PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIMINAL JUSTICE BILL

Fifteenth Sitting

Tuesday 30 January 2024

(Morning)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 3 February 2024

The Committee consisted of the following Members:

Chairs: Hannah Bardell, Sir Graham Brady, Dame Angela Eagle, † Mrs Pauline Latham, Sir Robert Syms

† Costa, Alberto *(South Leicestershire)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dowd, Peter *(Bootle)* (Lab)
† Drummond, Mrs Flick *(Meon Valley)* (Con)
† Farris, Laura *(Parliamentary Under-Secretary of State for the Home Department)*
† Firth, Anna *(Southend West)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Ford, Vicky *(Chelmsford)* (Con)
† Garnier, Mark *(Wyre Forest)* (Con)
† Harris, Carolyn *(Swansea East)* (Lab)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Mann, Scott *(Lord Commissioner of His Majesty's Treasury)*
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Phillips, Jess *(Birmingham, Yardley)* (Lab)
† Philp, Chris *(Minister for Crime, Policing and Fire)*
Stephens, Chris *(Glasgow South West)* (SNP)

Simon Armitage, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 30 January 2024

(Morning)

[Mrs Pauline Latham *in the Chair*]

Criminal Justice Bill

9.25 am

The Chair: I remind Members that any speaking notes need to be sent by email to hansardnotes@parliament.uk. Please make sure that your devices are on silent. As you know, tea and coffee are not allowed during the sitting.

Alberto Costa (South Leicestershire) (Con): On a point of order, Mrs Latham. I am wearing my spectacles today; I usually wear contact lenses. I have noticed that in this Committee room the LED lighting—I presume that is what it is—is perhaps set to cool white rather than warm white, and that has an impact on the sight of people like me.

Are you able to guide me on who I should speak to about this Committee room to ensure that the lighting is more appropriate for all Members, particularly people like me who find it very difficult to see in this cool light? Perhaps we could conduct a survey to see what type of optics LED lights work best with. Is Mr Speaker, somebody in facilities management or somebody else on the estate able to advise me on the best quality LED lights, whether warm or cool, for people with sight like mine?

The Chair: It is funny you should say that; I cannot see the Annunciator very well because of the lighting. You could go to the head of facilities or speak to Sir Charles Walker, who heads the Administration Committee where he will be able to bring the matter up. It meets every Monday.

Alberto Costa: Further to that point of order, Mrs Latham. I was desperately trying to hear you and I could not, which is another issue that we ought to take into consideration. I know that colleagues have from time to time raised the issue that the acoustics in these wonderful neo-gothic Committee rooms are not necessarily appropriate for the mid-21st century.

Again I ask, Mrs Latham: do you know what the appropriate body is when it comes to acoustic issues? We must ensure that all of us can hear, whether we have hearing aids or not—in my case, I do not have a hearing aid; I like to think that my hearing is okay. Nevertheless, I did have difficulty in hearing the response that you gave to my previous point of order. I would be grateful if you could repeat that response, in addition to giving me another one about the person to whom I should direct complaints when it comes to acoustics in these types of Committee rooms.

The Chair: I said that you could either go to Sir Charles Walker or the head of admin services. My response is the same for the hearing issue. I said that I cannot really see the Annunciator because of the angle of the lights, so that is a problem. I do not have problems here, but I have great difficulty hearing in Portcullis House rooms; I find they are very poor. It is worth reporting the matter to Sir Charles Walker because he can raise it in the Administration Committee. Several of us in this room are on that Committee. We have heard what you said and we can back it up.

New Clause 45

Administering etc harmful substances (including by spiking)

(1) In the Offences Against the Person Act 1861, for sections 23 to 25 substitute—

"23 Administering etc harmful substance so as to endanger life or inflict grievous bodily harm

(1) A person commits an offence if—

(a) the person intentionally or recklessly, and unlawfully, administers a harmful substance to another person, and

(b) the administration of the harmful substance endangers the other person's life or inflicts grievous bodily harm on them.

(2) A person commits an offence if—

(a) the person unlawfully causes a harmful substance to be administered to or taken by another person,

(b) the administration or taking of the harmful substance endangers the other person's life or inflicts grievous bodily harm on them, and

(c) the person intends that, or is reckless as to whether—

(i) the harmful substance is administered to or taken by the other person, and

(ii) the administration or taking of the harmful substance will endanger the other person's life or inflict grievous bodily harm on them.

(3) In this section "harmful substance" means any poison or other destructive or noxious thing.

(4) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).

24 Administering etc harmful substance with intent to injure, aggrieve or annoy

(1) A person commits an offence if—

(a) the person unlawfully administers a harmful substance to, or causes a harmful substance to be administered to or taken by, another person, and

(b) the person does so with intent to injure, aggrieve or annoy the other person.

(2) In this section "harmful substance" has the meaning given by section 23.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

25 Alternative verdict on trial of offence under section 23

A person who is—

(a) charged with an offence under section 23, and

(b) found not guilty of that offence,

may be convicted of an offence under section 24 (if it is proved that they committed it)."

(2) In consequence of the amendment made by subsection (1), in the following provisions for "maliciously administering poison etc" substitute "administering etc harmful substance"—

(a) paragraph 8(e) and (f) of Schedule 1 to the Suppression of Terrorism Act 1978;

(b) paragraph 5(g) and (h) of Schedule 2A to the Housing Act 1985;

(c) paragraph 10 of Schedule 15 to the Criminal Justice Act 2003;

(d) paragraph 11 of Schedule 5 to the Sexual Offences Act 2003;

(e) in Schedule 2 to the Counter-Terrorism Act 2008, paragraph (b) of the entry relating to offences under the Offences against the Person Act 1861;

(f) paragraph 7 of Schedule 4 to the Modern Slavery Act 2015;

(g) paragraph 4(c) of Schedule 1 to the Sentencing Act 2020;

(h) paragraph 23(f) of Part 2 of Schedule 9 to the Elections Act 2022;

and in section 72(2)(d) of the Domestic Abuse Act 2021 for "poison" substitute "harmful substance".".—*(Chris Philp.)*

This new clause re-casts the offences under sections 23 and 24 of the Offences against the Person Act 1861 (administration etc of harmful substances) and the procedural provision under section 25 of that Act relating to those offences

Brought up, read the First and Second time, and added to the Bill.

New Clause 46

SEXUAL ACTIVITY IN PRESENCE OF CHILD ETC

(1) The Sexual Offences Act 2003 is amended as follows.

(2) In section 11(1) (engaging in sexual activity in presence of child), in paragraph (c) for the words from "he engages" to the end (not including the "and" at the end of the paragraph) substitute "A engages in it when another person (B) is present or is in a place from which A can be observed,".

(3) In section 18(1) (abuse of position of trust: sexual activity in presence of child), in paragraph (c) for the words from "he engages" to the end substitute "A engages in it when another person (B) is present or is in a place from which A can be observed,".

(4) In section 32(1) (engaging in sexual activity in presence of person with mental disorder impeding choice), in paragraph (c) for the words from "he engages" to the end substitute "A engages in it when another person (B) is present or is in a place from which A can be observed,".

(5) In section 36(1) (engaging in sexual activity in presence, procured by inducement, threat or deception, of person with mental disorder)—

(a) in paragraph (c) for the words from "he engages" to the end substitute "A engages in it when another person (B) is present or is in a place from which A can be observed,";

(b) in paragraph (d) for "paragraph (c)(i)" substitute "paragraph (c)".

(6) In section 40(1) (care workers: sexual activity in presence of person with mental disorder), in paragraph (c) for the words from "he engages" to the end substitute "A engages in it when another person (B) is present or is in a place from which A can be observed,"."—*(Chris Philp.)*

This new clause amends offences of engaging in sexual activity in the presence of a child or person with mental disorder (B) so as to remove the requirement that the person knows or believes that B is aware, or intends that B should be aware, that the person is engaging in it.

Brought up, and read the First time.

The Minister for Crime, Policing and Fire (Chris Philp): I beg to move, That the clause be read a Second time.

It is a pleasure to serve under your chairmanship, Ms Latham, as we commence our final day of line-by-line consideration of the Bill. *[Interruption.]* I see that colleagues are very enthusiastic about undertaking the last lap.

My hon. Friend the Member for Newbury, who would ordinarily have moved this Government new clause, has just arrived. With your permission, Ms Latham, might I hand over to her so that she can speak to it?

The Chair: Yes, but let me correct the Minister: it is Mrs Latham, not Ms Latham. Having been married nearly 56 years, I do not think "Ms" is right.

Chris Philp: I do apologise.

The Parliamentary Under-Secretary of State for Justice (Laura Farris): I apologise to the Committee for being late—I had left something behind.

The new clause amends a number of existing criminal offences in the Sexual Offences Act 2003. Currently, it is an offence for a person intentionally to engage in sexual activity where, for the purposes of obtaining sexual gratification, they do so when a child is present and they know or believe that the child is aware that they are engaging in the sexual activity. There are similar offences that target such behaviour where the victim is an adult with a mental disorder.

