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Public Bill Committee

IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL

Third Sitting

Thursday 14 February 2019

(Morning)

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Monday 18 February 2019

The Committee consisted of the following Members:

Chairs: †Sir David Amess, Graham Stringer

† Badenoch, Mrs Kemi *(Saffron Walden)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
† Crouch, Tracey *(Chatham and Aylesford)* (Con)
† Dakin, Nic *(Scunthorpe)* (Lab)
Davies, Glyn *(Montgomeryshire)* (Con)
† Duguid, David *(Banff and Buchan)* (Con)
† Green, Kate *(Stretford and Urmston)* (Lab)
† Khan, Afzal *(Manchester, Gorton)* (Lab)
† Maclean, Rachel *(Redditch)* (Con)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
McGovern, Alison *(Wirral South)* (Lab)
† Maynard, Paul *(Lord Commissioner of Her Majesty's Treasury)*
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Nokes, Caroline *(Minister for Immigration)*
† Sharma, Alok *(Minister for Employment)*
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)

Joanna Dodd, Michael Everett, *Committee Clerks*

† attended the Committee

Witnesses

Bella Sankey, Director, Detention Action

Ilona Pinter, Policy and Research Manager, The Children's Society

Steve Valdez-Symonds, Refugee and Migrant Rights Programme Director, Amnesty International UK

Adrian Berry, Chair, Immigration Law Practitioners' Association

Jurga McCluskey, Partner, Head of Immigration, Deloitte LLP

Hilary Brown, Immigration Supervisor (Head of Department) and CEO of Virgo Consultancy Services Ltd

Martin Hoare, Senior Partner, H&S Legal Solicitors

Public Bill Committee

Thursday 14 February 2019

(Morning)

[Sir David Amess *in the Chair*]

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Examination of Witnesses

Bella Sankey, Ilona Pinter, Steve Valdez-Symonds, Adrian Berry and Jurga McCluskey gave evidence.

11.30 am

The Chair: We will now resume our public evidence gathering on the Bill. We have representatives present from Detention Action, the Children's Society, the Immigration Law Practitioners' Association, Deloitte and Amnesty International.

I do not know whether any of our witnesses have appeared before parliamentarians previously, but the idea is that this should not be intimidating. It is simply a procedure whereby parliamentarians gather evidence so that when we move on to line-by-line scrutiny later in Committee, we are better informed.

Will everyone introduce themselves, starting with Ms Sankey?

Bella Sankey: My name is Bella Sankey. I am director of an organisation called Detention Action. We support individuals who are detained in our immigration detention system at the Harmondsworth, Colnbrook and Moreton Hall centres.

Ilona Pinter: My name is Ilona Pinter. I am policy and research manager at the Children's Society. We work with children and young people facing multiple disadvantage across the country, including British nationals, European economic area nationals and non-EEA nationals.

Steve Valdez-Symonds: I am Steve Valdez-Symonds. I am the refugee and migrant rights programme director at Amnesty International UK.

Adrian Berry: I am Adrian Berry. I am a barrister and the chair of the Immigration Law Practitioners' Association. We represent barristers, solicitors and other immigration advisers.

Jurga McCluskey: I am Jurga McCluskey. I am a partner and head of immigration at Deloitte, representing a number of businesses in the immigration sphere.

The Chair: We have until 12.30 pm for this session.

Q221 Afzal Khan (Manchester, Gorton) (Lab): Good morning to you all. Let me start with a question for everyone to answer. Clause 1 of the Bill will repeal free movement and subject European Union citizens to the UK's immigration system. Do you think that the system is robust enough to deal with that influx? What are your biggest concerns?

Bella Sankey: As you say, clause 1 is incredibly significant, repealing free movement and bringing those resident here under regulation, within the scope of our immigration laws as they stand. Our major concern is the potential impact on the immigration detention population. We think that the Bill has far-reaching potential to make many more people liable to immigration detention. There is a real risk that we will see a similar situation develop to that of the Windrush scandal, with people who have the right to be here detained indefinitely for long periods. Even if a tiny fraction of people with the right to claim residency here under the settled status scheme did not do so, tens of thousands of individuals could be detained. We do not think that that system is currently fit for purpose, and we think that there needs to be a statutory time limit on detention, to guard against that risk.

Ilona Pinter: I echo Bella's concerns. Obviously, the Children's Society is particularly concerned about children and young people and their families. According to Migration Observatory figures, there are 900,000 children in non-Irish EU families in the UK. That is a significant proportion of the population, and more have come since then. More than half those children were born here, and some may be British citizens, although there are some discrepancies between those who have actually registered their citizenship and those who will need settled status.

We emphasise to the Committee that although some children will be able to get settled status through the EU settlement scheme, citizenship would be in the best interests of many of them. It will be important to consider that throughout the Bill.

We also have concerns about those who will not be able to regularise their status after Britain leaves the EU, and those who arrive after that. We work with many children, young people and families across the country who are currently subject to migration controls. Our experience of that is that children face significant difficulties in making sure that their welfare, safety and long-term outcomes are protected. We fear that a greater number of children will be subjected to that process.

There is an opportunity here to put right some of the challenges in the current immigration system. We urge Committee members to look at some of those opportunities.

Steve Valdez-Symonds: The short answer to the first part of your question, so far as Amnesty International is concerned, is: no, the system is not, as you put it, robust or fit for what is about to happen. There are, in broad terms, two major impacts.

There are the large number of people who will suddenly become subject to the fullness of this system. There are also, of course, a large number of other people who are already subject to it. The dysfunction of the system can only be expected to get worse for those people, given that it will be dealing with a much larger body of people—people already living here, and the European nationals who make future applications that the system will have to deal with.

If anyone had doubts about how unfit the system is, they should surely look back to what was revealed last year by the Windrush scandal. In response to that, Amnesty emphasised throughout that it was not a short-term scandal. It was not something that had happened for merely a few months or even a few years. Those issues have been going on for many years.

The system has been robbed of the safeguards that people need, and it has been made extremely complex. I am afraid that, as was made explicit in the quite clear evidence that Professor Bernard Ryan gave to the Committee on Tuesday morning, all we have in the Bill

is the switching off of rights for a large number of people without any indication of how their futures will be protected.

The other thing I should like to flag from Professor Ryan's evidence in response to your questions is that he very properly highlighted the implications not only for people already settled and living in this country but for the future of their descendants. That is a major problem, not least because not only has nothing been done to protect the future status of those who will need to apply for settled status under the new system, but nothing has been done—in some ways more importantly, for those children—to confirm what the status of their parents has been over the last several years. Many of the children we are talking about will have been born in this country, possibly as British citizens, but nobody knows, and in the future no one will be able to prove it.

Otherwise, with entitlements to British citizenship, I am sad to say that this Government have continued the policies of the previous Government by putting hurdles in the way of citizenship rights with fees that are, in our view, far in excess of what is appropriate for people to claim their statutory rights under our British nationality law.

Those matters, and many more, have not been addressed either in preparation for the Bill or on its face. The Bill contains wide powers to make enormous changes to our laws, but no indications or safeguards have been presented as to how that will happen.

