint about bad practice relating to late payment, come back to me. I'll deal with it."

The services are there. Let us concentrate on what the commissioner's role is. The role is to tackle late payment and to change the culture, so that we do not have so many small businesses that are not paid in time or have unfair conditions put on them in terms of when they are paid. That is why I urge hon. Members not to support the amendment. It is not the direction of travel. Mediation services are already out there, and it is the job of the commissioner to direct people to existing services.

Bill Esterson: Well, we will find out in time whether that works. The reason for quoting the Australian example is that both parties have to accept that mediation will have consequences. I think I am right in saying—the Minister will correct me if I am wrong—that if a party refuses to engage in mediation, there may be penalties if matters end up in court. That is an interesting approach.

Anna Soubry: If someone has a legal dispute and therefore issues proceedings, they will be pointed—there is no debate about it—to mediation. If they are a belligerent party and refuse to use mediation, when they come to court and lose, they will take the heavy toll of costs accordingly. At the moment, all the courts point people in the direction of mediation, and it is a very belligerent party that does not go down the mediation route. In fact, it may be almost impossible in the English system for a case to get into a county court or the High Court unless it has gone through mediation or some judge has determined that the case needs to go before it because mediation is not the correct route. In other words, we have a good system that is working.

Bill Esterson: That is interesting, but we come back to the huge problem of late payment that we are still grappling with after all these attempts. The Minister mentioned the number of pieces of legislation that have attempted to help with that.

The Minister has mentioned a number of times, including on this matter, her concern about not duplicating. If we have things that are not working, we need to consider new approaches; that is at the heart of the creation of the small business commissioner. However, it is about making the commissioner as effective as possible. That is why we have looked at mediation in the way we have. The amendment does not make the power compulsory, but it gives the commissioner the opportunity to be one of the services available.

While I do not dispute what Members on both sides of the Committee have said—that plenty of mediation services are available—if the system was working well, businesses would be finding those mediation services and using them. Something is not quite right, because it sounds like that is not happening. The constituents who have come to me have certainly not been taking advantage of such services; they have been suffering in silence when it comes to challenging those who owe them money.

I agree with the Minister; we need to change the culture. I have no doubt about that, but the question is how best to do it. This probing amendment was about doing just that. We absolutely need to raise awareness of the services that exist. If that is not sufficient in time, I hope that she and the Secretary of State—she may by then be the Secretary of State—will decide to give the small business commissioner those additional powers. Perhaps then we will have made further progress in helping to achieve the outcomes we want in reducing the level of late payments. As she quite rightly says, ideally we want it to stop being the problem that it is now. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Clause 4

THE SBC COMPLAINTS SCHEME

Bill Esterson: I beg to move amendment 47, in clause 4, page 4, line 25, at end insert?

"or is made by a small business ("the complainant") which has an agreement to supply, or has supplied or may supply, goods or services to another small or medium sized business ("the respondent"), which has the same meaning given by section 7(1) in the Small Business, Enterprise and Employment Act 2015."

This amendment would extend the Small Business Commissioner's remit to complaints made by an SME against another, to which it is providing goods or services.

One day, someone else will be moving an amendment, but not today. Amendment 47 is about the remit of the commissioner and the ability to consider complaints made by one small business against another, which can be due to supply chain issues. Behind a problem in payment from one small business to another, there often lies a chain in which larger businesses and, indeed, the public sector are the real problem. A small business cannot pay another small business if it is owed money itself. That was addressed in detail in the Lords. In Grand Committee in the Lords, we found out that 70% of small businesses trade with other small businesses.

The amendment is an attempt to unpick some issues and challenges that enable the commissioner to be as effective as possible. It would protect small and medium-sized businesses and enhance competition, creating a fairer environment for all businesses. Government involvement in small business matters should aim to ensure that prospective and ongoing small businesses have sufficient knowledge to make informed business decisions. Although any business has a fundamental right of control over positioning and maximising its business opportunities, that right does not extend to engaging in unfair business practices. This is not just about situations where small businesses cannot pay; it is also about situations where they choose not to.

I could not understand from the explanatory notes why the Government have not included complaints made by small businesses in the remit of the small business commissioner. The amendment would set that straight.