We have listened carefully to those on the frontline, who have identified a small category of cases involving this type of behaviour where there was insufficient evidence that the perpetrator knew, believed or intended that the child, or the person with a mental disorder, was aware of the sexual activity, most typically because the child was asleep. The new clause will expand the criminal law so that successful prosecution does not depend on the alleged victim's awareness of the sexual act or the defendant's intent. It will capture cases where, for example, a defendant masturbates over a sleeping child for the purpose of sexual gratification and subsequently seeks to argue that they did not believe the child was aware of the activity and did not even intend that the child should be aware of the activity. The new clause therefore alters the mental elements of the offences.

I thank the National Police Chiefs' Council, a number of individual police forces and the Crown Prosecution Service for bringing to the Government's attention these troubling cases, which have informed our response and led us to conclude that we should amend the existing offences to protect vulnerable adults and children. The amended offences will retain the need for a link between the child's presence or observation and the perpetrator's sexual gratification. That requirement is critical because of the risk of over-criminalising those who engage in sexual activity with no malicious intent where a child may be present, such as parents sharing a bedroom.

We want to ensure that these behaviours are prosecuted, not just to bring offenders to justice but, importantly, to enable the management of offenders and to prevent further escalation where there is the potential for a more serious sexual offence against children or vulnerable adults.

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Mrs Latham, for the Committee's final day.

The new clause is a welcome addition to the Bill. Clearly, experts have identified that the person B knowledge gap is really important and is creating risk with respect to those who seek gratification in this way. It is right that that loophole is closed. My only question for the Minister is about the sort of scale we are talking about. She mentioned a small number of cases. Do the Government have an estimate of the number of cases that the measure is likely to apply to?

Laura Farris: I do not have any indication of the number of cases, but we have heard from the police that there have been problems with getting a prosecution where they cannot prove intent.

Question put and agreed to.

New clause 46 accordingly read a Second time and added to the Bill.

New Clause 47

MAXIMUM TERM OF IMPRISONMENT FOR CERTAIN OFFENCES ON SUMMARY CONVICTION

"In the following provisions for "6 months" substitute "the general limit in a magistrates' court"—

section 1(6)(a) of the Prevention of Social Housing Fraud Act 2013 (unlawful sub-letting: secure tenancies);

section 2(7)(a) of that Act (unlawful sub-letting: assured tenancies and secure contracts);

section 30(3)(b) of the Modern Slavery Act 2015 (breach of certain orders or requirements);

section 339(2)(a) of the Sentencing Act 2020 (breach of criminal behaviour order);

section 354(4)(a) of that Act (breach of sexual harm prevention order);

section 363(2)(a) of that Act (breach of restraining order)."—*(Laura Farris.)*

This new clause provides that the maximum term of imprisonment for certain offences, on summary conviction, is the general limit in a magistrates' court.

Brought up, read the First and Second time, and added to the Bill.

New Clause 3

REMOVAL OF PARENTAL RESPONSIBILITY FOR MEN CONVICTED OF SEXUAL OFFENCES AGAINST CHILDREN

'(1) After section 2 (parental responsibility for children) of the Children Act 1989, insert—

"2A Prisoners: suspension of parental responsibility

(1) This section applies where—

(a) a person ("A") has been found guilty of a serious sexual offence involving or relating to a child or children; and

(b) A had parental responsibility for a child or children at the time at which the offence was committed.

(2) A ceases to have parental responsibility for all children, for a time specified by the sentencing court or until an application by A to the family court to reinstate parental responsibility has been approved.""—*(Jess Phillips.)*

Brought up, and read the First time.

Jess Phillips (Birmingham, Yardley) (Lab): I beg to move, That the clause be read a Second time.

I put my name to this new clause tabled by the Mother of the House, my right hon. and learned Friend the Member for Camberwell and Peckham (Ms Harman)—she has had some mentions. I absolutely agree with it. It is important, but, to be completely honest, for me it is far too small in its approach. I believe that the family courts in our country are harming—well, killing—children. Yesterday, the head of the family court division said on BBC Radio 4 that austerity is harming children and putting more children into care. We have been campaigning on family court justice for a decade, and progress has been slower than slow; I cannot think of an adjective. But people who abuse their families should not be allowed access to their children.

The new clause is specifically about those convicted of sexual offences against children. To be completely clear, those convicted in our family courts of sexual offences against children are not barred from parental responsibility for their own children—they can be barred from seeing anybody else's children, but their own children are not immediately excluded. I am afraid that child abuse cases are taking place in our family courts, and not only do we allow children to be alone with parents who are abusers, but we sometimes remove children from the person trying to keep them safe and place them with those abusers. The new clause would protect children specifically from fathers convicted of serious child sex offences.

When a man commits a serious sexual offence, he has to go on the sex offenders register and is prevented from working with children. That protects other people's children but not his own, and he retains parental responsibility. Currently, a father convicted of child sexual offences automatically retains parental responsibility. My right hon. and learned Friend's new clause would make the default position that he would lose his parental responsibility, subject to that being reinstated by a family court on his application if it is judged to be in the child's best interest.

The new clause follows important work done on this issue by my hon. Friend the Member for Rotherham (Sarah Champion)—including through the Victims and Prisoners Bill Committee, which I was also on—and Jade's law, which was added to that Bill to protect children by removing parental responsibility from a man who kills a child's mother, or a parent who kills any parent. The new clause would similarly remove the parental responsibility of the father where he is convicted of sexual offences against children.

There is a BBC News article relating to Bethan in Cardiff, who has spent £30,000 protecting her daughter from the child's father, who has been convicted of paedophile offences. The clause would make it the default position that parental responsibility is removed in such a case, meaning mothers do not have to go through such an arduous and expensive process. It could, however, be reinstated by the family court on application if it is judged to be in the best interests of the child.

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship this morning, Mrs Latham. I welcome the new clause tabled by my

right hon. and learned Friend the Member for Camberwell and Peckham and outlined by my hon. Friend the Member for Birmingham, Yardley. New clause 3, as we have heard, seeks to remove the parental responsibility of people convicted of sexual offences against children and I welcome the tremendous cross-party support it has received. The new clause's core aspect is the welfare of the child. I am one of those whose ambition in being elected to this place was to work for the benefit of young people, and the new clause does that.

The proposal would go some way to strengthening the law around the welfare of a child whose parent has been convicted of sexual offences against children. There are very limited cases where the court has allowed an application to terminate a person's parental responsibility. They include a 1995 case in which the court terminated the parental responsibility, acquired by a parental responsibility agreement, of a father who had been sent to prison for causing serious injuries to his child.

In 2013, the court removed the parental responsibility of a father who had been imprisoned for sexual abuse of his child's half-sisters. In a further case in 2013, the court terminated the parental responsibility of a father who was serving a prison sentence for a violent attack on the child's mother. Finally, in a 2021 case, the court terminated the parental responsibility of a father who had a significant offending history, including sexual offences against children. In other words, this is already happening.

On Second Reading, I spoke about the need to amend the Bill so that offenders who have sexually harmed children and are sent to prison as a result lose the ability to control their own children from behind bars. That measure is long overdue and will ensure all children are safe from those dangerous predators, including their own parents. The key problem to address is: how can a man—it is usually a man—considered too dangerous to work with or be around other people's children be allowed to have parental responsibility that effectively makes him responsible for all manner of decisions affecting their child's life, but which may not be in the best interests of the child? Why should any child be subject to any form of control by a convicted sex offender who is unlikely to be part of their lives for years ahead, and possibly forever?

In response to a question on the proposed new clause, Dame Vera Baird told Committee members that she had reservations about the definition of a sexual offence in the context of the Bill as she felt it might be too wide. That said, I hope the Government will at least support the new clause in principle and perhaps return to the issue on Report so that we can take another step in the quest of all of us here to protect children. I look forward to the Minister's response.

Laura Farris: The new clause seeks the automatic suspension of parental responsibility where a parent has been convicted of a serious sexual offence against a child. We understand fully the motivation in bringing the new clause. We have discussed it and I respect the remarks that have been made. I want to confine my remarks to the contours of the current system and where that fits in relation to Jade's law, which the hon. Member for Birmingham, Yardley has already alluded to, and how that was introduced in the Victims and Prisoners Bill.

Starting with the current state of the law, the paramountcy principle is the cornerstone of the family justice system. There must be full consideration of the best interests of the child as a starting point. The hon. Member for Stockton North has just given an example of a number of cases where the parent had committed a very serious sexual offence and the family court acted accordingly to suspend parental responsibility.

Jess Phillips: Perhaps the Minister would like to see my email account, which has a folder specifically for the thousands of cases from the family court where the cornerstone is absolutely not the safety of the child. There are lots of cases where that does not happen—far more than the handful that have been referred to.

9.45 am

Laura Farris: I noted what the hon. Lady said in her opening remarks, but I will go through the legal landscape before I come to other issues. As I say, we are carefully considering the force of the new clause.

In cases in which a parent has been convicted of a child sexual offence, the family court has the power to strip out parental responsibility. That decision is made only after careful consideration of the best interests of the individual children, to ensure that their needs are the driver for action. Decisions about suspending or restricting parental responsibility have significant ramifications for children, which is why judges prefer to consider each case on its individual merits and make a decision that is specific to the best interests of that child.

