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GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Eighth Sitting

Thursday 27 May 2021

(Afternoon)

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not later than

Monday 31 May 2021

The Committee consisted of the following Members:

Chairs: †Steve McCabe, Sir Charles Walker

Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
Wheeler, Mrs Heather *(South Derbyshire)* (Con)
Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 27 May 2021

(Afternoon)

[Steve McCabe *in the Chair*]

Police, Crime, Sentencing and Courts Bill

2 pm

The Chair: As you all undoubtedly observed, the Minister was just having a quick breather. We will now resume.

Clause 36

Extraction of information from electronic devices: investigations of crime etc

Amendment proposed (this day): 94, in clause 36, page 29, line 5, at end insert—

"(c) the user who has given agreement under subsection (1)(b) was offered free independent legal advice on issues relating to their human rights before that agreement was given."—*(Sarah Jones.)*

This amendment would ensure that users of electronic devices were offered free independent legal advice before information on their device could be accessed.

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Clause stand part.

Government amendment 63.

Clause 37 stand part.

Clauses 38 to 42 stand part.

Amendment 115, in schedule 3, page 198, line 29, leave out

"A person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971."

This amendment would remove immigration officers from the list of authorised persons who may carry out a digital extraction.

That schedule 3 be the Third schedule to the Bill.

New clause 49—*Extraction of information from electronic devices*—

"(1) Subject to Conditions A to D below, insofar as applicable, an authorised person may extract information stored on an electronic device from that device if—

(a) a user of the device has voluntarily provided the device to an authorised person, and

(b) that user has agreed to the extraction of specified information from the device by an authorised person.

(2) Condition A for the exercise of the power in subsection (1) is that it may be exercised only for the purposes of—

(a) preventing, detecting, investigating or prosecuting an offence,

(b) helping to locate a missing person, or

(c) protecting a child or an at-risk adult from neglect or physical, mental or emotional harm.

(3) For the purposes of subsection (2) an adult is an at-risk adult if the authorised person reasonably believes that the adult—

(a) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and

(b) is unable to protect themselves against the neglect or harm or the risk of it.

(4) Condition B for the exercise of the power in subsection (1) is that the power may only be exercised if—

(a) the authorised person reasonably believes that information stored on the electronic device is relevant to a purpose within subsection (2) for which the authorised person may exercise the power, and

(b) the authorised person is satisfied that exercise of the power is strictly necessary and proportionate to achieve that purpose.

(5) For the purposes of subsection (4)(a), information is relevant for the purposes within subsection (2)(a) in circumstances where the information is relevant to a reasonable line of enquiry.

(6) Condition C as set out in subsection (7) applies if the authorised person thinks that, in exercising the power, there is a risk of obtaining information other than information necessary for a purpose within subsection (2) for which the authorised person may exercise the power.

(7) Condition C is that the authorised person must, to be satisfied that the exercise of the power in the circumstances set out in subsection (6) is strictly necessary and proportionate, be satisfied that there are no other less intrusive means available of obtaining the information sought by the authorised person which avoid that risk.

(8) Condition D is that an authorised person must have regard to the code of practice for the time being in force under section [Code of practice] in accordance with section [Effect of code of practice] below.

(9) This section does not affect any power relating to the extraction or production of information, or any power to seize any item or obtain any information, conferred by or under an enactment.

(10) In this section and section [Application of section [Extraction of information from electronic devices] to children and adults without capacity]—

"adult" means a person aged 18 or over;

"authorised person" means a person specified in subsection (1) of section [Application of section [Extraction of information from electronic devices] to children and adults without capacity] (subject to subsection (2) of that section);

"child" means a person aged under 18;

"agreement" means that the user has confirmed explicitly and unambiguously in writing that they agree—

(a) to provide their device, and

(b) to the extraction of specified data from that device.

Such an explicit written confirmation can only constitute agreement for these purposes if, in accordance with the Code of Practice issued pursuant to section [Effect of code of practice], the user—

(i) has been provided with appropriate information and guidance about why the extraction is considered strictly necessary (including, where relevant, the identification of the reasonable line of enquiring relied upon);

(ii) has been provided with appropriate information as to (a) how the data will or will not be used in accordance with the authorized person's legal obligations and (b) any potential consequences arising from their decision;

(iii) has confirmed their agreement in the absence of any inappropriate pressure or coercion;

"electronic device" means any device on which information is capable of being stored electronically and includes any component of such a device;

"enactment" includes—

(a) an Act of the Scottish Parliament,

(b) an Act or Measure of Senedd Cymru, and

(c) Northern Ireland legislation;

"information" includes moving or still images and sounds;

"offence" means an offence under the law of any part of the United Kingdom;

"user", in relation to an electronic device, means a person who ordinarily uses the device.

(11) References in this section and sections [Application of section [Extraction of information from electronic devices] to children and adults without capacity] to the extraction of information include its reproduction in any form.

(12) This section is subject to sections [Application of section [Extraction of information from electronic devices] to children and adults without capacity] and [Application of section [Extraction of information from electronic devices] where user has died etc]."

New clause 50—*Application of section [Extraction of information from electronic devices] to children and adults without capacity—*

"(1) A child is not to be treated for the purposes of subsection (1) of section [Extraction of information from electronic devices] as being capable of—

(a) voluntarily providing an electronic device to an authorised person for those purposes, or

(b) agreeing for those purposes to the extraction of information from the device by an authorised person.

(2) If a child is a user of an electronic device, a person who is not a user of the device but is listed in subsection (3) may—

(a) voluntarily provide the device to an authorised person for the purposes of subsection (1) of section [Extraction of information from electronic devices], and

(b) agreement for those purposes to the extraction of information from the device by an authorised person.

(3) The persons mentioned in subsection (2) are—

(a) the child's parent or guardian or, if the child is in the care of a relevant authority or voluntary organisation, a person representing that authority or organisation,

(b) a registered social worker, or

(c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over other than an authorised person.

(4) The agreement of persons listed in subsection (3) further to subsection 2(b) should only be accepted where, if it is appropriate, the child has been consulted on whether such agreement should be provided and the authorised person is satisfied those views have been taken into account.

(5) An adult without capacity is not to be treated for the purposes of section [Extraction of information from electronic devices] as being capable of—

(a) voluntarily providing an electronic device to an authorised person for those purposes, or

(b) agreeing for those purposes to the extraction of information from the device by an authorised person.

(6) If a user of an electronic device is an adult without capacity, a person who is not a user of the device but is listed in subsection (7) may—

(a) voluntarily provide the device to an authorised person for the purposes of subsection (1) of section [Extraction of information from electronic devices], and

(b) agreement for those purposes to the extraction of information from the device by an authorised person.

(7) The persons mentioned in subsection (6) are—

(a) a parent or guardian of the adult without capacity,

(b) a registered social worker,

(c) a person who has a power of attorney in relation to the adult without capacity, or

(d) if no person falling within paragraph (a), (b) or (c) is available, any responsible person aged 18 other than an authorised person.

(8) The agreement of persons listed in subsection (7) further to subsection (6)(b) should only be accepted where, if it is appropriate, the adult without capacity has been consulted on whether such agreement should be provided and the authorised person is satisfied those views have been taken into account.

(9) Nothing in this section prevents any other user of an electronic device who is not a child or an adult without capacity from—

(a) voluntarily providing the device to an authorised person for the purposes of subsection (1) of section [Extraction of information from electronic devices], or

(b) agreeing for those purposes to the extraction of information from the device by an authorised person.

(10) In this section and section and [Application of section [Extraction of information from electronic devices] where user has died etc]—

"adult without capacity" means an adult who, by reason of any impairment of their physical or mental condition, is incapable of making decisions for the purposes of subsection (1) of section [Extraction of information from electronic devices];

"local authority"—

(a) in relation to England, means a county council, a district council for an area for which there is no county council, a London borough council or the Common Council of the City of London,

(b) in relation to Wales, means a county council or a county borough council, and

(c) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;

"registered social worker" means a person registered as a social worker in a register maintained by—

(a) Social Work England,

(b) the Care Council for Wales,

(c) the Scottish Social Services Council, or

(d) the Northern Ireland Social Care Council;

"relevant authority"—

(a) in relation to England and Wales and Scotland, means a local authority;

(b) in relation to Northern Ireland, means an authority within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));

"voluntary organisation"—

(a) in relation to England and Wales and Scotland, has the same meaning as in the Children Act 1989;

(b) in relation to Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995.

(11) Subsections (10) and (11) of section [Extraction of information from electronic devices] also contain definitions for the purposes of this section."

New clause 51—*Application of section [Extraction of information from electronic devices] where user has died etc—*

"(1) If any of conditions A to C is met, an authorised person may exercise the power in subsection (1) of section [Extraction of information from electronic devices] to extract information stored on an electronic device from that device even though—

(a) the device has not been voluntarily provided to an authorised person by a user of the device, or

(b) no user of the device has agreed to the extraction of information from the device by an authorised person.

(2) Condition A is that—

(a) a person who was a user of the electronic device has died, and

(b) the person was a user of the device immediately before their death.

(3) Condition B is that—

(a) a user of the electronic device is a child or an adult without capacity, and

(b) an authorised person reasonably believes that the user's life is at risk or there is a risk of serious harm to the user.

(4) Condition C is that—

(a) a person who was a user of the electronic device is missing,

(b) the person was a user of the device immediately before they went missing, and

(c) an authorised person reasonably believes that the person's life is at risk or there is a risk of serious harm to the person.

(5) The exercise of the power in subsection (1) of section [Extraction of information from electronic devices] by virtue of this section is subject to subsections (2) to (8) of that section.

(6) Subsections (10) and (11) of section [Extraction of information from electronic devices] and subsection (9) of section [Application of section [Extraction of information from electronic devices] to children and adults without capacity] contain definitions for the purposes of this section."

New clause 52—*Code of practice—*

"(1) The Secretary of State must prepare a code of practice containing guidance about the exercise of the power in subsection (1) of section [Extraction of information from electronic devices].

(2) In preparing the code, the Secretary of State must consult—

(a) the Information Commissioner,

(b) the Scottish Ministers,

(c) the Welsh Government,

(d) the Department of Justice in Northern Ireland,

(e) the Victims Commissioner,

(f) the Domestic Abuse Commissioner,

(g) any regional Victims Champion including the London Victims Commissioner,

(h) persons who appear to the Secretary of State to represent the interests of victims, witnesses and other individuals likely to be affected by the use of the power granted in subsection (1) of section [Extraction of information from electronic devices], and

(i) such other persons as the Secretary of State considers appropriate.

(3) After preparing the code, the Secretary of State must lay it before Parliament and publish it.

(4) The code is to be brought into force by regulations made by statutory instrument.

(5) The code must address, amongst other matters—

(a) the procedure by which an authorised person must obtain and record confirmation that a device has been provided voluntarily;

(b) the procedure by which an authorised person must obtain and record confirmation that agreement has been provided for the extraction of specified information, including the information which must be provided to the user about—

(i) how long the device will be retained;

(ii) what specific information is to be extracted from the device and why, including the identification of the reasonable line of enquiry to be pursued and the scope of information which will be extracted, reviewed and/or retained;

(iii) how the extracted information will be kept secure;

(iv) how the extracted information will or may be used in a criminal process;

(v) how they can be kept informed about who their information is to be shared with and the use of their information in the criminal process;

(vi) their right to refuse to agree to provide their device and/or to the proposed extraction in whole or in part and the potential consequences of that refusal; and

(vii) the circumstances in which a further extraction may be required, and what will happen to the information after the case has been considered;

(c) the different types of extraction processes available, and the parameters which should be considered in defining the scope of any proposed extraction from a user's device;

(d) the circumstances in which the extraction of information should and should not be considered strictly necessary and proportionate;

(e) the considerations to be taken into account in determining whether there are less intrusive alternatives available to extraction for the purposes of subsection (7) of section [Extraction of information from electronic devices];

(f) the process by which the authorised person should identify and delete data which is not responsive to a reasonable line of enquiry and/or has been assessed as not relevant to the purposes for which the extraction was conducted; and

(g) the records which must be maintained documenting for each extraction or proposed extraction, including—

(i) the specific information to be extracted;

(ii) the reasonable lines of enquiry pursued;

(iii) the basis upon which the extraction is considered strictly necessary, including any alternatives considered and why they were not pursued;

(iv) confirmation that appropriate information was provided to the user and, if applicable, agreement obtained;

(v) the reasons why the user was not willing to agree to a proposed extraction.

(6) A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) After the code has come into force the Secretary of State may from time to time revise it.

(8) References in subsections (2) to (7) to the code include a revised code."

New clause 53—*Effect of code of practice—*

"(1) An authorised person must in the exercise of the power granted under section [Extraction of information from electronic devices] have regard to the code of practice issued under section [Code of practice] in deciding whether to exercise, or in the exercise of that power.

(2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section [Code of practice] shall not of itself render him liable to any criminal or civil proceedings.

(3) A code of practice in force at any time under section [Code of practice] shall be admissible in evidence in any criminal or civil proceedings.

(4) In all criminal and civil proceedings any code in force under section [Code of practice] shall be admissible in evidence; and if any provision of the code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question."

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): As the Committee will remember, I gave a very quick example of circumstances in which it would be appropriate for the authorised person to use information extracted from a digital device: when a person is missing, it would be appropriate to do that rather than wait for a review of many hours of closed circuit television footage. I hope that has dealt with that part of new clause 49.

New clause 49 also incorporates a definition of "agreement". In order for authorised persons to exercise the power to extract information from digital devices, device users other than children or adults without capacity must voluntarily hand over their device and agree to the extraction of information. Authorised persons must explicitly ask device users for their agreement. The code of practice will provide guidance on: how agreement is to be obtained by the authorised person; ensuring it is freely given; and how the device user is made of aware of their right to refuse. The code will set out the best practice that authorised persons should follow when obtaining agreement, such as providing a copy of the digital processing notice for the device user to read and sign.

The final change made by new clause 49 is that it would define an adult as a person aged 18 or over, rather than 16 or over, as set out in chapter 3 of part 2. I understand this was not raised by the Victims' Commissioner, but we have listened, and have thought very carefully about the imposition of that age in the Bill. In setting the age at 16, we were keen to ensure that those aged 16 to 17 were given appropriate control over their personal devices. That is not dissimilar from the position in other legislation, such as the Mental Capacity Act 2005, which recognises the rights of young people aged 16 and 17. However, we note the concerns raised in the debate, and we will reflect on them.

Sarah Champion (Rotherham) (Lab): May I say how grateful I am that the Minister is clearly in listening mode on this issue? The difference with the Mental Capacity Act 2005 is that it does not define 16 and 17-year-olds as adults. It is that particular word, not the inclusion of that age bracket, that we are concerned about.

Victoria Atkins: I thank the hon. Lady. As I say, we will reflect on the issue.

New clause 50 would provide that, where the user of a device was a child or adult without capacity, their views were sought and taken into account when someone else was making a decision on their behalf regarding the extraction of information from their device. We agree on the point about children. Indeed, clause 37(4) makes an equivalent provision, so we are not sure there is much between us on this point. We rely on clause 37(4) to ensure that the views of the child are taken into account.

We do not, however, agree that it is appropriate to include equivalent provision for adults without capacity. With such people, it is the capacity of the individual user that is relevant, and that is determined on the basis of a case-specific assessment. It is only if, as a result of that assessment, the person is deemed not capable of making the decisions that someone else is asked to make it. Authorised persons using that power will still have to comply with their existing responsibilities under the Mental Capacity Act 2005 and the associated code of practice or equivalent provisions in Scotland and Northern Ireland. We will, however, include guidance and direct authorised persons to the relevant statutory responsibilities in the code of practice.

New clause 52 seeks to expand the list of statutory consultees in respect of the code of practice to include the Victims' Commissioner, the Domestic Abuse Commissioner and representatives of victims and witnesses, but clause 40 already places a duty on the Secretary of State to consult

"(a) the Information Commissioner,

(b) the Scottish Ministers,

(c) the Department of Justice in Northern Ireland, and

(d) such other persons as the Secretary of State considers appropriate."

We believe this last line affords sufficient flexibility to capture those other persons listed in new clause 52. I can assure the Committee that we will work closely with the Victims' and Domestic Abuse Commissioners, and other relevant groups, as we develop the code.

The new clause also lists matters to be addressed in the code of practice. We do not dispute the relevance of many of the matters listed in new clause 52(5), but putting such a list in the Bill is unnecessary. The code needs to be comprehensive and fit for purpose, and it will be prepared in consultation with interested parties and subject to parliamentary scrutiny.