Alan Brown: I echo what has been said. The amendment seems to be a logical extension. Earlier we supported the extension to public bodies, which I thought would strengthen the Bill, and I think this amendment would too. Fellow SMEs should be protected as well. There should not be a loophole. We do not want to get to a stage where there is an argument about what constitutes an SME. All businesses should be treated equally, and this simple amendment would allow that opportunity.

Anna Soubry: This is why we have done it in this way. As we see from the clause, the commissioner will handle complaints by small business suppliers about payment-related issues with larger businesses—that is, any medium-sized or large business. The intention of all this legislation is to help small firms where they suffer from the imbalance in bargaining power. I have referred to the words of the noble Lord Mendelsohn about asymmetry. We know that smaller firms, by virtue of their smallness—especially microbusinesses—are at a disadvantage, especially against medium and larger companies. We believe that that is where the real problem is, and that is what we particularly want the small business commissioner to address.

That is not to say that if a small business is in dispute with another small business, it will not have access to all the sorts of dispute mechanism that we have heard about, but we do not believe that is where the real problem is, or the real imbalance of power. That is why we have specified businesses of fewer than 50 employees. They are disadvantaged by their size against medium and larger companies. We know that such businesses often feel unable to challenge contract terms proposed by larger businesses, as I think we have all agreed and mentioned, because it could breach or damage existing or potential commercial relationships with those companies.

Smaller businesses may not have the time, money or expertise to take a legal challenge, which is another consideration. However, as we know, sometimes it is because they are simply frightened that if they take any form of legal action—even something like mediation—it will completely thwart the future commercial relationship between them. They are in a much weaker position by virtue of their size, so that is where we are putting all the emphasis. Their big problem is medium and larger businesses. That is why I resist the amendment.

Bill Esterson: The Minister rightly makes the point about the imbalance in bargaining power, but I repeat that 70% of trade is with other small businesses and that when a larger firm is behind the problem due to delays elsewhere in the supply chain, there does not seem to be a mechanism for addressing that. Perhaps she can take that away, if she is resisting our attempts to include small businesses: how can we deal with problems in the supply chain that come ultimately from a large or medium-sized business? With those comments, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: To move amendment 48, I call, with remorseless inevitability, Bill Esterson.

Bill Esterson: I beg to move amendment 48, in clause 4, page 4, line 26, after "(4))" insert

"or relates to allegations of unfair treatment or unfair contracts".

This amendment would empower the Small Business Commissioner to investigate allegations of unfair treatment or unfair contracts.

The Chair: With this it will be convenient to discuss the following: amendment 54, in clause 5, page 6, line 10, at end insert—

'(12) On application by the Commissioner a court may declare an unfair contract term void."

This amendment would empower the courts on application from the Small Business Commissioner to declare void a contract term that is unfair.

Amendment 57, in clause 8, page 8, line 32, at end insert—

'(3) The Commissioner must ensure that all information provided by complainants, litigants and other parties against respondents is handled with confidentiality.

(4) The Commissioner must not release the information outlined in subsection (3) without the consent of the complainant, litigant or relevant party."

This amendment would provide protections for those either providing information to the Small Business Commissioner or from complainants or litigants with large businesses.

New clause 7—*Companies: Payment terms with suppliers—*

'(1) On the advice of the Commissioner, the Secretary of State may make regulations—

(a) imposing a limit on the number of days after receipt of a supplier's invoice a company can seek to challenge that invoice,

(b) prohibiting the practice of a company seeking to change the payment terms of a supplier company unilaterally, and

(c) prohibiting a company from requiring a supplier company to make a payment in order to join that company's list of suppliers.

(2) The regulations may make provision for a prescribed breach by a prescribed description of person of a requirement or prohibition imposed by the regulations to be an offence punishable on summary conviction—

(a) in England and Wales by a fine, and

(b) in Scotland or Northern Ireland, by a fine not exceeding level 5 on the standard scale.

(3) The regulations may specify the size of company and supplier company to which they will apply.

(4) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(5) Regulations under this section are subject to affirmative resolution procedure.

(6) For the purposes of this section—

"company" has the meaning given by section 1(1) of the Companies Act 2006,

"prescribed" means prescribed by the regulations."

This new Clause would empower the Secretary of State to make regulations: (a) to impose a limit on the number of days after the receipt of a supplier's invoice a company may challenge that invoice; (b) to prohibit a company changing the payment terms to a supplier company unilaterally; and (c) to prohibit a company from requiring a supplier company to make a payment in order to join that company's list of suppliers.