We must not conflate suspending an individual's parental responsibility with a punishment. It is a step that is taken to protect the child from harm, and because of that it must be taken when it is in the best interests of the child. The new clause, as drafted, makes no provision for the consideration of the best interests of the child. For that reason, we think it engages article 8 consideration under the European convention.

Members are of course aware that the Government recently tabled an amendment to the Victims and Prisoners Bill that will automatically suspend parental responsibility where a parent has been convicted of the murder or the manslaughter of the other parent. We wish to make clear that distinction. In many cases in which one parent has killed the other, the children involved will have no one left to exercise parental responsibility, apart from the killer of their other parent. In such circumstances, we think that it is right that whoever is left caring for the child, whether that be a grandparent or even the local authority, is spared the onus being on them to commence family proceedings to restrict the offender's parental responsibility.

Where a parent has committed a serious offence other than murder or voluntary manslaughter, it is likely that there will be another parent able to exercise parental responsibility and apply to the family court.

Jess Phillips: Does the hon. Lady think it is okay for a woman who has been abused and had her husband convicted of paedophilia to pay £30,000 in order to keep her children safe?

Laura Farris: I thank the hon. Lady for her intervention. That case has caused concern, and we have been looking carefully at the legal aid position, which I will come on to.

[Laura Farris]

As I was saying, where a parent has committed a serious offence other than murder or manslaughter, it is likely that there will be another parent able to exercise parental responsibility and make the application to the family court—I will come to legal aid in a moment—for the well-established method of restricting the offender's parental responsibility.

Lord Meston, a family court judge who sits in the House of Lords, made a speech on the Victims and Prisoners Bill in which he warmly welcomed the inclusion of Jade's law as a way of automatically restricting the rights of the other parent. I just say this in passing. He was invited to consider whether there should be the automatic suspension of parental responsibility if another kind of crime was committed. He said something that we have noted as part of our thinking:

"However, on reflection, I do not think that the Crown Court should be expected, as part of a sentencing exercise, to make automatic prohibited steps orders"

in different cases. He continued:

"The Crown Court will not have, and cannot be expected to have, a full appreciation of the family's structure and dynamics, and of the circumstances of the children concerned, and will not have input from Cafcass." Lords—[*Official Report*, *House of Lords*, 18 December 2023; Vol. 834, c. 2094.]

That is not determinative of our thinking, but it is the reflection of a family court judge who sits in the other place. That is what he said in relation to Jade's law while, of course, welcoming it.

The automatic nature of the new clause would mean there would be no space for the court to consider the wishes of the other parent or the wishes of the children as to whether the matter should be brought to a family court.

Jess Phillips: The new clause clearly states that the other parent can apply to the court to have their wishes heard, but it is not the responsibility of a completely innocent mother, in most cases, to have to protect her child from a sex offender.

Laura Farris: I accept that the new clause gives the other parent the right to return to the family court, but effectively it could force a child to make applications to the family court to have their wishes considered.

Jess Phillips: How?

Laura Farris: Because there has to be an application for the reinstatement of parental responsibility. That is what the new clause states at proposed new section 2A(2).

Jess Phillips: The hon. Lady said that a child would have to make an application to the family court. How is that the case?

Laura Farris: The child would have to advance what their best interests are to the family court, if parental responsibility has already been suspended.

Jess Phillips: Children do not take cases.

Laura Farris: We have carefully considered the case in Cardiff. I want to make it clear that legal aid is available for a prohibited steps order and specific issue order in specific circumstances, subject to means and merits tests and evidence requirements relating to domestic abuse or the protection of children being met. Where the subject of an order has a relevant conviction for a child abuse offence, it is likely that the application would satisfy the relevant evidence and merits criteria. We are looking into why that was not the case for the lady in Cardiff.

Jess Phillips: Could I also open all the other cases with the Legal Aid Agency? The vast majority of people I encounter—there are thousands, and I have sat in the family court for hours—have not been able to access legal aid. Every one of them is a victim. Perhaps the Minister could look into that.

Laura Farris: That warrants a response, and the hon. Lady will get one.

My final point, to which the hon. Lady alluded in her opening remarks, when she said she hoped the provision might go wider, is that one of the conceptual difficulties with the new clause is that it would seek to remove parental responsibility in cases of serious child sexual abuse, but it is silent on, for example, child murder. Or what about perhaps a serious case of terrorism, where we could advance a plausible argument? We think there are issues around the scope of the new clause.

Jess Phillips: I could not agree more—the scope needs to be much wider—so will the Minister and the Government, by Report stage or in the Lords, finally act on the harms review by tabling amendments to the Bill that we can all be proud of?

Laura Farris: As I say, we are looking at the definitional issues. We are also looking carefully at the paramountcy principle, which underpins the way in which cases are approached in the family court. The new clause has a worthy aim. We have huge sympathy for families in these circumstances and want to do as much as possible to support them in getting the right outcome for their children. At present, we do not think the new clause is the right way to do that, and we urge the hon. Lady to withdraw it.

Jess Phillips: For nearly 10 years I have had Ministers stand in front of me and say, "We are a bit worried about" some legal word or other. How many children have died because of family court proceedings in the 10 years that we have been trying to raise the alarm? The family courts in our country will be the next Rotherham or Rochdale. State-sanctioned child abuse is going on and we all just turn a blind eye. The things that I have seen in courts are harrowing. I have watched children being removed from their loving mothers and placed fully in the care of paedophiles—proven child abusers. For me, we cannot casually sit here and pretend that that is okay.

Funnily enough, one of the people I started this campaign with, all those years ago, was the current Justice Secretary. Why is it taking so long to do something about the family courts in our country? They are actively dangerous, everybody knows it and nobody is doing anything about it. It is like the Post Office; I will not be one of those people who sat by and did nothing.

I will not press the new clause to a Division, because its scope is not wide enough and does not deal with half the harms that I see. If the Minister wants to take away the parental responsibility for children from terrorists

she can knock herself out—I will support it. I will support any movement towards progress in the family court, because I have seen none. I look forward to the Government coming forward with an all-singing, all-dancing proposal that will make children safe. I beg to ask leave to withdraw the motion.

Motion, by leave, withdrawn.

Vicky Ford (Chelmsford) (Con): On a point of order, Mrs Latham. I find it really hard to hear my colleagues in this room. Could I ask you, and other hon. Members, to please speak as loudly as possible?

The Chair: I agree. I do not think the microphones are doing a very good job today, so I will try to speak up.

New Clause 5

SEXUAL INTERFERENCE WITH A CORPSE

"(1) The Sexual Offences Act 2003 is amended as follows.

(2) After section 70, insert—

'70A Sexual interference with a corpse

(1) A person "P" commits an offence if—

(a) P intentionally performs an act of physical interference with the body of a dead person, and

(b) the physical interference is sexual.

(2) For the purposes of this section, physical interference may include—

(a) P touching the body of a dead person with any part of P's own body, and

(b) P causing any item or substance to make contact with the body of a dead person.

(3) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.'"—(*Stephen Metcalfe*.)

Brought up, and read the First time.

Stephen Metcalfe (South Basildon and East Thurrock) (Con): I beg to move, That the clause be read a Second time.

This new clause, tabled in my name and the names of my right hon. Friend the Member for Tunbridge Wells (Greg Clark) and my hon. Friend the Member for Chatham and Aylesford (Tracey Crouch), is a distressing one, and I apologise in advance for any upset that my speech causes, either in this Committee Room or to those who may read the *Hansard* report. I know that the Minister has been discussing the matter with my colleagues, who are more versed on the issue, and I know that the shadow Minister has been briefed, so I will not go into more detail than is necessary for the purpose of moving the new clause.

In 2021, David Fuller was convicted of the historic murder of two young women in Tunbridge Wells following a cold case review that eventually led to his identification. In the course of the police gathering evidence for his conviction—for which he received a whole-life tariff—video recordings were recovered of Fuller, who was an electrician at the Maidstone and Tunbridge Wells NHS Trust, that showed him sexually assaulting the dead bodies of women and girls in the hospital mortuary.

There were more than 100 female victims of Fuller's abuse, ranging in age from nine to 100. He received convictions for sexually penetrating corpses, which under current law carries a maximum sentence of two years in prison. However, the evidence gathered by the police showed that Fuller also seriously sexually assaulted victims in a non-penetrative way—I will not go into the details here for it to be clear as to what is meant by that.

Unfortunately, the current law only applies to penetrative assault and does cover any form of sexual assault that is non-penetrative. Fuller committed heinous acts such that, had the victims been alive, he would have been convicted and sentenced to lengthy terms of imprisonment for each offence, but as they were sadly not alive, he was not. There is clearly a loophole in the legislation that I am sure everyone will agree needs to be closed; that is what the new clause aims to do.

The new clause creates a new offence of sexual interference with a corpse and provides for a maximum sentence of up to 10 years' imprisonment—which I, my colleagues and, I hope, the Committee agree would be fitting for such a disgusting crime. I know that the Minister is meeting my colleagues soon, so I will not press the new clause to a vote, but I suspect the Committee would be very keen to hear the Minister's response and a commitment to amending the legislation.