Amendment 94 seeks to provide for independent legal advice for device users. Ensuring that victims are properly supported is a priority for this Government. The code of practice will make it clear that investigators should inform people about the use of the power, and ensure that they are fully aware of their rights. This information will include: why they are asking for agreement, what will happen to the individual's device, what information will be extracted from the device, how long it may be retained for, and what will happen to any irrelevant material found on the device.

We are aware of the impact that requests for personal information can have on victims of sexual violence, and we believe that individuals should be supported in the process. We are fully committed to giving support to victims of crime, including access to independent sexual violence advisers, who we believe have a role in helping to explain the power to victims; as I have said, we are investing in 700 more of these posts this year.

We are exploring the findings of the sexual violence complainants' advocate scheme, piloted in Northumbria, as part of the rape review, which will be published shortly. We do not think that chapter 3 of part 2 of this Bill is the right place to address this broader issue about the provision of legal advice to victims and witnesses, given the wider impact across the criminal justice system.

Amendment 115 to schedule 3 seeks to exclude immigration officers from the list of persons authorised to carry out a digital extraction. Immigration officers play a vital role in protecting vulnerable people, particularly those who may be victims of trafficking, and it is important that they are able to obtain information that may be vital in those and other investigations. The power in schedule 3 ensures that all authorities extract information in a consistent way, and put the needs and privacy of the user at the forefront of any request. Any person being asked to provide a device will be made aware of their rights, including their right to refuse.

[Victoria Atkins]

The hon. Member for Rotherham asked about a parliamentary question that the Under-Secretary of State for the Home Department, the hon. Member for Croydon South, answered. I am told that mobile phones are seized under statutory powers where there is a reasonable belief that evidence of a criminal offence will be found. The subsequent examination of the device will be conducted in forensic conditions, and in such a way as to target only the relevant material. The handset will be retained for as long as is required to support any criminal proceedings before being returned to the owner.

Finally, there is also a Government amendment in this group: amendment 63, which ensures that the definition of the common council of the City of London is used consistently throughout the Bill. The City of London Corporation has both public and private functions, and it is therefore appropriate that public legislation applies to the corporation only in respect of its public functions. Government amendment 63 provides that the reference to the common council relates to

"its capacity as a local authority",

which brings clause 37 into line with other provisions in the Bill referencing the common council.

To sum up, this is the first time that a clear and consistent approach to the extraction of information from digital devices with the device user's agreement has been written into primary legislation. The provisions remove legal ambiguity around the practice and, for the first time, enshrine the protections and safeguards that authorised persons must adhere to when exercising that power. It is a significant step forward in driving a consistent approach across the Union for the law enforcement authorities that exercise these powers, and for victims and witnesses in the criminal justice system. Of course, there is more to do outside the Bill in a range of areas, but we are committed to working with victims and survivors and with charities and commissioners to ensure that when implemented, the provisions command the trust and confidence of victims and witnesses. Many of the issues raised in the new clauses can and will be addressed through the code of practice, so I hope that the hon. Member for Croydon Central will feel able to withdraw her amendments and support Government amendment 63 and clauses 36 to 42 standing part of the Bill.

Sarah Jones (Croydon Central) (Lab): We all agree on the problems here; we have suggested some solutions and the Minister has explained why she is not convinced. I think it would be hard for the Minister not to agree with quite a lot of what Vera Baird said when giving evidence. We will have to come back to some of those new clauses and decide how we vote at an another time.

Given what the Minister said on three points—first, that she would look at the age issue and the definition of an adult; secondly, that there would be a draft code of practice by Report, and that she would incorporate some of the measures we discussed into that; and thirdly, that the rape review will be published soon, and that in it, the Government are looking at work such as that done in Northumbria, and at police training—I am content not to push the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 36 ordered to stand part of the Bill.

Clause 37

APPLICATION OF SECTION 36 TO CHILDREN AND ADULTS WITHOUT CAPACITY

Amendment made: 63, in clause 37, page 31, line 35, after "London" insert

"in its capacity as a local authority".*—(Victoria Atkins.)*

This amendment clarifies that the reference in clause 37(11) to the Common Council of the City of London is to the Common Council in its capacity as a local authority.

Clause 37, as amended, ordered to stand part of the Bill.

Clauses 38 to 42 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 43

PRE-CHARGE BAIL

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

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

Amendment 95, in schedule 4, page 203, line 33, leave out

"If it is reasonably practicable to do so"

and insert

"Unless there is an exceptional reason not to".

Amendment 96, in schedule 4, page 203, line 38, at end insert—

"(4AA) If it is reasonably practicable to do so, the investigating officer must consider the personal situation and the needs, as they appear to the investigating officer given all the circumstances of the case, of the alleged victim (if any) of the relevant offence on—

(a) whether any of the conditions that are relevant conditions should be varied under subsection (1), and

(b) if so, what variations should be made to those conditions."

Amendment 97, in schedule 4, page 203, line 40, at end insert "and (4AA)".

That schedule 4 be the Fourth schedule to the Bill.

New clause 54—*Offence of breach of conditions of pre-charge bail—*

"(1) The Police and Criminal Evidence Act 1984 is amended as follows.

(2) After Section 37 insert—

"37ZA Offence of breach of conditions of pre-charge bail

(1) Where a person has been arrested and released on pre-charge bail under subsection 37(7), that person commits an offence if they breach any condition attached to that pre-charge bail.

(2) A person guilty of an offence under this Section will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.""

2.15 pm

Sarah Jones: The full package of these reforms will be named "Kay's law" in memory of Kay Richardson, who was murdered by her ex-partner following his release under investigation despite evidence of previous domestic abuse. No conditions were imposed and the police gave Martin the keys back to the home he had

shared with Ms Richardson. Martin let himself into the house and waited for Ms Richardson, who was 49, before attacking her with a hammer and strangling her. Kay's mother Audrey Richardson said:

"They might as well have gone and opened the door for him".

I think we will all want to keep in mind Kay and her family, and all victims of perpetrators who have caused harmed while on RUI, as in Kay's case, or while continually in breach of bail conditions.

We are all largely pleased with the provisions on pre-charge bail, in that they reverse what amounted to mistakes made in the 2017 reforms, but it is important, if we want to achieve justice that is fair and efficient, that it comes alongside the Government investing in every part of our criminal justice system and tackling some of the many challenges that it faces.

To set the context, the reforms pursued by the Government in 2015 to 2017 introduced the presumption against the use of pre-charge bail. These reforms also introduced strict time limits on the use of pre-charge bail. They were designed to reduce both the numbers of individuals subject to, and the average duration of, pre-charge bail. That was supposed to address concerns that unconvicted individuals were being subjected to pre-charge bail conditions for long periods of time without due process.

The House of Commons Library says:

"There is no official data about who is released from police custody and how they are released. However, data obtained from various freedom of information requests suggest that the number of suspects released on pre-charge bail fell substantially following the 2017 reforms."

The use of RUI

"increased rapidly as a result."

A BBC investigation found that in one three-month period, 12 forces released more than 3,000 suspects of violent crime, murder, rape and sexual offences. Officers use RUI when they want more time to gather evidence and when the preconditions for pre-charge bail have not been met. There is no requirement for RUI suspects to report to the police, and the police have no power to place conditions on their movements or activities—although some RUI suspects will voluntarily attend further questioning at the request of the police. There are no time limits within which officers must conclude their investigations against RUI suspects and the police are under no obligation to keep them informed about the progress of their investigation.

Many stakeholders from across the criminal justice system have been critical of these 2017 reforms. The use of RUI, particularly in cases involving violent and sexual offences, puts vulnerable victims at risk because pre-charge bail conditions are not imposed on suspects. There are also concerns that the rights of RUI suspects are being undermined. Investigations against RUI suspects, on average, take longer and the police are not required to inform suspects about their progress while investigations are ongoing.

Zoë Billingham of Her Majesty's inspectorate of constabulary said in December 2020, on the police and Crown Prosecution Services' response to the changes, that the full consequences

"had not been thought through".

The report said that of 140 cases examined, in 62 cases a suspect was released under investigation when bail with restrictions should have been used. The inspector said:

"These cases included domestic abuse, sexual offences and offences against children—serious crimes. This is extremely worrying, especially for the victims in these cases, who had no bail conditions in place to keep them safe."

The report found one case where a suspected paedophile was arrested and, after three months, the bail restrictions lapsed. This was because delays in getting digital evidence from the suspect's devices meant police feared they would fall short of meeting the threshold to get bail extended. The report also raised particular concerns about domestic abuse cases. Billingham said:

"It has a profound effect on victims' confidence that they are being taken seriously and staying with cases that can drag on for months and years."

We welcome the changes, but have suggested some amendments; I will talk about amendment 95 first. Part 3 of schedule 4 would impose a duty on officers to seek the victim's views on whether pre-charge bail or street bail should be applied, and their views on what conditions should be attached, when it is reasonably practical to do so. Amendment 95 simply strengthens that wording, so that the views of victims must be sought by the investigating officer when setting pre-charge bail conditions, not

"if it is reasonably practical to do so",

but unless there is an exceptional reason not to do so; it tilts the balance in favour of seeking the views of a victim. It is vital that there be greater consideration of the needs of the victim in setting bail conditions, to protect them and ensure that they are able to continue through the criminal justice process safely and with full confidence.

Amendments 96 and 97 would ensure that the personal situation and needs of the victim, as well as all the circumstances, are taken into account to ensure that any variations necessary to the conditions can be put in place to protect the victim. The needs and situation of the victims must be taken into account when setting pre-charge bail.

It has, sadly, often been the case that victims—largely female victims of rape, domestic abuse or sexual exploitation—are hesitant to provide complete evidence of their personal situation or needs due to fear that the perpetrator will find out and put them, or their family, at risk. It is not right that victims do not feel that the police can protect them enough. Pre-charge bail can be broken and, as this is not a specific criminal offence, the custody clock can currently be run down by continuous breaches of pre-charge bail conditions.

I will talk about the measures in the specific context of domestic abuse, which represents one third of violent crime recorded by the police, and approximately one fifth of all adult homicides—half of all adult homicides when the victim is female. It affected 2.3 million adults in the last year. The criminal justice system still has a long way to go in bringing perpetrators to justice and in providing a consistently good response for domestic abuse survivors.

Over the past couple of years, there has been a notable decline in the number of offences prosecuted by the CPS relating to domestic abuse, despite there being

[Sarah Jones]

no reduction in prevalence and an increase in offences recorded by the police. Between April 2014 and March 2020, the annual number of domestic abuse-flagged cases referred to the CPS by the police fell by 37%, with similar declines in prosecutions and convictions. In the year ending March 2020, only 9% of domestic abuse-related crimes recorded by the police led to a charge or summons, and the CPS convicted 47,000 domestic abuse cases, compared to 758,000 police-recorded offences relating to domestic abuse.

As incidents of domestic abuse often take place in private, the complainant may be the only witness. CPS guidelines for prosecutors state that:

"Giving evidence may be very difficult for them, or may cause additional difficulties (for example, fear of reprisals; safety of their children; increased family pressures or serious financial repercussions; fear of being 'outed'; fear of a lack of support by the criminal justice system, or specialist support organisations; or, an emotional attachment or loyalty towards the defendant), leading to uncertainty about the course of action they should take."

Sarah Champion: I support the amendments that my hon. Friend is putting forward, because the intention is to put the victim at the absolute centre of all of this. Does she agree that we also need the resources to enable the police to back that up, and to enable the voluntary sector and social workers to put in place the support that she is talking about?

Sarah Jones: My hon. Friend is absolutely right. Nearly 5,000 women are turned away from refuges each year, because the support just is not there and so much provision has been taken away. That applies across all kinds of different aspects of the support that should be in place.

It is well known that separation and reporting to police are periods of heightened risk in abusive relationships, and the effectiveness of bail conditions can be critical. The Centre for Women's Justice has said that it hears from frontline women's services that breaches of bail are extremely common, and that women often cease to report them once they find that nothing is done by the police after their initial reports. Some victims withdraw support for prosecution in such situations and sometimes disengage from the domestic abuse service. In its briefing, the Centre for Women's Justice says that

"in the worst case scenarios women feel so unprotected that they reconcile with suspects and return to abusive relationships, because the separation has increased the dangers they face in the short term. As the only power available to police following a breach of pre-charge bail is to arrest the suspect and release him again on bail, officers sometimes say there is nothing they can do. Police often don't contact a victim until some time has passed since the reported breach, and many breaches are by phone or electronic communications. In these situations there is little purpose in arresting and releasing the suspect on bail again, and it is understandable that officers take no action."

New clause 54 has been tabled to probe the Minister and to seek some clarifications and assurances on a number of problems that the police deal with and that have been brought to my attention by several police organisations. New clause 54 would make a breach of any condition of pre-charge bail, such as not being allowed to go to someone's house, to turn up at the school gates or to visit a certain restaurant, a criminal offence. That would prevent the custody clock being run down by purposeful breaches of bail, and it would particularly protect victims in domestic abuse cases, so that abusers are less likely to breach conditions by returning to the home of the victim. If the enforcement around breach of bail could be strengthened, it would likely drive down the number of offenders who breach bail conditions, and it would allow the police to focus on the worst offenders. It is a straightforward amendment, which was drafted with victims in mind but was recommended to us, as I say, by senior members of the police.

The Police Superintendents Association has spoken to us about making the breach of pre-charge bail conditions a stand-alone criminal offence. Paul Griffiths was clear about this in the evidence session. He said that the PSA has concerns about breach of police bail and that

"bail conditions are imposed and then suspects continue to breach those bails. Of course, those bail conditions would be there to protect victims or even the wider public. It could be extremely useful to us for that to be an offence in its own right. I note that there is an introduction to prevent the start of the custody clock, which was another risk that we thought may come from somebody who would consistently breach their bail, risking an impact on the investigation custody time limits for other aspects for which they were under investigation. The Bill suggests that three hours is sufficient to deal with that breach of bail, and that seems appropriate, but it could be beneficial to the police service for that to be an offence in its own right in terms of processing individuals for such breaches."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 30-31, Q45.]

Could the Minister give us her views on that opinion and on the problem that we are seeking to overcome?

I appreciate that part 5 of schedule 4 would make amendments to the functions of the PACE clock, as it would suspend a detention clock for three hours when someone is arrested for failure to comply with bail. The amendments are supposed to prevent suspects from running down their PACE clock by repeatedly breaching bail. However, the view of many senior police whom I have met is that it is not long enough and that they would prefer the breach of pre-charge bail conditions to be a separate offence. I am aware that the Minister might say that to make the breach of pre-charge bail conditions a stand-alone offence could create an imbalance whereby the breach of post-charge bail conditions is not a stand-alone criminal offence, but I would appreciate her giving her views on how we can tackle this issue.

The Centre for Women's Justice had a slightly different proposal, which is a two-stage process whereby a breach of bail conditions triggers a presumption that the police will impose a domestic abuse protection notice and apply for a domestic abuse protection order. Once the order is in place, a further breach would be a criminal offence, so it creates a "two strikes and you're out" process. Perhaps the Minister will give us her view on that.

I reiterate that we very much welcome these much-needed reforms to pre-charge bail. Can the Minister talk us through what plans the Government have to monitor the changes to ensure they are effective and how they will ensure that the data on how each police force deals with suspects after they have been released from custody is clear and can be sufficiently reviewed so that victims across the country can be better protected?

2.30 pm

Sarah Champion: I am in the unusual position of having found out that things were going wrong with pre-charge bail at the same time that the Minister did. We were both in Rotherham with the National Crime Agency, to learn more about how it was investigating past cases of child sexual exploitation. There was a throwaway line by the officer about how things had got a lot more complicated since pre-charge bail was brought in through the Police and Crime Act 2017, and I have to say that I did not know anything about it.

Pre-charge bail does exactly what it says. Before 2017, the police were able to put in place restrictions on a person before they were charged, such as "You cannot leave the country" or "You cannot go within 100 yards of the victim." This is really important in a place such as Rotherham, because the victims—the survivors—and the perpetrators are sometimes both still living on the same street, or their children may still be going to the same school, but also because a number of the perpetrators are dual nationality and there is a flight risk. The problem the police had was that there was a window of 28 days during which they had to make the charge, and with child abuse cases, particularly past child abuse cases, it can take months if not years to gather all of the evidence they need to make that charge. We found in Rotherham that the police were having to sit on their hands and hope that the perpetrator did not either flee or—as unfortunately happened in a number of well-documented cases—engage in intimidation. There was a lot of intimidation of victims and witnesses because the police were not, for example, able to put distance restrictions on the then alleged perpetrators.

