

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### ENTERPRISE BILL [*LORDS*]

*First Sitting*

*Tuesday 9 February 2016*

*(Morning)*

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#### CONTENTS

Programme motion agreed to.

Written evidence (Reporting to the House) motion agreed to.

CLAUSE 1 under consideration when the Committee adjourned till this day at Two o'clock.

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**Saturday 13 February 2016**

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

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**The Committee consisted of the following Members:**

*Chair:* SIR DAVID AMESS

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

## Public Bill Committee

Tuesday 9 February 2016

(Morning)

[SIR DAVID AMESS *in the Chair*]

### Enterprise Bill [Lords]

9.25 am

**The Chair:** Good morning and welcome. Without wanting to seem pompous or arrogant, I should say that the Panel of Chairs has been told to tighten up on procedure because, nine months after the election, it is easy to get into bad ways.

If new Members, including our two Scottish National party Members, who are taking part in Public Bill Committee proceedings for the first time need any guidance, they should come and see me or the very wise Clerk. Tea, coffee and champagne are not allowed during proceedings. Wednesday is Lent so it is sackcloth and ashes, and just water. First, we will consider the programme motion, followed by the motion to enable the reporting of written evidence for publication. As time is tight, I hope those matters can be taken formally.

*Ordered,*

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 9 February) meet—

- (a) at 2.00 pm on Tuesday 9 February;
- (b) at 11.30 am and 2.00 pm on Thursday 11 February;
- (c) at 9.25 am and 2.00 pm on Tuesday 23 February;
- (d) at 11.30 am and 2.00 pm on Thursday 25 February;

(2) the proceedings shall be taken in the following order: Clause 1; Schedule 1; Clauses 2 to 14; Schedule 2; Clauses 15 to 19; Schedule 3; Clauses 20 to 35; Schedule 4; new Clauses; new Schedules; Clauses 36 to 40; and remaining proceedings on the Bill; and

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 25 February.—(*Anna Soubry.*)

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Anna Soubry.*)

**The Chair:** Copies of written evidence received by the Committee will be made available in the Committee Room. If, for any reason, Members cannot get hold of those papers, let the Clerk and me know.

Before we begin our line by line consideration of the Bill, I would like to tell Opposition Members that my fellow Chair Karen Buck and I do not intend to call starred amendments, which are those not tabled with adequate notice. The required notice period for amendments in Public Bill Committees is three working days, so amendments should be tabled by the rise of the House on Monday for consideration on Thursday, and by the rise of the House on Thursday for consideration on the following Tuesday. The Public Bill Office will be open

on Thursday 18 February, during the recess, from 11 am to 4.30 pm to receive amendments for sittings on Tuesday 23 February, when we return.

The selection list for today's sitting is available in the Committee Room and on the website, and it shows how the selected amendments have been grouped together for debate. Amendments on the same or similar issues are generally grouped together. A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye on all or any amendments within that group.

A Member may speak more than once in a single debate. At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or seek a decision. I emphasise that if any Member wishes to press any other amendment in the group to a vote, they need to let me know. I shall work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments.

Please note that decisions on amendments do not take place in the order in which they are debated, but in the order in which they appear on the amendment paper—in other words, debate occurs according to the selection and grouping list. Decisions are taken when we come to the clause to which the amendment relates. In accordance with the programme order, new clauses will be decided after we have finished clause 35 and schedule 4, and before clause 36. I shall use my discretion to decide whether to allow separate stand part debates on individual clauses and schedules following debates on the relevant amendments. I hope that is helpful and answers a few questions.

**Bill Esterson** (Sefton Central) (Lab): On a point of order, Mr Amess. It is a pleasure to serve under your chairmanship on this important Bill. I am delighted to be on the Front Bench with this opportunity to talk about enterprise, which is very dear to my heart; I have run my own business.

There are many good attributes to the Bill, which has been described as something of a Christmas tree of a Bill, with a number of not immediately obviously related parts. It could be described as having had baubles hung on it, some of which sparkle more brightly than others. Some of the sparkle is due to amendments tabled in the Lords, including on the ability of the small business commissioner to appoint his or her own staff and the market rent-only option in the pubs code.

However, some new clauses have yet to be tabled, and that is the reason for my point of order. The new clause I am thinking of relates to the Sunday trading laws. It was not tabled in the Lords, when there was ample opportunity. We were told that it was going to be included only in answer to BIS questions last Tuesday, as was confirmed on Second Reading the same afternoon.

The Government have not been short of time. I want your guidance, Mr Amess, on how to approach the matter. Have you had an indication of when the new clause—a whole new element in this Christmas tree Bill—will be tabled? How will we adequately scrutinise the new clauses? What opportunity will we have to table our own amendments, given your advice at the start on

the short time that we have and how difficult it is to get our amendments debated unless we table them in enough time?

The Sunday trading issue is a cause of widespread interest—some would say concern—not just in this Committee, but around the country. It causes concern to faith groups, families with workers affected by Sunday trading, trade unions and the independent retailers. Some larger retailers also have great concerns.

At the moment, we have what is often described as a good old-fashioned British compromise. What advice can you give me, Mr Amess, about when the new clause is likely to come forward, how we as an Opposition can adequately address it and whether we will be able to table our own amendments? Is there some other way in which we can deal with what is—we must face it—a very contentious matter, possibly the most contentious element of the Bill? We do not know, because we do not know the wording of the new clauses to be put forward by the Government.

**The Chair:** I am being generous and kind to the hon. Gentleman because this is his first point of order. Points of order must be brief and succinct; they cannot be like a Second Reading debate. I am very pleased to tell the Committee that new clause 21 on extended Sunday opening hours and Sunday working was tabled last night. I think the hon. Gentleman heard what I had to say about the Opposition's tabling of further amendments.

**Bill Esterson:** Further to that point of order, Mr Amess. I asked whether we were able to amend the clauses that have already been tabled by the Government.

**The Chair:** The answer is absolutely yes.

**Bill Esterson:** Thank you for clearing that up.

### Clause 1

#### SMALL BUSINESS COMMISSIONER

**Bill Esterson:** I beg to move amendment 33, in clause 1, page 1, line 5, at end insert—

(1A) Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner.

(1B) A person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

(1C) A person appointed to be the Commissioner may be—  
 (a) relieved of office by Her Majesty at his own request, or  
 (b) removed from office by Her Majesty on the ground of gross misconduct.

(1D) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons—

(a) of performing the duties of his office; and  
 (b) of requesting to be relieved of it.

(1E) A person appointed to be the Commissioner is not eligible for re-appointment.”

*This amendment would provide a level of independence for the Small Business Commissioner, adapted from the arrangements for the appointment of the Information Commissioner and the Parliamentary Commissioner for Administration who are appointed by the Crown following advice from both Houses of Parliament.*

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

Amendment 34, in schedule 1, page 56, line 7, leave out paragraph 2.

*This amendment in conjunction with amendment 33 would establish the Small Business Commissioner as an appointment by the Crown.*

Amendment 35, in schedule 1, page 56, line 19, leave out sub-paragraph (d).

*This amendment in conjunction with amendment 33 would establish the Small Business Commissioner as an appointment by the Crown.*

Amendment 36, in schedule 1, page 56, line 21, leave out sub-paragraph (e).

*This amendment would remove the Secretary of State's powers to dismiss the Small Business Commissioner.*

**Bill Esterson:** Small businesses are the lifeblood of our economy and are at the heart of communities up and down the country. There are more than 5 million businesses employing 10 people or fewer. It is vital that the people running such enterprises are given the opportunity to thrive and that their businesses can flourish.

The creation of a small business commissioner is a good step towards helping small businesses and follows the examples of the Small Business Administration in the US and the small business commissioner in Australia. In our manifesto, we proposed the idea of creating a UK small business administration and we support the principle of a small business commissioner as a step forward. The Enterprise Bill provides an opportunity to explore the proposed terms of reference of the small business commissioner and to look at how he or she can be as effective as possible in championing the cause of small business, in creating a level playing field and encouraging enterprise from the start-up to growth and beyond.

According to the Department for Business, Innovation and Skills impact assessment, the purpose is to

“make it easier, quicker and cheaper for small businesses to settle payment issues with larger companies by setting up a Small Business Commissioner. The Commissioner will give advice, provide information and refer businesses to services that can mediate in disputes. It will have the power to look into complaints about poor payment practices and report back on its findings.”

Small and medium-sized businesses, particularly new entrants to the market, drive economic growth by stimulating innovation, acting as a competitive spur to existing businesses. That occurs through the process of productive churn, when new entrants and existing firms become more and more enterprising, with new ideas for products and processes, and win market share, and less productive businesses exit the market. New and small businesses also complement larger firms by operating in local or niche markets and by being the first to enter new markets. Small and medium-sized businesses stimulate innovation with research, suggesting that such businesses in particular act as an important seed bed for innovations. Those businesses either grow in their own right or are taken over by larger businesses that take on board their ideas.

As global competition intensifies, the ability of businesses and individuals to identify and take advantage of entrepreneurial opportunities becomes increasingly important, hence the need for Government to ensure that support for small businesses is in place. It is in the

[*Bill Esterson*]

spirit of the Government's role in creating a level playing field that we approach the Bill, to scrutinise, challenge and propose amendments.