Adrian Berry: The question was about clause 1, not about the Henry VIII powers in clause 4. There is a complete change from free movement to the immigration rules. We are changing from a permissive system where people can circulate in and out to a one-directional system where migrants come and are on routes to settlement.

What is really changing is the economic migration rules for EU citizens, who in essence will have to satisfy the tier 2 general work permit regime. At the moment, the Home Office deals with 20,000-plus work permits a year. EU migration for economic purposes will be greater by several orders of magnitude. If the question is whether the system for economic migration is robust enough, the answer is no, because the capacity is not there to deal with it.

The White Paper adopts the Migration Advisory Committee's recommendations, which gives you some idea of where the Home Office wants to go but does not tell you anything about how it is going to work in practice. You are talking about a multiple factor of four, five or six in terms of the number of work permits that may have to be issued, and there is simply no real understanding of that.

Nor is there any understanding of how people will come and go to provide services on a short-term basis. The permitted paid engagement route and the business visitor rules are simply inadequate to replace the free movement of services. For example, under the permitted paid engagement route, you can only come for a month and take a fee from a UK-based client. There seems to be no thinking about that. It is certainly not on the face of the Bill, and it is not in the White Paper, so we are very short on detail.

Clause 1 is of course necessary for replacing free movement with a domestic system of immigration control, and schedule 1 reflects that commitment, but it does not tell you where the direction is. When you combine that with clause 4, which gives the Secretary of State wide powers to make regulations in the absence of Parliament, essentially usurping the function of Parliament—and of you, if you are not on the payroll—to make legislation, that creates a very dangerous situation.

Jurga McCluskey: EU inflows accounted for close to 49% of total non-British inflows to the UK in 2016. I realise these are old numbers, but they are the most recent ones I could get hold of. In the first quarter of 2017, approximately 2.4 million EU-born people were employed in the UK. Stuart McDonald asked in a previous sitting how many Europeans are working here in the UK. I do not think we can say how many are working, but I can honestly say I do not know of a company here that does not employ European workers.

Statistically, around 69% of EU nationals who come here do so to work, very closely followed by other requirements, such as study and so on. For me, and I think for business, it is really important that we facilitate the replacement of freedom of movement with a sophisticated system that is simple and flexible enough to allow us to accommodate that influx of people—adding to the overall management of the population in terms of immigration—but that also allows flexibility. Immigration rules and immigration laws need to be flexible, because we are adapting to a very fast-changing environment.

The Chair: A quarter of our time has already gone, but I wanted to give our witnesses the opportunity to respond to the overall question about how they feel about the Bill. A number of colleagues wish to ask questions. It is not necessary for everyone to give a view on every question. I hope that is understood.

Q222 Afzal Khan: Adrian, you talked about the Henry VIII powers in clauses 4 and 5. To what extent do those go beyond the powers the Secretary of State currently has? Is there anything that Ministers would need those powers to do that they cannot do already and is not so big that it would require primary legislation?

Adrian Berry: In my view, it is a grab on the functions of parliamentarians generally. You need to make a case for the use of Henry VIII powers—the idea that Ministers can make statutory instruments that amend primary legislation—under our constitutional order. There has to be some pressing need. The European Union (Withdrawal) Act 2018 already domesticates EU law and makes it our law. The question is: what is the case for not using primary legislation when you are considering the fundamental rights of migrants, who are, of course, unfranchised?

What drops out of the picture is your role as Members of Parliament to scrutinise parliamentary legislation in Committees such as this. It is true that you have the affirmative resolution procedure, but it is clearly a poor substitute for primary legislation and the scrutiny you get in Select Committees. The law is already domesticated under the European Union (Withdrawal) Act. The Home Office memorandum to the Delegated Powers and Regulatory Reform Committee simply says, "We need this power because we have things to do." That is not good enough. This is not needed urgently. You should not make yourselves redundant. You should retain your function at the level of making primary legislation in this area.

That particularly applies to social security, which is of course about not means-tested social assistance but the contribution-based benefits that people have paid into through their national insurance contributions in this country and other countries. It is a system that even non-EU countries, such as Morocco and Turkey, adhere to in the non-EU legal order.

The Chair: My colleague has just one more question, and then I am going to Maria Caulfield.

Q223 Afzal Khan: To follow on from that, could the Government use the powers in the Bill to amend immigration legislation affecting non-EU citizens?

Adrian Berry: Yes, they could. The power in clause 4 is broad enough for a Secretary of State to make legislation—in fact, by using the negative resolution procedure in certain circumstances—that has an effect on third-country nationals. That is, of course, an additional concern.

Q224 Afzal Khan: Does anybody disagree with that position—that the Government could use the powers in that way?

Steve Valdez-Symonds: No. It is explicit in clause 4(4) that it can be used for precisely the people you are referring to.

Q225 Maria Caulfield (Lewes) (Con): I have a question to Bella Sankey on your concern about removing indefinite detention. I do not necessarily disagree with that, but I am interested in why you are supporting a 28-day limit. What is the rationale behind 28 days?

Bella Sankey: Thank you very much for the question. A limit of 28 days has been put forward as a principled, practical cumulative backstop for immigration detention. It reflects what the Home Office says its policy on detaining people is. Home Office guidance is clear that detention should happen only as a last resort, when there is the prospect of removal within a reasonable time, and when the prospect of removal is imminent. Imminence is defined as three to four weeks, so we are proposing a time limit that would reflect what the Government say their policy is on detention.

Through our casework, we see that that is not how detention is currently used. Detention Action has clients who have been detained for months or years—coming up to two years in some cases. Those are not unusual cases. Under our present system, the longest period that someone has been detained for is four and a half years. That makes the case for why a time limit is crucial.

We are proposing a 28-day backstop that would be accompanied by early judicial oversight of decisions to detain. That would mean that, after a period of days, the Home Office would need to go before a judge and the immigration tribunal. The tribunal would be able to decide whether to grant bail by looking at whether the decision to detain was really necessary and whether removal is genuinely imminent. That important safeguard should accompany any time limit to safeguard against the risk that, if 28 days is introduced as a statutory backstop, that becomes the norm. We would not want to see that.

Q226 Maria Caulfield: Is your proposal across the board for all detainees, or would it exclude groups such as foreign national offenders?

Bella Sankey: The proposal is for a universal time limit that would apply to all. We think it is an important matter of principle that no one should be detained under immigration powers unless their removal is genuinely imminent. Again, that is nothing more than a reflection of current Home Office policy and guidance. We do not see any need to detain any group for longer than that.

People with previous convictions have served criminal sentences if they received a custodial sentence for their conviction. There is no need for a further detention—an additional punishment—for that group. It is also worth mentioning that many of the trafficking survivors and victims of modern-day slavery who we see in the immigration detention estate have convictions because they have been coerced into criminality. We think it is a false distinction to make between people with convictions and those without, because it really does not speak to the wider circumstances. In many cases, it is people with convictions who are actually the most vulnerable—people who have experienced torture and extreme forms of trauma.