I really welcome that these restrictions are back. I do not want to reflect on the omission in the intervening years—the fact that they were not in place. I am grateful that the police were creative and used release under investigation, because that was really all that they had, but it was not good enough, and it is not good enough. I am proud to support my hon. Friend's amendments on this topic, which I think strengthen the Bill and make it even more victim-centred. However, I thank the Minister for listening to the women of Rotherham, the National Crime Agency, and all the other forces up and down the country. These events demonstrate to me that we make legislation with the best of intentions, but sometimes the unintended consequences are severe, so I am grateful that the Government have recognised that mistake and redressed it through this Bill.

What I would say, though—I have to say something, Minister—is that child abuse cases and many sexual offence cases are, by necessity, resource-heavy. If she can do more to put resources within the reach of officers so that they can speed up these cases as much as possible in order to eliminate the ongoing trauma that survivors go through, that would be deeply appreciated.

Victoria Atkins: Before I explain the clauses, we should remind ourselves why the 2017 Act was passed. Colleagues may remember that in the first half of the past decade, there were several very high-profile investigations into very serious allegations of child sexual abuse and exploitation. There was an understanding that in some cases—not all—we had to look at bail conditions and so on to ensure that these complex investigations were carried out as efficiently and quickly as possible. That was the driving sentiment behind the 2017 legislation. We have listened to the police and to victims and survivors and charities that work with them. We want to improve the efficiency of the pre-charge bail system and encourage the use of bail where necessary and proportionate.

The hon. Member for Croydon Central explained the background to this clause and schedule and its reference to Kay Richardson, whose murder has already been described. When we scrutinised the Domestic Abuse Bill, I said that the experiences of individual victims and their families were behind many of the measures introduced to improve court processes, for example, and to help with services and refuges. This is such an example. Colleagues will understand that we wanted to take time to work through the measures in this Bill and this schedule in order to ensure they were as effective as possible in helping victims. It could not be included in the Domestic Abuse Bill, but I am pleased it is in this Bill.

The motivation behind Kay's law is to provide better protection for victims through the anticipated increased use of pre-charge bail and to refocus the system, with victims at its heart. The hon. Lady's amendments and new clause allow us to discuss two significant elements of this reform package: the duty to seek views from alleged victims on pre-charge bail conditions and the consequences for a suspect who breaches those conditions.

As with other measures in the Bill, our reforms to pre-charge bail put victims at the centre of the changes we are making, to help ensure that they are better protected and involved in decisions that affect them. The views of victims on bail conditions and how these can best safeguard them are vital to enable the police to build a full picture of all the relevant circumstances.

I hope we can all agree that this must be balanced against the need for operational flexibility within policing and the need to balance victims' rights against those of the suspect. While I would expect officers to seek the views of victims in the vast majority of pre-charge bail cases, that may not always be practicable. For a variety of reasons, a victim may be uncontactable by the police. The duties imposed by the legislation must be proportionate within the investigation. It would not be right, and could be disproportionate, to require officers to hold a suspect in custody longer than appropriate until that contact is made. The current wording goes far enough to ensure that the duty is followed in all cases where it is practical to contact the victim.

We are not of the view that the Bill should be amended to require that officers discharge this duty in every case, unless there are exceptional circumstances. We need this change to work in practice for the benefit of victims and the wider public. I make it very clear that this is the expectation within this legislation, but we have to reflect operational practicalities and the balancing act of ensuring the rights of both victims and suspects.

Amendments 96 and 97 seek to provide that the personal circumstances of the victim are taken into account where bail conditions are varied. I agree with this view but believe that the drafting of the Bill as is, coupled with the current legislation in this area, already provides for this. When imposing or varying conditions, custody officers must take into account a number of considerations, including the need to ensure that the suspect does not interfere with witnesses or obstruct the

[Victoria Atkins]

course of justice, and that will include consideration of the victim's circumstances and needs. The duty set out in the Bill also requires further consideration by the investigating officer to determine which of the bail conditions are relevant conditions—conditions that relate to safeguarding the victim. I anticipate that that will also require consideration of the victim's personal circumstances and needs as part of this overall assessment.

Finally in this group, new clause 54 aims to create a criminal offence of breach of pre-charge bail conditions. I understand that there is a long-held concern about the sanctions available when a suspect on pre-charge bail breaches their bail conditions. We should remember that officers will, in the first instance, consider whether the behaviour or actions that breached the conditions amount to a separate offence, such as harassment or intimidation. Equally, there are civil orders that can be put in place, breaches of which constitute an offence. I am thinking of a sexual risk order, a stalking protection order and when in due course they are piloted, the new domestic abuse protection orders. I also have concerns around creating an offence without an understanding of the number of people that it would be likely to affect. I am pleased to say that data collection in this area is being improved, but we do not yet have a full picture of what the effects of such an offence are likely to be on suspects, victims and the wider criminal justice system.

To support the increased data collection around breaches, the Bill includes provision for a pause on the detention clock following arrest for breach of conditions to encourage the police to arrest in those instances. The issues raised by the amendments are all ones that we would expect the College of Policing to address in the statutory guidance provided for in the new section 50(b) of the Police and Criminal Evidence Act 1984. In the longer term, across the board of Home Office policy, we will keep under review the case for any additional sanction where pre-charge bail conditions are breached as the reforms provided for in the Bill settle in and we have better data on which to make a decision. For now, however, I invite the hon. Member to withdraw her amendment.

Question put and agreed to.

Clause 43, accordingly, ordered to stand part of the Bill.

Alex Cunningham (Stockton North) (Lab): On a point of order, Mr McCabe. The Opposition have an opportunity to respond to the Minister about whether to withdraw the new clause.

The Chair: I think you are just one step ahead of me, Mr Cunningham. We now come to amendments 95 to 97 for schedule 4, which have already been debated. Do you wish to press the amendments?

Sarah Jones: I will not press the amendments on the basis of what the Minister said on those ones. I was also pleased to hear that there is going to be better data gathering—she might come to that in a minute, I am not sure—on whether it should be a separate offence. I understand the point that we need more data about what is happening before we take a view on that. I therefore ask that the Minister keep an eye on that situation as the data emerges and keep an eye on the fact that the police are concerned about that.

Schedule 4 agreed to.

Clause 44

ARRANGING OR FACILITATING COMMISSION OF A CHILD SEX OFFENCE

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

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

New clause 37—*Retrial for child sexual offences—*

"(1) Schedule 5 of The Criminal Justice Act 2003 is amended as follows.

(2) After paragraph 14, insert—

'Sexual assault of a child under 13

14A An offence under section 7 of the Sexual Offences Act 2003.'

(3) In paragraph 15, leave out from 'where' to the end of the paragraph.

(4) After paragraph 15, insert—

'Sexual activity with a child

15A An offence under section 9 of the Sexual Offences Act 2003.

Causing or inciting a child to engage in sexual activity

15B An offence under section 10 of the Sexual Offences Act 2003.

Indecent assault against a child under 16

15C An offence under section 14 or 15 of the Sexual Offences Act 1956 where it is alleged that the assault was against a child under 16 by a person over 18.'"

New clause 39—*Aggravated child sexual offences—*

"(1) The Sexual Offences Act 2003 is amended in accordance with this section.

(2) In section 14—

(a) in subsection (4), at the beginning, insert 'Subject to subsection (5),'; and

(b) after subsection (4), insert—

'(5) If one or more of the following applies, a person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life—

(a) the child has a mental impairment at the time of the offence;

(b) the child is subjected to inhuman or degrading treatment in connection with the offence;

(c) the child dies as a result of physical harm suffered in connection with the offence;

(d) as a consequence of the offence the child is forced to engage in sexual activity with another child;

(e) as a consequence of the offence the child is forced to engage in sexual activity with a family member;

(f) more than 500 pounds were paid in aggregate for the commission of the offence or related offences.'

(3) In section 48—

(a) in subsection (2), at the beginning, insert 'Subject to subsection (3),'; and

(b) after subsection (2), insert—

'(3) If one or more of the following applies, a person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life—

(a) the child has a mental impairment at the time of the offence;

(b) the child is subjected to inhuman or degrading treatment in connection with the offence;

(c) the child dies as a result of physical harm suffered in connection with the offence;

(d) as a consequence of the offence the child is forced to engage in sexual activity with another child;

(e) as a consequence of the offence the child is forced to engage in sexual activity with a family member;

(f) more than 500 pounds were paid in aggregate for the commission of the offence or related offences.'"

New clause 40—*Communication for the purpose of causing or inciting sexual exploitation of a child—*

"(none) Section 48 of the Sexual Offences Act 2003 (Causing or inciting sexual exploitation of a child) is amended by the insertion of the following subsection after subsection (1)—

'(1A) A person commits an offence if he communicates with another person, whether in person or remotely via electronic communication through the internet or other telecommunications, for the purpose of committing an offence under subsection (1), regardless of whether the sexual exploitation takes place.'"

New clause 41—Causing or inciting a child under 13 to engage in sexual activity—

"(1) Section 8 of the Sexual Offences Act 2003 (Causing or inciting a child under 13 to engage in sexual activity) is amended in accordance with sections (2) and (3).

(2) In paragraph (1)(a), leave out 'to engage in an activity' and insert ', having communicated with B by any means, to engage in an activity in any part of the world'.

(3) After subsection (1), insert—

'(1A) For the purposes of this section "by any means" includes, but is not limited to—

(a) in person, and

(b) remotely via electronic communication through the internet or other telecommunications.'"

2.45 pm

Sarah Champion: I will start with new clause 37 on extending double jeopardy. I start with a quote from Dean Radford in the *Metro* in 2019,

"Like many young boys who grew up with a dream of becoming a footballer, the sport was my whole life. It was the be-all and end-all. I didn't even want to think about not being offered a contract. That dream looked like it could become reality when I made it to Southampton Football Club at 13 years old. They had produced some of my favourite football heroes and I was given the amazing opportunity to train with boys like myself, who wanted to be the next big thing in football. All of this came to a halt when I was subjected to sexual abuse at the hands of a coach I trusted and looked up to."

In the 1980s, Radford was one of six boys allegedly abused by their football coach and scout Bob Higgins at Southampton football club. Higgins was acquitted of all charges in the '90s and continued in same line of work. In 2016 the football abuse scandal rightly erupted, and more than 100 people came forward in relation to Higgins. Higgins was convicted of 45 counts of indecent assault involving 23 victims over a period from 1971 to 1996.

The Criminal Justice Act 2003 sets out exceptions to the law of double jeopardy if the offences are considered "severe" or "serious". Murder, kidnapping, serious drug offences, serious criminal damage offences, and penetrative child sex offences all come under that definition. The schedule does not exempt any offences relating to non-penetrative sexual assault or sexual activity with a child. Due to double jeopardy exemptions not applying in sexual assault or indecent assault, the original six complainants against Higgins from the 1990s were prevented from having their case reheard. I find it shocking that the law does not deem non-penetrative child abuse as serious or severe enough for retrial.

The Government is right to acknowledge that extending the list of qualifying offences is not something to be undertaken lightly, but any form of child sexual abuse, whether it involves penetration or not, should be considered a serious or severe offence. Survivors do not differentiate between the severity of different forms of sexual abuse; they do not have a hierarchy. They judge it by the impact on their lives, which tends to be both devastating and lifelong. Abuse of a child should be the very definition of a serious crime, regardless of whether penetration has taken place. I return to the quote from Dean Radford in 2019. He says:

"even though Higgins is in jail right now, he spends no time in his cell for the abuse he [allegedly] subjected us to. He sits in jail knowing he got away with it when it comes to us. He took away years of my childhood and ruined my adult life, without paying any consequences for it. There isn't one day that I don't feel sick to the stomach, or sleep through one night without waking up and thinking of what he did to me."

New clause 37 would amend schedule 5 to the Criminal Justice Act to include child sex offences set out in sections 7 to 10 of the Sexual Offences Act 2003 and sections 14 and 15 of the Sexual Offences Act 1956. Will the Government at the very least commit to a review of the law in this area? It has been 20 years since the Law Commission conducted such a review. The proposed changes to the double jeopardy laws have received widespread support, including from the Victims' Commissioner, the all-party parliamentary group for adult survivors of child sexual abuse, and over 15,000 people who have signed a change.org petition.

The case of Dean Radford, who was abused by Bob Higgins, is just one that devalues the fairness that should exist in our criminal justice system. Higgins was convicted of abusing a total of 24 boys, but the police, Crown Prosecution Service and clearly the criminal jury and judge appreciated the veracity and importance of Radford's evidence, because as he was a witness at Higgins' trial in respect of the abuse—but he did not get the conviction in relation to Higgins' abuse of him.

Bambos Charalambous (Enfield, Southgate) (Lab): My hon. Friend is making an excellent speech. My constituent Ian Ackley was also abused, by Barry Bennell. He was one of the first whistleblowers on the sexual abuse of young men by football coaches, but because he was one of the first, he did not get the support that others got subsequently. As a result, he was encouraged to allow certain offences not to be pursued as much as he would have liked. Does she think that, with additional support, that would change—and how does that relate to her new clause?

Sarah Champion: My hon. Friend knows that I have the great privilege of knowing and working with Ian. He is a remarkable survivor, who does everything he can both to prevent and to seek justice for child abuse. The problem in a lot of these cases is that the abuse happened in the past. As technology has moved forward—in the use of DNA, for example—the evidence available now will be so comprehensively different from that available to those brave enough and successful enough to try to get a case to court in, say, the '70s or '80s, that not to allow double jeopardy in the case of child abuse seems a

[Sarah Champion]

really poor and morally reprehensible decision. We have the opportunity to change that now for these specific cases.

As I said, the last review into double jeopardy was conducted 20 years ago by the Law Commission. Since then, the disclosure in 2017 of abuse by Jimmy Savile and in 2016 of abuse within football, and disclosures in other parts of society have changed the societal landscape so radically that I ask the Minister to consider at the very least initiating such a review.

I will end with a question that I put to the Victims' Commissioner:

"Non-penetrative child abuse offences are not seen as serious crime; therefore, they do not fall under the double jeopardy rule. Should they be?"—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 113, Q178.]

Her answer, in a word, was yes. I urge the Minister, if she will not accept the new clause, to consider a review into this important topic, which is widely supported by the public and a number of bodies.

I will now speak to new clauses 39, 40 and 41 together, while giving a little bit more detail on each one. They all relate to online sexual abuse of children. It might seem silly to say, but people seem to see online abuse as not as severe as abuse in a room, which is nonsense, because online abuse is a child being abused; they are just not in the same room as the abuser. I have to put a health warning on some of the examples that I will give, but I need to give them to explain. Hopefully no one in this room has any knowledge about what is going on out there on the internet, but unfortunately some of us work in this field and so do know. It is pretty chilling, hence my earlier attempt to put "trauma" into the police covenant.

I have worked really closely on these new clauses with the International Justice Mission, which is a fantastic organisation.

Victoria Atkins *indicated assent.*

Sarah Champion: The Minister is nodding. The IJM is leading the way in working collaboratively with international justice departments, police departments and local voluntary organisations around the world. It gave me one example from its recent work in the Philippines, where it has been spending a lot of time. Recently, Philippines police rescued a three-month-old baby in an operation to free children from online sexual exploitation, and weeks later they brought a two-year-old to safety. This is what we are talking about when we talk about online abuse.

The International Justice Mission reports that children it has helped to rescue have been abused by family members. It has been supporting children who have, for example, contracted sexually transmitted diseases as a result of their abuse. Online sexual exploitation includes creating, possessing or distributing child sexual exploitation material such as photos or videos. Traffickers livestream the exploitation to satisfy the online demand of child sex offenders paying to direct the abuse in real time. That crime has been growing internationally, particularly during the covid pandemic, as online offenders have been at home with greater access to the internet and with fewer eyes on them, while victims have been locked into the same environment as their traffickers.

The National Crime Agency has stated its belief that the UK is the world's third largest consumer of livestreamed abuse. That means that people here are sat in their homes directing the abuse of a child in another country. We must strengthen our criminal legal framework for apprehending those offenders in the UK. They may not physically not carry out the act, but they are directing it, and as far as I am concerned, that is as good as.

The International Justice Mission research shows a trend of relatively lenient sentencing for sex offenders in the UK convicted of abusing children in the Philippines, for example. Offenders serve on average only two years and four months in prison, even though they spent several years and thousands of pounds directing the sexual abuse of children. Those sentences do not represent justice for the survivors and, probably just as important, they do not deter the perpetrators. Prevention is vital, but a framework must be in place to give law enforcement the tools they need to act effectively.