The purpose of the small business commissioner is to support small business. We want that commissioner to be as effective as possible and believe that he or she will therefore need to work independently of large business and Government. The small business commissioner is being set up to support small business, according to the BIS impact assessment. That includes making it easier to resolve commercial disputes, not least relating to late payment, and to resolve contract negotiations related to late payment or otherwise. It also includes having someone to turn to for dispute resolution and in respect of being treated unfairly in tendering for work, as well as being able to maintain business relationships while in dispute, ensuring that good mediation options are available and dealing with supply-chain matters.

We welcome the small business commissioner's having a remit that supports small business in addressing those challenges. As the impact assessment says,

"...small businesses thrive and grow, to help support our economy, both locally and nationally".

The impact assessment goes on:

"It is proposing to establish a service to complement existing provision and lead a culture change in how businesses resolve—and ultimately avoid—commercial disputes. It is proposed that the new Small Business Commissioner (SBC) would: empower small businesses to resolve disputes and avoid future issues through general advice and information, related to dispute resolution and contract principles; signpost to appropriate services eg sector ombudsman or regulator, existing independent advice service, approved alternative dispute resolution (ADR) provider or SBC complaints handling function and; consider complaints by small business suppliers about payment matters arising with larger businesses which they supply. These disputes may relate to pre-contractual negotiations as well as terms of the contract and new arrangements proposed once a contract is in place; for instance, if a firm feels it is being harmed by the other party's unfair behaviour."

Helping small businesses thrive and grow to help our economy is very much the right way for Government to intervene in support. The list of intended responsibilities I have just read out are all concerns shared by many small businesses. There are too many examples of larger customers treating their smaller suppliers in an unfair way, but one large group of larger customers is the public sector.

The Bill at present gives the Secretary of State the power to appoint and to dismiss. The Lords amended the Bill to allow the small business commissioner to appoint his or her own staff. However, the Secretary of State still has the power to appoint and dismiss the small business commissioner. This group of amendments seeks to make the appointment a Crown appointment, to ensure that the small business commissioner is in a position to help when the source of complaint or unfairness is the public sector. If the Secretary of State appoints and has the power to abolish, there may well be a reluctance on the part of the small business commissioner to challenge the very organisation that appointed him or her and which can abolish his or her role.

**Kevin Brennan** (Cardiff West) (Lab): My hon. Friend makes a very interesting point. Perhaps there is a contemporary analogy with what the Government are currently doing in relation to charities: they are saying

that where Government funding has been given to charities, those charities should not be able to use it to campaign in any way against Government policy. If the Government have such influence over the appointment and the very existence of the small business commissioner, does my hon. Friend think there is a danger, without our amendments, that the Government might seek to exert the same kind of influence on the small business commissioner as they do over the charities?

**Bill Esterson:** My hon. Friend makes a very good comparison. There are many examples where the closeness of the relationship means there is the potential for a conflict of interest. There are other examples, which I will come to, where there is an arm's length relationship: our amendment attempts to forestall this potential conflict.

We certainly do not want the Secretary of State to have undue influence and the commissioner to feel constrained in his or her ability to act. After all, if we want small businesses to be as successful as possible, we want them to have independent support from the small business commissioner. People will rightly look to the commissioner to give a lead and give support, advice and encouragement to small businesses, which are, as I said at the start of my remarks, the backbone of our economy.

The Government do not intend the small business commissioner to have a role when it comes to disputes between small businesses and the public sector. As that is a source of much concern among small businesses, it seems certain that many complaints will go to the commissioner about the public sector. Even in relation to complaints against larger public sector businesses, if the Government do not like the way the commissioner is operating—this is at the heart of my hon. Friend's intervention—the Secretary of State may decide to intervene and that implied threat could cause the commissioner to be less effective, through a reluctance to act.

**Mary Creagh** (Wakefield) (Lab): I apologise to colleagues on the Committee, Mr Amess; I was cycling through and dropping my daughter at school.

The definition of what constitutes the public sector for the purposes of the Bill is an interesting one. We have all been up and down the Embankment and seen Transport for London's cycle super-highway, but the definition of the contractors working on it, two or three steps removed from a Government body, is interesting. Perhaps Ministers might like to explore that further in their response to my hon. Friend's comments.

**Bill Esterson:** I thank my hon. Friend for her intervention. The whole area of the supply chain and whether the Government have thought through some of the implications of exactly that example are among the challenges that we have tried to deal with not just through this group of amendments but elsewhere by giving the small business commissioner the opportunity to be as effective as possible. One of the problems of the commissioner only dealing with larger businesses is that they miss an opportunity and may be constrained in many ways, an example of which my hon. Friend has just given.

This group of amendments seeks to remove a potential obstacle to the small business commissioner's being as effective as possible. Other amendments attempt to do the same thing with other elements of the way in which the Government have structured the office.

9.45 am

The Bill allows for the appointment and dismissal of the commissioner by the Secretary of State, yet the relationship between the Government and small business is one concern raised by small businesses. If we want to address the difficulties faced by small businesses, we need to do so in full. For the commissioner to be as effective as possible, we need them to feel able to challenge the Government, particularly given that contracting with and late payment by the Government are problems raised by small businesses. If a commissioner has at the back of their mind the thought of their potential removal—indeed, if the appointment of a commissioner is on the basis that Government relationships with small businesses will not be challenged—the independence of the commissioner may well be in question.

The amendments seek to avoid the potential conflict of interest by using an existing arrangement—a Crown appointment—which is in place for appointments of the Information Commissioner and of the Parliamentary Commissioner for Administration, who is appointed by the Crown on the advice of both Houses of Parliament. The experience of Crown appointments suggests that for the small business commissioner to be as effective as possible, they will need to maintain the confidence of all stakeholders and all those in the process. The position should not just be an instrument of government, but be able to work collaboratively and collectively with the Government, small business, the media, academics and other stakeholders in the economic cycle.

In Australia in 2003, Victoria's small business commissioner was established. Over the entire period—during which all the other states have adopted a small business commissioner, and there is also a federal one—an effective commissioner has marshalled the arguments, evidence and capacity of a body established by the Government in order to be most effective, to build the confidence of business, and to be a body capable of acting separately from the Government. We want to see that model but we are concerned that the structure, as defined in the Bill and the explanatory notes, suggests that the position is no more than a rebadged office of the Department.

If the position of small business commissioner is to work and to provide valuable, long-term strength to the small business environment, it needs to be fully independent. We need an effective small business commissioner, and one of the most important things that will make that person effective is the ability to appoint their staff. The Lords amendment allowing the commissioner to appoint their own staff was an important step in the right direction, and we hope that the Government will not attempt to remove it. In fact, they have not tabled any attempt to do so but we will see whether they try to later, and we hope that they will not.

**The Minister for Small Business, Industry and Enterprise (Anna Soubry)** *indicated assent.*

**Bill Esterson:** I am pleased that the Minister is confirming that from a sedentary position.

If the small business commissioner is to be as effective as possible on late payments, we need someone who can work not on the basis of a press release or the exhortations of Members of whichever House but constructively

with businesses, learning the right lessons and creating the right solutions. That means not being an appointee of the Secretary of State, doing the Secretary of State's bidding or wondering whether the Secretary of State will intervene with the potential for abolition.

It is important to note that the Institute of Directors has been forthright in its support of the amendments. The institute represents many directors, owners and operators of small businesses, so I suggest that it is worth listening to what it has to say:

“Together, these amendments would give the Small Business Commissioner a stronger footing from which to be a champion for small business. We fear that the possibility of abolition by the Secretary of State could potentially negatively impact the ability of the Small Business Commissioner to challenge that same Secretary of State. We hope for and anticipate a positive working relationship between the Commissioner and the Secretary of State”.

**Lucy Frazer (South East Cambridgeshire) (Con):** It is a pleasure to serve under your chairmanship, Sir David. I want to ask the hon. Gentleman a question, for clarification. Do these two clauses stand alone, or are they conjoined? Would the hon. Gentleman be pressing for the appointment he suggests if there were not a successful amendment to include public authorities?

**Bill Esterson:** We are debating the first set of amendments, which are about appointment and dismissal. We will come to public bodies later. However, it is relevant to speak about them both; I have done so because the independence of the commissioner enables small businesses to have confidence that they can deal with the commissioner and that the commissioner will not be constrained by their relationship with Government, either in relation to other businesses or the public sector.

**Mary Creagh:** It is, of course, a pleasure to serve under your chairmanship, Sir David—my apologies for failing to pay that courtesy earlier.

Is there not a wider point about public appointments and open competition? The Groceries Code Adjudicator was appointed after open competition. The great merit of putting out an advertisement and seeing who wants the job is that all sorts of people apply who may not be on the cocktails and canapés circuit frequented, perhaps, by the Secretary of State for Business, Innovation and Skills. Is there not also a gender equality point, which is that people sometimes appoint in their own image and we end up, sadly, with an establishment group of figures who all—dare I say it—tend to look like many of the MPs in this place? We end up with a self-perpetuating group of people who may not be acting in the interests of the entrepreneurs. Many of the new entrepreneurs who have started will be young, tech savvy people. To see one of the usual suspects appointed to this position might risk alienating some of the people who might have need for his or her services.

**Bill Esterson:** I thank my hon. Friend for reminding us about the difference in how the Groceries Code Adjudicator has been set up. We will talk about the Groceries Code Adjudicator at a number of points during our deliberations. Indeed, we will be discussing an amendment later on the need to review the performance of that office so far.