Victims of Fuller had already been robbed of their lives. Fuller then robbed them of their dignity, and then suitable justice. The hurt, distress and damage done to the families of Fuller's victims is immense. They had the unimaginable shock of being told what that vile man did to the bodies of their loved ones—their daughters, sisters, nieces, aunts, wives, mothers and grandmothers—when they were in the protected space before they were laid to rest. I do not want to think there will be future cases like that, but if there are, I hope we can make a difference by making sure that such acts are crimes and providing sentences that fit their gravity.

10 am

Alex Cunningham: I will be brief. As the hon. Gentleman said, this is a distressing new clause, but the Opposition believe it is very much necessary. I was briefed on it last week by the right hon. Member for Tunbridge Wells, and I was really shocked by what he had to tell me about the murderer David Fuller. The facts have been outlined to the Committee today. Fuller was of course jailed for murder, but that someone could carry out the assaults that he did on dead people and not be prosecuted beggars belief. None of us can comprehend the distress caused to the families of the deceased people Fuller violated. It is important that we ensure that anyone who acts as he did is suitably punished.

I note that the hon. Member for South Basildon and East Thurrock does not intend to press the matter to a vote, but I hope the Minister will be sympathetic to his cause and that of the right hon. Member for Tunbridge Wells. I reiterate our support for the new clause and ask the Government to bring forward a new clause, perhaps on Report, to deal with this most horrendous crime.

Laura Farris: I thank my hon. Friend the Member for South Basildon and East Thurrock for his speech. I am grateful for the opportunity—

The Chair: Order. May I intervene? I have been passed a note to say that the mics in the room are for the audio recording of proceedings, not for amplification in the room, so Members should be advised to speak up if others are having difficulty hearing. I understand that when somebody has their back to the people they are speaking to, it is very difficult to hear, so would the Minister mind speaking up a little?

Laura Farris: Thank you, Mrs Latham. I am grateful for the opportunity to speak about the new clause. I hope people can hear me this time.

It is actually quite rare in this place that we find that there is a crime that is not reflected at all in the law. This is one of those examples. It follows the truly disgusting offending by David Fuller. I want to start by acknowledging the experience of his victims' families and how distressing it has been for them. I thank my hon. Friend the Member for Chatham and Aylesford and my right hon. Friend the Member for Tunbridge Wells for their work on this matter.

The Government have been reviewing the sexual penetration of a corpse offence in section 70 of the Sexual Offences Act 2003, which currently carries a maximum penalty of two years' imprisonment following conviction on indictment, and we agree that there is a gap in the law. Section 70 applies only to sexual penetration of a corpse, so any form of sexual touching falling short of penetration is not currently a criminal offence. The Government have therefore concluded that the criminal law should be expanded to include non-penetrative sexual activity with a corpse.

The Government have also concluded that the current statutory maximum does not adequately reflect the harm caused by an offence of this nature, and that it should be increased from two years' to five years' imprisonment. We therefore support my right hon. and hon. Friends' laudable aims in tabling their new clause.

In the interests of completeness, I will set out why we cannot accept the new clause as drafted. It would not repeal section 70 of the Sexual Offences Act but would create a new offence, in proposed new section 70A, with a higher maximum penalty than the behaviour already covered by section 70. It would also introduce the concept of interference with a corpse. With respect, we say that is unnecessary, because touching is already defined in section 79(8), and we think that section can be expanded and read across to apply to victims in the circumstance we are discussing. Introducing a new concept of interference, which could arguably be interpreted differently, could lead to confusion in the prosecution of the offence, which we think is not necessary.

In addition, the offence in the new clause as drafted does not require the offender to know or be reckless to the fact that what is being interfered with is a dead body. We think the mental element of the offence is important so that we capture those who are genuinely committing a criminal offence.

Again, I thank all the Members who have spoken on this matter, particularly my right hon. Friend the Member for Tunbridge Wells and my hon. Friend the Member for Chatham and Aylesford who have been to see me. They continue to make efforts on behalf of their constituents who have been so badly affected by this uniquely disgusting and horrific crime. We support the intentions behind the new clause, and I look forward to working with hon. Friends to find a way to bring forward the necessary legislation in this Bill. With that reassurance, I urge my hon. Friend to withdraw his new clause.

Stephen Metcalfe: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 16

COMPLICITY IN JOINT ENTERPRISE CASES

In section 8 (abettors in misdemeanors) of the Accessories and Abettors Act 1861, after "shall" insert—

", by making a significant contribution to its commission,".—*(Peter Dowd.)*

This new clause would clarify the definition of 'joint enterprise' (or secondary liability), so that an individual must make a "significant contribution" to an offence committed by another to be criminally liable.

Brought up, and read the First time.

Peter Dowd (Bootle) (Lab): I beg to move, That the clause be read a Second time.

It is a pleasure to see you in the Chair, Mrs Latham.

New clause 16 mirrors the Joint Enterprise (Significant Contribution) Bill introduced by my hon. Friend the Member for Liverpool, Riverside (Kim Johnson) in attempting to amend the Accessories and Abettors Act 1861. It clarifies that a person must make a significant contribution to a crime to be guilty of it. The private Member's Bill, which has cross-party support, will have a Second Reading debate on Friday 2 February. The 1861 Act states that those

"who aid, abet, counsel or procure the commission of "—

an offence—

"…shall be liable to be tried, indicted, and punished as a principal offender."

However, the doctrine of secondary liability or joint enterprise, as it is more commonly known, is still older. Through common law, developed by the Court, "aid" or "abet" has now shifted to "assist" or "encourage" for establishing secondary liability. In many situations, this test is entirely reasonable. Most people would agree that an armed robber at a bank heist gone wrong, for example, can be deemed as culpable as their partner who actually shot a person, because they make a significant contribution to the crime by carrying or supplying a gun and threatening the cashier, for example. The problem, according to many legal experts, is that joint enterprise laws are sometimes used in a much wider way, often to convict people who have made no significant contribution to the crime at all. Campaigners have long warned that these laws can be used as a racist dragnet to maximise convictions.

Recent Crown Prosecution Service data, recorded and released as a result of legal action by Liberty and the campaign group Joint Enterprise Not Guilty by Association, suggest that black people are 16 times more likely than white people to be prosecuted for homicide or attempted homicide under joint enterprise laws, yet no assessment of the reasons for this shocking statistic—and it is shocking—has been made by the Crown Prosecution Service, or, as I understand it, by the Government.

In 2016, the Supreme Court, in the case of R *v.* Jogee, said that the law on joint enterprise had taken a "wrong turn" for more than 30 years. It restored the proper law

of intentions so that those who intended to commit or assist a crime, rather than those who only might have foreseen it, could be properly convicted. That was, as the BBC said, a moment of "genuine legal history". Research by the Centre for Crime and Justice Studies identifies that the judgment has had little to no effect from joint enterprise changes, charges or convictions, and the Court of Appeal has decided that prisoners whose juries had only been directed to consider foresight, rather than intention, should not have a retrial. The situation is gravely unjust for many prisoners, and my hon. Friend the Member for Huddersfield (Mr Sheerman) tried to address it in his Criminal Appeal (Amendment) Bill.

It is a myth that the Supreme Court fixed joint enterprise in 2016. It left under-addressed what constitutes "assist" or "encourage". There is currently no threshold or test for whether someone made a significant contribution to a crime to be convicted of it. That flexibility gives rise to uncertainties and injustice. For example, joint enterprise laws are being used to convict young people who are seen fighting, but not with the victim; young people who are not present at the scene; women who have no control over their boyfriends' conduct; and young people who listen to certain kinds of music, where trials focus on character and culture rather than on contribution to a crime. In the recent case of Fiaz, the Court of Appeal suggested that a jury need not be specifically directed by the judge to consider the legal significance of a defendant's contribution towards an offence. Unfortunately, the Supreme Court declined to hear that case, so it falls to Parliament to enact safer legal frameworks.

What would the new clause do? It would simply add weight to the words of the 1861 Act, inserting:

"by making a significant contribution to its commission"

and thereby enshrining in statute a common-sense safeguard against inappropriate or over-zealous prosecutions. That is an important principle in a fair and effective justice system. By clarifying that someone must make a "significant contribution" to an offence in order to be criminally liable, the new clause seeks to restore Parliament's original meaning and to correct a second wrong turn by the court with respect to joint enterprise. That would help to ensure that persons who make no significant contribution to a crime are never again convicted of being complicit in that crime.

Of course, that would not prevent the use of alternative charges in cases involving multiple accused persons, nor would it prevent the prosecution of multiple persons for a crime in which they all made a significant contribution. It would not help anyone who is already convicted under this doctrine—I referred to the Bill introduced by my hon. Friend the Member for Huddersfield—but it would be an important step in preventing the unfair and unjust use of joint enterprise laws against innocent people in the future. I understand that there may be some objections; as far as I am aware, the Government have not made any formal response to the proposed change but have let it be known that they are potentially resistant to the idea. I hope that the Minister's response to the Committee will clarify any of those objections.