I welcome some of the changes in the Bill, which will really help to deal with the problem, including clause 44 and the positive shifts on sentencing for those convicted of arranging or facilitating sexual abuse. We could go further simply by including online offences.

Sarah Jones: I cannot really argue with the points my hon. Friend makes, which seem completely correct. At the bottom of my road was the Shirley Oaks home, which was the scene of massively severe child abuse decades ago. Victims are still coming forward and being compensated for it. The internet now makes it possible for huge numbers of people to be involved in that kind of awful activity, so it is even more important not only that we catch up and stop seeing online offences as different criminal offences, but that we ensure that our response to that crime and our sentencing are such that we can stem the tide. We need to go even further, because that kind of abuse is so widely available that perpetrators can abuse children in any country around the world.

Sarah Champion: My hon. Friend makes absolutely the right point. I am talking about UK offenders abusing children internationally, but hon. Members, particularly the Minister, will also be very aware of the rapid escalation of abuse of UK children through online means.

I remember when I first started to research the issue. Simon Bailey, the National Police Chiefs' Council lead for child protection, said, "Sarah, what you need to understand is that when a family is sat down watching 'Antiques Roadshow' on a Sunday night, and the six-year-old is there playing on their iPad, they could be being groomed and abused in the same room as the parents, and the parents just don't understand that." It always chills me. If I may deviate very slightly, Chair, it frustrates me enormously that the Government's legislation for mandatory relationship education for all children from primary school age, which should have been introduced in September, still has not been brought forward. We have to address that because covid has really escalated the abuse faced by children in this country and internationally.

3 pm

I will say a few words about the new clauses so that the Committee, particularly the Minister, can understand. We are seeking with new clause 39 to bolster provisions

by introducing aggravated offences to capture particularly egregious abuse—for example, where siblings are forced to commit abuse or other degrading or inhuman abuse. I will give an example. One of the International Justice Mission clients said:

"I was asked to strip in front of the camera while a foreigner watches and dictates my next actions. Sometimes, they force me to have sex with animals like dogs and made me do other obscene acts."

The aggravated offences build upon the groundbreaking legislation introduced in Australia in recent years. The offences listed in Australia help to bring to the surface of the legislation the true nature of the vile abuse suffered by many children at the direction of UK sex offenders. It would give police and prosecutors additional tools that more accurately reflect the severity of abuse that is quite typical in these cases.

While existing legislation can be used for overseas sexual exploitation cases, it does not adequately capture the harm caused to the child. It does not necessarily capture the extreme nature of the abuse and the demands placed upon children. It does not necessarily take account of the involvement of other family members, including siblings, in the contact abuse. It does not necessarily include the financial element of this crime, which reflects the economic imbalance that is played upon by sex offenders, enabling them to exploit children.

The aggravated offences seek to reflect that reality and equip police and prosecutors to charge and prosecute offenders accurately, and the judiciary to impose a more appropriate sentence upon conviction. That includes when a child has a mental impairment; when a child is subjected to inhuman and degrading treatment, including having sex with animals; when a child dies of physical harm; when a child has to engage in sexual activity with another child; and when a child has to have sex with a family member.

New clause 40 seeks to address the communications that enable, facilitate or incite the abuse of children. A typical example might involve a British sex offender engaging with an adult in the Philippines, communicating with them through online forums and on social media platforms, with a view to abusing a child. As I mentioned, there is a power dynamic involved between British sex offenders and the adults in the Philippines who are directed to commit contact abuse. The new clause would address communications or activity that is intended to enable the sexual abuse or exploitation of a child. It addresses the initial steps taken by the offender with the intention of committing an offence, regardless of whether that offence in fact took place.

The sex offender might be looking to engage in sexual activity with the child themselves, for an adult to engage in sexual activity with the child or for the child to engage in sexual activity with another child. It would be common for the British sex offenders to send money for food, education, medical supplies and so on in order to manipulate the adult to facilitate or commit the abuse either in person or via live stream. It is vital that this type of behaviour, which creates the conditions for abuse, is covered by the law. The new clause is intended to do so—to capture the exploitative nature of such abuse. Very often these cases involve communication over a significant period of time, rather than one-off instances of abuse. They are, in effect, examples of one adult grooming another to abuse a child. That level of intentionality and exploitation must be reflected in the law. Of course, early intervention is needed before a child is ever abused and the new clause sets out that it is an offence to communicate this intention, even if the sexual abuse or exploitation does not take place.

Finally, new clause 41 seeks to clarify that offences under section 8 of the Sexual Offences Act 2003 involving inciting, arranging or facilitating child sexual abuse may take place online or in person, in the UK or around the world.

These simple additions to a Bill that I really welcome would future-proof the law. As the Minister is well aware, more and more abuse is happening online and that is only going to continue. I feel deeply for the police, who know this, but Pandora's box has well and truly been opened. Even with unlimited resources, it would still be incredibly difficult to address this issue, but with the resources that the police have, they are failing. These new clauses recognise the level of abuse that is happening to these children at the hands of UK nationals.

Alex Cunningham: It is a pleasure to serve under your chairmanship, Mr McCabe, and I do recognise that you know what you are doing. I tend to have a big mouth at times, and I am often the first one to jump in, maybe a little bit prematurely.

I pay tribute to the Clerks of this Committee, just as my hon. Friend the Member for Croydon Central did. We all know that their professionalism is first class, but my greatest admiration is for their patience, which they have had to demonstrate daily in helping us prepare for this particular Bill. I also apologise to you, Chair, and to the Minister, the hon. Member for Louth and Horncastle, that I was a couple of minutes late to the Committee this afternoon. I gather that the Minister mentioned that she is going to address the issue of 16-year-olds being designated as adults in clause 36 of the Bill.

I am sure that Members on both sides of the Committee will join me in paying tribute to my hon. Friend the Member for Rotherham for the tremendous amount of dedicated work she has done on child exploitation since arriving in this House. Her experience and ability to pull together Members from across the House not just to champion the rights of children but to help educate us on what is happening in our society, is admirable to say the least. Today, she has finally had that most important opportunity: the chance to propose a series of amendments to legislation to help address some of those issues and, above all, better protect young people from the predators who would ruin their lives.

As Members will have seen, we are supportive of what the Government are trying to do in this space, but it is important that we do not lose this opportunity to strengthen this work in the best interests of our children and young people. We hope that Ministers will remain in listening mode, ready to adopt the revisions that we are suggesting, in relation to not just clause 44 but the following clause 45. There is very little that I can add to the detail outlined by my hon. Friend, so I will address clause 44 and new clauses 39 to 41 in relatively brief fashion.

As has been said, clause 44 addresses the need to strengthen section 14 of the Sexual Offences Act 2003, with subsection (2) extending the offence so that it

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covers acts preparatory to the offences in sections 5 to 8 of that Act: among other things, the rape of a child under 13, assault of a child under 13 by penetration, and causing or inciting a child under 13 to engage in sexual activity. The proposed sentence changes are to be welcomed as a step in the right direction, and the new clauses proposed by my hon. Friend are designed to bolster what the Government are trying to achieve while, more importantly, demonstrating a much tougher approach to those who would commit the most heinous of crimes against children.

As outlined by my hon. Friend the Member for Rotherham, new clause 39 will introduce aggravated offences to cover the most serious cases such as those involving particularly degrading treatment of a child, or where a family member or the family are involved in the contact abuse. This reflects landmark legislation that has been introduced in Australia, as my hon. Friend has set out in more detail. Each of the aggravating factors listed in this new clause—I am pleased that my hon. Friend read them out—is an example of the most depraved and horrifying offending that can be imagined. We strongly believe that these instances of extreme abuse and exploitation should be captured in legislation, and I am sure the Government agree that offending of this nature needs to feel the full force of the law.

New clause 40 will criminalise online communications or activity that are intended to enable sexual abuse and exploitation. As abuse moves online, it is so important that we ensure our legislation keeps place with emerging criminal activities so that these abusers are still held to account for their crimes. This new clause will address the initial steps taken by the sex offender who is intent on committing an offence, and will ensure that law enforcement has a framework through which it can tackle this horrendous behaviour at the earliest point possible.

Finally, new clause 41 will make it clear that offences of inciting, arranging, or facilitating child sexual abuse can take place in person or online, in the UK or in any other part of the world. My hon. Friend the Member for Rotherham spoke of the important work of the International Justice Mission. As she said, the IJM's teams in the Philippines work with local and international law enforcement to address situations in which sex offenders pay to direct and livestream sexual abuse of Filipino children. Sadly, and to our shame as a nation, it is often sex offenders in the UK who are driving the demand for such abuse. The National Crime Agency believes that the UK is the third-largest consumer of livestreamed abuse in the world. The harm that the demand causes cannot be overstated. Many of the children whom IJM has assisted are very young: around half were under 12 years of age when they were helped to safety. The severity of the harm caused by online offenders here in the UK must be recognised.

Currently, UK offenders who directed and paid for the livestreamed sexual abuse of Filipino children will serve an average of just two years and four months in prison. Are the Government content with that? I would hope not. The new clauses will go some way to addressing the injustice and will help hold UK online offenders accountable for the abuse and trauma they cause. We need the abusers to know that they cannot hide behind their computer screens and access extreme material without knowing that when they are caught—modern technology is improving the chances of that tremendously—they will not just get a slap on the wrist but will go to prison for a considerable length of time. I hope the Government will support the amendments.

The Chair: No need for apologies, Mr Cunningham. It is important that the Bill is properly scrutinised and that the parliamentary procedure is complied with. I call Minister Philp.

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): It is a great pleasure, once again, to serve under your chairmanship, Mr McCabe. I join the hon. Member for Stockton North in paying tribute to the hon. Member for Rotherham for the work that she has been doing in this area for so many years. I am sure the entire Committee, and anyone listening, will have been deeply moved by her speech a few minutes ago, in which she described the most appalling abuse that I know all of us, as a House, can come together to combat and fight. I know she has been tirelessly working in this area for many years, and the whole House is grateful to her for the work and leadership she has shown.

The provisions in the Bill that we are discussing form only a small part of what the Government are doing to combat these terrible crimes, and I pay particular tribute to the Minister for Safeguarding, my hon. Friend the Member for Louth and Horncastle, who leads the Government's work. Before talking about the provisions in the Bill, I want to draw attention to some non-legislative work that is going on, particularly the work that is being done internationally, including through the "Tackling Child Sexual Abuse Strategy", which I think was published earlier this year. The hon. Member for Rotherham talked a few moments ago about a separate piece of legislation—the forthcoming online safety Bill, which aims to tackle many of the issues that we have been discussing. We are of course also working internationally with other states and with international organisations and charities, such as the International Justice Alliance and the International Watch Foundation, to make sure that we protect children overseas. Legislation is important, but so is action. The Minister for Safeguarding and others in Government are committed to taking that action, and we welcome the support from Members of different parties in doing that.

Let me pick up some of the points that the hon. Members for Rotherham and for Stockton North raised in their comments. A question was posed by the hon. Member for Stockton North in his excellent speech: he asked whether we were content with some of the sentences being handed down to people in the United Kingdom who go online and cause a deeply traumatising offence to be committed in another country, such as the Philippines or elsewhere. The answer is no, we are not.

Clause 44 aims to address the lacuna that currently exists in this area and that we think needs to be closed. Clause 44 is a critical part of doing that.

3.15 pm

Specifically, the clause seeks to close a gap in legislation relating to arranging or facilitating the sexual abuse of children under the age of 13, to start with. The Sexual

Offences Act 2003 already contains a number of specific child sex offences. Under the provisions of the Criminal Attempts Act 1981, attempting to commit any of those offences is an offence itself. The 2003 Act rightly goes further and provides in section 14 that it is also an offence to undertake acts that are preparatory to one of the offences under sections 9 to 13, which among other things cover sexual activity with a child.

The clause aims to address a gap in relation to section 14. The offence of "Arranging or facilitating commission of a child sex offence", currently does not apply to child sex offences under sections 5 to 8 of the 2003 Act, which include rape and other offences against children under the age of 13. First, therefore, clause 44 closes that gap.

Secondly, and in relation to the point that the hon. Member for Rotherham and shadow Minister the hon. Member for Stockton North made, clause 44 does more. Critically, it also aligns the maximum penalty for a section 14 offence with the maximum penalty for the substantive underlying offence being facilitated or arranged. If, for example, someone is inciting, arranging or facilitating a horrendous act to be committed in another country online, the maximum penalty for doing so is the maximum penalty for what is actually being done to that child, not simply for facilitation or arrangement.

That critical change ensures that people will be sentenced for what is actually being done to the victim, exactly as the hon. Members for Rotherham and for Stockton North rightly called for. That is a critical change. To give an example, the maximum penalty for arranging or facilitating the rape of a child under 13 would now be life imprisonment, reflecting the seriousness of that act being done to the child, rather than simply 14 years' imprisonment at present. That is absolutely right. As the hon. Member for Rotherham rightly said, the fact that the person is inciting, facilitating and arranging that act is just as serious as the physical conduct of the act itself. Were that person not arranging or facilitating it, it would not have happened. The hon. Members for Rotherham and for Stockton North are right to say that it should be prosecuted and punished as seriously as the act itself. The Government are in complete agreement with that, and the clause accomplishes it, as drafted.

Let me move on to one or two other points, which the hon. Member for Rotherham in particular made—territorial application and offences committed online. The existing offences, which we have just talked about, under sections 8, 14 and 48 of the Sexual Offences Act 2003, are now being strengthened by clause 44, as we have discussed. Those offences can already be prosecuted, regardless of the method of communication, whether that is two people in the same room talking to one another, or someone online giving instructions by email. It does not matter what the method of communication is, prosecution can still happen.

I was shocked to hear the statistic given by the shadow Minister about the UK being the third-highest live-streaming source country in the world. That is a shocking and shameful statistic. The law as it stands allows prosecution, and prosecutions happen under the current law, but clearly we need to do more to ensure that the law is used to prosecute more widely. That is part of the tackling child sexual abuse strategy work that my hon. Friend the Minister for Safeguarding is leading.

Territorial application is making sure that it does not matter where in the world the offences happen, they can still be prosecuted. Section 72 of the Sexual Offences Act 2003 makes it clear that the offences can be prosecuted even when the physical act happens outside the United Kingdom. A section 14 offence—the one being strengthened by clause 44—again applies to acts conducted or carried out in any part of the world. The law allows prosecution for an act committed elsewhere, where the communication is online. That is already inherent in section 14; it is inherent in the 2003 Act, which we are strengthening.

Sarah Champion: The Minister's speech is incredibly reassuring, and I am glad that it will now be in black and white in the transcript, because it gives the comfort that we need. However, hearing everything that he is saying, is there any objection to putting the words "online" or "international" in the Bill, just for clarity and just because there is a change? The likelihood of people reading through all the guidance when they are making a decision is slender, whereas they will go to the Act and it would be there in black and white, which would give a lot of comfort.

Chris Philp: I thank the hon. Lady for her question. My clear understanding is that the police already prosecute for these offences. I will go away and double-check with colleagues to make sure that there is no scope for misunderstanding by law enforcement authorities: the police; the National Crime Agency; and the Crown Prosecution Service. Having investigated that question further, I will write to her with the reply to her question. The law permits it, and the law is being used. However, I will just seek that assurance that there is no misunderstanding by practitioners. My understanding, as I say, is that they are prosecuting and getting some convictions, but I will double-check her point and get back to her in writing.

I think that speaks to the issues raised in new clauses 40 and 41. In relation to new clause 39, I think that the essence of what the hon. Lady is seeking to achieve is delivered by clause 44, as it is drafted, by making the maximum penalty the maximum sentence for the underlying act that is committed. To take the most extreme and distressing example, if someone is being raped and that has been incited, facilitated or arranged online, that facilitation will now—if we pass this clause—lead to that maximum sentence applying. It will be the underlying offence that triggers the maximum sentence, which I think addresses the point that she is quite rightly making in new clause 39. I believe that clause 44 addresses that issue.

Finally, there is the question of new clause 37, which is concerned with double jeopardy. I completely accept, and I think the Government accept, that this is an incredibly difficult area, where a very difficult balance has to be struck, because on the one hand we have long-standing interests of natural justice, which say that someone can only be tried for a given offence once for reasons of fairness, natural justice and finality, but on the other hand there are the points that the hon. Lady has very powerfully made concerning these very distressing offences.