**Catherine McKinnell** (Newcastle upon Tyne North) (Lab): It is a pleasure to serve under your chairmanship, Sir David.

Does my hon. Friend share my view that this is such an important issue for small businesses because we know that the issue of late payment, in particular, is a real challenge for them? It is in the Government's interest that this body is as influential and powerful as it can be and that those small businesses see it as a visible presence and feel that it is their champion, not the Government's or anybody else's.

**Bill Esterson:** My hon. Friend is absolutely right. This is why we have tabled not just these amendments, but others, which are about making the post as effective as possible, so that it really is about championing business. This is the Enterprise Bill: it is about promoting enterprise as best we can. Small businesses are absolutely critical to driving enterprise, pushing forward productivity and improving the overall state of the economy. Getting this post right is a great opportunity to do just that. The interventions of both my hon. Friends just now demonstrate the importance of getting that appointment process right, so that the best person possible is appointed. As my hon. Friend the Member for Wakefield said, opening it up to the widest field possible is an important way of doing just that.

The commissioner will be someone whose terms of reference are quite clear. As things stand, he will be the creature of, and appointed by, the Secretary of State, and will have little security of employment, given the ability of the Secretary of State to dismiss him or her at the drop of a hat. He will be capable of being thrown out at the whim of a Minister. It would afford the business community a sense of confidence if our amendments were adopted. A small business that has problems with payment and other concerns about administration will find that this place person is in a job that affords the small business little or no protection or opportunity for redress of an independent character. At the end of the day, the operation of the office, as things stand, will be subject to the most minimal scrutiny and the report will be given, not to Parliament, but to the Secretary of State alone, which leaves one with grave concerns.

In the other place, the Minister said that if the commissioner was ineffective, there would be grounds for abolition. Surely the point is to set the post up in the first place to ensure that it is effective by giving him or her the necessary powers and independence. That means being outside the control or remit of the Department or the Secretary of State.

The Regulatory Reform Committee made an assessment which said:

"We therefore consider that it is inappropriate for the Bill to confer on the Secretary of State a Henry VIII power to abolish the Small Business Commissioner without any of the procedural restrictions (beyond the need for an affirmative resolution in each House) of the nature set out in the Public Bodies Act 2011, particularly that requiring consultation".

I am concerned, as are my hon. Friends, that the general perception of how this provision was planned and developed under-appreciated the role that the body should play. The estimate is that it will deal with 500 complaints. I mentioned the Victoria commission in Australia. It dealt with 430 complaints of a comparative

nature in its first year. Victoria is a state with 5.8 million people, a GDP perhaps one-tenth the size of that of the UK and with perhaps one-fifteenth of the number of small businesses. It had 430 cases, while our commissioner is planning to handle 500. That does not seem very ambitious for the role of the small business commissioner. Perhaps that is related to the way that it has been set up as part of the Department, reporting directly to the Secretary of State.

If the small business commissioner is set up only to address a tiny amount of work, it might raise the question how serious the Government are about making a difference to small businesses. Some might even suspect that the Government do not really intend for the office to be a great success and that therefore they will be in a position to deliver abolition down the line. It would be a great shame if that were the case.

The Government say that they envisage the role of the small business commissioner evolving over time. The workload grows and as businesses grow accustomed to the idea that there is someone to turn to, that is a likely development. If that happens, how will the office cope with the increased workload? Perhaps the Minister will consider that in her response. Remember, BIS faces sizable budget cuts. How will the small business commissioner be protected from those cuts, let alone be in a position to recruit additional staff?

We know that late payment is a significant problem, as my hon. Friend the Member for Newcastle upon Tyne North reminded us in her intervention. The 500 anticipated cases a year will be the tip of the iceberg. What will happen if the small business commissioner does not have the opportunity to expand his or her office? The issue of who appoints and whether the office can be abolished by Ministers is part of the wider question of whether the office will be effective or not, a point made very well on Second Reading by the hon. Member for Huntingdon (Mr Djanogly). It was also made many times by Members of the other place across the parties.

**Catherine McKinnell:** My hon. Friend is making a very important point. I wonder whether the Government have considered the importance of the role of the small business commissioner and the number of businesses that are likely to get in touch with them, because there is such a gap in the market for advice for small businesses. I know that from my constituency postbag, many small businesses come to me looking for advice and signposting for where they can get help and advice. My hon. Friend rightly points out that the proper resourcing and independence of the post are important for businesses to feel confident in the service provided.

10 am

**Bill Esterson:** My hon. Friend is right: businesses will expect this office to be able to handle their complaints. We might reasonably expect the level of complaints to be significantly higher than 500 from a small-business population of well over 5 million. It is not a good idea when standing on one's feet, Mr Amess, to calculate the proportion of small businesses that would be involved if more than 500 out of 5 million were to approach the small business commissioner. I am sure somebody can work it out and give us the figure at some point. It is certainly a very small number.

**Catherine McKinnell:** To clarify, I feel the reason so many businesses come to me as an MP for advice on this issue is because the support and assistance provided to small businesses under the previous Labour Government disappeared in 2010. That has had a huge impact on small businesses and their ability to understand and navigate the system to find help and advice. Therefore, they come to their MP. I am always pleased to hear from businesses but it is a gap in the system in that they do not know where to go locally.

**Bill Esterson:** That is an excellent point. Like my hon. Friend, I find myself performing some of the roles and responsibilities set out for the small business commissioner on behalf of my constituents. Having been owner of a small business, I have sometimes been able to point them in the right direction. We would expect the small business commissioner to be in a position to give advice, support and encouragement. Later amendments will look at how that might be achieved if that office is to be given additional responsibilities.

**Hannah Bardell (Livingston) (SNP):** It is a pleasure to serve under your chairmanship, Sir David. Does the hon. Gentleman share our concern? We are aware that the Government have targets for prompt payment but, as some Governments do, they have occasion to miss those targets. If the commissioner does not have the power in that jurisdiction, he or she cannot bring the Government and other larger organisations into line.

**Bill Esterson:** I thank the hon. Lady for her intervention, with which I agree. We will deal with that point in more detail in the next set of amendments, although it does have an impact on the appointment and dismissal process, as she rightly points out.

We want the commissioner to be effective. We want him or her to be able to help with late payments and to look at what other functions might make good additions as the office evolves, and that includes the point made by the hon. Lady.

The Federation of Small Businesses, the Institute of Directors and the British Chambers of Commerce often offer good advice, legal services and access to discounted business products such as insurance, and they are also good at helping businesses with disputes, but they are member organisations. Not every small business has a lawyer or accountant who is able to offer the full range of services. Many small businesses will need the office of the commissioner—just as an advice service was available under the previous Labour Government for businesses that had nowhere else to go—to provide advice, support, encouragement and dispute resolution directly, rather than just signposting elsewhere.

If the Minister expects the small business commissioner to signpost to those excellent organisations, she will need to ensure they can cope, because they might face a deluge of additional work. They have raised that concern with me, and no doubt also with the Minister. She will need to ensure that every business that approaches the small business commissioner wants to go to a membership organisation, where, of course, they will have to pay a fee—because I suspect that the Institute of Directors, the Federation of Small Businesses and the chambers of commerce will continue to charge for their services, as

will solicitors, accountants and other professionals, if that is what the intention is when it comes to signposting. The small business commissioner will therefore also need to be in a position to develop his or her own capacity to help with disputes, whether related to late payment or not, to consider developing an advice and support function, and to look at areas such as procurement in the supply chain.

The ability to explore the options as the office develops will be restricted if the small business commissioner is, in reality, restricted by his or her relationship with the Department for Business, Innovation and Skills. We want the small business commissioner to have the chance to be as effective as possible, and an important part of developing that effectiveness will be the way in which the small business commissioner is set up and his ability to operate as independently as possible. Otherwise, the question will remain whether the small business commissioner has the teeth to deliver for business and do the job of enabling enterprise to flourish.

The amendments to make the small business commissioner a Crown appointment are based on the legislation that set up the office of the Information Commissioner. The Information Commissioner is a public body, sponsored by a Department—the Ministry of Justice. In the case of the small business commissioner, we propose that BIS would sponsor the small business commissioner, so that he would not simply be part of the Department, answerable only to the Secretary of State. The Information Commissioner reports directly to Parliament. The office cannot be abolished by the Secretary of State; the individual office holder cannot be removed by the Secretary of State. The office's decisions are supervised by the courts, not the Department. That is the level of independence afforded by a Crown appointment, and that is what is needed for the small business commissioner to be as effective as possible and to deliver for small businesses and enterprise.

The Australian model, for example, is not an appointment by a Minister; it is an appointment by the Governor-General, the Queen's representative. That is the direct equivalent of what we are proposing. Three significant steps in the right direction were taken in the other place on this matter. The first was the designation of the small business commissioner as a corporation sole. The second was the amendment to have the small business commissioner appoint his own staff. The third was the new requirements on the Secretary of State to consult on any proposal to abolish the role. That is certainly a sign that we are moving in the right direction. It is a heartening indication that there is a shared sense that the small business commissioner needs to be free to act in the interest of small business. *[Interruption.]* I am fascinated to know what the Minister thinks is interesting, having heard what she has just said—she is very welcome to intervene and tell me. She is going to wait until her response.