In my view, it would be hard to object to the new clause on the grounds of unintended consequences as to do so would be an acknowledgement of the belief that some people deserve to be found guilty of offences—sometimes very serious offences, such as murder—despite making no significant contribution to the commission of those offences. As such, Ministers may claim that the amendment is unnecessary on the grounds that our current laws—whether "aid" or "abet" in statute or "assist" or "encourage" in common law—already imply a significant contribution or that the current flexibility of the law is part of its strength, as it means that it is for the jury to weigh up and decide on the facts of a particular case.

That is not the case according to Dr Felicity Gerry KC, who was lead counsel in the Jogee case. She described the following generic examples, all of which are based on real cases: a boy, cycling to and from an incident, who has no contact with the victim; a driver who drops friends off to collect drugs, and a fight happens outside the car; a passenger in a taxi, where others get out of the taxi and go to an area where a stabbing occurs, but that passenger has no contact with the victim; schoolchildren who gather for a fight and one of them dies, but they are all prosecuted even when they have had no contact with the victim and have no weapon, putting them all in risk of being convicted, without separating those who contribute and those who do not contribute; autistic children who find it difficult to assess what others will do; children exploited to sell drugs who get caught up in the actions of others; a woman whose violent boyfriend gets angry with some people and runs after them around a corner—she follows a short while later and pulls another person's hair when she thinks he is being attacked; and a woman looking for her shoes during violent disorder.

All those scenarios describe circumstances in which people can be convicted of serious crimes, despite making no significant contribution to that crime, so it is not correct to claim that "significant contribution" is already implied by law—it is not.

10.15 am

Jess Phillips: In a case that I have come across, a woman who was a victim of domestic abuse was charged under the crime of joint enterprise and received a longer sentence—because she pleaded not guilty—than the person who abused her and killed somebody by pulling the trigger of a gun. Is my hon. Friend concerned that in some cases of joint enterprise, those who have not had it proven that they had a significant part to play get longer sentences than those who did?

Peter Dowd: My hon. Friend gets right to the nub of this matter, and she is absolutely right. I agree with her point. Dr Gerry points out that the case of Fiaz, in which she was lead counsel, highlights the need for legal clarity. Judges are currently required to direct juries to consider the significance of a defendant's contribution to an offence, and that is leading to numerous miscarriages of justice. Only Parliament can fix that.

I have a number of questions for the Minister. If the new clause is unnecessary, as may be claimed, can the Minister explain why when schoolchildren spontaneously gather for a fight and one of them unfortunately dies, they are sometimes all prosecuted even when they have had no contact with the victim and no weapon? That is one of the many such examples provided by Dr Gerry, who, as I said, was the lead counsel in the landmark Jogee case.

[Peter Dowd]

Is the Minister be willing to meet Dr Gerry and other experts in this field who can explain why this change of law is so badly needed? Can the Minister explain why the Crown Prosecution Service's own database suggests that black people, as I indicated earlier, are 16 times more likely than white people to be prosecuted for homicide or attempted homicide under joint enterprise laws? What assessment have the Government made of the reasons behind that remarkable statistic? It is shocking. Is it not obvious why campaigners say that joint enterprise is too often used as a racist dragnet? Finally, will the Minister agree that it is not in the public interest to prosecute those who have not made a significant contribution to a crime?

Alex Cunningham: I begin by paying tribute to the work of my hon. Friend the Member for Bootle on the new clause, and the ongoing work of my hon. Friend the Member for Liverpool, Riverside (Kim Johnson), who we have already heard has introduced a private Member's Bill to the House on the same issue. I am sure that Members across the Committee will share my admiration and respect for the campaigners from JENGbA, who have been tirelessly working on challenging injustices in joint enterprise convictions for well over a decade.

As we have just heard, the new clause mirrors the Joint Enterprise (Significant Contribution) Bill, which we hope will receive its Second Reading on Friday 2 February. I would prefer to see the Government making commitments on this matter, as it is a complex area of law and practice and any reforms will need careful consideration and monitoring to ensure that they are working, especially after the unexpected absence of change following the Jogee decision in 2016, which I will come back to later.

I am glad that the new clause has been tabled to enable a discussion in Committee, because the issue deserves more parliamentary time. Even though we have had many criminal justice Bills before this House in the past 10 years, all while alarms have been raised about continuing problems with joint enterprise law, Parliament has not engaged substantially with the issue for some time. During my tenure as shadow Justice Minister, I met the Centre for Crime and Justice Studies and the PCS, among others, and heard about ongoing challenges with joint enterprise convictions, despite the decision in Jogee and the very active collaboration between campaigners, legal practitioners and academics over the last decade. So I will be very interested to hear from the Minister about the work her Department has been doing in this area and, indeed, about any ongoing engagement it has had with campaigners, experts and practitioners who are collaborating on reform in this area.

The processes of prosecution and conviction in our criminal justice system should be fair, transparent and accountable, but joint enterprise law can be vague and confusing, and it can lead to apparently unjust outcomes. Some examples of individuals who are potentially at risk of being prosecuted under joint enterprise have been provided by Dr Felicity Gerry KC, who was the lead counsel in the case of Jogee. My hon. Friend the Member for Bootle has already outlined them to the Committee.

In 2016, when the Supreme Court ruled that the law of joint enterprise had taken a "wrong turn" for over 30 years, it restored the proper law of intention so that those who intended to commit or assist a crime, rather than those who might have foreseen it, could be properly convicted under joint enterprise law. These are all based on real cases, and as I have said, my hon. Friend has given the example of the taxi passenger getting out and becoming involved in a stabbing, or the woman who pulled somebody's hair while trying to defend her boyfriend who may well have carried out a serious offence. Those individuals were charged under joint enterprise law, and they were at risk of extremely lengthy sentences, as if they were the primary offender, even when it is very difficult to discern how they contributed to the crime in question. Joint enterprise law has been used to convict young people who have not been present at the scene of the crime, and young people who listen to certain kinds of music, and there is a risk that such a trial focuses on character and culture, not contribution to a crime. My hon. Friend spoke about that in some detail. It is clear that joint enterprise law needs to be reformed in some way.

Last September, the CPS finally recorded and published a set of pilot data about joint enterprise cases, as a result of legal action by Liberty and JENGbA. While the results were shocking, they were, sadly, not surprising, as they confirmed much of what has been said by joint enterprise reformers for years. The data revealed that over half of those involved were aged under 25. Some 30% of the defendants in the cases were black, compared with the 4% of black people in the wider population, and black 18 to 24-year-olds were the largest demographic group identified in the pilot data. The data illustrated what we already knew about joint enterprise, which is that there is a serious racial disproportionality in its use.

The CPS pilot data suggests that black people are 16 times—I repeat, 16 times—more likely than white people to be prosecuted for homicide or attempted homicide under joint enterprise laws, which is a very significant divergence. I would be grateful to hear from the Minister the results of the data analysis, particularly about what she believes are the reasons behind the shocking disparities, given that the CPS has said that no conclusions about its decision making can be drawn from the pilot data. At the very least, we have to ask questions about the possibility that this level of divergence is at least in part caused by discriminatory practices in our criminal justice system. Looking at those figures, is the Minister confident that the framework for joint enterprise prosecutions is fit for purpose?

It has taken a number of years for the CPS to finally publish data on this important issue, but now that we have it, we must ensure that the Ministry of Justice is using that data to explore how it can best improve practice. I would also be grateful if the Minister could share any other plans for data collection and analysis in relation to the application of joint enterprise law, and anything she is aware of in the Ministry of Justice, the CPS or other Government body that is happening to progress this.

I was personally quite surprised at the scale of joint enterprise prosecutions, with the CPS data showing 680 defendants in 190 cases of homicide or attempted homicide across six of 14 CPS areas in just six months. That number is considerably higher than I would ever

have anticipated. If the Minister has any thoughts on the number of prosecutions, I ask her to share them with the Committee. The high level of joint enterprise prosecutions demonstrates that at the very least it is an issue deserving of considerably more active consideration by parliamentarians and the Government.

Finally, I would be grateful if the Minister could speak to any discussions that she has had in her Department about the recent Fiaz case, in which the Court of Appeal suggested that a jury need not be specifically directed by the judge to consider the legal significance of a defendant's contribution towards an offence. Dr Gerry has argued that the case highlights the need for additional legal clarity, as judges do not always direct juries to consider the significance of a defendant's contribution toward an offence. Does the Minister also recognise the need for additional clarity in that area, and has her Department considered any means by which that may be achieved? It is an area with substantial cross-party recognition that more needs to be done to increase the fairness, transparency and accountability of prosecutions, and I look forward to hearing the Department's position on the matter.

Laura Farris: I thank the hon. Member for Bootle for tabling new clause 16, which would amend section 8 of the Accessories and Abettors Act 1861 to provide that a person must have made a "significant contribution" to an offence committed as part of a joint enterprise to be indicted or punished as a principal offender. Its effect would be that the prosecution would have to identify the precise nature of the defendant's role in aiding, abetting, procuring or counselling the commission of a crime committed in order to prove that the defendant had made a significant contribution—a threshold that need not currently be met.