As the hon. Lady said, this issue was looked at by the Law Commission in the early 2000s and then legislated for via the 2003 Act. In fact, the Law Commission

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initially only recommended that the exemption to double jeopardy should apply to murder. However, when Parliament debated this question, it decided to expand the range of exemptions, which were covered in schedule 5 to the 2003 Act, to cover, in addition to homicide, other offences, as she said, such as rape, penetrative sexual offences, kidnapping and war crimes. Such offences are generally punishable by a term of life imprisonment, or in one or two cases by the exceptionally high standard determinate sentence of 30 years.

A line has to be drawn as these things are balanced, which is an extremely difficult line to draw, because there will always be offences that are just over the non-exception side of that schedule 5 line, which are very grave offences. The hon. Lady very powerfully described why those offences are so appalling, offensive and terrible. She is right—they are—but we have to try to strike a balance in deciding where that line is drawn. Clearly, offences of rape and sexual assault involving penetration are exempted—they can be tried again—but those that do not involve penetration are not in schedule 5, so the rules on double jeopardy apply.

The Bill does not change that, and there are no plans to change where the line is drawn. As the hon. Lady raised the question in such powerful terms, I will raise it with more senior colleagues in Government to test their opinion—I can make no stronger undertaking than that—to ensure that her point, which she articulated so powerfully, gets voiced. I will let her know the response. I do understand her point, but there is a balance to be struck and considerations of natural justice that need to be weighed as well.

Sarah Champion: I appreciate what the Minister is saying. In that discussion, will he throw in the potential of another review? In relation to this crime, things have moved on so much, not in the last 20 years, but in the last five years, so it would be good to hear his colleagues' thoughts on that as well.

Chris Philp: Well, I have reached the end of my remarks—

Maria Eagle (Garston and Halewood) (Lab): I have been listening carefully to the Minister's response. Will he undertake to get back to Opposition Members and indeed the whole Committee before Report?

Chris Philp: I almost said that without being prompted, but, since I have now been prompted, yes, I will.

I hope that the commentary I have given on the operation of the clause addresses the many points quite rightly and properly raised by the hon. Member for Rotherham and the shadow Minister. I have undertaken further to investigate two points, and I hope that on that basis the Committee is content to see the clause stand part of the Bill.

The Chair: I know that members of the public get a little confused by this, so I remind them that the new clauses were debated as part of our discussion on clause 44 because that is where they sit most logically, but we will vote on them at the end of our consideration.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

POSITIONS OF TRUST

Sarah Champion (Rotherham) (Lab): I beg to move amendment 7, in clause 45, page 37, line 1, leave out subsections (2) and (3) and insert—

"(2) In section 21, after subsection (5), insert—

(5A) This subsection applies if A is regularly involved in caring for, training, supervising or being in sole charge of B and none of subsections (2) to (13) of this section otherwise applies."

(3) In section 16—

(a) in subsection (2)(a), leave out 'or (5)' and insert ', (5) or (5A)';

(b) in subsection (4)(a), leave out 'or (5)' and insert ', (5) or (5A)'.

(4) In section 17—

(a) in subsection (2)(a), leave out 'or (5)' and insert ', (5) or (5A)';

(b) in subsection (4)(a), leave out 'or (5)' and insert ', (5) or (5A)'.

(5) In section 18—

(a) in subsection (2)(a), leave out 'or (5)' and insert ', (5) or (5A)';

(b) in subsection (4)(a), leave out 'or (5)' and insert ', (5) or (5A)'.

(6) In section 19—

(a) in subsection (2)(a), leave out 'or (5)' and insert ', (5) or (5A)';

(b) in subsection (4)(a), leave out 'or (5)' and insert ', (5) or (5A)'."

This amendment aims to ensure that all adults who are in a position of trust are subject to the child sexual abuse offences provided for by section 16 to 19 of the Sexual Offences Act 2003, rather than simply extending the definition to those who coach, teach, train, supervise or instruct children in a sport or a religion.

I am sorry; everyone must be sick of my voice now. I must say that I am sick of giving this speech on positions of trust, because I have given it so many times. I will start, somewhat cheekily, by quoting the Under-Secretary of State for the Home Department, the hon. Member for Louth and Horncastle, back to herself on clause 1 and the police covenant. On Tuesday, she said:

"We have kept the wording deliberately broad to ensure that there is room within the legislation to allow the Secretary of State to consider issues of importance as they arise, and the issues that have been raised here will be included in those considerations."—[*Official Report, Police, Crime Sentencing and Courts Public Bill Committee,* 25 May 2021; c. 198.]

I ask her to take a similar approach on positions of trust. I am hugely—*[Interruption.]* Oh. I will ask the Under-Secretary of State for the Home Department, the hon. Member for Croydon South, to listen to the other Minister's wise words when it comes to considering positions of trust. It is a real collaborative effort when it comes to tackling child abuse, and I do appreciate that.

Let me set out my stall. At the time of the Sexual Offences Act 2003, it was rightly identified that certain adults had a position of trust over a child that made it all the more inappropriate for them to have sexual relations with that child. I am talking specifically about children aged 16 or 17 who are able to have sex within the law, and who are able to give consent. Because of the adult's position of trust, they have a disproportionate amount of power over that child, which brings into debate the free gift of consent that a child could give

because of that power imbalance. Clause 22(2) of the Sexual Offences Act defines someone in a position of trust, saying,

"a person looks after persons under 18 if he is regularly"—

that is a key word—

"involved in caring for, training, supervising or being in sole charge of such persons."

I think we would all agree on that.

3.30 pm

Where I disagree with the Sexual Offences Act, and where I am incredibly grateful to the Government for listening, is where the Act defines the jobs that are seen as positions of trust. At the time—we should remember that this was 18 years ago—these were basically all statutory roles, such as teachers and people working in care homes. Times have moved on, and I must pay huge thanks and tribute to the hon. Member for Chatham and Aylesford (Tracey Crouch), Baroness Tanni Grey-Thompson, and a number of charities, including the NSPCC and thirtyone:eight, in particular, who lobbied incredibly hard to make the point that, for example, a sports coach or a faith leader is in at least as much of a position of trust as a maths teacher.

Let me go back to what we just heard about double jeopardy and the power and influence that a football coach has over a child. Members here may all have had the most amazing maths teacher, but in reality we would have seen them once a week for an hour in an environment with lots of other children—it is incredibly unlikely that we would have seen them on our own after school. To be honest, that maths teacher would not have anywhere near as much power and influence over us as a football coach would, or a dance teacher would, if we had wanted to get into the next round of "Strictly" or whatever it is.

What we have managed to argue, and what the Government have acknowledged—I am extremely grateful for that—is that sports coaches and faith leaders have that disproportionate influence over a child; they are regularly involved in caring for, training, supervising or being in sole charge of those children, and it is therefore right that they come under that description and that, if they have sex with a 16 or 17-year-old in their care, it is a criminal offence.

We made a number of arguments to get to that point. As the law stood, it was up to the child to recognise that they were in a coercive relationship, and also to report it, and also to be the witness in court justifying that they were in a coercive relationship. There are a number of points to make on that, and this comes to all forms of sexual exploitation. First, the child has to have the awareness, when someone has indoctrinated them, that they are not giving their consent freely, whether that is in a child marriage situation, a child exploitation situation or a situation of being exploited by someone in a position of trust. Indeed—I look at colleagues in the room—some of us have been in relationships that, when we were younger, we thought were absolutely wonderful, but when we looked back, we think, "Oh my goodness, they had so much power and influence over me, and I didn't see it at the time." That is as an adult.

We are asking a 16 or 17-year-old to have that awareness to report that the relationship they are in is not one where consent has been freely given. But then we are also putting that 16 or 17-year-old in an adversarial court situation to argue with the very person who has the control and influence over them that they are abusing them. It comes down to that classic situation of the two people battling it out and who is right in that situation. With the sports coaches and gymnast coaches, we know that these cases very rarely—if ever—come to trial. The rebuttal that is almost always given at the time of reporting it is, "Well, you are able to consent, so you are in a consensual relationship." Every time, the abuser will say, "They said yes. It was consensual. They are above the age of consent." That does not address the power imbalance, so I am grateful that, in these two particular cases, the Government are recognising that the power imbalance is so severe that it needs to be on the face of this Bill.

I am tired of making the same arguments. I could make the same arguments about tutors or driving instructors, and I could go through a whole range of other influencers. Let me try and future-proof the Bill by saying that a social influencer has far more influence over a child than a maths teacher. In the future, when social influencers are running online tutorials on a weekly basis, one to one with a child, which lead to that child getting into an abusive relationship, they would not be covered in the Bill if the child is 16 or 17.

I do not want to be here in five years' time arguing that it is great that teachers, care workers, football coaches and faith leaders are in the Bill, but that we now need to put in youth workers. I want this Bill to be as broad as it can be, but also to be specific. The specificity comes from the existing definitions of a position of trust. I want to future-proof the Bill and to stop the next iteration of Sarah Champion, which will definitely be no sooner than in 20 years' time, because I intend to hold Rotherham for all that time, making the same argument.

When the next Labour Member for Rotherham comes here, I do not want them to have to make the same argument about why a driving instructor has particular influence over a child because the possibility of that child going to their job or going for a date becomes conditional on their having sex with that person, and about why that should therefore be recognised in this legislation. I ask the Ministers to drop these two job descriptions and to keep things as broad as they currently are in the Sexual Offences Act 2003. Then, they will have done their duty by all future 16 and 17-year-olds, so that they cannot be abused by adults in positions of trust in the future.

Alex Cunningham: My mum is a wise older woman who will be 88 on 1 August. She has offered me many a statement, and sometimes direction, that has given me food for thought and helped me form opinions or even take action to work for change. One expression she would use in the past was, "We all come into the world the same way, and we all leave it the same way." She knew, as we all do, that opportunities between and birth and death vary tremendously for our people. We need to work for equality wherever we can, particularly for our children and young people. We need to apply that work on equality to this Bill, to ensure that all young people are protected from adults in a position of trust over them and, where they are exploited, to ensure that the full weight of the law is felt by those who have betrayed that position and possibly ruined young persons' lives.

[Alex Cunningham]

The Opposition have worked for months with the police and policing and justice stakeholders from across the field in drawing together our various amendments. It has been extremely heartening that Ministers have already shown a great willingness to work together to improve the Bill. That has been extremely welcome thus far, and I hope it will extend to our discussion on clause 45.

This matter has strong cross-party support, and I am sure hon. Members join me in giving wholehearted thanks to my hon. Friend the Member for Rotherham and those she paid tribute to earlier—the hon. Member for Chatham and Aylesford and Baroness Grey-Thompson—for their tireless work prosecuting the case and campaigning for wider protections for our children.

The proposed extension to the definition of "position of trust" is very much welcomed by the Opposition, but it is vital that we do not miss this opportunity to introduce a comprehensive solution that protects children from potentially abusive adults in positions of influence over them in all activities and settings. It is time to Close the Loophole, as the NSPCC has called its campaign.

Before I discuss the excellent amendment from my hon. Friend the Member for Rotherham, on which she made an outstanding and meaningful speech, I would like to seek some clarity about who is covered by the definition currently in the Bill, to eliminate confusion. Can the Minister confirm that, with regard to sports, the current wording covers those adults who are instructing and training children in recreational physical activity that is not directly leading to a specific competitive event or display—for example, swimming lessons or dance classes? Can he also confirm that, with regard to religion, the current wording covers adults who are leading activities that have a religious ethos, or who are operating under the auspices of a specific religious organisation or denomination, but where the activities are not directly related to religious practice—for instance, a temple youth group, a church camp or outdoor activities? What happens there? I would welcome clarity on all those points. The possible confusion in the current wording, which has been pointed out by the NSPCC, means that the clause as it stands may not cover all sporting and religious activity.

The lack of clarity about the Government's proposals goes to illustrate the issue at hand. Why are we excluding children from the protections of this clause in some settings, but not in others? I will repeat that point a few times. Why have the Government chosen to draw the line here? Why are some children being safeguarded and others left at risk? As it stands, the Government will be excluding children from this new protection in many settings, such as music, creative and performing arts, tutoring, cadets, driving lessons and youth clubs.

Sarah Champion: My hon. Friend is making a very strong point. I am thinking about this from a parent's point of view. At the moment, they assume that everybody in a position of trust over their child, as they would see it, is covered by this legislation. It seems ridiculous that, when we are talking about a child in school—I will stay with the example of the maths teacher—the maths teacher would be convicted if they had sex with a 16-year-old, but if the child leaves school and goes to a maths tutor, the maths tutor could have sex with them and would not be prosecuted. The issue is just about getting clarity for everyone on this.

Alex Cunningham: I thank my hon. Friend for making that point. It illustrates exactly what we are about here, which is that everybody should be treated the same. Incidentally, I had an excellent maths teacher; I do not remember his first name, but he was Mr Fielding, and he was a first-class maths teacher.

I am sure that we all agree that extracurricular activities such as those that I have outlined are vital for children's development. They provide opportunities for children to learn new skills, make new friends and develop self-confidence. But why should those young people not be afforded the same level of protection when doing them?

I discussed this issue recently with my hon. Friend the Member for York Central (Rachael Maskell), and she shared with me a number of horrendous cases of abuse by adults in positions of trust that have arisen in her constituency, yet the definition proposed by the Government would not cover these horrific abuses. I understand that she discussed one particular case in meetings with Justice and Home Office Ministers, so she was surprised, as I am, that no action was taken in this legislation to deal with people in similar situations in the future.

I am sharing details of the case here with my hon. Friend's permission. She said:

"With regard to tutors, we had a dreadful case of grooming and then assault on a teenager who was a music student, by her private tutor.

She was groomed from the age of 14, was a rising talent, which he nurtured and there came a relationship of dependency in the light of this.

He then raped her when she turned 16.

The case went to the CPS but they did not proceed with the case despite the support of the local police.

It destroyed her.

Music lessons were conducted in private. He held her future career in his hands.

He was in a position of trust and abused that trust."

Can the Government explain why they have chosen not to extend the positions of trust laws to cover all situations like this, where the adult holds the power to influence a young person's future and is in close contact with the child? If we fail to close this loophole, we will fail young victims like the young woman in the case I just described.

3.45 pm

Another issue that my hon. Friend raised with me is host families of international students, which she also discussed with her local police force, as they identified a safeguarding gap in this area. That is a possible issue of concern for any student travelling from overseas. They sometimes do not speak much English—indeed, they might have travelled to the UK to learn the language—and they live with host families for a time. I understand that families face some checks, but that that depends on the exchange organisations that organise the accommodation. Families do not already face Disclosure and Barring Service checks in all cases.

My hon. Friend told me of instances of hosts assaulting or acting inappropriately towards their guests—young people living in a stranger's home in a country they are

unfamiliar with; they could not be much more vulnerable. Host families are placed in a position of trust and should be subject to full checks prior to providing residential accommodation in their home. Those young people will not be afforded the protection they need simply because they are not in one of the designated settings. Again, why have the Government drawn the line to exclude such people from the legislation?

As noted by my hon. Friend the Member for Rotherham, while subsection (2) allows the Secretary of State to add or remove activities in the future, we are concerned by the challenge of collecting data on something that is not defined in law.

Sarah Champion: Like my hon. Friend, I am somewhat perplexed. He is right: subsection (2) suggests that the Government recognise that additional careers may need to come under the legislation, now or in the future, so why are they closing the door now when they recognise that they will need to open it again in a year or in 10 years? NSPCC research on the cases it already knows have been prosecuted identifies—as well as the teaching professions, faith and sport—transport, youth work, scouts, cadets, charities and the performing arts as the most prevalent careers for cases. We know that there are more cases.

Alex Cunningham: Yes, and that seems so obvious. The briefings we have received from different organisations outline that the fact that this is the case across all the activity that my hon. Friend describes. How will the Minister determine what is to be added or removed in future? What criteria will be used to determine which child should be protected and which should not?

No doubt a robust mechanism will be required to monitor the implementation and to ensure that no child is placed at unnecessary risk, but the legal framework makes it difficult to collect comprehensive data on the scale of abuse by those in positions of trust. We have insight to the scale of the problem, and I thank the NSPCC for providing these figures and pay tribute to it. The NSPCC is probably one of the clearest about what it is trying to achieve; when it sends me a brief, I know exactly what it wants, and I trust it tremendously when it tells me things.

The NSPCC tells me that the Office for National Statistics has analysed child sexual abuse data from the Crime Survey for England and Wales, which asks people over 16 to report on their experiences of abuse in childhood. It found that in 9.7% of all contact child abuse cases, and in 4.4% of all non-contact child abuse cases, the perpetrator was an adult in a position of trust or authority over the child. For males—this actually surprised me—19% of contact abuse was by a person in a position of trust or authority.