Late payments and unfair payment terms are a long-term problem and they call for a long-term solution, with a role that is absolutely protected from the outset. These amendments to strengthen the independence of the small business commissioner offer that protection. The current commitment to establishing the role—the commitment to championing the interests of small businesses—is laudable. By strengthening the independence of the small business commissioner, our amendment

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would capture that commitment and change the conditions of appointment, removal and abolition of the post, which, as they stand, may leave the small business commissioner vulnerable in future.

That is a level of protection that remains even if the small business commissioner's role sets him on a collision course with the Government of the day, as happened with the Information Commissioner over NHS IT programmes and the citizen information project. The Information Commissioner disagreed with the Government and did so publicly. We need that protection for the role of the small business commissioner—a clear statement in the legislation that says, “This post is here to stay and it will stand independent of Government, no matter the political priorities or budget constraints of the day.”

Establishing the small business commissioner as a corporation sole is a step in the right direction, but a corporation sole is more about the continuity of the post. It allows the post to pass without interval from one office holder to the next. It lays powers and legal status with the office, not the office holder, securing a level of continuity as the post passes from one person to the next. It gives the office holder some guarantee of independence, but the level of independence needed for the small business commissioner is not guaranteed purely by virtue of a designation of corporation sole.

Removing the ability of the Secretary of State to abolish the role is the key. If the small business commissioner is not appointed by, cannot be removed by and cannot be abolished by the Secretary of State, then he really achieves independence. This is the distinction between a corporation sole and a Crown appointment, and that is why our amendments are so important.

**Anna Soubry:** It is a pleasure to serve under your chairmanship, Sir David. I hope that I am right in this, but I would like somebody to check: I note that 50% of the members of this Committee are men, which means that membership is half men and half women. I do not know whether that is a first, but it certainly must be for a business Bill going through this House. It is a welcome development. Too often, in my experience, the highest levels of businesses tend to be dominated by men. I just thought I would say that.

**Catherine McKinnell:** I very much agree with the point that the Minister has made, but I must say that it is Labour that has upped the ante in terms of female representation on this Committee. As ever, in terms of 50:50, the Government are letting us down.

**Anna Soubry:** I am not responding to that; the hon. Lady may be right.

I will address my comments to the amendment moved by the hon. Member for Sefton Central. I will rebut much of what has been said by establishing the history of how the small business commissioner came to be placed within the Enterprise Bill. I agree with everything he said about the value to the economy of small businesses. We are absolutely and utterly agreed on that. We understand their huge value and their importance to building a successful economy.

The idea started with the Conservative party manifesto commitment to consider setting up a conciliation service specifically on the point of late payment, which as we all know is a serious matter for concern, notably for small businesses. Having come into office, as I considered how to achieve that, it became obvious that there are already a number of ways to supply such a service. That is the sort of matter that we will undoubtedly debate in this Committee. Having learned of the great workings of the Australian small business commissioner—hon. Members will hear much about the work of Mark Brennan; I have spoken to him at length—I came to the conclusion, and I assure hon. Members that my Secretary of State absolutely agreed, that a small business commissioner should be created specifically to address the problem of late payment.

I put it on the record clearly: it would be utterly bizarre of this Government to want to positively create an office with the apparent intention of abolishing it at some later date. The idea has come from me and the Secretary of State; it is a position that we want. We would love for the position to abolish itself in time, because we would love it if there were no complaints about late payment. Unfortunately, we think that is an ideal that we will not achieve, however much we might strive.

**Kevin Brennan:** The Minister is making a reasonable point, but she knows that she cannot fetter what future Administrations of any party do. Neither can we, but we can ensure that the body cannot be abolished at the whim of a Minister rather than by going through some other due process.

**Anna Soubry:** It would not be abolished at the whim of any Minister.

**Catherine McKinnell:** I agree that the Minister is making a reasonable point, but does she accept that the Government are being cautious in setting up the body, possibly out of fear that it could become more powerful than she anticipates? If it begins to direct any concern towards the Government or state changes that the Government ought to be making to support small businesses, it will run the risk of a conflict of interest with the Government's direct appointment of the commissioner.

**Anna Soubry:** It may be a surprise, but I do not agree with the hon. Lady. I can understand why she might raise that concern, but I honestly believe that because of how we are introducing the office—it will be a public appointment just like any other—the sort of proposal made by the hon. Lady through the shadow Minister would not make much difference, if any, to the person appointed. I am going to explain why that is.

10.15 am

It is also important that we understand the history of the Australian small business commissioner, which is very different from the history of what we hope to set up with our small business commissioner. In many ways, it was not just a quasi-judicial appointment: he—as it turned out, it was a he—was making decisions on rent and other valuations. That is not what we

anticipate the role of this commissioner to be. That is really important when we look at powers, appointment and so on.

There is another thing I want to quash. It could be said that if either I or, indeed, the Secretary of State for Business, Innovation and Skills were to appoint somebody in our own image, that might be a good thing, given that I am the daughter of a small businessman and, of course, my right hon. Friend the Secretary of State is the son of a Muslim bus driver who became an outstanding small businessman himself.

We all know that it is absolutely agreed that the person who is appointed will be incredibly important. We know that that person must be independent; that they will have the integrity and ability to command the respect of those large businesses that they will often be tackling, but at the same time have the confidence of small businesses. We know that that person and their abilities are vital, and that is certainly not lost on me or the Secretary of State.

**Hannah Bardell:** The right hon. Lady is making a powerful speech and strongly advocating for the commissioner. We support the notion of the commissioner, but does she agree that if the commissioner does not have the powers or the teeth to enforce its decisions, it cannot ultimately do justice to its office?

**Anna Soubry:** That is not part of these amendments, and I want to confine my comments to these. We will have that debate later, as we discuss other amendments.

**Mary Creagh:** Will the hon. Lady give way?

**Anna Soubry:** Very briefly.

**Mary Creagh:** The hon. Lady says that she wants the person appointed to command not just the respect of the large companies and organisations that will be accountable to this person, but the confidence of small businesses. Is not the lesson from the Groceries Code Adjudicator that it is imperative to gain the confidence of small businesses and small suppliers, and that any perception—real or imagined—that this person is the creature of big business would be devastating to this office? This person's authority comes from the office that they will hold.

**Anna Soubry:** Hon. Members on both sides need to have confidence in the system that exists, whereby the person we appoint will have all the qualities that we know they must have in order to do the job. That person is going to be the most critical factor in the success of this office. We absolutely know that.

**Catherine McKinnell:** *rose*—

**Anna Soubry:** I am not going to give way; otherwise, we will be full of interventions.

**Kevin Brennan:** She'll just make a speech if you don't.

**Anna Soubry:** I am sorry, but we need to make some progress. The appointment of the small business commissioner by the Secretary of State will not compromise his or her independence. It will be a public appointment,

subject to all the usual public appointments rules and procedures. There would be little material difference to the appointment process if this were a Crown appointment.

**Catherine McKinnell:** While the Minister is on her feet, will she clarify exactly why this should not be a Crown appointment, rather than a ministerial one? Will she clarify that for the Committee and members of the public, because it is not clear why that is the case?

**Anna Soubry:** I absolutely will. A Crown appointment is made on the advice of Ministers. Effectively, we get exactly the same process, but with a different stamp on it. This will be a public appointment that will go through the usual procedures. It will be advertised. As for the idea that this is going to be somebody from the cocktail and canapés circuit, forgive me, but those days have long gone. That is certainly not the way that I operate or that my Secretary of State operates. We take considerable care to make sure we get the right person in place. I actually take a little exception to the idea that I go to cocktail and canapé parties to select someone. I personally make a great effort to ensure that we have people who represent the diversity in our society. I am quite robust in my views, as I am rather anti-establishment, and I will bend over backwards to ensure that we get the right person in place. I am confident that when we advertise this job, a large number of people will come forward with exactly the sort of qualities we need.

The amendments made by the Government in the other place have already increased the independence of the commissioner by giving him or her a separate legal identity as a corporation sole. As we know, the commissioner can appoint staff and receive public funding. Those are the key hallmarks of an independent body. Nothing stands to be gained in practice from the suggested amendments, which would only add considerable delay and complication to getting the commissioner up and running. It is normal practice for the Secretary of State to be able to terminate public appointments. The Secretary of State cannot dismiss a commissioner at will, but only if the individual is unable, unwilling or unfit to perform their functions.

It is good that we are having this debate so that we can give people the confidence in what we hope to achieve and in the mechanisms by which we will make the appointment to get what we all want—an independent small business commissioner who will be utterly focused on looking at late payments, free from any form of interference or abuse of office. The commissioner will have an independent spirit but will come from the right background, so that they have the confidence, most importantly, of small businesses to be their champion in solving the problem of late payments.

**Bill Esterson:** Thank you, Sir David. I apologise for omitting your title earlier. I thank the Minister for her brief response, but I do not think that she has really answered the questions we posed. I am glad that there is broad agreement about the value to the economy of small businesses, and I reiterate that our approach to part 1 of the Bill is about trying to strengthen the post as much as possible so that businesses and the wider economy really can benefit from it. I understand why the post has been set up to look at late payments, rather than at some of the wider issues, as the problem of late

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payments has existed for more years than many of us will remember. I understand why the Government have gone down that route, although it is a shame that the commissioner has not been set up to draw on some of the successful experiences as well as the remits of the arrangements in America and Australia.