Joint enterprise is a common law doctrine used in a variety of situations, most commonly to describe a situation in which two or more individuals have a common purpose to commit any criminal offence, or a secondary party encourages or assists the principal offender to commit an offence. It is a long-standing principle of criminal law that in either of those situations, both or all of the offenders may be held equally responsible and could be subject to the same penalty.

The hon. Member for Bootle has set out a number of examples, but I will start with a high-profile one. Members of the Committee may well recall the Victoria station attack in 2010, when a group of young men chased another young man over the ticket turnstile and down the escalator, where they set upon him. In the course of that attack, the young man was kicked in the head and torso repeatedly and was stabbed, and he died. At the end of it, the cause of death was multiple injuries, but it was impossible for the coroner to say who had struck the fatal blow with the knife or who had administered the fatal kick to the head. The whole group of assailants was put on trial; a number were convicted of murder and a number were convicted of manslaughter. That was classic joint enterprise, where they went with a common purpose to attack seriously an individual, and it could not be identified who had made the significant contribution, but the young man—the victim—was killed.

I say with great respect that R *v.* Jogee, which went before the Supreme Court in 2016 and to which the hon. Members for Stockton North and for Bootle both referred, was not an ordinary case. It was not even close to being an ordinary case. The Supreme Court reviewed 500 years of common-law jurisprudence on joint enterprise, and not only changed the law but issued really important guidance. I would like very briefly to talk the Committee through the framework that the Supreme Court applied, because it will help to explain why the Government will not accept new clause 16 today.

The Supreme Court said that it circumscribed the ambit of the offence and removed, as a matter of common law, the principle of parasitic accessory liability. To give an example that is sometimes given in case studies, if two people go to a farm with the purpose of stealing some farm machinery, and the farmer approaches them, and then person No. 1 pulls out a weapon and uses it on the farmer, that would not be decisive evidence that person No. 2 intended to kill or cause serious harm. That would previously have been the case under the principle of parasitic accessory liability, but the Supreme Court said that that went too far. In plain English, it said that joint enterprise cannot be inferred from the fact that it was foreseeable that a secondary offence would take place; there has to be an intention to assist. It said that the existence of foreseeability was something that the court should treat as evidence of intent, but was not necessarily decisive of it.

The judgment concluded by saying that joint enterprise essentially requires two elements. The first is a conduct element: the accessory must encourage or assist the crime committed by the principal. Secondly, the prosecution must show that the mental element existed, in other words that the accessory intended to encourage and assist the commission of the crime committed by the principal.

I have done a bit of a review of the case law—although I question whether it is helpful or unhelpful to go through case law during a Bill Committee in which nobody has the opportunity to read the case report—and am satisfied that there have been examples of case law since the Jogee case that show that approach being fairly applied. One example is of a group of young men who undertook a burglary on a care home. One person was tasked with searching the rooms before the others went in. In the course of events, one of the residents of the care home was brutally attacked. The young man who had done the search went in to try to stop it; he established that in court. He was convicted of burglary but not of the secondary attack, because that had not been his intention as part of the joint enterprise exercise.

10.30 am

I will draw out some other principles that the Supreme Court set out at the beginning of its judgment. Although this was not the question that the judges were asked to consider, they started by setting out the fundamental principles of joint enterprise:

"It is a fundamental principle of the criminal law that the accessory is guilty of the same offence as the principal. The reason is not difficult to see. He shares the physical act because even if it was not his hand which struck the blow, ransacked the house, smuggled the drugs or forged the cheque, he has encouraged or assisted those physical acts…The accessory who funded the bank robbery"

—or acted as lookout or drove the getaway car—

"is as guilty as those who are at the scene. Sometimes it may be impossible for the prosecution to prove whether a defendant was

a principal or an accessory, but that does not matter so long as it can prove that he participated in the crime either as one or as the other. These basic principles are long established and uncontroversial."

As I say, they did make a correction to the law in that case. They said that it must be possible to show that the mental element was there—that the accessory intended to encourage or assist the commission of the crime. I have given examples of that.

The Government understand and recognise the importance of the law on joint enterprise and the consequences that result from convictions. This can be difficult for defendants and their families to accept, but equally the impact of the crime can be devastating for the victim. I want to provide some reassurance to both hon. Members who asked what work was being done to gather evidence of disparate impact.

Reference has been made to the CPS pilot, which concluded in September and published its report. Its purpose was to review the interim findings of the pilot and the joint enterprise casework with the purpose of opening up a decision-making exercise, answering questions from stakeholders and possibly reviewing the guidance that it publishes. I understand that a further panel is to be convened by the CPS on 2 February, this Friday, with a focus on situations in which evidence of gang association is a feature. A careful review is being undertaken on the issue of disparate impact, which I concede has been raised a number of times.

Jess Phillips: Can the Minister tell me what protections are in place for the woman in the case that I outlined? She was considered to be an accessory to a crime. She was a victim of coercive and controlling behaviour, and the crime was a part of a pattern of domestic abuse.

Laura Farris: In that circumstance, the defence of duress would be available to the victim in the ordinary way.

Jess Phillips: Currently, that is absolutely not what is happening in our criminal courts. It is currently no defence for victims of domestic abuse in these cases to say, "I'm a victim of domestic abuse: that's why I ended up here." The Minister is saying that there is the defence of duress; I am saying that it never gets used. It does not stack up, and this is not happening in reality. She has spoken of her pride in the Government over coercive control. Does she think that there need to be specific elements, within this conversation about joint enterprise, to protect people who are coerced into such behaviours?

Laura Farris: We will come on to some amendments of that nature and I will deal with them in due course, but the defence of duress is a standard defence in the criminal context. *[Interruption.]* These are the criminal defences that get advanced.

In response to the hon. Member for Bootle, this is an area of the law that is intrinsically linked with other inchoate offences such as encouraging or assisting a crime. We think that it is too difficult to require the prosecution to prove a significant contribution; as we say, the very important case of Jogee has set clear parameters for both the conduct element and the mental element, which we think creates the correct framework of common law. For those reasons, the Government are unable to support the new clause, and we ask the hon. Member for Bootle to withdraw it.

Peter Dowd: I take the Minister's points in good faith. Nothing that I say today—nothing whatever—condones any attempted criminality, but the question of proportionality, which we have discussed several times, is key. The Minister gave the example of a young man breaking into a care home, who was able to prove that he assisted the person. In that case, he was having to prove that he was not guilty. A fundamental element of British law is that someone is innocent until proven guilty, not the other way round. I see the perplexed look on the Minister's face, but the young man in that case had to prove that he was not guilty. This was not about the prosecution proving that he was guilty.

I do not want to go into the detail of these cases; I am just trying to make the point that the Jogee case went so far, but it still did not deal with the question of proportionality. One defence solicitor said:

"They don't need to prove that you did anything. If you're part of a gang, it doesn't matter, because the actus reus"—

that is, being there—

"and the mens rea",

the state of mind,

"is being in the gang".

That could be applied in so many different cases. It could apply in boardrooms, and right across the piece: "You were there. You are guilty." That is almost what it is saying, and that is what lawyers and Dr Gerry are trying to get the Government to consider.

Let us have the debate and have the discussion with the experts. The whole point of British justice is that when issues are raised and potential injustice arises, we think it through and work it out, instead of just closing the door. The danger in this situation is that the Government are closing the door and effectively saying that the Jogee case is the final say on this matter. I do not think it is.

However, my hon. Friend the Member for Liverpool, Riverside, who has done sterling work, will be addressing the issue in the debate on Friday 2 February. On that basis, I will withdraw the new clause, but I ask the Minister to give careful consideration to what I have said. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 17

OFFENCE OF FAILING TO REMAIN AT THE SCENE OF A TRAFFIC COLLISION

"In section 170 of the Road Traffic Act 1988, after subsection (4) insert—

'(4A) A person guilty of an offence under subsection (4) is liable—

(a) If a person other than the driver of the vehicle suffered a fatal injury—

(i) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(b) If a person other than the driver of the vehicle suffered a serious non-fatal injury—

(i) on summary conviction, to imprisonment for a term not exceeding 10 years or a fine not exceeding £20,000 or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(c) In any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 10 years or a fine not exceeding £20,000 or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 10 years.'"—*(Peter Dowd.)*

This new clause would expand the existing offence of failing to stop after a road collision to create more serious penalties for failing to stop after collisions which result in death or serious injury.

Brought up, and read the First time.

Peter Dowd: I beg to move, That the clause be read a Second time.

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

New clause 18—*Time to report road collision—*

"In section 170 of the Road Traffic Act 1988, omit subsection (6) and insert—

'(6) In complying with a duty under this section to report an accident or to produce such a certificate of insurance or other evidence, as is mentioned in section 165(2)(a) of this Act, it is an offence for a driver—

(a) not to do so at a police station or to a constable as soon as is reasonably practicable, and

(b) not to do so within two hours of the occurrence of the accident in relation to reporting an accident, or within twenty-four hours of the occurrence of the accident in relation to the production of a certificate of insurance or other evidence.'"

This amendment would amend the Road Traffic Act 1988 to reduce the time within which a driver must report a road collision in which they were involved from twenty-four hours to two hours, and make it an offence not to report an accident.