Q227 Gavin Newlands (Paisley and Renfrewshire North) (SNP): Further to the questions that were posed on detention, we have just got a comprehensive response on why it is limited to 28 days detention. Could you highlight the main differences between the amendment to the Bill that Detention Action has proposed and the so-called Harman amendment that has received some prominent backing? I am conscious of Sir David's direction, but could the rest of the panel give a yes/no response to whether you agree with limiting detention to 28 days?

Bella Sankey: I am afraid that I cannot speak to Harriet Harman's amendment, because I believe that it has not been published. I can speak to the safeguards in our amendment, if that would assist.

Q228 Gavin Newlands: I think the amendment is known publicly. If you are aware of that amendment, it would be useful if you could highlight the differences between the amendments.

Bella Sankey: I understand that it has been suggested that a detention time limit amendment could exclude people with convictions. I have explained many of the reasons why, in our view, that is not a sensible thing to do. There is an additional point that is highly relevant. An amendment that sought to exclude people who have served custodial sentences of a certain length—for example, at least 12 months—would be contrary to EU law, and so it would likely be found unlawful. I do not think that is a recommended course of action. As I have just indicated, there are severe drawbacks to excluding a category of people who often have the most acute vulnerabilities, including asylum seekers who have convictions for document offences, people who have convictions because of extreme destitution and so on.

As I referenced earlier, people who have received criminal convictions and custodial sentences serve time in prison. The explicit objective is to provide deterrence, punishment and rehabilitation. As you will know, our criminal justice system has been designed and equipped so that if people who have committed serious offences are released from prison, they are subject to a regime of licence, probation and initial management in the community in order to ensure public safety.

With our current system, people with convictions are often immediately sent straight to immigration detention after their custodial sentence finishes. They might spend their entire period of licence in detention, only to be released back into the community. It is important for the Committee to acknowledge that over half of people who are detained are ultimately released back into the community, which means that some people who have committed more serious offences are not given the proper support, supervision and monitoring that might be necessary to ensure public safety.

Immigration detention currently creates a kind of parallel system that essentially removes people from the criminal justice system and its safeguards.

Gavin Newlands: Does the rest of panel agree with the 28-day detention limit?

Ilona Pinter: We obviously work with children, who are generally not detained. For young people who are turning 18, we agree with that limit. I want to echo what Bella has said. It is a real concern, particularly for victims of modern slavery. The modern slavery review panel is currently looking at those issues, particularly the use of a statutory defence and non-prosecution principles. We continue to see lots of young people who end up in immigration detention, so we would very much support that.

Steve Valdez-Symonds: Amnesty strongly supports the introduction of a time limit. If anything, in our opinion, 28 days is a very long period of time. It is certainly a period of time that should be applied to all people facing removal from this country, whatever their past. We ought to remember that many of the people we are talking about, in respect of deportation following criminal offences, are people who have grown up in this country and, indeed, in some instances, were born in this country—people with rights to British citizenship that have been long overlooked and who should certainly not be facing deportation in the first place.

Adrian Berry: Briefly, it is a rule of law issue. Twenty-eight days should be the outside limit. There should be automatic bail hearings and judicial oversight. Both the Bar Council, representing barristers, and the Law Society treat this as a rule of law issue, and they support that amendment.

Jurga McCluskey: It sounds very sensible to me, so yes.

Bella Sankey: Can I add one more thing? I do not think I answered your question about parliamentary support. It is my understanding that there is widespread support among your colleagues for a universal time limit on immigration detention. Some of you may have seen a story in *The Times* newspaper today—11 Conservatives wrote to the Home Secretary on Tuesday to say that they support a time limit for all. It is also my understanding and my reading of the manifestos of the Opposition Front Benches that a time limit for all is supported. It is our understanding and our view that there is actually a great deal of consensus in Parliament for this.

Q229 Jack Brereton (Stoke-on-Trent South) (Con): Once we have ended free movement, would you agree that it would not be correct to give preferential treatment to EU migrants over somebody coming from anywhere else in the world?

Ilona Pinter: We are not so concerned about that. What we are concerned about is that those children, young people and families who are here are able to have access to the services and support that they need. One of the biggest issues that we deal with through our services is supporting families who have no recourse to public funds. That includes EEA-national families, because of the kinds of restrictions around those who are exercising treaty rights, but primarily families from non-EEA backgrounds. Often, those are families with a single parent—single mothers, primarily—of young children facing a lot of difficulties. The no recourse to public funds restrictions on their access to benefits pose great challenges to families being able to work—

Jack Brereton: With respect, I do not think you are answering my question. Does anyone else have a view on the question that I asked?

Jurga McCluskey: It is an important and interesting question. What the system is trying to do, I think, is to apply the same rules irrespective of where you come from following the implementation of the new system. For me, the most important thing is that we are looking at this as a flexible, all-encompassing simple system, which means bringing two groups together and governing them as one.

Q230 Jack Brereton: Would you agree that the simplicity of having the same system for new migrants as people coming from other parts of the world is advantageous?

Jurga McCluskey: Correct. Yes, I do.

Q231 Nick Thomas-Symonds (Torfaen) (Lab): My question is principally directed to the Children's Society. Obviously, at the moment, the Government have set about waiving the charge for the EU settlement scheme, but there is still a power in clause 4(5) of the Bill that allows the modification of provisions on the imposition of fees and charges. I am interested in how that relates to vulnerable children, especially looked-after children. First, what are the barriers to those children being able to register? Secondly, what can the Home Office do to assist with those children to ensure that they are registered under the scheme as they are entitled to be?

Ilona Pinter: As I mentioned before, and as Steve mentioned, we are concerned about the significant fees, not just in relation to citizenship registration but more broadly. However, as the Bill is focused on EEA nationals, there is an opportunity here to tackle citizenship registration fees, which are more than £1,000 per child. That makes it prohibitive for many families to be able to acquire those rights, which may be in the child's best interests. The EU settlement scheme will apply to many children, but it may not be in the child's best interests to have EU settled status because citizenship provides for greater protection.

We really welcome the Government waiving the fees for the EU settlement scheme. That will help a lot of families for sure, particularly given the levels of poverty among EEA nationals and families, but the risk is that the costs will then be shifted on to other areas. I think there is a real concern in the sector about what happens come April, when the fees normally go up. That is one of the issues that is highlighted with the fees—that there is very little scrutiny and oversight around fee regulation, which is one of our concerns going forward with this kind of approach. For instance, there was no children's rights impact assessment on fees, including for looked-after children, which you asked about.

There is not currently a waiver for citizenship fees, so local authorities are having to pick up the bill. Interestingly, the issue of the EU settlement scheme came up at the Home Affairs Committee hearing on Tuesday. One of the things that was flagged up in that session and in the beta testing review report is that, for the local authorities involved in that second phase of testing, quite a lot of them—although the numbers are not given, and we would urge the Committee to ask questions about that—said that in many cases, children did not have their original passports, which would be the first stumbling block for the EU settlement scheme. Of course, local authorities are going to have to think about not only settling children's status but settling their citizenship, because as corporate parents, they have to act in the best interests of the child, as any other parent would. That will often mean for that child to apply for citizenship rather than for the EU settlement scheme.