The Minister said that the commissioner would not—I am not sure whether she said “could not”, so I will assume that she said “would not”—be abolished at will. However, the role can be abolished by affirmative resolution of both Houses and, in Parliament, that is pretty close when one party has an overall majority in the Commons. It is unlikely that the Lords would object. I take on board the point that if it were proved that the commissioner was not up to the job, the commissioner would be removed, but there is a difference between that and abolishing the post.

The Minister said that the small business commissioner needs to command the respect of large and small businesses alike. I completely agree but there is a concern among the representative organisations that the lack of independence that comes from being an effective part of the Department will make it difficult for the commissioner to command that respect, particularly the respect of the small business community. Large business is effective at lobbying and has effective relationships with the Government, and that is much harder for individual small businesses and for small businesses collectively.

**Catherine McKinnell:** The Minister gave a short but fairly robust response to some of the concerns that our amendment seeks to address. Would my hon. Friend agree that it is not just about the reality—whatever that might be—but about the perception as well? It is really important for small businesses to have confidence in the commissioner. Perhaps the Minister is not taking on board some of the concerns that people have, whether real or perceived, about the Government’s relationship with big business.

**Bill Esterson:** That is right. We are trying to achieve a level playing field. This is not about preferring small business over large, it is about making sure that the relationship is equitable. In the same way, the Groceries Code Adjudicator was set up to make sure that the behaviour of some of the large supermarkets was not excessive and their relationship with their suppliers was fair and equitable.

I did not get the sense of an answer or a justification of why this should not be a Crown appointment. I thought the Minister’s argument could equally have reached the conclusion that it should have been a Crown appointment. For that reason, I would like to test the will of the Committee and press the amendment to a vote.

*Question put.* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 1]

#### AYES

Bardell, Hannah	Esterson, Bill
Brennan, Kevin	Flint, rh Caroline
Brown, Alan	McKinnell, Catherine
Creagh, Mary	Morden, Jessica

#### NOES

Argar, Edward	Lewis, Brandon
Barclay, Stephen	Mackintosh, David
Churchill, Jo	Pawsey, Mark
Frazer, Lucy	Solloway, Amanda
Howell, John	Soubry, rh Anna

*Question accordingly negated.*

**Bill Esterson:** I beg to move amendment 37, in clause 1, page 1, line 9, leave out paragraph (b) and insert—

“(b) to consider complaints from small businesses relating to matters in connection with the supply of goods and services to—

(i) larger businesses and

(ii) public authorities

and to make recommendations.”

*This amendment would widen the consideration of complaints function to cover complaints from small businesses relating to matters in connection with the supply of goods and services to larger businesses and to public authorities (as defined in clause 13).*

**The Chair:** With this it will be convenient to discuss:

Amendment 45, in clause 3, page 4, line 9, leave out paragraph (c)

*This amendment would include public authorities in the definition of “larger business”, and therefore extend the Small Business Commissioner’s remit to include consideration of complaints by small businesses relating to public authorities.*

**Bill Esterson:** Do we not have a debate on clause 2 stand part, Sir David?

**The Chair:** I refer the hon. Gentleman to the remarks I made at the start of the proceedings. That comes after this debate; the hon. Gentleman is a little ahead of himself.

**Bill Esterson:** I apologise. My notes are slightly out of order. Some might say that there is much about me that is out of order, but I leave that to others to decide. Amendments 37 and 45 relate to the public sector, which we have already touched on once or twice. While late payment in the public sector is less prevalent than in the private sector, with £187 billion spent annually on goods and services by the public sector, any level of late payment is damaging to the economy and to small business.

Government Departments’ target to pay 80% of invoices within five working days might look good on the surface, but it tends to mask a culture of late payment to small and medium businesses, which fare far worse than large companies in dealing with the Government. EU directive 2011/7 on combatting late payment and commercial transactions makes payments within 30 days mandatory for public authorities, with administration fees and interest applied to late payments, but there is no evidence of public authorities automatically adding these penalties when invoices are paid late. More has to be done, and the small business commissioner should be championing small businesses’ rights with public authorities, as well as with larger companies. It is what small businesses will expect when they see the phrase small business commissioner, and when they approach that office.

10.30 am

**Mary Creagh:** I might be anticipating the Minster unfairly, but I remember from my days as a councillor and from working with small businesses that cash is king. That is not necessarily understood by civil servants working for local authorities. Does my hon. Friend remember the days of local authorities being able to get interest rates as high as 9% with certain Icelandic banks? I am thinking of several of the ones that collapsed in 2007-08.

When interest rates are high, there is an incentive for treasury managers in public authorities, such as councils and generally central Government, to take that money and use it. When interest rates are 9%, if an authority has £10 million, that is a significant amount of money that could be earned while, unintentionally I am sure, it starves small local businesses of the cash they need to survive.

**Bill Esterson:** My hon. Friend is right. I was a councillor at the time as well and remember the investments in certain Icelandic banks. More than a few local authorities were caught badly as a result. Her point is well made.

On the benefits to larger firms—and we will deal with this when we discuss cash retentions in the construction sector—there is evidence of the use of moneys due, particularly to smaller firms, to help the cash flow of the larger firm. That is potentially true in the public sector, as my hon. Friend said. Dealing with that is one reason to explore bringing the public sector within the remit of the small business commissioner.

The last Federation of Small Businesses members' survey assessing late payments by the public versus the private sector was conducted in 2012. It consisted of responses from nearly 9,000 FSB members and confirmed that although larger companies are the worst offenders with late payments, late payment in the public sector is still a big issue. According to the survey, 27% of Government agencies paid SMEs late and 29% of SME invoices from the UK central Government were paid late, so central Government were slightly worse than local. A more up-to-date assessment of late payment by central Government is found in the National Audit Office's paper "Paying Government suppliers on time" from January 2015. The study covered all central Government Departments but looked in detail at the payment practice of the Ministry of Defence, the Home Office, the Department for Business, Innovation and Skills and the Cabinet Office.

Central Government spend £40 billion a year on goods and services, of which about £4.5 billion is spent directly with SMEs. An additional £4 billion is spent with SMEs indirectly where SMEs are subcontractors to Government contracts. The wider public sector—for example, local authorities and NHS trusts—spends £147 billion a year on goods and services.

Government Departments have a target to pay 80% of undisputed invoices within five working days and report good performance against those targets, but the NAO study calls into question the idea that Departments are paying their suppliers promptly.

**Caroline Flint (Don Valley) (Lab):** My hon. Friend mentions the role of local authorities and health trusts as regards the supply chain in local communities. In my

area of Doncaster, I would add the Prison Service. I have three prison establishments in my constituency, and there is another prison within Doncaster town, and we can add to that the fire service and policing. A huge number of our more provincial towns and communities do not necessarily have the big corporate companies but are the supply chain for the public service in all its diversity and in meeting the needs of local people. It would be short-sighted not to look at how we can ensure within our communities that those public services pay our small businesses in good time.

**Bill Esterson:** My right hon. Friend makes a very good point. The public sector is an incredibly important part of the economy in many parts of the country. We have a collective responsibility, whether in Parliament or elsewhere, to get this right and ensure that the public sector is doing its bit. That is really important.

**Catherine McKinnell:** Speaking of areas of the country that depend on these issues, I have a useful figure that may help my hon. Friend. The accounting, payroll and human resources corporation Sage, which is based in my constituency, has suggested that £55 billion in outstanding invoices is currently owed to the UK's small and medium-sized businesses. That is an astounding figure and of great concern. The CBI's recent survey of north-east SMEs found that 53% of the worst offenders are large firms, but that a third come from the public sector, so the public sector represents a significant proportion of the significant sum of money that is outstanding.

**Bill Esterson:** Yes, and those figures are higher than in the 2012 Federation of Small Businesses survey. The figures demonstrate that, as I touched on earlier, the smallest firms that lack the ability to pursue cases are the most vulnerable to the problem of late payment, wherever it comes from. Certainly in the case of the public sector, we have a duty and a responsibility to ensure that payment is on time and to look after the smallest firms in particular and business in general. That is an important part of what the Government should be doing to encourage and generate our enterprise culture—this is the Enterprise Bill—and to ensure that the economy is successful through the support that the public sector can give to business.

I was talking about the four Departments that the National Audit Office looked at in detail: the Ministry of Defence, the Home Office, the Department for Business, Innovation and Skills and the Cabinet Office. The National Audit Office shows that those Departments' apparently good payment record is skewed by a high volume of low-value e-transactions with a few large suppliers. Those payments are dominated by large companies, such as the ones the Departments use to book train tickets and order office supplies. Basically, Departments can get close to hitting their payment performance targets just by using their procurement cards and by paying their e-invoices from a few large companies straightaway.

If we dig past the misleading top line and look past the e-invoices from large companies, we see a different picture. None of the four Departments that the NAO looked at measures its performance in paying SMEs, which typically use paper invoices. Looking at the average

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payment time for paper invoices shows that the time taken by the four Departments to hit the 80% payment target jumps from five days to between three and seven weeks—a very different picture.