New clause 49—*Amendments to the Road Traffic Act 1988—*

"(1) The Road Traffic Act 1988 is amended as follows.

(2) In each of the sections listed below, after 'a road or other public place' insert ', or a private place adjacent to a road,'—

section 1 (causing death by dangerous driving);

section 1A (causing serious injury by dangerous driving);

section 2 (dangerous driving);

section 2B (causing death by careless, or inconsiderate, driving);

section 2C (causing serious injury by careless, or inconsiderate, driving);

section 3 (careless, and inconsiderate, driving)."

This new clause would extend the Road Traffic Act 1988 so that a range of driving offences can be committed in private places adjacent to roads as well as on public roads or in public places.

Peter Dowd: New clauses 17 and 18 relate to the offence of failing to remain at the scene of a traffic collision. My new clause 17 is clear and unambiguous. As Members will see from the explanatory statement, it would expand the existing offence of failing to stop after a road collision and would create a more serious penalty for failing to stop after a collision that results in the death or serious injury of the person hit by the vehicle. I emphasise the element that refers to victims of serious injury or death.

I put on the record the support provided to me by RoadPeace, particularly by Lucy Harrison. I want to mention Pauline Fielding, who died last year; her son was killed in an accident several decades ago, and she was a sterling advocate and campaigner on the issue in the north-west. I put on record my thanks for the work that Pauline did. I also thank Cycling UK, particularly Roger Geffen; Amy Aeron-Thomas at Action Vision Zero, who has worked on the issue; and a number of other organisations that have campaigned for many years. However, everything I say today is my responsibility and not that of others.

Why have these measures not been put on the statute book before? Promises to review the law have been made in the past and, to be fair, have been partly fulfilled, but there remains a great deal to do. It has been 10 years since the Government said that they would undertake a full review and consultation on traffic offences. Regrettably, as we discuss these issues, no full review has taken place. It seems to me that there is an irrefutable case for introducing these amendments, or a variation of them, on potential penalties. I am not servile to the wording of the new clauses; there can be variations on a theme. I recognise the legislative pressures on the Government and the workloads within Departments, but sometimes there are issues that have to be faced up to. In my view, this is one of them.

Let me set the context for these proposals. Every 16 minutes, someone is killed or seriously injured on a road in the United Kingdom. That is quite a stark figure, as I am sure hon. Members will agree; it is an official figure based on the average over the 10-year period from 2013 to 2022. To put it into an annual context, it means that 31,000 men, women and children were killed or seriously injured in collisions, out of a total of about 135,000 casualties right across the piece, including very minor collisions. In a year, 1,766 people killed were killed—1,711 in Britain and 55 in Northern Ireland—and 28,941 seriously injured: 28,031 in Britain and 910 in Northern Ireland. Road deaths have increased by 10% since 2021 and are close to pre-pandemic levels. Serious injuries are up 8% since 2021. I stand to be corrected, but on average, if I have my figures right, 85 people are killed or seriously injured every year in each of our constituencies. That is seven every month. The lives of our constituents are lost or irreparably damaged or changed.

Meanwhile, many drivers simply leave the scene of the collision—as many as 17,000, according to figures from the Motor Insurers' Bureau. Not all of those are related to serious injury or fatality, which this clause deals with, but many families are left bereft and victims are left to carry on with their lives while perhaps very physically or neurologically damaged, not to mention the ongoing psychological impact of not knowing who was responsible and of not being able to settle. Let us say that families approached us in our constituency surgery having found out that some of the drivers involved in collisions had fled the scene—in other words, they had hit and run—and had avoided potentially more serious consequences as a result. What would we say to our constituents?

In preparing this speech, I pondered whether to give case examples of lives destroyed and families left shattered. I decided not to. Members have had so much to take in already—we have heard that today—that I do not think that adding to that with more tragic narratives would be appropriate, but I will challenge them in a different way. For the purposes of the debate, I will set aside the emotional effect on the victim's family, knowing that their daughter, son, brother, sister, mother, father or other relative has been left on the road or the side of the

[Peter Dowd]

road to die by a fleeing driver because the driver decided not to stop, or, having stopped, got back into the car and drove off.

10.45 pm

What would Members say to a constituent sitting in front of them who presents the evidence of their experience? What would we say? "What a shame, I am sorry to hear that"? What if the constituent said, "You have the power, capacity and wherewithal to change the legislation, given that you are a member of this Committee. Will you speak up for me in the Committee? Will you help to change the law?" What would be our response? Would we defend the status quo? Would we, figuratively speaking, shrug our shoulders and say, "There is little I can do to redress the balance"? Would we sit there in silence, or would we look at the data and the information provided by our constituent and road safety campaigners, and make a decision on the basis of that data and information? I hope we would do the latter. We have that opportunity. That is what I am asking hon. Members to do—no more, no less.

These people, our constituents, are not seeking vengeance or retribution for themselves; they are seeking justice for others, or for those who may be affected in the future. In our proceedings over the past few weeks we have sought justice by changing or introducing measures when faced with evidence, however upsetting those stories, information and narratives were. It has been pretty upsetting; we have heard that again today. I am going to be a proxy for those constituents. The Committee has dealt with so many harrowing cases. Colleagues listened carefully and respectfully when we discussed child sexual exploitation, adult sexual exploitation, grooming gangs, fraud, knife crime, coercive control and the abuse of intimate images. There have been many other sensitive but necessary interactions and interventions. It can be distressing, but why should it not be? In effect, the Committee has ensured additional and more serious consequences for actions that we consider to be intolerable.

We have a responsibility and a job to do to protect the public. We have taken that very seriously over the past few weeks. It is our first and most important responsibility: protecting the our constituents' wellbeing and, wherever and whenever we can, seeking justice. After all, we are discussing the Criminal Justice Bill. My amendment seeks to ensure that we fulfil our responsibility by making it clear that heartlessly driving off after having hit another human being—including children, but no matter how old they are—will result in a sanction that sends a clear message that such selfish behaviour is intolerable and unacceptable.

Members may ask why people drive off. Is it shock, a sort of flight or fight response, or even "I didn't realise I had hit somebody. I did not notice"? Really? Seriously? What are some of the other reasons for driving off, leaving a person potentially dead or dead? Dr Matt Hopkins from the University of Leicester, who has interviewed dozens of hit-and-run drivers about why they failed to stop, said:

"What the research seems to be pointing to is that a fair proportion of hit-and-run collisions are related to drivers who tend not to have valid insurance, tend not to have a valid licence". Others had a ban in place at the time of collision, or were under the influence of drink or drugs, or both; others did not have a licence, or were in stolen cars. It is clear that a driver trying to avoid responsibility by driving off can potentially avoid the consequences of their actions.

Currently, the maximum penalty for driving off after a collision is up to six months in prison, excluding other potential subsequent penalties. That might suffice where a driver leaves a scene having, for example, damaged a car, but not when they have left someone—a pedestrian, a cyclist, a motorcyclist—dead or seriously injured in the road.

New clause 18 would reduce the amount of time a person has to report a collision from 24 hours to two hours. There are so many cases where after a collision occurs, the driver, who may be under the influence of drink or drugs, drives off and then sobers up. If or when they are found, they are free of the intoxicating substance and so can avoid the penalties that might have arisen had they been tested at the scene of the collision or soon after. Given that, the new clause reduces the amount of time a person has to report a collision—I say collision because many of these are not accidents; they are collisions. Two hours is more than enough time, given that virtually everybody today has a mobile phone, which did not exist when the legislation was first introduced.

I hope Members understand the spirit of what I am intending with these new clauses. They are quite simply designed to ensure that those who seriously injure or kill a person they collide with face justice if they decide to leave the scene of the collision. As I said earlier, if Minister wishes to take away my new clauses and give the intent behind them some thought, I would be more than willing to withdraw them and give the Government the opportunity to carefully consider the points I have made, our constituents have made and road safety campaigners would make if they could speak directly to the Committee.

Carolyn Harris (Swansea East) (Lab): I rise to speak to new clause 49 on behalf of my hon. Friend the Member for Merthyr Tydfil and Rhymney (Gerald Jones) and others. The new clause would amend the Road Traffic Act 1988 to provide that dangerous and careless or inconsiderate driving offences may be committed on private land adjacent to the highway. In August 2017, 22-month-old Pearl Melody Black from Merthyr Tydfil was tragically killed while walking with her father and brother. Pearl was killed by an unoccupied vehicle that rolled from a private drive in Merthyr on to a highway and down a hill, crashing into a wall that subsequently crushed Pearl and injured her father and brother.

In the months after the incident, officers from the serious collision unit of South Wales police worked tirelessly to put together a case to provide justice for the family. In short, all tests concluded that the car was mechanically sound and that it had rolled because the handbrake was not fully engaged and the automatic transmission was not fully placed in park mode. The case was sent to the Crown Prosecution Service in March 2018 and was worked on by the London office as well as by an independent QC hired by the CPS. Everyone was hopeful of a conviction under the causing death by dangerous driving category, and the CPS looked at other possible options. However, in June 2018 the CPS

stated that it was unable to send the case to court as a glitch in the law states that the vehicle must have started its journey on a public road for a prosecution under the Road Traffic Act 1988. Even though Pearl was killed on a public road, the fact that the vehicle started its descent from a private drive meant that prosecution was not possible.