In the data from the Crime Survey for England and Wales, the definition of a person in a position of trust or authority included positions currently included in the definition of positions of trust, such as teachers and social workers, and persons included within the Government's proposals in clause 45, such as sports coaches and religious leaders, as well as positions that remain outside the Government's proposals, including private tutors, youth workers and those leading music and creative activities, which we have covered.

Chris Philp: I thank the shadow Minister for giving way and for sharing those figures. Does he have, or was he provided with, a breakdown of them? On the 19%—I think that was the figure he gave—of males reporting contact abuse perpetrated by someone in a position of trust, does he have a breakdown of what proportion of those offences were committed by people who either met the current definition or who meet the definition as expanded by clause 45, as opposed to people who do not meet either of those definitions? That would be interesting information if he has it to hand.

Alex Cunningham: Indeed it would be good information to have to hand, but I do not know the answer to the question. Perhaps we can discuss the issue in a future debate.

If data on those instances of abuse is collected, even in the Crime Survey for England and Wales, why do the Government not think that the law should recognise the activity as criminal?

Sarah Jones: I worked for six months at Addenbrooke's Hospital. That happened to be when things were coming to light about a doctor called Myles Bradbury, who had abused many, many children. Part of what I had to do was put together the plan for how we would go to the parents of children who had died of cancer, having been treated by that doctor. We will never know how many people he managed to abuse; he abused many children. He was an abuser. If he had not been a doctor, he might have been a driving instructor. If he had not been a driving instructor, he might have been a football coach. He was intent on abusing young people and he would always have found a position of trust to do so.

Does my hon. Friend agree that it makes no sense to list certain things and exclude others when we are talking about perpetrators who will find the means to do these things if they want to?

Alex Cunningham: Indeed I do. People say, "It doesn't matter what laws you pass; people will find a way." That is one of the terrible things in our society.

Having heard what both my hon. Friends have said, I reflect on the parents and the trauma that parents face when they realise that they have allowed their child—their daughter—to be tutored by a particular person to learn the piano, or entrusted them to a sports coach working with 20 children, who goes on to abuse them. The parents have that guilt—guilt they have to live with. It is not their fault, but they still have to live with the guilt.

We must strengthen the law as much as possible, so that if such cases come to light the perpetrators face the full force of the law, and we must not allow any loopholes whatever to protect any of those people.

The figures from the NSPCC that I mentioned come from a series of freedom of information requests on all local authority children's services in England and Wales between 2014 and 2018. The NSPCC found that over a four-year period there were 653 complaints about adults who were not covered by the criminal law having sex with 16 and 17-year-olds in their care. That compares to 1,025 criminal offences of abuse of a position of trust of a sexual nature in the same period.

The NSPCC also asked local authorities to provide information about the fields of work of the referrals: 26% were cases in sport and leisure settings; 12% were

[Alex Cunningham]

in religious group settings; 11% were cases involving transport or involving drivers—my hon. Friend the Member for Croydon Central referred to cases involving driving instructors; 5.7% were in settings of voluntary or charity work; and another 5.7% were in cadet organisations. That is 653 cases where our law did not protect vulnerable young people.

We have a chance to extend that provision to protect children in those settings future and I urge the Government to take it—please do not lose the opportunity. Those figures are deeply disturbing, but statistics alone do not convey the impact that abuse of a position of trust has on children and young people, including the truly devastating impact when someone is told that what happened to them is not a criminal offence and nothing can be done about it. Too many young victims are being given the message that the adult who abused their position did nothing wrong and that to have prevented it from happening the young person should not have consented.

With support from the NSPCC, "Hannah", whose name has been changed, and two other brave young women directly affected by that form of abuse wrote directly to the Lord Chancellor and Secretary of State for Justice. "Hannah" told the NSPCC, "When I turned 16, 'Jeff', my swimming coach, began to comment on my appearance. He would tell me that I looked nice or that clothes looked good on me. No one had ever said these things to me before, and I wasn't sure how to feel. Soon he started pushing the boundaries. Initially he would just give me a hug. Then one day he gave me a hug and put his hand on my bottom. 'Jeff' spent a long time making me feel comfortable. I remember the first time we kissed. After training, we started to be intimate in that way a couple would. After some time, we started having sex. This was my first sexual experience. 'Jeff' told me to keep this a secret. I was under the impression when 'Jeff' told me not to tell anyone that it would be for the best for my swimming, and this would develop into a proper relationship and we could tell everyone. I wanted to tell my friends, but I knew I couldn't. When this relationship came tumbling down, I changed with it. I was left feeling really angry, I was a difficult person to be around. It took me a long time to trust friends and family, to let them hug me again."

Hearing the devastating impact of that horrific abuse is absolutely heartrending. I want to put on record the great debt of gratitude that we as parliamentarians owe to the courageous young people, such as "Hannah", who work with the NSPCC to lobby the Government on the issue. Their civic-mindedness in the wake of such dreadful abuse is so very admirable, and because of their work, alongside others, the law will be improved to protect more young people.

In the event that the Government do not support my hon. Friend's excellent amendment, will the Minister say how the risks associated with positions that remain outside the definition—for example, private music tutor or cadet leader—will be monitored? The consistent collection and monitoring of data relating to the implementation and effectiveness of clause 45 are vital if it is to protect the full range of young people who may come into contact with personal abusers. If the Minister will not do what the Opposition consider the right thing, will he please provide clarity on the review mechanisms the Government will put in place to decide whether further extensions of the definition of "positions of trust" in clause 45(2) should take place?

I want to consider some of the Government's previous objections to the extension of the ambit of the "positions of trust" definition. In March 2020, during a Westminster Hall debate on sports coaches in positions of trust, the Under-Secretary of State for Justice, the hon. Member for Cheltenham (Alex Chalk), said:

> "What is at stake here is a need to balance the legal right, as prescribed by Parliament, for young persons aged 16 and over to consent to sexual activity, with the proper desire to protect vulnerable young people from manipulation."

Although I agree that it is not our place to deny age-appropriate rights as prescribed by Parliament, this is not an attempt to raise the age of consent by stealth. It is an attempt to offer extra protection to young people when they are specifically in a context where there is a disproportionate power imbalance.

Sarah Champion: I hear that the Government use that excuse a lot, and my rebuttal is always that it has not been an issue for the past 18 years when it has been in place for teachers, so why would it suddenly be an issue with different professions?

Alex Cunningham: Again, my hon. Friend makes it very clear that we are bamboozled by the approach that the Government are taking. Surely the figures that I mentioned earlier show that there is significant prevalence of abuse in such settings, and that Parliament should step in and offer protections to our young people. Later today, we will be talking about memorials. Apparently, the law could be changed, and one person extra might go to prison as a result of the new legislation, yet here is a serious situation whereby many people could be sent to prison for the abuse of young people, but the Government are not making the necessary changes. We hope that the Minister is actually listening.

In Westminster Hall, the hon. Member for Cheltenham said:

> "Another complicating feature is the evolving case law in the area. In certain situations, the criminal division of the Court of Appeal has already been clear that supposed consent may be vitiated or even negated, thereby creating a criminal offence in any event… That is important because, as the Crown Prosecution Service now indicates in its charging decisions, in certain circumstances that ruling could apply where perpetrators were in a position of power in which they could abuse their trust over a victim. If we look at the CPS charging decision—in other words, when making a decision about whether there truly was consent in a relationship—one of the matters that has to be considered is:
>
> 'Where the suspect was in a position of power where they could abuse their trust, especially because of their position or status'"—

including, as he said himself—

> "'a family member, teacher, religious leader, employer, gang member, carer, doctor.'"

He continued:

> "The point is that it is no longer necessarily automatically good enough for the defendant to say, 'Look, she consented', if in fact that will was suborned in some way. That might well be a very proper reason why the CPS could conclude that there had been no consent."—[*Official Report,* 4 March 2020; Vol. 672, c. 304WH.]

4 pm

That might all sound well and good, but we all know that there is a serious crisis in the criminal justice system's handling of sexual offences. New figures this week illustrate the scale of the crisis, as my hon. Friend the Member for Croydon Central noted. They simply show the latest in a sharp downward trend in the volume of rape prosecutions. Analysis by *The Guardian* of Home Office figures shows that one rape case in six reported to the police last year resulted in a suspect being charged. In 2020, more than 52,000 rapes were reported in England and Wales, but only 843 resulted in a charge or summons. That is an appallingly low rate of just 1.6%. We can never forget that figure or stop reminding the Government of it.

For every 10 rape cases the CPS prosecuted in 2016-17, it now pursues only three. The volume of rape prosecutions declined by 71% between 2016-17 and the calendar year to December 2020, from 5,190 to 1,490. The drop in prosecutions has in turn led to fewer convictions: 1,917 fewer rapists were convicted in the year to December 2020 than in 2016-17, a decline of 64%, as 2,991 convictions were secured four years ago compared with 1,074 last year.

Against that dire backdrop, I am sure the Government appreciate that the same legal provision covering cases of sexual abuse in these instances gives the Opposition no reassurance whatever. Indeed, those deplorable figures show that, if anything, we should provide the police and the CPS with more tools to ensure that such cases of abuse can be charged and taken to court. If the provision had been extended to cover the case of the private music teacher I mentioned earlier, perhaps that abusive man would have faced the full force of the law for his actions.

We have a timely opportunity to improve the law in this area. Calls for the expansion of the definition of "positions of trust" have come from both sides of the House for as long as the Sexual Offences Act 2003 has been law. I hope the Government will therefore support the amendment and finally close the loophole completely, offering protection to young people from potential abusers in all positions of trust.

The Committee should take a clear and comprehensive stance and expand the definition of "positions of trust" to include all adults in positions of power and authority over children, regardless of the setting and of whether they are employees or volunteers. No child in any situation is less vulnerable to potential abusers in positions of trust by virtue of the setting they are in. It is time to bring all children in all settings under the umbrella of protection the clause seeks to afford.

Chris Philp: I thank the hon. Member for Rotherham for introducing her amendment and the hon. Member for Stockton North for his thoughtful speech. I think we are all united in our horror and disgust at people who abuse positions of authority or trust to do the sorts of thing that we have been discussing—there is agreement on that. The debate is really about how we can best implement the solutions that we would like to see.

This is obviously a complicated and delicate area. As Parliament has legislated that the age of consent is 16, when we deviate from that by defining circumstances where the age of consent is effectively raised to 18, we need to be careful and ensure that we are doing it in a thoughtful and well-considered way. As the hon. Member for Rotherham said, the existing legislation—sections 16 to 19 of the Sexual Offences Act 2003—defines some very specific roles, such as teacher and social worker. That is the law as it has stood for the last 18 years.

The Government have listened to the campaigns of the hon. Lady, of my hon. Friend the Member for Chatham and Aylesford, and of many others, and we have decided to change the law in response to the very powerful case that has been made. However, in doing so, we have tried to be thoughtful, careful and proportionate. As Members will see from the drafting of clause 45, the Government propose to extend the current "positions of trust" legislation to cover where a person is coaching, teaching, training, supervising or instructing someone on a regular basis in either sport or religion, as then subsequently defined. To answer the shadow Minister's question, the definition of sport in this context would certainly cover things like gymnastics, swimming and so on. Therefore, the case that he powerfully made out—the awful case of Hannah that he mentioned—would of course be covered by this legislation as drafted, because it was in the context of swimming, which is a sport. I hope that reassures the shadow Minister that that awful case would be addressed by this legislation.

Alex Cunningham: It does reassure me on that point, but I wanted the Minister to reassure me about the individual music teacher as well.

Chris Philp: I think that was the constituency case raised by the hon. Member for York Central. In that case, the victim alleged rape—she was saying that there was no consent—and in cases where there is no consent, it is obviously appropriate that it is investigated as rape and prosecution is sought for rape. The legislation we are discussing today deals with cases where there is consent. I do not know the particulars of the case—the shadow Minister said that it was not subsequently proceeded with—but that is a non-consent case. We are discussing cases where, even with consent, it is still held that an offence has been committed.

I think we are agreed about the need for reform. We have listened carefully to the cases that have been made, and have made these proposals. The shadow Minister and the hon. Member for Rotherham have raised a number of questions through their amendments and in their speeches, the first of which is, "Why shouldn't this be much broader? Rather than specifying sports and religion, why not—as amendment 7 does—have a very broad clause that says

'if A is regularly involved in caring for, training, supervising or being in sole charge of B'?"

That is an extremely broad set of definitions, and it is not completely clear from that very broad drafting who might or might not be included in them. The shadow Minister asked, "Why be specific? Why not be general?" The first reason for wanting to be specific rather than general—specifying these two roles, religion and sport, to start with—is so that people have certainty about which side of the line they are on. If the clause is drafted very broadly—"caring, training, supervising"—supervising is an extraordinarily broad term, so it would not be immediately obvious who is included and who is

[Chris Philp]

not included. One of the features of good law is that the people who might be subject to it have some pretty good degree of certainty about whether they are going to be affected or not. The Government's concern about terms as broad as "supervising" is the question of what is covered by them. What is included, and what is excluded? There are a lot of things that could be covered by the term "supervising".

Sarah Champion: As I am sure the Minister is aware, amendment 7 is a direct lift from the Sexual Offences Act 2003, so the definition that he is pulling apart now is already law. The bit that we are challenging is adding the specific job titles to the legislation, which I think is already fit for purpose.

Chris Philp: I understand the hon. Lady's point. However, the point about providing some degree of certainty for someone in a particular role in this context, which is at the edge of the law—where the law is evolving—none the less has some validity.

Having said that we want to be specific rather than general for the reason just outlined, the question that then arises—which the shadow Minister and the hon. Lady have asked—is, "Why these two roles? Why sports and religion to start with?" I stress the words "start with". The reason is twofold: first, those particular roles carry an unusual degree of influence.

Religion is a powerful force. Ministers of religion or people who lead religious congregations often wield very extreme and high levels of influence over their congregations and their followers. It therefore seems appropriate to recognise the high degree of influence that flows from that particular religious context.

In the case of sports coaches, there is clearly a degree of physical proximity. In fact, the shadow Minister, powerfully and eloquently illustrated in describing the case of Hannah—the case of the swimming coach—how it is that sports settings are so easily abused. That is why sport was selected as one of the two specific areas. It also flows from the data. In fact, the shadow Minister referred to the January 2020 report of the all-party parliamentary group on safeguarding in faith settings, chaired by the hon. Member for Rotherham. It analysed the 653 complaints mentioned by the shadow Minister and, in 495 of those, the type of role that the person was discharging was identified. The figures I have are slightly different from the shadow Minister's—they are broadly similar, though—and the top two categories were sport, at 31%, and faith, at 14%. Therefore, the two roles here are the two top roles revealed by that survey. Of course, there were other roles with smaller percentages.

Sarah Champion: The frustration of wearing a mask is that the Minister cannot see that I am smiling. He is quoting back all the arguments I have been making for the last five years—I am grateful that they have sunk in. He is right that we went for the most obvious and biggest offenders, but that is now. As I said in my speech, I am concerned that in five years it may be counsellors, whom we have not mentioned today but have a huge influence over the people they support, or an online form that turns online grooming into real abuse. I completely agree with him, but this measure needs to be future-proofed so that we do not keep having the same arguments as the professions and influences change.

Chris Philp: I pay tribute again to the work done by the hon. Member in this area over many years and the work done by her all-party parliamentary group. I am glad that we agree on the starting point, because she has called for it and the data of her all-party parliamentary group points to it as well. The question is how it is best future-proofed and whether one tries to do so with the general provisions in amendment 7, which would run the risk of giving us a lack of clarity and potentially inadvertently criminalising some situations that hon. Members may not feel appropriate, or with the other approach of starting with these two specifics—I think we agree they are the right starting point, because the evidence points there—and adding further positions as the evidence base develops. That is what proposed new section 22A(4) of the 2003 Act will do: it will give the Secretary of State power to add other specific roles as that evidence base develops.

Alex Cunningham *rose—*

Chris Philp: I will say a word on that because the shadow Minister asked about it. But, before I do, I give way to him.

Alex Cunningham: There is considerable evidence to cover some of the other categories of people in a position of trust. The Minister said that we may have a different interpretation of some of the statistics, but, even if I agree with his numbers, the Bill's provisions cover only half the children, and half would still be at risk. Should I start drafting amendments for Report that say, "Let's include people who provide home facilities for overseas students or, perhaps, cadet force leaders"? If anyone has a strong influence over a young person, it is a cadet force leader. Should we start coming up with a list based on evidence that he might accept on Report?