The Asset Based Finance Association conducted research in 2014 that showed that the average wait for payment is still in excess of 40 days for some local authorities, and that the average wait for payment from local authorities is virtually unchanged over the past six years, from 17.7 days then to 17.3 days more recently. EU directive 2011/7 makes it mandatory for all public authorities to settle invoices in a maximum of 30 days from receipt. It is aimed at making pursuing payment a simpler process across the European Union and making payment on time the norm. One point that occurs to me from my experience of invoicing is that sometimes the date on which an invoice is received is a matter of great debate, because accounting departments may say that they have not received an invoice for many days, if not weeks. It will be interesting to see how that is to be defined; there are ways around the problem using electronic invoicing or recorded postal delivery, or suchlike, but most SME invoicing does not happen in those ways.

Under the directive, the failure of public authorities to pay within 30 days leads to interest of 8% being added from day one of late payment, subject to agreement on when the late payment is recognised. There is an admin fee of £40, £70 or £100, depending on whether the invoice is under £1,000, under £10,000 or over £10,000. That is a step in the right direction. However, the Local Government Association released a paper in 2014 saying that there is no evidence of any public authorities automatically adding the penalties when invoices are paid late. The Institute of Credit Management has said it is not aware that interest is automatically being paid. The House of Commons Library has also confirmed that it has not seen evidence of public authorities automatically adding the penalties—so the question is, how is this going to happen unless there is automatic addition of interest and penalties?

Although the user guide is clear, the automatic nature of the obligation is less clear when we review the specific statements in both the EU directive on late payment and the Late Payment of Commercial Debts Regulations 2013. Essentially, without automatic penalties, the interest and admin fees imposed for late payments still require SMEs to stick their head above the parapet and challenge their public sector customers. As I am sure all hon. Members are aware, that is a real problem. Once businesses start to challenge their own customers, they risk losing their custom later on, which is a real dilemma. It is the same dilemma that small businesses face with large suppliers, and it happens in the public sector as well. It is about businesses being asked to sour relations with their own customers.

I have an example from my own constituency. One start-up company had a contract with a public authority. The company was paid 30 days after the five-day terms laid out in the invoice. It had paid up front for the supplies needed to carry out the work, so it was left in a precarious financial position within six months of starting up. It could have made use of the rights available to it within existing legislation—a £70 administration fee

and interest on the contract value. However, when the debtor did not automatically add the interest and fee, the company chose not to pursue it. It told me:

“As a start-up, repeat business with the public sector is no different to repeat business with the private sector: we rely on both to get by, and we know that they have more options than we do about who to do business with. Of course we don't have to keep quiet, avoiding admin fees and interest on invoices—just like they don't have to use us again. It's a bad situation when you're lurching from one loan to the next because you aren't getting the money you're owed. But whether it's the public or private sector it's the same point—you don't bite the hand that feeds you.”

The Bill sets up the small business commissioner only to address complaints or disputes against large businesses. It currently excludes complaints against public sector organisations. Many small businesses find trading with the public sector very difficult, and we have seen some of the reasons why.

**Mary Creagh:** My hon. Friend has made an excellent point about the psychology of start-up businesses in particular—the David and Goliath psychology between the very small supplier and the very large purchaser. Does he agree that making the commissioner work with public authorities as well would force better financial management practice on those authorities? If the law states that they should pay within five days and they do not, but instead pay within 30, 60 or 90 days, the financial managers in the public sector who are doing that should be held to account. Levying fines and interest payments is a poor use of public sector money in these straitened times. At the end of the day, this is all taxpayers' money, and it should not matter to the financial managers whether it is sitting in their Treasury account or going to the small businesses who are in the community and creating jobs.

**Bill Esterson:** Yes, that is right. We are trying to create an opportunity for the small business commissioner to make sure that payment practices are carried out correctly in the public sector. As my hon. Friend says, there is a massive opportunity here to make sure that all public authorities are doing their bit to support the economy. The money could be out in the economy, going through small businesses that will then reuse it elsewhere. We get the benefits and the economic growth that comes from that.

**Mary Creagh:** It also occurs to me that if we end up with a two-tier system with the small business commissioner, we could end up in a paradoxical situation where small businesses would choose to supply the private sector rather than deal with public sector purchasers, and the public sector would miss out.

10.45 am

**Bill Esterson:** I thank my hon. Friend for that point: we might almost think that the Government had designed it so that that would be the consequence.

Many small businesses find trading with the public sector very different, because of late payment and retentions in the construction sector, and because of the arrangements for contracting, procurement and tendering. Given that the public sector is such a large part of the trade of small firms and one of their biggest markets, it seems odd that the small business commissioner is not going

to be constituted in a way that will allow support to be provided when the public sector is involved. That is the point my hon. Friend made. In fact, the issues of late payment and retentions, contracting, procurement and tendering are the same whether the business being contracted for is with the public or the private sector. The imbalance in the relationship between large and small is the same in both sectors, and the need for a level playing field is the same.

Public sector organisations that buy from the private sector should treat large and small businesses equally, yet many of the complaints from small businesses suggest that large firms have the advantage in tendering and other contractual matters in their relationships with both public and private sectors. Certainly my own experience in business was that it was almost impossible, as a small business, to get anywhere in tendering or even in getting past the pre-qualifying questionnaire. I know that that is a complaint often made by small firms: there seems to be an automatic decision to choose the larger firm when it comes to contracting.

If we want the small business commissioner to be as effective as possible, we should enable and, indeed, encourage him or her to explore and address the challenges where they lie and where small business wants support and advice. It makes sense for small businesses to have one place to go to for help, no matter the cause of complaint. If what the Government want the small business commissioner to address late payment as a priority, it makes sense for the commissioner to address late payment, not just some late payment. Whether a small business has difficulty being paid, progressing with tenders or developing its business with large customers, many of the same difficulties of anonymous organisations present themselves. The idea of a one-stop shop seems to make a lot of sense, and this group of amendments is an attempt to give teeth to the commissioner from the outset and not to limit his or her remit.

In the Lords, the Government said they did not want to include the public sector because there are other arrangements for complaints against the public sector, and for mediation. The obvious answer is that the difficulties that small businesses face are such that the existing arrangements are not sufficient, just as the existing arrangements are not sufficient in relation to late payment and other relationships between large and small firms in the private sector.

**Alan Brown** (Kilmarnock and Loudoun) (SNP): It is a pleasure to serve under your chairmanship, Sir David.

The hon. Gentleman makes a valid point. I agreed with what he said earlier about the relationships between businesses and their clients in the public sector. He pointed out that the current arrangements do not work. There is also a risk associated with Government cuts in the public sector, because one of the easiest places to make cuts is in the backroom staff who process invoices and so on. If the current system is not working, there is a risk that things will get worse for small businesses. It is really important that the public sector is included along with private businesses, so that the small business commissioner can hold them to account.

**Bill Esterson:** That is an excellent point, because it highlights the fact that when Ministers and Government MPs say that cuts can be made in administration or in

non-essential roles, there are consequences. As the hon. Gentleman says, one of the consequences is in accounting departments, and there is a potential knock-on effect of the late payment of small businesses. One reason why it would be a good idea to include the public sector is that the commissioner could shine a light on some of those problems, gaps and staff shortages. They could say to the Government that they should rethink the scale of cuts in the public sector, that the consequences of those cuts also have an effect on the private sector and the wider economy, and that perhaps those Treasury decisions should be reconsidered. Of course, that is much harder to do if the commissioner is part of the Department and owes his survival in post to the Secretary of State.

The Groceries Code Adjudicator was set up, albeit on a limited scale, and we could learn much from that experience when considering how best to set up the small business commissioner. When I say “a limited scale”, I mean that a three-day-a-week adjudicator with five members of staff is responsible for 7,000 suppliers with 300,000 indirect suppliers that are not even part of her remit.

The Groceries Code Adjudicator was set up to address the imbalance between large supermarkets and their suppliers, because there had been a long-standing problem. There is also a long-standing problem in how many small businesses are treated by some public sector organisations, and the creation of the small business commissioner is an opportunity to address problems for small businesses, regardless of where those problems originate. That includes working with the Groceries Code Adjudicator.

One learning point from the Groceries Code Adjudicator, by the way, is that she has spent much of her time explaining to suppliers and others what her role and remit are, leaving her much less time to devote to addressing the concerns of the industry, which was why the office was set up in the first place. Maybe that is one reason why, after two years, she has held only one investigation, welcome though that investigation of Tesco is. We should take that experience on board.

The adjudicator has raised concerns about suppliers' reluctance to complain and difficulties in ensuring confidentiality in the complaints process. We will move amendments on those points later in our discussions. Hopefully, we can learn from the Groceries Code Adjudicator to ensure that the small business commissioner is as effective as possible, as early as possible.

On the relationship between small businesses and the public sector, there are sometimes supply chain situations in which a small business supplies goods to a private sector customer, who in turn contracts with the public sector. My hon. Friend the Member for Wakefield made that point earlier. Construction is a good example; we will come to the issue of cash retentions in the construction industry numerous times in our deliberations.

If a small business is not paid by a larger customer, which in turn is struggling because of delays by a public sector organisation, I can see how the small business might approach the small business commissioner for help but be told that the complaint is beyond the scope of the small business commissioner due to the involvement of the public sector. The simple answer to that and other disputes with the public sector is for the small business commissioner to be able to intervene in all cases brought to him or her by small businesses. As the

[Bill Esterson]

Minister did not respond earlier to the point made by my hon. Friend the Member for Wakefield about supply chains involving the public sector, perhaps she will do so this time.