Bill Esterson: We move to the topic of unfair treatment or unfair contracts and how they are or might be dealt with by the small business commissioner, starting with amendments 48 and 54. The issue is similar to some of the problems faced by consumers that were dealt with in the Consumer Rights Bill—is it an Act now?

Anna Soubry: I don't know.

Bill Esterson: I look for inspiration, and I am sure that we will get it. *[Interruption.]*

Anna Soubry: Yes, says the Whip. Whips are always right.

Bill Esterson: Thank you. Whips always know.

I think that there was an agreement in Committee on that Bill, which is now an Act, that microbusinesses have a lot in common with consumers, and that there is merit in considering them in the same way when they are purchasing goods and services, and certainly those that are not their core business. Examples include a hairdresser, who would buy shampoo or scissors as part of the business, whereas an individual would perhaps buy such things from Boots. When the hairdresser was buying coffee or a kettle for staff, however, it would perhaps be reasonable for them to be treated as a consumer. One-off business-to-business purchases made by a small business, such as somebody who is self-employed, should attract the same protection as would be afforded to consumers.

3.45 pm

I now turn to the handling of complaints and how to access redress. As for complaints about unsatisfactory service or the quality of goods, the protections in the Consumer Rights Act 2015 on returns, refunds, repairs and unfair terms should be available to microbusinesses, as defined in clause 2. The Minister may well have some sympathy with that point, given what was said by one or more of her colleagues—I do not know whether she served on that Bill Committee. The small business commissioner's complaints scheme would enable them to advise a court that a particular contract term was unfair on the basis that a small business is similar to a consumer, which would allow the court to declare that contract void. That is important in the case of payment terms in, for example, telecommunications, which is outside the core area. Written evidence to the Committee has described examples of onerous contract terms in the telecoms sector being put on to small businesses.

Amendment 57 is about protections for those either providing information to the small business commissioner or from complainants or litigants with large businesses. We will deal with the matter in more detail when discussing the amendments on confidentiality, but the point is similar to that being dealt with by the Groceries Code Adjudicator.

New clause 7 would empower the Secretary of State to make regulations to impose a limit on the number of days after the receipt of a supplier's invoice that a company may challenge that invoice, to prohibit a company unilaterally changing the payment terms to a supplier company, and to prohibit a company from requiring a supplier company to make a payment in order to join that company's list of suppliers.

We have been discussing imbalances and the Minister has mentioned the term several times. These changes represent opportunities to ensure that unfairness is reduced as much as possible and that imbalances between small and larger firms are kept to a minimum.

Anna Soubry: I think I ought to say to the hon. Gentleman, and to hon. and right hon. Opposition Members, that I am actually enjoying this Committee. I do not mean to be rude to previous Committees, but—*[Laughter.]* Members know what I mean, though. Some important points have been made by the hon. Member for Sefton Central and I want to be clear that I am listening. It is not that my mind is absolutely set and that I will not budge on anything—although I am not making any promises. What I am saying is that we are setting up a new commissioner, and the hon. Gentleman has made a good point that the Government might look at that if it is not working, so I am in listening mode. However, I am not convinced by these amendments.

The hon. Gentleman talks about the rights of the consumer apropos the rights of a small business owner, and there are arguments about that. I am not saying that it is working just because it is there, but there is quite old legislation—that does not mean to say that it is not good, just because of its age—such as the Unfair Contract Terms Act 1977, so we have to set this against pre-existing legislation. The reason that legislation is often not relied on is because, as we have already understood, very small businesses are reluctant, for all the reasons we have identified, to use existing legislation,

or indeed to sue for a breach of contract. We all know the reasons—because we have already debated them—but there is existing legislation covering unfair terms and conditions, by way of example. I strongly suggest that the amendments are not necessary.

As we discussed earlier, business groups have said that the commissioner's role should be to focus on the business of late payment and changing the culture. The commissioner absolutely should not alter the fundamental basis of contract law. It is not the role of the small business commissioner to get involved in contractual negotiations, contractual relations and, indeed, changing the law of contract. That is the role of Government. The Bill provides appropriate protection against identifying complainants to third parties, and the Government are already implementing a package of measures to address late payment to small businesses.