Q232 Mrs Kemi Badenoch (Saffron Walden) (Con): I would like to bring us back to the issue of 28 days and the time-limited detention. I do not think anyone in this room wants to see unnecessarily long detention. You have all talked about how the system is not robust enough. If a case cannot be determined within 28 days, what rights do you think the applicant should be given?

Steve Valdez-Symonds: It is wrong, firstly, to think of the case being determined within 28 days. I think you have got to think about the whole of the time in which you are talking about an applicant. It is also quite dangerous to think of applicants, too. People who are taken into detention include people who have been through a process and have been applicants and may still be applicants; they also include people who did not even know they had an issue with the immigration services. Think back to the Windrush scandal. People were picked up who were perfectly entitled to be here and had not had any thought that over the last several decades they had had any problem with the immigration system, and they found themselves in detention. There is a whole range of issues to consider in terms of what is going on here.

From our point of view, the straightforward point is that detention is supposed to be for two specific purposes only. The most important one is to effect a lawful removal. At the moment, we have large-scale routine use of a very extreme power. Going back to the first question, we have a system that clearly is not—if you want to use the word—robust enough to exercise the power fairly and sensibly, let alone humanely, for the thousands of people it is imposed on. If we had a system that was properly directed towards using such powers appropriately at the time that it was appropriate to use them, perhaps we would have a robust system. Perhaps many fewer people would end up being detained. Perhaps the smaller number of people who were detained would be those whom the system was lawfully seeking to remove and had some real potential of removing within what should be a very short period of time.

Q233 Mrs Badenoch: How much of the system not being robust enough do you think is due to the fact that there is such a high volume of immigration cases that need to be dealt with?

Steve Valdez-Symonds: I think the aspects go far and wide. You have made the immigration rules so incredibly complex over the last many years; immigration appeals for so many people have been taken away; legal aid is not available to so many people, even to understand what their situation is, including, as it happens, people who are entitled to British citizenship but cannot get legal aid to establish their citizenship rights. All of those things make for a very complex system, which, unfortunately, even the Home Office frequently does not understand. The courts have not only found that this system is so byzantine but have had to rule in cases where the Home Office has not been able to present a consistent understanding of the rules it is trying to operate.

Q234 Mrs Badenoch: I am sorry to stop you, but I sense there is a lot passion.

Steve Valdez-Symonds: There is a lot of passion, yes.

Q235 Mrs Badenoch: But it sounds like you are hectoring me. I would actually like you to take some of the emotion out of your answers and just stick to the facts, please.

Steve Valdez-Symonds: I am sorry to have given that impression. I certainly did not mean to do that. I apologise to the Committee more generally. All I would say is that the system, over a very long period of time—this is not just a matter of this Administration; it is years and decades—has become very complex and safeguards have been taken away from people. If you want to understand how people end up in detention in the situations that I have been concerned about, there are myriad reasons why this system does not work, long before detention even happens.

Bella Sankey: Could I just add to that question? You asked why the system is not robust enough. The main reason for that at the moment is that there is not a proper independent check on it. In other areas where we allow the state to deprive people of liberty, we always ensure that there is an independent check on the decision to do so. Take the criminal justice system, for example. A suspect cannot be held for longer than 96 hours and not without being charged. Within that 96-hour period, a magistrate's approval is required for incremental extensions to somebody's detention. At the moment, in our immigration system there is nothing comparable to that. There are bail hearings that have recently been introduced at the four-month stage, but four months is already an extraordinarily long time, particularly for vulnerable people.

To give a quick, illustrative example, earlier this week, the Minister's Department conceded that it had been unlawfully detaining an incredibly vulnerable Chinese victim of trafficking for six months. This woman was picked up at a brothel after a tip-off from a member of the public that there was a woman there who seemed like she did not want to be there. When she was found, there were all the indicators you might expect for a trafficking victim. She had no passport, she was worried about being in debt to other people, and she had no friends or family in the UK. But instead of being treated as a victim of potential modern-day slavery and trafficking, she was taken to a detention centre and held for six months. She exhibited signs of extreme distress. She had psychotic episodes. She was walking around in her underwear and screaming, and talking about being burned by a man with hot water.

Despite all of the internal safeguards that are apparently in place, that woman was not released for six months. The Home Office has now conceded unlawful detention.

These sorts of cases are happening all the time. I can assure the Committee that there will be people in detention right now in that same situation. That will continue unless there is a statutory end date that will force the Home Office to comply with its own policy and guidance.

The Chair: Colleagues, we only have 20 minutes left of this session. I have five more colleagues wishing to ask questions and I wanted to give the Minister time to ask something at the end, so we really have to speed this up.

Q236 Paul Blomfield (Sheffield Central) (Lab): I want to return to a different point, which Mr Valdez-Symonds mentioned, reflecting our discussion with Professor Ryan about the way in which this Bill switches off rights without setting out clearly an alternative for the people whom it affects. I see you are nodding, Mr Berry.

Adrian Berry: The Bill was designed to bring an end to EU-derived rights that have been domesticated into UK law under the EU (Withdrawal) Act. That is what clause 1 does, and that is fine as far as it goes. It dovetails with the draft withdrawal agreement, which would extend the period of the full EU acquis applying until the end of December 2020, so there is time to consider and design properly, to think, at the top level of primary legislation, what a new immigration system should look like, to allow civil society to feed into that and to allow all of you to bring your expertise to bear on that. This Bill tries to foreshorten all of that, press it all together and say that Ministers decide and that your role is restricted.

What the Bill needs is for clause 4 to be either radically redrawn or omitted in so far as it creates Henry VIII powers, because even on a unilateral commitment about implementing the provisions of the withdrawal agreement in the event of no deal—the Home Office and the Department for Exiting the European Union have published a paper setting out how the transition period will apply on a unilateral basis—you have the time to do that. You do not need to use this Bill to try to create ministerial powers to create a future immigration system. You have the year to December 2020 to do that.

Q237 David Duguid (Banff and Buchan) (Con): Going back to something Ms McCluskey said earlier about the opportunity to improve the simplicity of a future system if EU and non-EU citizens are treated in a similar way, we have heard that testimony from other witnesses. What justification, if any, would you or any panel member say there would be for giving EU nationals preferential treatment going forward, and what risks might that pose to the integrity or complexity of a future immigration system?

Jurga McCluskey: This goes back to what you were saying, Adrian, and links into the point you were making. I realise that time is important, but I see it from a slightly different point of view. Representing the business community, for me it is really important that we have time to allow businesses to understand what the new system will look like. Looking at the White Paper in particular, I think that is precisely what it is trying to do; it is trying to allow us time, first, to put flesh on the bones of this White Paper, and secondly, to allow businesses to have that glide path in understanding what the system will look like and to put the right administrative processes in place to facilitate that system and thereafter to use it. For me, that is a really important point.

I am not necessarily sure whether prioritising or somehow easing the Europeans and treating them slightly more preferentially is really the point. For me, if we are trying to simplify the system, the worst thing we could end up with is two different systems or a two-tier system, one for Europeans and one for all the other nationals. In a way, we would be discriminating and creating administrative burdens for businesses, and that would not be welcome. If we have to create, adapt and change because of the circumstances we find ourselves in, one simple system that is the same for everybody will be the preferential way forward.