Chris Philp: There may well be evidence in those areas, but the shadow Minister does not need to draft amendments for Report, because, if the Bill in its current form is passed, it will not require primary legislation to add those other categories; it will simply require a statutory instrument. Therefore, once passed—if passed in this form—the Secretary of State will of course keep this under constant review.

It will then be open to anyone, including organisations such as the APPG or people such as the shadow Minister or anyone else, to make representations to the Department—the Department will also keep it under review—that there is evidence that group X, Y or Z should be added. The case might be that they have an unusual degree of influence, capable of being abused, and that an evidence base supports that, so they should be added to the list. By virtue of a statutory instrument under subsection (4), that can be done.

4.15 pm

In conclusion, a mechanism has been embedded into the Bill to allow precisely the kind of flexibility that the shadow Minister just asked for, without needing to amend primary legislation on the Floor of the House. It

can be done at any time. It can be done the week after the Bill passes, five years after or 10 years after—at any time. It has that flexibility built into it, as further evidence arises or as the House or the Government take a different view from the one being taken today. *[Interruption.]* I can sense an intervention brewing from the shadow Minister.

Alex Cunningham: Those reassurances are helpful, but will the Minister tell us what criteria we should apply if we are to bring forward suggestions of other groupings to be included in the legislation?

Chris Philp: The criteria are not specified in subsection (4), which simply says:

"The Secretary of State may by regulations amend subsections (1) and (2) to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed."

However, providing the profession or category of person being added is involved in coaching, teaching, training, supervision or instruction—provided they do one of those things—they are capable of being added.

On the criteria that might be applied, that would be for the Secretary of State and a Delegated Legislation Committee to determine. I suggest that what would make sense is for the criteria to consider two or three things: first, the degree of influence that the person has—that case has been met in the case of sports' coaches and religious ministers or practitioners—and, secondly, that there is an evidence base to demonstrate that abuse of that position of authority is occurring. Again, that case has been made for sports and ministers or practitioners of religion, because the data that the APPG received shows that.

I suggest to the Committee—this is not in the legislation—that if those two criteria are met, it might be appropriate to make further additions, but that would be for the Secretary of State and a Delegated Legislation Committee to decide, case by case. I have no doubt that the hon. Member for Rotherham, the APPG and others will make that case. The mechanism is there to add things pretty quickly from month to month, or year to year, as the cases get laid out.

In conclusion, it strikes the Government that the provision is the best way of protecting vulnerable people—we have started with sports and religion—but we have also created the facility to expand the list quickly and easily by delegated legislation, as the case gets made by campaigners over time. On that basis, I hope that the Committee will be content to see clause 45 stand part of the Bill. I hope that the provisions that I have been explaining mean that amendment 7 does not need to be pressed to a vote.

Sarah Champion: I have heard everything that the Minister said. I 100% put on the record my gratitude that our work to research and prove the case around faith leaders was heard and listened to. However, my concern is the clarity. No legislation is effective unless it is out in the public domain, whether that is for the professionals who need to use it or, for example, the victims or families who need to know it is there.

As the Bill stands, my concern is that, were we to go to for the

"regularly involved in caring for, training, supervising or being in sole charge of"

persons as the definition that means it is a crime, any parent or individual would know what that meant. I do not want to press the amendment to a vote now, but I will reserve the right to later, because 21 MPs spoke on this in the Chamber, so I think it needs to be heard by the Minister. We need that clarity so that any parent or child knows what their rights are. Just having certain professions defined muddies the waters further rather than a blanket definition based on role and responsibility. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: We have had a fairly thorough debate, so I am not sure there is any need for a clause stand part debate.

Clause 45 ordered to stand part of the Bill.

Clause 46

Criminal damage to memorials: mode of trial

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

Chris Philp: I will briefly introduce the clause. At present, when someone commits an act of criminal damage, where the value of that damage is less than £5,000, the matter is triable summarily only, with a maximum penalty of three months' imprisonment or a fine of up to £2,500. The clause makes a change and says that where the item being damaged is a memorial, where it commemorates someone, the offence of criminal damage is triable as an either-way offence and potentially, although not necessarily, can be heard in the Crown court with a higher sanction.

The reason for that is that there are some occasions when criminal damage is committed against, for example, a war memorial and although the financial value of the damage may be less than £5,000, the symbolic damage to society is far higher. We have particularly in mind acts that desecrate war memories; memorials to people who have sacrificed their lives for our freedom—the ultimate sacrifice. We and, I think, most of the public take the view that where their memory is desecrated in that way, it is appropriate that the courts have open to them a higher criminal sanction. It does not mean the judge has to use it. We still have judicial discretion so the judge can make a determination based on the facts of the case, but we believe that things such as desecrating war memorials and dishonouring those who have sacrificed so much should, in some circumstances, be punishable by more than just a fine and three months in prison.

Alex Cunningham: I am absolutely gobsmacked that after the Government made such a tremendous fuss in the media, with announcements in Parliament and all manner of things, that the Minister has just dismissed his clause in a matter of a couple of minutes.

Chris Philp: I did not dismiss it.

Alex Cunningham: The Minister did not dismiss it, but he addressed it for two minutes after everything that went before.

Chris Philp: A point is no less powerful for brevity. In fact, some of the most powerful points are brief.

Alex Cunningham: I will not reply to the Minister by applying brevity to my speech, because we need seek reassurances from the Government on several things. It is fair to say that clause 46 generated much discussion on Second Reading, and I am glad that we are now able to discuss it a lot more fully in this focused forum. I am sure it is no surprise to the Minister to hear that we have some serious reservations about the clause.

First, we do not believe that it in any way helpfully adds to the existing law on criminal damage. Much has been made by the Government about how those who vandalise statues will feel a greater force of law in relation to their actions and could face up to 10 years in prison. Speaking in support of the proposed changes, the Home Secretary said:

"My message today is simple: actions have consequences. I want vicious individuals held to account for the violence and criminality that they perpetrate."—[*Official Report*, 15 June 2020; Vol. 677, c. 542.]

That sounds very serious indeed. However, the Government's impact assessment states:

"No additional prison capacity needs to be built because the expected prison caseload increases are less than 1 place per annum. Prison construction costs are thus treated as negligible."

If the legislation will result in less than one prison place a year, why bother changing the mode of trial at all?

The impact assessment goes on to say:

"The number of cases that will be sentenced for this offence every year range from 10 to 60, with a best estimate of 35…These figures are based on a mixture of published research and internal projections."

Let us say that we do get 35 cases a year. We then need to know how many would be for damage worth less than £5,000. Then, within that even smaller subsection of cases, we need to work out how many cases it would really be appropriate to send to the Crown court for sentencing. Perhaps the Minister can tell us, but my guess is that it would probably be none at all.

Then there is the issue of the utter randomness of increasing penalties for some vandalism offences in this wide-ranging crime Bill—a Bill that completely omits to make changes in the criminal law to offer more protection to victims of other types of offences, victims who are actual living breathing people, whom we believe the public at large, and Members of the House, think pose a more pressing concern to legislators. Child criminal exploitation and sexual offences are just a couple of examples that spring to mind. As the Secret Barrister has noted:

"While in practice the maximum of 10 years would rarely, if ever, be imposed, the new cross-party consensus appears to be that displaying disrespect—not even quantifiable damage—to an inanimate object is worthy of a higher maximum sentence than inflicting grievous bodily harm, violent disorder, affray, theft, carrying knives, acid or offensive weapons, voyeurism, upskirting and causing death by careless driving, to name but a few offences that cause tangible harm to real people. It would inject criminal sentencing, which already suffers from wild incoherence and inconsistency between offence types, with another dose of gratuitous disproportionality."

I agree with the Secret Barrister on all but one part of that: there is no cross-party consensus.

The Government have done much good work to simplify the vexed and confusing world of criminal sentencing by overseeing the implementation of the sentencing code last year. Yet in clause 46—and in so many other parts of the Bill—the Government seem enthusiastic to trample across the good progress that has been made.

I would particularly welcome some information from the Minister on what guidance will be used to quantify the level of sentimental and emotional impact necessary for the case to be sent to the Crown court. Whose emotions will be measured, and how? Surely clear guidance would provide at least some protection against the "gratuitous disproportionality" about which the Secret Barrister warns.

The Sentencing Council has already helpfully provided detailed sentencing guidance on that very topic. In fact, for the offences of

"Criminal damage (other than by fire) value exceeding £5,000"

and of

"Criminal damage (other than by fire) value not exceeding £5,000",

the guidance refers to damage to

"heritage and/or cultural assets".

It is, therefore, already covered in law. I am no lawyer, but I strongly presume that that includes war memorials and that the sentencing court should treat that as an aggravating factor when passing sentence.

I ask again: how does clause 46 helpfully add to the law? The Opposition's position is that it does not. It goes way beyond the anticipated proposals to address protection for war memorials. Instead of working with us to address the concerns of their Back Benchers, the Government have tried to make this a wedge issue across the political divide, to the detriment of the law. We would have been happy to engage on provisions in relation to war memorials and protections for our communal symbols of such great national sacrifice and pride, but we are certainly not happy to do so on the wide scope covered by the clause.

The clause defines a memorial as

"a building or other structure, or any other thing, erected or installed on land (or in or on any building or other structure on land)".

That is weird: "any other thing". Why have the Government drafted the clause so widely? I would be grateful for guidance from the Minister on what type of serious offending the Government hope to catch with that capacious definition.

Proposed new section 2(11B) reads:

"For the purposes of that paragraph, any moveable thing (such as a bunch of flowers)".

The Bar Council notes:

"This raises the prospect that the removal of a bunch of flowers could result in proceedings in the Crown Court."

It goes on to say:

"Putting aside questions of whether one would need to get permission to remove old bunches of flowers, such an allegation could be sent to the Crown Court if either a magistrates' court considered the offence to be particularly serious"—

I do not think that it would—

"and beyond their maximum sentencing powers of six months' imprisonment, or if the defendant"

opted for trial by jury. That means that somebody who has removed a bunch of flowers from a graveside could opt for a trial at the Crown court.

I know that the following example is from Scotland, but it comes from my childhood. Let us imagine that an old bunch of flowers left for commemorative purposes at the memorial for a dog such as Greyfriars Bobby—a delightful memorial that is well loved in its community—is picked up and put in the bin. Does the Minister think that the person who put the flowers in the bin should end up answering a case in the Crown court? I am sure he does not. I am sure that the intention behind the clause is not to cover that type of incident, but the fact that we could even ask the question strikes me as absurd.

4.30 pm

This is the most substantive justice Bill in recent years, yet the Government have proposed very few changes to the criminal offences. One change—the extension of positions of trust—is a good and meaningful addition to the law that, as I said in the previous debate, we very much welcome. And then we have this. I am surprised that the Ministers, who I recognise take the contents of the Bill very seriously, want to include such provisions. It really represents some of the more unpleasant elements of the Government's attempt to stir up mistrust and division in our country.

Before I go into more detail on our final concern, I note that it is the Commonwealth War Graves Commission War Graves Week. This fantastic initiative is a new awareness week that encourages communities to come together and discover the world war heritage on their doorstep. I only wish that the Government had brought forward serious proposals to provide assurance to communities that our symbols of national pride and sacrifice would be respected as needed, rather than politicising our communal symbols of sacrifice to fuel a so-called culture war of their own making. If the Government want to do some positive work on the hugely important memorials that we are fortunate to enjoy and share in our public spaces, they should focus some of their energy on addressing the findings of the Commonwealth War Graves Commission admission last month.

The commission found that up to 54,000 casualties from India, east Africa, Egypt and Somalia were treated with unequal dignity in death: some were commemorated collectively on memorials instead of being given individually marked graves like their European counterparts, and others had their names recorded on registers rather than in stone. As many as 350,000 mainly east African and Egyptian personnel who fought for Britain were not commemorated by name. Some were not commemorated at all. My right hon. Friend the Member for Tottenham (Mr Lammy) wrote in his excellent article on the findings:

"The logic for this outrage was explained by Gordon Guggisberg, the governor of the Gold Coast (now Ghana), who wrote in 1923: 'The average native of the Gold Coast would not understand or appreciate a headstone.' A War Graves Commission document refers to African soldiers and carriers as 'semi-savage'. Another states 'they are hardly in such a state of civilisation as to appreciate such a memorial', and 'the erection of individual memorials would represent a waste of public money'…Whenever there is debate around decolonising the curriculum, there is a false assumption that those arguing for it are focused on removing what we do not like. This could not be further from the truth. We don't want to erase history. We want to tell it honestly. Until we are able to do this, we will be unable to properly understand the present.

Wilful ignorance of Britain's colonial past in part explains the refusal by…government to accept the existence of institutional racism in modern Britain. The government's Sewell report, denounced by the UN, described the belief in institutional racism in the UK as being a product of 'idealism' from young people. There can be no clearer evidence than this report that, in fact, the refusal to accept the existence of institutional racism is a product of ignorance."

I could not have put it better myself. My right hon. Friend's wise words go to the root of the issue with this clause: our history belongs to us all. It is deplorable that the Government instead want to use our symbols of national pride as a political football.

As I mentioned earlier, we expected that the Bill would incorporate the more limited proposals in the Desecration of War Memorials Bill—the private Member's Bill of the hon. Member for Stoke-on-Trent North (Jonathan Gullis). Indeed, when he introduced the Bill last summer, he said that it

"should not be perceived as a knee-jerk reaction to recent events".—[*Official Report*, 23 June 2020; Vol. 677, c. 1215.]

The recent events he was referring to were, of course, the wave of Black Lives Matter protests sparked by the horrific murder of George Floyd. Yet the Government's own factsheet sets out the following justification for the changes:

"There has been widespread upset about the damage and desecration of memorials with a recent spate over the summer of 2020."

Well, that looks very much like a knee-jerk reaction to me. We all know that in the discussions on this clause the Home Secretary's mind was firmly focused on the protestors in Bristol who toppled the statue of Edward Colston. I have said many times in my speech that if we had just been discussing war memorials, this would be a different conversation, but the Government appear to have deliberately changed their position so that they can include commemorations to slave traders in the purview of this clause. I do not condone, and no Labour Member does, the criminal act that saw the statue removed in Bristol, but let us not forget that before the statue of Colston was toppled, many persistent attempts had been made to remove the statue peacefully. Even the attempts to affix a plaque detailing his crimes—or his past, call it what you will—adding more information on his place in history were thwarted.

So as much the Justice Secretary tries to frame the issue as being just about war memorials, as he tried to do on Second Reading, we know that is not true. This is the type of event the Government are trying to cover, however much they try to maintain that it is merely about war memorials. Otherwise, why would the Communities Secretary write in his opinion piece for *The Telegraph*:

"We will save Britain's statues from the woke militants who want to censor our past"?

Well, to that I say the Opposition do not believe in censoring our past. We believe in an honest and full engagement with our past, even the parts of it that do not generate commemorative pride. That is why earlier this week, speaking on the one-year anniversary of the killing of George Floyd, the shadow Women and Equalities Secretary said:

"Labour would build a curriculum that reflects and celebrates our diversity. Young people will have a balanced understanding of Britain's past and how it has shaped society today."

We must see this clause in line with the provisions made in part 3 on public order, which I know we will come to debate more fully. This clause started its life with cross-party support; all of us in this room deplored it when the Cenotaph was vandalised. But then the Government took this good idea, and twisted it. Now the clause is so far-ranging that, as I have said before, someone putting a bunch of flowers in the bin might end up in the Crown court. It introduces unnecessary confusion and disproportionate responses into criminal sentencing, without providing safeguards against perverse outcomes. If the Government would like to address these fundamental concerns, the Opposition would be happy to look again at provisions for war memorials. I would very much welcome reassurances from the Minister on the issues I have raised.

Chris Philp: Let me start by answering some of the points the shadow Minister has just made. First, he questions why the measures are necessary when the Sentencing Council guidelines already have, as aggravating factors, things such as "emotional importance". In reading out those guidelines, he acknowledged their title:

"Criminal damage (other than by fire) value exceeding £5,000".

The whole point of this new clause is that it addresses circumstances where the value is less than £5,000. That is precisely its purpose. There may be cases where the monetary value of the damage may be less than £5,000 and therefore not subject to the Sentencing Council guidelines that he read out, but the damage to our national discourse—our national state—is significant, because war memorials represent all of those hundreds of thousands of people who gave their lives for our freedom. Even if the value of the damage is less than £5,000, the disrespect and dishonour done to those who sacrificed and secured our freedom is a matter that this Government take seriously. I am disappointed to hear that that is not something that interests him.