Alan Brown: On the previous point about it being up to the Government to change the law, amendment 54 would allow the commissioner to apply to a court to declare an unfair contract. That would not interfere with Government law. The commissioner would be making an application to a court of law for the court to decide, which is different from interfering with Government law.

Anna Soubry: If the hon. Gentleman will forgive me, amendment 54 is a very bad idea because the commissioner would be able to undermine the fundamental freedom of two businesses to agree commercial transactions on such terms as they see fit. I strongly resist that amendment.

The commissioner will consider a complaint on the basis of what is fair and reasonable in the particular circumstances, but it is absolutely not the role of the commissioner to begin to interfere with a contractual relationship between two parties, any more than it is for the commissioner in any way to undermine or begin to change contract law, for example. Laws are made in this place, not by a commissioner. Otherwise, we would be getting into the very dangerous territory of a quasi-judicial role, and I hope the hon. Gentleman might trust my admittedly very old knowledge of jurisprudence, certainly in the English and Welsh law, to know that that would be a very bad route to go along.

On amendment 57, if a complainant does not want to be identified to the respondent—*[Interruption.]*

3.53 pm

Sitting suspended for a Division in the House.

4.8 pm

On resuming—

Anna Soubry: I shall now deal with new clause 7, which is really not necessary given the package of legislative and non-legislative measures we have taken to tackle late payment. I shall give some examples.

We plan to make regulations this year to require large companies to report six-monthly on payment practices and policies. That information will be available for public scrutiny. We have strengthened the prompt payment code to enforce a maximum 60-day payment term for all signatories from this year. Public sector buyers are required to have 30-day payment terms in contracts and throughout their supply chains, as we discussed this morning. We have to sharpen that up—we have to be better—but it is there. From 2017, public sector buyers must also publish annually their liability to debt interest payments. Central Government will publish quarterly on liability to debt interest from April 2016, and we will monitor the effectiveness of the measures.

There has been a little jollity—if one can be jolly about the mystery shopper service—but, in all seriousness, I have been absolutely convinced by that service because I have seen the evidence of the work it does. I might not be happy with the name, but it does investigate poor payment performance by public sector bodies and in their supply chains, and it is having an effect and making a difference.

Stakeholders—that dreadful word, but they are important people who have an interest—tell us that they want more public exposure of the payment practices of larger companies, and I agree with them. Bans on certain practices would be easy to sidestep and substitute with others. However, as we all know, publicity—casting a spotlight—is one of the best disinfectants against bad practice. That is the way forward. Were we to go down the sort of legislative route suggested by the new clause, it would become all too easy to sidestep and get around, so we would not make the advances that we need to make. For those reasons, I urge the hon. Gentleman to withdraw the clause or, if he pushes it to a vote, I urge the Committee not to support it.

Bill Esterson: I am still intrigued about the mystery shopper—at some point we may find out.

Anna Soubry: It is going to be a running joke.

Bill Esterson: The Minister is making a joke of it. I am intrigued to discover what it is finding and what is happening with its findings. I hope that we might hear that at some point. We do not need to hear today, but I would be very interested. I do agree that mystery shoppers can be very important in improving the quality of service and operation in a number of organisations.

I accept the Minister's assurances on new clause 7, but, again, when the commissioner has been up and running for a while, it might be good for them to look at some of the payment-terms issues in the new clause and how well things such as the prompt payment code are bedding in—that is, is it as effective as we want it to be? That might be something useful that the commissioner could do in future to make a real difference.

Before the Division, the Minister talked about whether the commissioner should take unfair contract terms to court. She said that a quasi-judicial role would be inappropriate. Take the example of somebody in an imbalanced business relationship being offered a three-month payment term on an invoice, knowing full well that it is unfair and completely wrong, but, given their dependence on that contract and business relationship, feeling they have no choice but to go ahead with it. At a later date—this is what the amendment is getting at—there might be an opportunity for them to get some kind of redress. That would be the sort of issue in which the commissioner might intervene. The amendment suggests the commissioner might recommend to the court that the term was inappropriate, rather than take a quasi-judicial role. Nevertheless, I take the Minister's points and, as the amendments were intended to be probing, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Let me see who is speaking to the next group of amendments—ah yes, Mr Esterson.

Hon. Members: Hooray!