Expanding a little further on your point about the new system, what is really welcome to the business community, looking at the White Paper alone, is all the simplifications it is trying to achieve. We are seeing a removal of the immigration cap, which is welcome; we are seeing a removal of the tier 2 panel process, which is also welcome, and we are seeing flexibility in the visitor system, which allows visitors to switch into different categories, which again is really welcome. We are also seeing removal of the resident labour market test, about which the business community has been saying for many years, "It's not fit for purpose, please remove it," because all it does is add administrative cost in terms of time and recruitment to a process that otherwise would be much quicker and simpler.

It is also good to see in the White Paper the commitment to modernising the sponsorship system, which at the moment really needs a substantial amount of work. What we have is no longer fit for purpose. It may have been in 2008, but now, in the era of digitisation, we have to see a little bit of a more modern way of dealing with sponsorship. That is committed to in the White Paper, which is great.

Another thing that came up many times before in these hearings is the £30,000 salary threshold. This is a really important point. Everybody is focused on the number, which I understand is important and relevant to many businesses; it is a large amount for many. However, what is also good is that, as I understand it, the White Paper actually says very loudly—perhaps I am wrong here—that the number the Government chose is a starting point, and that they want to go out and consult business on it.

Q238 David Duguid: Sorry to interrupt, but my specific question—Mr Berry might have a specific legal response to this—was on the potential complexity or legal issues that might arise from having a separate system for EU nationals, in which their family members can join them, that is not the same for non-EU members. I must declare an interest: I am married to a non-EEA citizen, so this is quite personal to me. Do you foresee any particular legal issues with that?

Adrian Berry: The political declaration envisages separate mobility provisions embraced in a new treaty covering the future relationship between the UK and the EU after Brexit. It specifically scopes out the idea that there will be an enhanced mobility regime in any event, so you will not get only one set of immigration rules. Just like now, if you are an EU citizen, you do not have an EU right of residence; you acquire leave to enter or remain, like any third-country national.

The political declaration specifically envisages the new relationship as having separate regional arrangements, because of the intensity of journeys and circulation in

the region, not because of discrimination on the grounds of nationality. The Government's aspiration, and that of the Commission, is that there will be an enhanced regime in the region, if the political declaration finds expression in a future relationship treaty. That is what we will have in any event.

To say that there will be a universal floor is a good thing, but there may be other treaty arrangements with other regions, just as Australia and New Zealand have a free movement system between them—

The Chair: Sorry to cut you off, but I want to get everyone in.

Q239 Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): My question has been answered, but I want to follow up on the point about simplicity. The White Paper envisages trade arrangements being tied up with different possible visa regimes for different countries, not only an arrangement with the EU. Ultimately, we have heard lots of evidence that the system for non-EEA nationals is horrendously complicated. The idea that you make things simpler by applying the horrendously complicated system to everyone seems a bit superficial, does it not? Ms McCluskey, you said that this was increasing simplicity, but it is absurd to say that you will simplify a horrendously complicated system by applying it to everybody.

Jurga McCluskey: I see your point. I completely accept everything that has been said before, in terms of the 5,000 changes in the last 10 years.

Q240 Stuart C. McDonald: To give an example, if you have a fish processing business and you currently recruit from the EU, you just recruit. That is it. You do not have to go through any visa regime. Under the new system, you will have to be a tier 2 sponsor. Every single time you get somebody to come in, you will either have to get a certificate of sponsorship or you will need to go through this ludicrous one-year visa. That is not simplicity for that fish-processing businessperson, is it?

Jurga McCluskey: Absolutely; there is no denying that. However, at the same time, what is the alternative? Freedom of movement would have facilitated all the points you raise—

Q241 Stuart C. McDonald: My alternative would be a trade arrangement that allows for the free movement of people to carry on. Mr Berry, on the family point, in 10 years' time, if I am a UK citizen married to an EU spouse and want them to come to this country, what rules will apply to them that do not apply now?

Adrian Berry: At the moment, in the absence of a mobility component of a future relationship treaty between the UK and the EU, the immigration rules will apply if you want to bring a spouse who is an EU citizen. However, be careful what you wish for, because that is the inbound system. On the export system, Brits going to the EU27—where economic migration is not harmonised—will face 27 different Acts of reciprocity to however strong we are on inbound migration. There will be no intra-EU migration for British citizens. How Brits will be impaired going the other way is completely missing from the White Paper or any Government document.

Q242 Stuart C. McDonald: Ms Pinter, do you have any comments on the family rules that might apply to EU family members in the future?

Ilona Pinter: There are obviously concerns about families being separated by income thresholds. The Children's Society works within the UK, and our concerns are about those who are already here, as well as about families in the future. As I said, I think access to benefits and vital services is absolutely essential for families and particularly for children who currently miss out on vital things like free school meals and the pupil premium—things that are aimed at families on a low income and in material deprivation to help them to overcome and to have the best life chances in the future.

I want to add one more thing about the White Paper. It would be really beneficial to have proper public consultation on the White Paper; we have an opportunity to really look at this in detail. A lot of the focus in the White Paper is on the economic aspects, which are obviously very important, but a lot of cultural and social integration issues need to be thought through properly, as does, I would argue, how these complicated rules and systems are going to impact on children's rights. The Children's Minister committed in November to doing a children's rights impact assessment on all new policy and legislation coming in. This is a great opportunity to do that. We have 12 months: we would really welcome the opportunity to work with Government and look at this in the round to make sure that proper account is taken of the wide-scale impact that it will have.

The Chair: I am sorry, but we have just eight minutes left with this panel. Kate Green.

Kate Green (Stretford and Urmston) (Lab): My question has been asked, Sir David.

The Chair: Right. Nic Dakin.

Q243 Nic Dakin (Scunthorpe) (Lab): Earlier, someone said that there was a danger of people being robbed of the safeguards that they need; and later, Bella, I think, said that there was a risk from independent checks not being in the system. The 28 days seemed to be a major way of addressing the issue and putting checks in the system. Is that sufficient, or are other things necessary? We do not wish to complicate things; if that is sufficient, great.

Bella Sankey: There are lots of other things—checks and provision—that I think are needed to improve the system and make it fit for purpose. A statutory time limit is absolutely essential. I think everyone who works on immigration detention, whether they are caseworkers, researchers, non-governmental organisations, academics or the lawyers involved, would agree that a statutory time limit is the absolute priority and actually is long overdue.

In addition, we need to restore legal aid, so that people's substantive immigration cases can be properly considered and we are not at risk of continuing to deport people unlawfully, as it has now been accepted we did with the Windrush generation. That is still going on every single day.

There are a whole host of ways in which our immigration rules more generally could be improved to better safeguard people's human rights to ensure that families are not unnecessarily separated and that people are not

re-traumatised by a system that is often so disbelieving, even when there are such clear signs of, for example, persecution and torture.