The amendment also address the fact that most small business trade is with other small businesses; again, larger firms and the public sector are often somewhere in the supply chain. I believe that such disputes are also excluded from the small business commissioner's remit, unless the Minister tells us otherwise. There is a wider business environment, and for the small business commissioner to deliver, it needs to be able to do so regardless of the nature of the parties involved.

During the debate in the other place, I noticed that there was discussion of how late payment could not be considered in isolation. It was suggested that to address late payment effectively, the small business commissioner would also have to consider commissioning and operations. As hon. Members will know, payment in business is due only if a contract has been properly agreed and completed to the satisfaction of both parties. There are legal definitions of what constitutes the completion of a contract, which go beyond my limited knowledge of the law. The argument was made in the Lords that late payment is often the result of disagreement about contract matters and about whether a product or service has been delivered as agreed. As a result, it is difficult to see how the small business commissioner will be able to consider late payment in isolation.

The point was also made in the Lords that if small businesses want help with late payments or anything else and are told that the Government have set up a wonderful new service, but are then told that the small business commissioner is not allowed to help with their particular problem, they will feel let down by the Government. It will reinforce the impression that the Government are not really interested in helping; that they are not really on their side; that they stand up for some groups, but not others; that they are there for the Googles and tax havens of this world but not for small businesses. That impression already exists through measures such as the introduction of quarterly filing of tax returns, the scrapping of the growth fund and business accelerator and the movement from grants to loans for small businesses. The creation of the small business commissioner is an opportunity to put some balance back, but only if it is done in the right way. That means not restricting where the small business commissioner investigates. It should be able to look at other elements of the business relationship, including commissioning, procurement and operations, and its remit should include the public sector and other small businesses.

The Government want the small business commissioner to concentrate on late payments. Given the scale of the problem, we do not object to that, although it is not the way in which the Australian commissioners have been set up. The advice from Australia, from the excellent Mark Brennan, has been that having late payments as the commissioner's main focus might limit the role, because late payment is about a lot more than the immediate issue of whether a particular invoice is late. The commissioner could and should be able to do a lot more, and should have an important role in improving the wider business environment for small business and

the economy as a whole. Better information is an important part of having a successful economy, with low barriers to entry, that encourages and supports the growth of businesses of all ages and sizes. Having the appropriate regulations to ensure fair competition is another important element.

It is clear from the successful work of Mark Brennan that there is an opportunity for our small business commissioner to provide information and work towards the right kind of regulation that ensures a fair economy. On Second Reading, the hon. Member for Huntingdon (Mr Djanogly) raised concern about the narrow remit of the small business commissioner, and I agree with him that it lacks teeth. There is an opportunity for the commissioner to do much more than look at 500 late payments a year when there are 5 million small businesses. That sounds like just scratching the surface.

Lord Mendelsohn made the point that the small business commissioner could look at so much more, including

“access to information and education; advocacy to government; investigation of small business complaints and business behaviour; facilitating the resolution of disputes, including and especially through mediation; influencing small business-conscious government and other key stakeholders, including regulators, media and the business community; and ensuring that such a commissioner would operate with an attitude of being concerned with substance rather than technicality and a dedication to resolving disputes by encouraging commercially realistic attitudes”.—[*Official Report, House of Lords, 25 November 2015; Vol. 767, c. 733*]

He also made the point that an effective small business commissioner should be expected to help the wider business environment and the economy as a whole, as his or her role is to ensure fairness, not to see one party succeed at the expense of another.

The Lords were also concerned that a mediation role was to be excluded from the function of the small business commissioner. In Australia, the ability to resolve disputes through mediation and direct involvement has been one of the reasons for the success of the office across the country and in a number of different states. Mediation has meant the commissioner working with large businesses as well as small and has enabled the small business commissioner to build profile, credibility and influence. In Australia, if a large firm refuses to take part in mediation with the small business commissioner, that can be taken into account when costs are being considered during court action. The Australian small business commissioner has teeth—very sharp ones—and it is a great shame that ours appears to be lacking in bite. The small business commissioner's ability to direct small businesses to another organisation that may be able to help clearly has value, but in some cases the commissioner may well be best placed to help and, as in Australia, may be more effective in a wider sense. The purpose of the amendments, which relate to the public sector, is to give a wider sense of how we can build on the commissioner's initial role of tackling late payments.

11 am

**Anna Soubry:** Again, I shall keep my comments specifically to the amendments. The small business commissioner's main role will be to address the problem of late payments, and the biggest problem that small businesses face with late payments is bigger businesses not paying them in the way that they want. However,

there is also a problem with the public sector. Our consultation made it clear that people did not want a duplication of existing ways and means by which small businesses can ensure that public bodies pay on time. If we expanded the small business commissioner's remit to include public bodies, we would duplicate pre-existing ways of raising a complaint and dealing with the problem.

**Caroline Flint** *rose*—

**Mary Creagh** *rose*—

**Anna Soubry:** I am going to continue. I will take some interventions, but not yet.

This Government are on the side of small businesses and, in the Public Contracts Regulations 2015, we now have strict rules obliging central Government to ensure that 80% of undisputed invoices are paid within five days. As a result, I am pleased to say that my Department paid 98.6% within five days and 99.5% within 30 days. The first quarter statistics for 2015-16 show that, on average, central Government Departments paid 89% of undisputed invoices in five days. We have set clear rules for how we expect all public authorities to deal with small businesses in particular.

However, notwithstanding the regulations that we introduced, the strong messages that we are sending out and the way in which we are putting into practice what we preach, there is evidence that that does not necessarily go all the way through the supply chain. I think that was the point that the hon. Member for Wakefield was making, and no doubt the concern of the hon. Member for Doncaster—

**Caroline Flint:** Don Valley.

**Anna Soubry:** The hon. Member for Don Valley, rather.

**Caroline Flint:** Right honourable.

**Anna Soubry:** Sorry, the right hon. Member for Wakefield—

**Mary Creagh:** No.

**Anna Soubry:** Oh, she's not right honourable. Anyway, that was their point, and it is important. At first blush, it looks like a good idea, but there are pre-existing ways of tackling the issue. If we were to extend the small business commissioner's powers, the danger is that we would duplicate existing ways of curing the problem. It was made clear in our consultation that that was exactly what small businesses did not want. For that reason, I urge hon. Members not to support what looks, at first, like a good idea. The Public Contracts Regulations 2015 are in place, and the guidance is absolutely clear to everyone involved in the spending of public money through public authorities, whether local government or hospital trusts.

If the process is not working, there are ways of curing mischiefs. First, any small business will the ombudsman service available to it. The local government ombudsman is a good example of a pre-existing body that can take up complaints. The second—although I accept that it may not be well known—is the mystery shopper service. I completely accept that its title does not give much clue

about the huge work it can do, but we know that it is working. I refer hon. Members to one of the excellent speeches—in fact, all her speeches were excellent—of my noble Friend Baroness Neville-Rolfe, who is a Minister in my Department. In Committee in the other place, she gave a really good example from the Ministry of Defence of where a small business in a supply chain had found it was not being paid in the way it should have been. It used the mystery shopper service, which can be done anonymously. The problem was solved and that small business got exactly the result it wanted.

I have no difficulty with ensuring that the influence and investigatory powers of the mystery shopper service are made more widely available. It is a good example of the pre-existing means and methods by which small businesses can take action against public authorities other than going to law. No doubt we will come to this in debates on further amendments, but we have to be very careful, because if a company has agreed to a contract and seeks redress, it will have to go to law. We are looking at alternatives to that, because of what we know about companies pursuing things by way of legal action.

**Mary Creagh:** I am delighted to hear about Baroness Neville-Rolfe's conversion to being on the side of the small company, given that she spent most of her career working for Tesco, which has just been censured by the Groceries Code Adjudicator for its massive, systematic non-payment and late payment of small businesses, which was a clear use of late payment for treasury management and an abuse of its suppliers in asking them to pay up-front fees for the privilege of supplying Tesco. There is more joy in heaven over one small sinner that repented, as the prodigal son parable tells us.

I would expect the Department for Business, Innovation and Skills to pay its suppliers on time. If the Government Department charged with looking after small businesses does not do it, what hope is there for the rest of Government? Where is the evidence that the regulations brought in last year have forced changes in payments? For example, is there any evidence of that in the case of the largest purchaser of goods, services and equipment, the Department of Health?

**The Chair:** Order. This is an intervention rather than a speech, so will the hon. Lady come to a conclusion?

**Mary Creagh:** I now regret not making a speech—this only came to me as I was listening to the Minister. Is there evidence of any behaviour change towards small businesses in national or local government? Will she set out, for the record, what the mystery shopper service is, because I am sure that people reading *Hansard* will be keen to know.

**Anna Soubry:** I thought I had read out the figures that show a huge change; I am happy to read them out again. I am resisting all temptation to say that it is rather strange that the Labour party seems to have done diddly squat during the 13 years when they could have solved all these problems. This Government have made a significant change. For the purposes of *Hansard*, I repeat that BIS paid 96.8% of those undisputed invoices

[Anna Soubry]

within five days and 99.5% within 30 days. I am happy for us to get all the statistics, if they exist, that show the real strides we are taking.