Bill Esterson: Thank you very much, Ms Buck. I have never been more popular—often this popular, but never more.

I beg to move amendment 46, in clause 4, page 4, line 27, at end insert—

'(3A) A relevant complaint may be made anonymously."

This amendment would enable the Commissioner to act on anonymous complaints from small businesses against a larger business.

The Chair: With this it will be convenient to discuss the following:

Amendment 49, in clause 4, page 4, line 27, at end insert—

'(3A) A "relevant complaint" at subsection (3) may be made anonymously by a small business ("the complainant") which has an agreement to supply, or has supplied or may supply, goods or services to a larger business".

This amendment would allow the Small Business Commissioner to be able to act on anonymous complaints.

Amendment 51, in clause 5, page 5, line 37, at end insert—

'(4A) In enquiring into, considering and determining a complaint, the Commissioner must take all reasonable steps not to identify the complainant, unless the complainant consents.'

This amendment would provide anonymity to complainants who raise a complaint with the Commissioner.

Bill Esterson: The amendments deal with anonymity and confidentiality. I do not intend to spend too long on them, but this is an important subject area, because it is one of the places where we can learn lessons from the Groceries Code Adjudicator. One concern raised by the adjudicator was that many of the supermarket suppliers that wanted to make complaints were nervous of doing so for fear of loss of business. That explains why the investigation into Tesco that recently concluded was not the direct result of complaints being investigated; it was prompted only when the adjudicator herself decided to intervene because of suppliers' fear of the consequences of complaining and being publicly identified. She has encountered that theme on far too many occasions over the past two years. Indeed, there are some unfortunate examples of that confidentiality not being maintained for a number of reasons when suppliers have approached the adjudicator that has no doubt created a concern among businesses, which have therefore chosen not to approach her.

4.15 pm

Loss of business is a big reason why so many businesses more generally do not take action about late payment or other unfair business practices from which they suffer. One way in which the small business commissioner might be able to help is if complaints can be made anonymously. If a pattern then emerges, the commissioner can investigate a large firm without its suppliers suffering reprisals.

Mentioning the Groceries Code Adjudicator provides me with the opportunity to remind the Committee that small firms face challenges that go beyond the narrow confines of late payment. The adjudicator has considered the concerns of suppliers to the large supermarkets, and it is to be hoped that the small business commissioner will be allowed to draw on that experience in developing his or her role. The adjudicator is described as dealing with variations to the supply agreement and terms of supply, unjustified charges for consumer complaints, the obligation to contribute to marketing costs and lack of compensation for forecasting errors. The issue of payments in general is a condition of being a supplier, but it is also remarkably similar to that of late payments where the inequitable nature of the relationship between large and small is concerned.

The Groceries Code Adjudicator's public response to the concerns raised with her made it absolutely clear that fear of reprisal is still the single biggest inhibitor to raising a case. Indeed, one fifth of those surveyed would not raise a case at all for fear of retribution. There are even larger problems when we take into account concerns about the adjudicator's ability to address asymmetries of power. It is not about just the fear of retribution, but about confidence that the adjudicator can maintain confidentiality, or even do anything, given the strength of the businesses with which she deals.

That issue came to the public's attention when the adjudicator admitted recently that fear of retribution was probably the biggest single challenge—the biggest reason why suppliers did not raise issues with her—and that the matter had to be dealt with. Christine Tacon said at a conference in London that building trust with suppliers to encourage them to raise the issues is a major challenge. The measures we are discussing would give the small business commissioner a much greater ability to address the confidentiality issues and the means, or part of the means, to do so.

We strongly believe that it is important that the commissioner should be able to gain the confidence of suppliers, maintain confidentiality, use discretion, address the issues and find ways to resolve them. In Australia, the small business commissioner takes anonymous complaints so as to be able to identify potential patterns, and has greater powers to consider such issues and learn broader lessons. I hope that we can learn from what happens there.

Anna Soubry: I have to say, of course, that the Bill already protects the complainant from being identified to third parties. A Government amendment was introduced in the other place to ensure that complainants are not identified through freedom of information requests, which is also an important protection. Complaints made anonymously could be covered in the annual report, if they were significant—exactly the point that the hon. Gentleman made about a pattern emerging among complaints, some of which may be anonymous and some not. If the commissioner sees a pattern, that is absolutely something that he or she can pursue. To consider a complaint fully, however, the commissioner will invariably need some detail, notably the name of the complainant.