Q244 The Minister for Immigration (Caroline Nokes): I want to start by welcoming the comments that Ilona made about wanting to work with Government in relation to the White Paper. I also want to talk a little bit about the EU settled status scheme and how it impacts children, and the focus that we have had on vulnerability. I wondered whether you felt that the £9 million that the Government had made available for charities, NGOs and so on to support the vulnerable was enough and whether the Children's Society was planning on bidding for any of that.

Ilona Pinter: We did. Thank you for the question. I think that there has been recognition of the challenge in regularising or settling the status of so many EU nationals. I think the Home Office has done a huge amount to try to make this as simple as possible. I mentioned the fees; getting rid of the fees is really welcome. Of course, the working with voluntary organisations in the testing as well as going forward to address the needs of vulnerable groups is really important and welcome.

We are currently also working with the Government on looking at children-specific communication—communication aimed at children and young people and their parents and about making sure that as many families and children as possible are able to settle their status. In addition to the 900,000 children I mentioned, the Migration Observatory has also highlighted that 1.2 million EU nationals are adults who are parents. They will have to think about their children's status or citizenship rights. That is really important.

There are things that we believe need to be done to provide safeguards—for instance, a right of appeal in the EU settlement scheme. That was within the statement of intent for the withdrawal agreement Bill, but I know that the Committee has discussed whether this Bill might be the right avenue for it. Equally, legal aid is a key issue. We welcome the fact that the Government have agreed to provide legal aid for separated children, and we understand that that will extend to EU settlement, but children within families will remain unable to access legal aid.

There are a range of complex situations where advisers at the Office of the Immigration Services Commissioner level 1—the level that enables people to support those applying for settled status—will be unable to deal with the complexities that some families will have, because of myriad reasons to do with documentation, trafficking histories, domestic violence and a range of other issues, particularly in families where there is a Zambrano carer. Some issues remain outstanding.

Q245 Caroline Nokes: I am sorry—I am conscious that we have only a couple of minutes. I think pretty much all the panel talked about simplification of the immigration rules. I think I said on Tuesday that nobody gets any argument from me about the necessity of doing that. Presumably you have all responded to the Law Commission's consultation, or will do so before it closes. I wonder whether you could give me your top pick of what you would like to see from a simplified system.

Jurga McCluskey: I think I already made this point: it is very important that the system addresses both categories of people in the same way. The changes that have been made are very welcome, particularly the resident labour market test, and so on. I have mentioned those points before.

What I would really like to see, in addition to what you have already done in the White Paper, is going one step further and, in particular, removing the cooling-off period. It still seems to be manifesting itself in the White Paper. I realise what the reason behind the net migration target is—sustainable levels of migration, and so on—but it would be great to see you going one step further and demonstrating that it will be about the brightest and the best in the future, and attracting people who will truly benefit the economy. Cooling off is not serving that purpose; it is making people leave just as they have made an impact.

Caroline Nokes: Thank you. Can we turn to Mr Berry? We have three minutes.

Adrian Berry: Very briefly, write it in plain English and avoid the endless repetition that appears in the immigration rules. Get rid of overly prescriptive rules of evidence, and allow forms of evidence that allow people to show that they substantively satisfy the categories for which they are applying. In terms of the content of the immigration rules, make family reunion rules such that they promote family reunion rather than hinder it.

Q246 Caroline Nokes: You said earlier that you did not think that there was any urgency—I cannot remember at which specific point. Do you not think that 29 March is now somewhat pressing, and perhaps the Government should feel a sense of urgency about, first, ensuring that we address the issue of turning off freedom of movement and, secondly, looking to our future immigration system?

Adrian Berry: I was not objecting to clause 1 of the Bill, which switches off free movement. I was saying that you do not need clause 4 and the Henry VIII powers; you can let your colleagues in this room, and in Parliament generally, do their job and make primary legislation in the usual way.

Q247 Caroline Nokes: Except, on immigration, the rules have been the usual way to do it since 1971.

Adrian Berry: You have not used the immigration rules to amend primary legislation, and they are statements of Executive policy, not legislation.

Q248 Caroline Nokes: Okay. Mr Valdez-Symonds—your point on simplification.

Steve Valdez-Symonds: I agree with all the points that Mr Berry has just made. The one thing that I would add is that those rules have become highly volatile. It is easy to forget that the lack of simplicity for people is not just a one-off experience; people experience those rules through long periods of their lives in the UK, when they come to have to renew their visas or when there are changes that affect their continuing compliance with those rules. I am afraid the rules change many times a year, sometimes with very little notice and with dramatic impacts upon the lives that people have invested in with their families in this country. Something needs to be done to address the certainty that people need to be able to carry on with their lives.

The Chair: Order. It is such a shame—all our witnesses have so much to share with the Committee, so for those who feel that they did not have ample opportunity, you can still write to the Committee. Thank you very much indeed for your time today.

Examination of Witnesses

Hilary Brown and Martin Hoare gave evidence.

12.31 pm

The Chair: Welcome to our next set of witnesses. I think you have got a feel for the way in which we proceed. Your session is just half an hour, but, because there are two of you, it might not be so pressurised. Will you introduce yourselves?

Hilary Brown: My name is Hilary Brown. I am the chief executive officer of Virgo Consultancy Services, a law firm with offices in south Wales and south London.

Martin Hoare: I am Martin Hoare, a solicitor advocate in private practice representing immigrants.

Q249 Afzal Khan: My first question is to both of you. Clause 4 gives the Secretary of State powers to introduce new immigration rules with little scrutiny in Parliament. What are your concerns about how Ministers might use such powers?

Martin Hoare: The difficulty of making rules that have such a massive impact on the lives of the people they affect without any scrutiny has meant that people's rights have not been respected. Furthermore, those making the rules have not had the benefit of input from concerned parties and from Parliament itself.

Hilary Brown: The complexity of individuals' lives has not been taken into consideration, especially around issues such as vulnerability where people have been trafficked into the United Kingdom, where they are in circumstances and a situation that is out of the norm. Rules need to be made with all of those situations taken into consideration.

Q250 Afzal Khan: We now know that a 12-month visa was previously trialled and abandoned as unworkable. What evidence and information do you have regarding the operation of a 12-month visa?

Martin Hoare: The 12-month visa was in place in the form of the so-called sectors-based scheme. That was introduced in May 2003 by a House of Commons paper with no parliamentary discussion. It allowed people in less skilled fields to live in the United Kingdom for 12 months. It was abandoned following an investigation by Parliament. According to the *Hansard* report in 2008, quite significant malfunction and abuse was detected.

The tribunal responsible for immigration also found that there was a considerable amount of hostility towards the rule itself, manifested by those implementing the rule at the visa point. That rule was scrapped altogether by 2008. Tony McNulty, the then Minister of State, observed when scrapping it that the slack, as it were, could be taken up by immigration from what were then the EU accession states. The rule then was not effective. The significant difference between now and then is that there will be no pool of EU workers to take up the slack. What I have just referred to is in parliamentary documentation. It is not my opinion.

Hilary Brown: I have nothing to add to that—we have exactly the same frustrations.

Q251 Afzal Khan: Your question is slightly different. You have dealt with a number of Windrush victims; do you think Ministers have addressed the problems in the Home Office that led to the Windrush crisis, and that they will be able to avoid a repeat of that with EU citizens?