**Caroline Flint** *rose*—

**Catherine McKinnell** *rose*—

**Anna Soubry:** I will give way in a moment. I know that it is difficult for Labour Members—they can dish it out, but they can't take it. There is real evidence that we are seeing this trickling all the way down. However, as I have conceded—I am being as fair as I hope to be—I am concerned that it is not going all the way down through the supply chain. I have conceded that the name of the mystery shopper service may be a little not brilliant, but what is important is whether it delivers. There is absolute evidence that it does.

I think my noble Friend Baroness Neville-Rolfe would take exception to the rather cheap dig made about her, because she is absolutely on the side of small businesses. I know that she has been involved with a number of small businesses. For the record, she was not on the board of Tesco when it behaved in that unacceptable way. Thank goodness that a Conservative-led Government introduced the Groceries Code Adjudicator to bring Tesco to book—but we are going off the point. She gave a good example from the Ministry of Defence of exactly how the mystery shopper service is working. The more we advertise it, the better.

**Caroline Flint:** Of course, as head of public affairs, Baroness Neville-Rolfe spent a lot of time defending how Tesco treated farmers and everyone else. The problem is not going to go away, whatever the outcome of these proceedings.

Can the Minister, to help the Committee, provide us with full details in writing of the record of every Department, and maybe also some other parts of the public sector, on payments? The issue is not just about payment from a Department to one supplier; often other, smaller suppliers are subcontracted as well. It goes way beyond that. It is a missed opportunity, particularly for the number of areas of the country, including my own, in which small and medium-sized businesses depend on the public sector in all its variety, not to include them in the Bill.

**Anna Soubry:** If those figures exist, of course I am more than happy to share them. However, as I have said, the first quarter statistics for 2015-16 show that on average, central Government Departments paid 89%—we have exceeded our own target—of undisputed invoices within five days. However, I absolutely agree with the point that the right hon. Lady was trying to make, which is—

**Caroline Flint:** Will the Minister give way?

**Anna Soubry:** At least let me finish my point. My point is that the problem may well exist within the supply chain. We know that regulations from central Government are hugely important in driving the change

required. We also know three things. First, there are ombudsmen who can absolutely assist in curing such mischief. That is the first place where many small businesses can go. Secondly, there is the mystery shopper service, which, as I have said, is already providing evidence that it is curing the problem.

The third way in which we ensure that cultural change occurs—we must be honest about this—is when a small business comes to us as constituency MPs: we are in a unique position to go to our local authorities. We usually do so rather quietly; it does not have to involve bells and singing and dancing. We speak to the leadership of our local authorities, both officers and councillors—often of our own persuasion, although that matters not—to say, “I have an example of a small business. I won't give you their name, but I have evidence, and I am concerned. Let's change the culture within our local authority and do something about it.”

For example, somebody has approached me with a problem relating to a construction project of which I am aware. As the Minister, I am taking that up directly with the chief executive of the hospital trust involved to ensure that the trickle-down of cultural change goes all the way through the supply chain.

**Caroline Flint:** The Minister makes an interesting point about the role of MPs. One could say the same about MPs going to businesses in communities and making the point there, but the Bill offers support for the small business commissioner to deal with the private sector.

On the point that the Minister made about the percentage of undisputed bills that are sorted, does she not agree that the extent of business that goes on varies enormously across Government? I gently suggest that it might be interesting to compare the transactions between the Department for Business, Innovation and Skills and SMEs with the volume and size in monetary terms of the contracts between the Department of Health, for instance, and the small business community. I would say they are very different. I hope she will write to the Committee to provide more detail about volume and monetary value, because 89% in BIS may be very different from, say, 70% in the Department of Health or elsewhere.

11.15 am

**Anna Soubry:** The Department of Health, no doubt, has very few contracts because it is not the Department that delivers, but the clinical commissioning groups and hospital trusts. It is important that the Labour party understands how the Government and business work. The Government and the previous Conservative-led Government simplified public sector procurement and abolished the pre-qualification questionnaires for low-value contracts, to back up and assist small businesses and make our lives considerably easier. Those are examples of the real-life things that we have done.

**Alan Brown:** On the previous point about the trickle-down effect, the Scottish Government are trialling a project bank account system for public procurement, whereby payments to the main contractor go into a project bank account and smaller payments that would normally

trickle down to the supply chain are ring-fenced for sub-contractors and other people in the supply chain. They get their money right away without going through middle men or the main contractor. Is that something that the UK Government will consider in due course?

**Anna Soubry:** As I said, I am going to try to confine my remarks to the amendments.

**Lucy Frazer:** The Minister is making a very good point about why public authorities are in a very different position from private entities, but does she agree that the duty of candour in litigation is an additional reason why they are different? When a case is taken against a public authority, it has a duty not to fight it as a commercial entity; fairness, not commercial success, must prevail at the end of the day. That is an additional reason why public authorities are in a different position.

**Anna Soubry:** I am grateful for my hon. and learned Friend's very sensible contribution. She reminds us that this is not necessarily about Government. Public authorities are a huge sector in our society, and they rightly have different levels of accountability.

I remind hon. Members of Lord Mendelsohn's words when this matter was debated in the other place:

"Of course, the origins of the Small Business Commissioner in Australia... came from very different circumstances and functions. In fact, late payment was never really part of the role. It still does not do that much."—[*Official Report, House of Lords, 26 October 2015; Vol. 756, c. GC116.*]

We can learn from that experience, but we need to understand that it has different roots and seeks to tackle different problems. We can learn much from it about the qualities needed in the small business commissioner. We must ensure that he or she focuses on the real mischief, which is late payment between bigger and small businesses. We are determined to tackle that problem.

**Bill Esterson:** There has been a very interesting series of exchanges during the Minister's remarks. She mentioned the Australian experience and quoted Lord Mendelsohn's analysis of what happened. The Australian small business commissioner was set up not to resolve late payment, but to deal with a number of other matters, including advice, complaints, mediation and small business support. Mark Brennan, the Victorian small business commissioner, advised that this approach should not be used to go after late payments.

**Anna Soubry:** I am sorry, Sir David. I did not intend to intervene, but this is important. I spoke to that gentleman, and he gave the most outstanding advice about and support for the small business commissioner's ability to deal with late payments. He advised me about the qualities that the commissioner needs to act as effectively as he did. It is important that I put that on the record.

**Bill Esterson:** Lord Mendelsohn had a long meeting with that commissioner and spoke to him a number of times. The clear sense we were given was that the success in Australia has been about other matters; actually, when it comes to late payment, there has not been a

success. There has not been the progress on late payment and Australia is probably not the place to go to learn about action on late payment. That was the evidence that was taken and very clearly set out by *Hansard* in the Lords. That is, of course, one reason why we are tabling these amendments: they are about learning from the success that Mark Brennan has had and the advice he has been able to give on those matters.

The Minister talked about success. As my right hon. Friend the Member for Don Valley said in an intervention, we would expect BIS to pay every invoice on time—of course we would. It would be not just bizarre but quite disturbing if BIS did not have a very high success rate when it came to undisputed invoices being paid on time, but that does not take away from the fact that, right across those four Departments, a significant level of late payment still exists. The Federation of Small Businesses figures for 2012 show 27% in local government and 29% in national Government, and my hon. Friend the Member for Newcastle upon Tyne North cited a higher figure of 34%. There is still a phenomenally big problem of late payment in the public sector when it comes to small businesses.

The Minister cited the example of trying to support a construction firm involved with the NHS—I commend her for trying to solve the problem, as others of us have tried. She will have found it almost impossible, I suspect, to prevent the NHS trust from knowing the identity of that construction firm when she took that complaint to them. There is always the risk, as I said earlier, of a loss of business later on. That is one of the concerns expressed again and again by small businesses: that when they complain and put their heads above the parapet, they lose future business. It damages the business relationship irreparably. This is one reason why it is so important that there should be an independent opportunity. We will come to anonymity and confidentiality later.

A large number of small businesses are still involved. The Minister mentioned the point about prequalification questionnaires having been removed. I am sure that she speaks to businesses, as I do, who say they consider it a complete and utter waste of their time to even try to get business directly with the public sector. Their experiences and the experiences of associates, friends, business competitors and collaborators alike, has been of a lack of success in the past.

I do not think we have had an adequate response. I do not think we have dealt with the issues around the supply chain or with the problems around the scale of the problem of paper invoices for small businesses. We did not get an answer about how the mystery shopper scheme works; it is something of a mystery, the Minister seemed to say. I do not think she sounded confident in it herself.

**Anna Soubry:** I am; it works.

**Bill Esterson:** I would love to know what the remedy is when the scheme identifies a problem, but we did not hear about that; perhaps we will later. With those remarks, I would like to press the first amendment in the group and test the will of the Committee.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 10.*

**Division No. 2]**

Bardell, Hannah  
Brennan, Kevin  
Brown, Alan  
Creagh, Mary

**AYES**

Esterson, Bill  
Flint, rh Caroline  
McKinnell, Catherine  
Morden, Jessica

**NOES**

Argar, Edward  
Barclay, Stephen  
Churchill, Jo  
Frazer, Lucy  
Howell, John

Lewis, Brandon  
Mackintosh, David  
Pawsey, Mark  
Solloway, Amanda  
Soubry, rh Anna

*Question accordingly negated.*

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*