Alex Cunningham: The Minister is relying on these war memorials again. He is talking about them, but this is an extremely wide provision, covering all manner of memorials and of places, from individual gravestones all the way through to the Cenotaph. How on earth will a prosecutor determine the emotional value of one crime against that of another? Is the emotional value of a small grave desecrated the same as the Cenotaph?

Chris Philp: First, it is not the prosecutor who makes that determination; it is the judge. Secondly, the judge makes such determinations the whole time. Indeed, judges already make those determinations under existing sentencing guidelines for the more serious either-way offences. It will be for the judge to decide whether the nature of the damage merits a higher sentence or a lower one. That is why we have judicial discretion. I have confidence in our country's judiciary to be able to draw the distinction between desecrating the Cenotaph, which honours the memory of hundreds of thousands of servicemen and women, versus something else.

The point is that, at present, the judiciary do not have that discretion open to them, because where the value of the damage falls under £5,000, the matter is triable summarily only, with a very low maximum penalty. The clause gives the judiciary the discretion to take into account such considerations and to sentence as appropriate. The Government's view, clearly, is that desecrating the memory of brave servicemen and women who have given their lives in defence of our freedom is something we should stand up against. This Government are standing up against it; I do not know why the Opposition are not.

Alex Cunningham: The Minister is being unkind. In no way are we against some of the things in the Bill. We do not want to be in a position in which we are not supportive, respectful and everything else. I think he should withdraw that remark.

Chris Philp: I will be happy to withdraw my remark when the shadow Minister joins us in supporting the clause. If he does so, of course I will withdraw it.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Surely when something is stolen, damaged or desecrated, it is about not just its monetary value but the effect on the victim. In this case, the victim could be the children or grandchildren of the person commemorated on that war memorial. A stolen photograph album has no monetary value, but the actual value to the family is very strong.

Chris Philp: My right hon. Friend makes a powerful point. That is exactly the purpose of the clause. The monetary value, the £5,000, does not reflect the profound emotional damage that can be caused when something like a war memorial is desecrated.

The shadow Minister asked how it will be decided whether a matter is heard in the Crown court or in the magistrates court. As he rightly said, the defendant always has the right of election for an either-way offence but, generally, the allocation decision is set out in the allocation guidelines of 2016. A decision is based on whether the anticipated sentence will exceed the magistrates' sentencing powers—if the magistrates think that it might exceed their sentencing power, they will send up to the Crown court—or if the case is of unusual legal or factual complexity.

There is therefore a flexible system for deciding where a case is heard. Some of the cases might be heard in the Crown court and some in the magistrates court, depending on the facts of the case, so by no means does it follow that everything will end up in the Crown court. It is true that the number of anticipated offences is low—between 10 and 60 a year—but we are talking about acts that desecrate the memory of servicemen and women. I hope that that the Committee can agree on that in supporting the clause.

Alex Cunningham: Will the Minister confirm that all the offences captured in those statistics were against war memorials?

Chris Philp: The impact assessment covered all offences that might be caught by the clause, clearly many of which might well be war memorials. We have seen examples of war memorials being desecrated and the Cenotaph was attacked last July. A war memorial in the constituency of my hon. Friend the Member for Corby

was desecrated—indeed, it was possibly even destroyed—and he led a campaign to get it replaced. Sadly, such things happen, and it is important that we as a House send out a message that we stand with our servicemen and women when their memory is attacked in that way.

4.45 pm

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47 ordered to stand part of the Bill.

Schedule 5 agreed to.

Clauses 48 and 49 ordered to stand part of the Bill.

Clause 50

ENTRY AND SEARCH OF PREMISES FOR HUMAN REMAINS OR MATERIAL RELATING TO HUMAN REMAINS

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

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

Clause 51 stand part.

That schedule 6 be the Sixth schedule to the Bill.

Clause 52 stand part.

Victoria Atkins: Very quickly, I just want to put on the record a point about clauses 50, 51 and 52, and schedule 6. Their background is, as my right hon. Friend the Home Secretary said on Second Reading, the horrific case of Keith Bennett and the Moors murderers, which brought to light the need for new powers to search for material that may relate to the location of human remains.

In 2017, the police believed that they had a further lead to assist Keith's family in finding his body, when it was discovered that Ian Brady had committed papers to secure storage before his death. However, the existing law would not allow the police to obtain a search warrant to seize the papers, because there was no prospect of them being used in criminal proceedings, as Brady was dead.

These new powers will build on the existing law and enable officers to seize material that may help them to locate human remains outside criminal proceedings. As well as cases such as Keith's, where a homicide suspect has been identified but cannot be prosecuted, these powers could be useful for the police in missing persons cases, or suicides where there is no indication that criminal behaviour has taken place.

These are terrible circumstances that lead to the need for this law, but we very much hope that passing these measures will bring a small crumb of closure and comfort to the Bennett family and others.

Sarah Jones: The Opposition support these clauses, for exactly the reasons the Minister has outlined. The case of Keith Bennett was incredibly awful. Today we saw the news about the ongoing search for remains in a Gloucester café. Mary Bastholm was 15 when she went missing in 1968. She is a suspected victim of Fred West. That search, for various legal reasons, was able to go ahead. Unfortunately, the police have today said that they have not found any human remains, so for Mary's family the ordeal goes on, to try and get some kind of closure. However, for that family at least we were able to look for remains, but in the case of Keith Bennett the law did not allow the police to look. Therefore, it is absolutely right that we correct the law.

Question put and agreed to.

Clause 50 accordingly ordered to stand part of the Bill.

Clause 51 ordered to stand part of the Bill.

Schedule 6 agreed to.

Clause 52 ordered to stand part of the Bill.

Clause 53

FUNCTIONS OF PRISONER CUSTODY OFFICERS IN RELATION TO LIVE LINK HEARINGS

Chris Philp: I beg to move amendment 64, in clause 53, page 44, line 33, leave out "and (4)" and insert "to (4A)".

This amendment and Amendments 65 to 67 ensure that the references to live audio links and live video links in clause 53(3) are consistent with the provisions made about live links in clause 168 of, and Part 3 of Schedule 19 to, the Bill.

The Chair: With this it will be convenient to discuss Government amendments 65 to 67.

Chris Philp: Clause 53 seeks to extend to prison escort and custody service officers the right to accompany prisoners in police stations, such as for the purpose of conducting video remand hearings. Owing to an historical anomaly, they are unable to discharge that function at the moment. It became clear during the coronavirus, where video remand hearings were used quite widely to avoid having to take a prisoner to court, that PECS officers did not have those powers, so we had to ask police officers to do that instead, which took up a lot of police time. The police did that, and I pay tribute to them for doing so, but that took up police officer time that could have been spent out on patrol arresting criminals.

The clause amends the Criminal Justice Act 1991 to provide PECS officers with those powers to have custody over prisoners in police stations, for the purpose of overseeing preliminary sentencing enforcement hearings by way of live links. It is a good operational improvement that I hope will make things more efficient where it is appropriate to use it.

Amendments 64 to 67 make some small technical amendments to the clause, because there were some references to a piece of legislation that is being repealed. They simply replace those reference with the correct ones.

Alex Cunningham: We understand what the Government are trying to achieve in this clause, but we have a number of concerns about what it will lead to in the longer term. I would welcome some ministerial assurances that those concerns will be considered.

Before that, I thank Transform Justice for its energetic scrutiny of the amendment, which I am sure will add much value to the debate. The Government's fact sheet describes clause 53 as

[Alex Cunningham]

"enabling legislation to ensure that any future VRH rollout is not reliant on police resource, which would be an ineffective and inefficient use of their training and skills".

It also notes that the implementation plan for rolling out video remand hearings across police stations

"is being developed and not yet finalised",

and that

"A solution to the long-term structural and resourcing issues is required"

to facilitate the roll-out. In that case, it does not seem necessary to include it in the Bill.

If there is so much work to be done to have proper functioning video remand hearings, why are the Government bringing that forward at this time? We take a similar position to that of the Law Society, which says that although it supports the use of prisoner custody officers to facilitate video remand hearings during the pandemic, it does not believe it should be a permanent feature of the justice system.

The rationale for legislating to increase the use of audio and video live links across the Bill seems somewhat confused. On the one hand, the need for covid-19 protection is mentioned; on the other, the measures are justified on the grounds of efficiency and modernisation. The covid-19 motivation is particularly confusing, given that the Bill will not be enacted for some time, when the covid safety of courts will, we hope, no longer be an issue. Can the Minister tell the Committee the motivation for video remand hearings beyond the pandemic?

Even more problematic is the lack of evidence to back up the functioning of the proposals. Even now that we have been living with the pandemic measures for a year, we still have no evidence beyond the anecdotal about the extremely significant changes to how we run hearings. This is one of a number of remand changes made during the pandemic for which we are seriously lacking detail. The other, more concerning, one is that in September 2020 the Government increased the length of time they are legally allowed to hold people on remand from six to eight months, a provision in place until 28 June 2021. While I am on the topic, I would welcome an assurance from the Minister that the custody time limit extension will lapse, and he will stick to his word in the SI Committee some months ago and it will not be extended again.

To go back to clause 53, before the pandemic very few police forces ran video remand courts. Where they did, defendants detained by the police post charge would not be taken to court for their first appearance, but would appear from police custody by video link, with their lawyer, the judge, the prosecutor and so on in the physical courtroom. When the pandemic hit, PECS contractors, who usually transport these remanded defendants to the court, said that courts and court cells were not covid-safe enough and refused to transport all the prisoners who needed to go to court, so police forces in almost every area agreed to set up makeshift courtrooms in police custody suites that would be video linked to the magistrates court. The police agreed to run these courts purely on an emergency basis and were not paid to do so by Her Majesty's Courts and Tribunals Service. As the first wave eased and the courts implemented their own covid-19 safety procedures, police stopped running video remand courts and most areas reverted to the traditional arrangement.

We are not aware of any significant concerns with the traditional arrangement, so again I ask: why do we need this clause, which lays the groundwork for even more video remand courts in the future? There are significant cost implications to running the hearings in this way. The Government have published an economic impact assessment for the use of PECS staff in police custody. This shows a positive cost-benefit, but the assumptions need some further scrutiny.

To quote from the material provided by Transform Justice:

"PECS staff would only be used in custody if the police agreed to run video remand courts permanently. Despite the government stating '*VRHs will indeed be rolled out at some point in the future*'…no such agreement has been reached—police forces have given no commitment to running and hosting video remand courts. Given that most police forces are not running video remand courts currently, the installation of video remand courts nationwide would incur considerable costs for the police, including premises costs, IT infrastructure costs, costs of keeping defendants in cells for longer, and staff costs. During the first months of the pandemic the costs incurred by police in running emergency video remand courts were considerable—the Met had to use 45 staff to manage the process and estimated the operation cost the equivalent of £2 million a year. Though some police costs would be offset through the support of PECS, it would still cost police staff time to liaise with PECS staff and would incur the other costs. The 'Do nothing' option in the economic assessment assumes that the police costs of running video remand hearings have already been budgeted for by local forces—but this is not the case."

I know it is a very long quote, Mr McCabe, but it continues:

"The economic impact assessment suggests that the PECS staff in police custody are in addition to existing PECS staff. PECS staff will still need to transport defendants from police custody to court and to supervise prisoners at court. Therefore, if PECS staff allocated to police custody for video remand hearings are additional, PECS costs will be greater, police will incur significant costs and the courts will still need to be able to accommodate some of those who have been detained by the police in court cells. We therefore suggest that the economic impact assessment does not encompass any of the costs associated with having PECS staff in police custody, so the cost-benefit cannot be judged."

I would welcome the Minister's comments on Transform Justice's analysis because, as far as I can see, the economic justification for the measure goes to the root of why it is being proposed. Furthermore, will the Minister accept that the implementation of the PECS staff in police custody proposal should be contingent on a full cost-benefit analysis of video remand hearings versus the physical equivalents? If he is not prepared to do that, why not?

We have reservations about the impact that this change would have on justice. It is vital that changes to our justice system that would impact on the very principles that underlie it, such as the right to a fair trial, are properly tested before they are introduced. The stakes are too high for us to get it wrong, so will the Minister consider safeguards to make sure we get this right? These include that every defendant who may be assigned a video remand hearing should be subject to full health and mental health screening, and if necessary an assessment, by a health professional before the case is listed; that this screening information and needs assessments from police custody are made available to the bench or judge

before that day's court hearings start; that a simple system is set up to bring those defendants immediately to court whom the bench or judge deems need face-to-face hearings; and that all those who are deemed vulnerable—vulnerable adults and all children—should automatically be assigned a physical hearing.

We do not really see the need for the provisions in the clause, but I stand open to hear the Minister's justification for it. If need can be demonstrated for it, we would welcome the Government's commitment to the safeguards to access to justice that I have just raised, alongside the further cost-benefit analysis.

Chris Philp: I thank the shadow Minister for his speech, and for the thoughtful questions that he has posed in it. As he says, this is enabling legislation to create the option of using PECS officers this way in the future. We were rather caught by surprise during the pandemic when it transpired that these powers did not exist at a time when we wanted to use lots of video remand hearings for obvious, covid-related reasons. As the shadow Minister said, this Bill will hopefully receive Royal Assent some time after coronavirus has become a memory and is behind us. None the less, these enabling powers are worth taking, because it is conceivable that in future, even after coronavirus, we may want to use video remand hearings more than was done previously, which was essentially not at all.

5 pm

There are a variety of reasons why that might be the case. One is that there might be particular parts of the country where there are operational and cost benefits. For example, in a place where the police station is a very long way away from the court, it might be easier to do a video remand hearing than transport the prisoner from the police station to the court and then the prison, depending on the logistics of the particular area. The shadow Minister asked whether a cost-benefit analysis would be done before implementing video remand hearings in those circumstances, or indeed others. The answer is yes, it would be. We would not want to implement this just for the sake of it: it would only be done if a clear operational and/or cost benefit would accrue from implementing this solution.

The shadow Minister also asked a question about access to justice. Some people have raised concerns that if a prisoner is visible to the court only via a video screen, that prisoner might not get such a good hearing. Such judgments are made by the judge who is overseeing the trial, and in any case involving remote technology, whether it is a remand hearing or any other kind of hearing, it is always ultimately for the judge hearing the case to decide whether the interests of justice are served. If the judge feels that the interests of justice are not served by a video remand hearing, for whatever reason—maybe the prisoner cannot be heard properly, the communication is not as good as it needs to be, or for any other reason—it would be open to the judge to say, "This is not appropriate. I want to see the defendant, or in this case the prisoner, before me in the court." Those case management matters are absolutely the preserve of the judiciary, and judicial discretion would always apply.

As the shadow Minister says, this is a piece of enabling legislation that allows us to use PECS officers to facilitate video remand hearings in the future if that proves to the benefit of all parties. Obviously, that will be done in consultation with the police, because it will be using police premises. The police have co-operated very well with the PECS staff and Her Majesty's Courts and Tribunal Service staff during the pandemic, and I again pay tribute to them for doing so. If this solution were to be used in the future, it would of course be in consultation and co-operation with the police. I hope that provides the shadow Minister with the assurances and background that he was quite reasonably asking for a few minutes ago.

Amendment 64 agreed to.

Amendments made: 65, in clause 53, page 44, line 36, after first "a" insert "preliminary, sentencing or enforcement".

See the explanatory statement for Amendment 64.

Amendment 66, in clause 53, page 44, line 37, leave out from "link" to end of line 38.

See the explanatory statement for Amendment 64.

Amendment 67, in clause 53, page 45, line 3, at end insert—

"(4A) In subsection (4), at the appropriate place insert—

(none) "'enforcement hearing', 'live audio link', 'live video link', 'preliminary hearing', and 'sentencing hearing' each has the meaning given in section 56(1) of the Criminal Justice Act 2003;'."—*(Chris Philp.)*

See the explanatory statement for Amendment 64.

Clause 53, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Tom Pursglove.)*

5.4 pm

Adjourned till Tuesday 8 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

PCSCB18 Association of Chief Executives of Voluntary Organisations (ACEVO), Bond, National Council of Voluntary Organisations (NCVO), and Small Charities Coalition (SCC) (joint submission)

PCSCB19 Law Commission

PCSCB20 Quakers in Britain and Unlock Democracy

PCSCB21 Domestic Abuse Commissioner for England and Wales

PCSCB22 Centre for Women's Justice (re: pre-charge bail provisions)

PCSCB23 Southern Co-op