Hilary Brown: I do not think the difficulties faced by the people caught up in the Windrush scandal have been fully addressed. Many people still have not come forward, who have not been identified and who are living under the radar. I do not think it will be a situation where we can avoid a repeat of such a scandal if we are not in a position to fully map out where the deficiencies in the immigration rules lie.

Martin Hoare: The significant enduring problem is that people are required to establish a right that they say they have. They are required to establish that at short notice, perhaps when they are simply accessing a health service to which they are entitled. The Government have not shifted the onus of proof on those people, so the problem continues.

Furthermore, because of the expanding of immigration control to those who are not qualified to exercise it, such as healthcare professionals and the police, people are not able to determine whether the documents that people present are adequate. There are many examples of that: people holding indefinite leave to remain stamps in an expired passport encounter the difficulty that the passport has expired, therefore the perception is that the Home Office stamp in it has expired, notwithstanding that it explicitly states that it is settled.

People who came into the United Kingdom on other schemes, such as so-called east African Asians who came without passports because they had no citizenship, find it very difficult to establish an entitlement in the UK. They particularly encounter that difficulty when they access something else; they are on the receiving end of Government action when they are not expecting it, and they do not have legal aid. Those are continuing problems that permeate many cities in the United Kingdom and have not been addressed.

Q252 Afzal Khan: Could Government use powers in this Bill to amend immigration legislation affecting non-EU citizens?

Martin Hoare: Yes, they could if they chose to do so. There are so many examples of problems that arise from their not having done so.

Q253 Jack Brereton: Obviously, quite a substantial number of British citizens are living in EU countries. Do you feel those EU countries have taken adequate steps to address the rights of those citizens?

Martin Hoare: I do not profess any expertise on European law, but no doubt European Governments will look at how we treat citizens of European countries and will wonder whether they should treat our own citizens in the same way. I think there will be many vulnerable British people living in European countries who do not quite understand that yet.

Q254 Kate Green: How confident are you that the Home Office will be able to scale up the existing immigration scheme that applies to non-EEA nationals to meet the needs of individuals and employers after Brexit? What challenges do you think it will have to address?

Martin Hoare: I think the Home Office will find it very difficult. It finds it very difficult to make quick and consistent decisions at the moment. Unless the Government propose a significant increase in resources to the Home Office, I think it will find it very difficult to cope with additional case work and a whole set of new rules.

Kate Green: What impact do you think that will have on labour mobility?

Martin Hoare: It will severely restrict labour mobility. It will make it very difficult for employers to know whom they can employ. That will not get easier.

Hilary Brown: Already, it is a very difficult situation. We see that employers are very confused and frightened about whom they should and should not employ. When people who have current leave to remain are about to make an application to extend it, we often see employers bringing their employment to an end, until such time as they have received confirmation that they are able to continue to employ those individuals.

Q255 Kate Green: What guidance or advice has been issued to your employer clients so far about the checks they should be making on the ability of EEA nationals to work in the UK after exit?

Hilary Brown: It is very difficult for employers, because regardless of the guidance they are given, they do not have the skills, knowledge or experience of anxiously scrutinising that guidance. A document may be acceptable, but because they do not have an understanding of the fact that it is an acceptable document, employers often revert back to, "Unless you have a passport with a visa, with a stamp in it that says you are able to work, I am not prepared to run the risk of having a fine, and so I will bring your employment to an end."

Q256 Kate Green: Are your clients expecting that they are going to have to start asking questions about people's status on 30 March?

Hilary Brown: Absolutely.

Q257 David Duguid: I have asked this question to different panels—forgive me for that—but you will be answering for the first time. Do you believe there is any justification for having a two-tier system in the future, where EU citizens and their families may get preferential treatment to those from the rest of the world?

Martin Hoare: I personally think that all people should receive overall fair treatment. I think that currently the family members of EU citizens have an easier set of requirements to satisfy objectively. I find that the Home Office enforces that in the most severe and restrictive way possible. I can see no grounds of fairness to suggest that everybody should go down to the lower level of protection that applies under the purely English rules.

Q258 David Duguid: Would you advocate for immigrants from outside the EU to have the same level of access to their families, for example?

Martin Hoare: Yes, I would. From time to time, those advocating support for the English rules and litigating on behalf of the British Government suggest that the English rules are somehow compatible with European principles.

Q259 David Duguid: Sorry, when you say English rules, do you mean UK? I just wanted to be clear, before my Scottish National Party colleagues—

Martin Hoare: Yes, the UK rules—sorry. I just did not want to include your nation with such rules, that is all. It was out of courtesy to your nation that I was making that distinction. Presently, people who are advocating for the British Government contend that the rules are compatible with the European provisions. They are clearly not, and the proposal is to reduce the rights of everybody.

Hilary Brown: It would be difficult for the UK to justify why they felt it was appropriate to run a two-tier system. It needs to be simplified, to be one system and to be equally applicable to everybody.

Q260 David Duguid: Okay, thank you.

Q261 Stuart C. McDonald: The White Paper does not propose applying the same rules to everybody, does it?

Hilary Brown: No, it does not, but that does not mean to say that we should not make some progress towards attempting to simplify it so that it does apply equally to all.

Q262 Stuart C. McDonald: Our trade relationships would be one reason why you might not apply the same rules to everybody, and that is pretty much why we have free movement now.

Hilary Brown: Yes, trade relationships may be a reason to justify some kind of other consideration, but they should not be a back-door route into the United Kingdom, for people who can hide behind trade,

Q263 Stuart C. McDonald: When you said we should be pushing for fairness for everybody, is that not closer to the mark? It does not mean that everybody comes under the same rules.

Hilary Brown: Whatever rules are implemented, they should be fair. As I say, there could be other trade agreements, but they should be open to anxious scrutiny and I do not think they should be seen and used as a back-door route into the United Kingdom for people who can afford that.

Q264 Stuart C. McDonald: I absolutely agree with you on that point. It should not just be about suddenly allowing the wealthy from country A, B or C to come in. Can you tell me about the tier 2 system? What are your thoughts on how simple that is?

Hilary Brown: At this time none of the immigration rules is simple. The tier 2 system can be a route into the United Kingdom, again, for people who are able to afford it and those with large reserves of money. I think the system itself needs to be completely overhauled. There needs to be a situation where the UK can look at innovation and other trades and routes. For instance, on the shortage occupation list, there are multimillion pound industries in the United Kingdom that would not be identified unless there was some innovation around whether they should be included in various tier 2 legislation.

Q265 Stuart C. McDonald: Mr Hoare, will you comment on how simple or otherwise the tier 2 system is now? Secondly, do you have any thoughts on how we can

[Stuart C. McDonald]

make the settled status scheme better for EU nationals who are currently here, whether that is making it a declaratory system, or appeal rights, or whatever else?

Martin Hoare: First, with the tier 2 system, the process for employers of obtaining a sponsor licence is difficult. It does not receive intense scrutiny by the Home Office. There is no right of challenge to the Home Office decision, and therefore many employers who wish to run a tier 2 scheme to sponsor migrants, although they are bona fide employers, get cases refused and are not able to challenge. The starting point of the scheme is unworkable. The insistence on pedantic documentary requirements, which many employers cannot understand, leads to a lot of cases being refused, so the system is not workable at present.