The commissioner will not, of course, have to name the complainant to the respondent. So someone can go to the commissioner and say, by way of example, "My name is Fred Bloggs", and then make it clear that they do not want their name to be disclosed: "I am making a complaint about Freda Bloggins Ltd. I do not want my name disclosed to them, but this is the nature of my complaint".

If the complaint is completely anonymous, that could make the commissioner's job difficult if not almost impossible, because they can go to Bloggins and Co. and say, "I've had a complaint from someone. I haven't got a clue who it is, but they have emailed me." That person could be vexatious and there could be an underlying dispute between them, but the commissioner would be almost bound to take up and try to pursue the complaint while not knowing anything about the complainant. That is just plain wrong and could involve a great deal of wasting the commissioner's time.

There is no difficulty with someone coming forward and then saying, "I want to be anonymous." That will curtail the commissioner's ability to investigate, because if they go to Bloggins and Co. and say, "Look, I am told that one of your people who is in charge of contracts has said to someone from another business, 'I'm going to impose payments of 180 days' and that is absolutely outrageous and wrong," it would be difficult for the person receiving the complaint to make full representations. They may say, "I've spoken to our representative and he spoke to 10 people that day. We need a bit more detail as to who he is meant to have said this to." In other words, it is very difficult for them to defend themselves.

We have to ensure that things are done fairly, and it would be quite wrong for someone to be able to make a complaint completely anonymously. The Bill allows someone to make a complaint and then retain their anonymity and, depending on the nature of their complaint, they will be properly advised as to the consequences that might flow. Anonymity will prevent the small business commissioner from making the sort of investigation that he or she may want to make.

Mary Creagh (Wakefield) (Lab): I apologise to the Committee for arriving late. May I pose an alternative view? During the horsemeat scandal a stream of anonymous tip-offs came in through my email that were helpful in pointing me in the right direction of where to look to see who was putting horsemeat into the human food chain. That enabled me to ask questions in Parliament and of Ministers that revealed that a variety of very large companies had knowingly or unknowingly been accepting it in. Most of those tip-offs came from legitimate suppliers who were looking around and saying, "I don't understand how X can supply burger meat at this price when for me to do it legitimately it has to cost Y." Does the Minister agree that it may sometimes be useful for the small business commissioner to know where to look when issues are happening?

Anna Soubry: I do not disagree at all. That is why a flexible approach rather than an overly prescribed legislative approach is what I seek, and I am told that our model reflects the small business commissioner model in Australia. If as the hon. Lady describes the small business commissioner receives a flood of anonymous complaints and—even better—some have substance to them, it is difficult to believe that the commissioner would not grab that and take it forward. However, this is about accepting and understanding the difficulty of anonymity for the person against whom the charge or complaint is made, because they cannot take part in the investigation without some more detail to answer the charge. The small business commissioner must act and be seen to act in a way that is fair to both parties.

That is why the Bill does not prohibit anonymous complaints from being made. In legislation we are making the dangers of anonymity clear and ensuring that it is fair, but not for small businesses alone. We might be biased in favour of small businesses, but when looking at complaints the commissioner must be absolutely fair to both parties.

Bill Esterson: I think the point was well made by my hon. Friend the Member for Wakefield and by the Minister that if a pattern of anonymous complaints emerges, that is absolutely something the commissioner may act on. Having carefully reread amendments 46 and 49, I accept that they might potentially be read in that way—that was the intention—but I am satisfied by what the Minister says and having it on the record is extremely helpful. Amendment 51 deals with confidentiality and I agree that in an individual case it might be difficult for the commissioner to act if complainants did not give information to the commissioner. Granted they might want to give it confidentially, but those are two separate matters and I am satisfied by what the Minister said. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

Clause 5

Enquiry into, consideration and determination of complaints

Bill Esterson: I beg to move amendment 50, in clause 5, page 5, line 35, at end insert—

'(3A) Where the respondent fails to provide information voluntarily the Commissioner may investigate the failure and can enforce compliance with information requests on contract terms.'

This amendment would allow the Small Business Commissioner to investigate and require compliance with information requests on contract terms.