With regard to your second point, yes, I think there should be simply a declaratory system for EU settled status. If the British Government wish to require EU citizens to justify and document every day of their existence in the United Kingdom when at the time they did not know they would have to do it, it will lead to a load of perverse and unfair outcomes.

Q266 Stuart C. McDonald: Ms Brown, any thoughts on improvements to the settled status scheme? We have heard people suggest making it declaratory, or appeal rights.

Hilary Brown: I would certainly suggest not making it so onerous as to documents.

Q267 Afzal Khan: Will you tell us the cost to applicants of applications and the fees for appeals, and the effect of removing legal aid?

Hilary Brown: Aside from the cost of the appeal to the tribunal, which is over £100, the cost of appealing is not a cost that can just be measured in the cost of the application to the tribunal. There is often the cost of getting representation and having to obtain evidence to go before the various tribunals. There is the cost of certifying and obtaining documents. The withdrawal of legal aid often means that for people to be able to get before a tribunal with a robust bundle of evidence giving some sort of chance of demonstrating that the appeal should be granted in the appellant's favour, they must be able to find something in the region of £1,000 or £2,000—maybe £3,000. That is just to get together a bundle of evidence to go before a tribunal with a remote chance of succeeding. All too often people just cannot afford that. The fact that we have to put bundles together in a way that proves the documents and evidence they rely on will stand up to independent and anxious scrutiny, and the denial of legal aid, prevents people from getting access to justice.

Q268 Afzal Khan: Will you also shed some light on the number of people who have been detained and later given some sort of leave to remain?

Hilary Brown: There are high numbers of people who are quickly detained when they are initially detected by various means—people who have trafficking offences and who have been randomly stopped by police and immigration authorities. In the first instance, they are taken to police stations and not given access to appropriately qualified immigration advisers. They are denied access to any type of legal advice in a police station. Often, and unnecessarily, that sees individuals referred on to immigration removal centres, which clogs up immigration removal centres unnecessarily. They then have to make bail applications to the various immigration tribunals. Often people are then released on bail, only having identified for the first time that they have some kind of irregular immigration status.

Detention is used far too often—and for over-extended periods of time— unnecessarily. If a similar type of system was offered to immigration detainees as to people who face criminal offences in police stations, such as a duty solicitor scheme or a duty representative scheme for immigration issues, I certainly think there would be far fewer immigration detentions.

Martin Hoare: On fees, to make an application to stay in the United Kingdom for 30 months, one has to pay £1,033 at the moment. That may apply to people who have been working in the United Kingdom. If somebody had their leave to remain cancelled with no right of appeal, their option would be to make a new application. To do that, they would have to pay £1,033. If they did not have £1,033, they would face removal from the United Kingdom.

Another aspect of the fee system is that an applicant has to find, for a period of two and a half years, £1,000 to pay towards the NHS. When that was introduced, the rationale was that people who are living here illegally should not use the NHS. The scheme would apply to someone who had been here lawfully for seven and a half years paying tax and national insurance. If they want their last two and a half years in the United Kingdom, they have to pay another £1,000 for it. Over a period of 10 years, someone living in the United Kingdom perfectly lawfully and paying tax and national insurance has to find another £10,000 to fund the NHS.

Q269 Caroline Nokes: You both mentioned the anxiety that employers might have regarding somebody's right to work. Do you regard the digital right-to-work checks as a step forward?

Martin Hoare: If employers understand that there is a digital check system, it would be a step forward. The people answering the checks are not infallible. The system is very complicated. If the wrong advice is given, there is no way for an employer to check that.

Another aspect I have come across in advising employers is that they cannot determine whether documents are genuine. A digitalised check does not address that properly. Employers find that, notwithstanding having conducted checks, they have unwittingly employed somebody with a document that looks fine when it is checked digitally but that is not fine. The employer then faces criminal sanctions as a result. That is happening to people.

Q270 Caroline Nokes: Do you not see the digital right-to-work check as a useful safety net to verify whether documents are genuine?

Martin Hoare: I think it is an improvement on nothing, but it is not perfect.

Q271 Caroline Nokes: You said that the EU settled status scheme required people to document every day of their existence in the UK.

Martin Hoare: No, I said "if" it did.

Q272 Caroline Nokes: Which, of course, it doesn't. It requires people to evidence their identity and residence. We have seen from the testing phases that more than 80% of people have been able to do that with no additional documents, just by using their Her Majesty's Revenue and Customs or Department for Work and Pensions records. Of course, it asks them to declare any criminal convictions. Do you think it is scaremongering a little to say "if" the EU settled status system required people to evidence every day of their existence, when it simply does not.

Martin Hoare: The results you refer to indicate that people who have applied have been granted either settled status or less than settled status.

Q273 Caroline Nokes: Pre, not less than.

Martin Hoare: Pre, which is less than. It is the same thing. That may be because people cannot document the earliest time in the United Kingdom, because notwithstanding their subjective compliance with employment rules, there are cases where tax and national insurance have not been credited by employers. It is not scaremongering—that is the factual reality for many people.

Q274 Caroline Nokes: You do know that in the first two testing phases, those employers were NHS trusts and universities, don't you? We like to think that they would have credited the right amount of tax.

Martin Hoare: I accept that entirely, but that is not the point. The point is that it will extend to all employment in the United Kingdom.

Q275 Caroline Nokes: It absolutely will.

Martin Hoare: And in the scheme that has existed so far, there have been cases where people have paid tax and national insurance to their employer but it has not been credited. That has been a problem. Secondly, the results that have come back to the Home Office on tax and national insurance records are different from the results that people have obtained by their own freedom of information inquiries with the Revenue.

Q276 Caroline Nokes: You are conscious of the very high levels of people in the testing phases of the system who have reached either pre-settled or settled status—are you happy with that?

Martin Hoare: I am aware of it, but pre-settled status indicates that there is likely to be a component of those people who would be entitled to settled status, but because of deficiencies not of their own making with regard to the recording of their presence and economic activity, are given pre-settled status, which is lower.

Q277 Caroline Nokes: Which they can upgrade once they have got to five years, and at no extra cost even when there was a charge, but now there is no charge anyway.

Martin Hoare: The form says that there is a charge. At the end of the form, one is told that the charge that one has just paid will not be levied, but that still means that some people get less than they are entitled to. They have been here for more than five years, but the record-keeping system is not adequate so they are not given that to which they are entitled.

Q278 Caroline Nokes: How would you make it simpler?

Martin Hoare: The Home Office should have a degree of flexibility with regard to the assessment of evidence and should exercise more discretion where cases clearly are substantially satisfied.

Q279 Caroline Nokes: You are conscious that it is still in a testing mode?

Martin Hoare: Yes, of course I am conscious of that, but unless the existing parameters of decision making in the Home Office change, one will see further evidence of injustice arising from that process.

The Chair: I thank our two witnesses for the time you have spent with us. We are grateful.

1 pm

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

Adjourned till this day at Two o'clock.