The Chair: With this it will be convenient to discuss the following:

Amendment 52, in clause 5, page 5, line 37, at end insert—

'(4A) In support of the consideration and determination of a complaint made under the Small Business Commissioner complaints scheme, the following bodies may be required to provide information or answer questions during the course of the Commissioner's investigations—

(a) Government departments,

(b) local authorities,

(c) public sector bodies, and

(d) companies.'

This amendment would require Government, local authorities and public sector bodies and companies to provide information or to answer questions when a complaint is made.

Amendment 53, in clause 5, page 5, line 44, at end insert—

'(6A) A recommendation made under subsection (6) may be that the complainant and respondent enter mediation to resolve their dispute.

(6B) Where a party declines mediation the relevant party shall provide an outline to the Commissioner on costs relating to litigation.'

This amendment would allow the Small Business Commissioner to recommend that the parties attend mediation and to make a commentary on costs in litigation where a party declines mediation.

Bill Esterson: All three amendments are drawn from what happens in Australia. The Australian small business commissioner is a great success and we have discussed that in some detail, so it would be as well for the Government to consider what happens in Australia.

Legal powers to demand information relevant to an investigation form a crucial part of what the Australian commissioner does—note that that includes the public as well as the private sector. That is an important reminder that as the office of the small business commissioner in this country develops, the opportunity to continue to learn from the very best practices in the world remains available. The amendments are probing ones designed to allow the Government to do just that. We have discussed such matters previously, so I need say no more. I will wait to hear the Minister's response.

Anna Soubry: It is really important that the commissioner wins the trust of small and large businesses. We need to ensure that we do not take an overly heavy-handed approach at the outset.

The commissioner will seek to change the culture of payment. The best way to do that is to take an approach that balances disincentives to encourage larger businesses to behave reasonably towards smaller businesses with support for those smaller businesses, so that they may become more savvy contractors. To do that, the commissioner needs to build trust.

The commissioner may publish a report about the inquiry, consideration and determination of a complaint, or any of those aspects. This could include reporting on whether or not a party provided information and should be sufficient to obtain engagement on all sides. In other words, it uses the huge power of naming and shaming. Compelling the production of information—I do not like that as an idea—from the parties or third parties will get us into an awful quasi-judicial situation and bring an adversarial flavour to the process, and it will invite legal argument and therefore delay. That is why I resist that.

The key issue from consultation responses on alternative dispute resolution is the need to raise awareness of what it is and what it can achieve. The commissioner will do that, as we have described. Adverse costs inferences can already be drawn by the courts, as I described in my previous comments, in the event of an unreasonable refusal to participate in mediation. I think we have got the balance right. I am grateful for the probing nature of the amendments, and I hope that what I have said will satisfy the hon. Gentleman. We have made it very clear that if things need to come back in some way after the commission has been set up—if it is not working—we are always here to listen, but we want this person to work for the benefit of small businesses in relation to late payment.

4.30 pm

Bill Esterson: I agree that there needs to be trust and the right relationship between businesses of all sizes. I have used the term level playing field a number of times. I am not against the concept of naming and shaming, either. But there is the matter of what happens if it does not work. To be fair to the Minister, she has acknowledged that we might have to come back to some of these points. The prompt payment code is not compulsory, and perhaps we will revisit that. So, there is the question of businesses that do not co-operate and provide information and do not go through mediation. Equally, we still have the challenge of those businesses that feel unable or scared of the consequences, or feel that it will disadvantage them if they complain. We do not know what will happens then, so I think there is a long way to go. This is the start of a process, and the amendments, as I said in my earlier remarks, are about drawing on the good practice from Australia.

I am reassured that the Minister has every intention of this being a learning organisation and that it will continue to evolve. With those remarks, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 5 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —(*Stephen Barclay*.)

4.32 pm

Adjourned till Thursday 11 February at half-past Eleven o'clock.

Written evidence reported to the House

ENT 01 Business Centre Association

ENT 02 Peter Causton, Solicitor and Mediator, ProMediate (UK) Limited

ENT 03 Jerry Schurder, Head of Business Rates, Gerald Eve LLP

ENT 04 Kevin Powles

ENT 05 Steve Cook

ENT 06 Mat Revitt

ENT 07 Oliver Homewood

ENT 08 Bill Weir

ENT 09 Martin Smith

ENT 10 Fiona Apfelstedt

ENT 11 Keep Sunday Special Campaign, Relationships Foundation