The coroner stated that the vehicle was well maintained and it seemed that the issue was very much driver operation. The inquest heard that the handbrake had not been fully applied in park mode. The inquest into Pearl's death was heard in October 2018 and the outcome was that it was an accident. However, with the support of South Wales police and the CPS, Pearl's parents have been seeking a change in the law to prevent other families from being unable to secure justice due to a legal loophole following such a tragic and completely preventable accident as this. As Gemma and Paul acknowledge, it will not help to bring justice for Pearl, as legislation is not retrospective, but if this law can be changed to prevent anyone else from suffering this injustice again, it may provide some comfort.

My hon. Friend the Member for Merthyr Tydfil and Rhymney put forward a ten-minute rule Bill that had cross-party support, including mine, but it fell due to a lack of parliamentary time. Meetings with various Justice and Transport Ministers have been helpful in that they were all sympathetic, but there is currently no major transport Bill that could provide a vehicle for this change. This new clause would therefore allow for the change to be made.

It is wholly wrong that, in cases as tragic as the one I outlined, justice cannot be achieved. There can be no conviction simply because the land on which the incident took place is not classified as public. If the law were changed in relation to driving offences occurring on private land adjoining public land, that would be a powerful deterrent to road users being careless, as well as those who have no doubt exploited the current loopholes in the law to avoid conviction when they have undoubtedly been at fault. People would be more likely to take care and pay more attention when parking or driving on private land close to public land if they knew that there could be serious consequences for their careless and reckless behaviour.

There are a huge number of instances where private land adjoining public land is readily used and potentially dangerous to those around it, including residential driveways, schools and nurseries, supermarkets, shopping centres, hospitals and doctors' surgeries to name some of the more common ones. When we consider those examples, we can see that driving on that specific category of land can present a high risk to people in everyday situations, and especially children, the elderly and some of the most vulnerable among us.

I am sure that all hon. Members agree that nobody who has suffered the loss of a loved one or had an accident or an injury as a result of a driving offence should have to endure the injustice of seeing those responsible go free simply because of a loophole in the law. Prosecutions for driving offences—indeed, for any illegal action—should be based on what happened, not where it happened.

Alex Cunningham: I shall be brief. My hon. Friends the Members for Bootle and for Swansea East have addressed new clauses 17, 18 and 49, and I pay tribute to them and to my hon. Friend the Member for Merthyr Tydfil and Rhymney for the work they have done on road traffic incidents. All three new clauses illustrate the need for a sentencing review for serious road traffic offences, and Labour is committed to doing that alongside sentencing for other serious crimes across the system.

The Minister and the Committee heard the tragic accounts outlined by my hon. Friends, including that of a runaway car that killed a young child. Sadly, in that case, there could be no justice for the child or her family as no offence related to the circumstances of her death. Surely that cannot be right. I am sure the Minister agrees that we have a duty to act in all three areas outlined in the new clauses. Has she examined the impact of those measures on cost, particularly in relation to the additional cost of prison places? If she has not, will she consider doing so before Report and share that information with the Committee, so that we are better informed? If she cannot support the new clauses today, I would be obliged if she told us what action, if any, her Department is considering for such offences and whether the Government plan to address them in the Bill at a later stage, or perhaps during Committee of the whole House on the Sentencing Bill, which I believe is due within the next few weeks.

There can be no doubt that the new clauses would close loopholes in the law that currently prevent families of loved ones killed in tragic circumstances from achieving either justice or closure. I look forward to the Minister's response.

Laura Farris: I thank the hon. Members for Bootle and for Swansea East for compellingly setting out the impact of various forms of driving offence that are raised in our surgeries. When we talk about driving offences, there is often a narrow focus on things such as drink-driving for which the penalties are serious; we do not talk enough about things such as causing death by dangerous driving, which can be unbelievably reckless and irresponsible and cause the most serious harms.

The hit and run that the hon. Member for Bootle so powerfully described was an extension of dangerous driving. Whether panic, cowardice or other offences that the perpetrator is concerned about come to the fore, such incidents are absolutely devastating for the families of the victim. I therefore pay tribute to those hon. Members for the way in which they presented the new clauses.

It was helpful to hear that the hon. Member for Bottle is not wedded to the language he has used in his new clause. I had some remarks to make about that, but I will not spend too much time on that because of his indication. I do not know whether this applies to the hon. Member for Bootle too, but I understand that the hon. Member for Merthyr Tydfil and Rhymney is having conversations with the Department for Transport. I hope the hon. Member for Bootle will allow time for those conversations to happen and for us to engage with them before the Bill comes back. With all that in mind, I will lay out the framework for how we deal with the hit and run issue and I will then come on to the other points and where the Government's thinking lies at present.

11 am

In a small number of hit and run cases, the driver leaving will contribute to serious injury or even to the death of the victim, but in the vast majority of such cases, the convictions for drivers who fail to stop come after they caused minor property damage or more low-level personal injury. As I said, I will not spend too much time on the new clause except to say that the way it is drafted would create a very high penalty while not making it clear that there is necessarily a causal connection between the fact that the driver has departed the scene and the injury itself. Ordinarily, within the contours of this area of the law, the more serious penalties are reserved for cases in which there is a causal connection between whatever the driver did and the injury that followed. I have already said that there can be cases where there is a direct correlation, and it may be that the hon. Member for Bootle had that in mind when he drafted the new clause, but I just point that out to him.

Where there is evidence that the driver caused harm, there is a range of other offences. There is, of course, causing death or serious injury by dangerous or careless driving. At the extreme end, a hit and run can amount to perverting the course of justice, for which the maximum sentence is life. I do not want the hon. Gentleman to think that there are no circumstances where a more serious penalty can be applied. It is also the case that departure from the scene of the crime would be aggravating in the normal context of sentencing for a crime of that nature. We are therefore concerned that the penalties in the new clause would create a sense of disproportionality in maximum sentencing compared with other death or injury offences where there is a higher level of culpability. Indeed, I have already said I consider causing death by dangerous driving to be an area in which Parliament should be particularly interested.

The hon. Gentleman presented new clause 18 on mandatory reporting in a compelling way. In a way, I think that what he is saying is two halves of the same whole, which is not just that the person should stop but that they should take positive action to make the police aware of what has happened. Again, I hope he will read my comments in the context of the existing legal framework and understand why I make them.

In the majority of road traffic accidents, we are looking at something more minor, where stopping often marks the beginning of the reporting period, in the sense that both sides will swap details and there is then a claim to the insurance company; the notification takes place in that way. One of our concerns about reducing the reporting time to two hours is that that could create unnecessarily onerous reporting restrictions, particularly if there is no police station anywhere nearby. We are also concerned that having to report all accidents to the police could put too much pressure on police stations when, as I have already said, quite a lot of those accidents are minor and can be resolved without the intervention of the police. I am sure the hon. Member for Bootle had that in mind anyway.

The hon. Member for Swansea East, who was presenting the amendment on behalf of the hon. Member for Merthyr Tydfil and Rhymney, told us of a case that I had never heard about before. It is truly tragic, and I can understand the sense of injustice. There seems to be an anomaly in the law where if a vehicle takes off from private land, makes its way on to public land and a fatality occurs, the family is left without recourse. I think that engages an important question.

The hon. Lady will know why there is a general prohibition relating to private land, and how many legitimate uses of vehicles on private land would not be acceptable on a road. Obviously, any change to private land more widely would have far-reaching implications for other aspects of the Road Traffic Act 1988, such as having a driving licence, motor insurance and the definition of vehicles that falls within the Act's scope. There are things such as buggies—I do not know what they are called—that people can go around in private land.

Mark Garnier (Wyre Forest) (Con): Quad bikes.

Laura Farris: Hon. Members will know what I mean: those things that are not cars. There is, therefore, quite a lot of classification. We have a two-part system.

Mark Garnier: I am slightly confused. I get all the stuff about not being insured and not needing a driving licence, but surely if a person clobbers somebody with a quad bike and causes them injury, there has to be some recourse?

Laura Farris: My hon. Friend is correct, but that would be a civil action for negligence, for which remedies would be available. We treat private land separately, but I think the was saying something rather different, about where private land becomes public land. When the index offence takes place, it relates to a motor vehicle on public land; we are not dealing with particularly difficult definitional issues. I undertake to take that point away; I had not understood it from the motion and the explanation of the hon. Member for Swansea East, so it might require some further thought. I hope conversations are happening in the Department for Transport, but I will ensure that that point is included in the Department's thinking.

I point out, in the interest of completeness, that there is a broad definition of land that is defined as "private". Some complications may exist around the classifications of private land, such as that used for military, commercial or other official purposes or land that is exempt from legal proceedings for offences committed there. There is a legal framework in place. Accidents on private land are covered by civil law and compensation—I talked about negligence in relation to a quad bike. In extreme cases such as gross negligence manslaughter or breaches of the Offences Against the Person Act 1861, the criminal law may be engaged too. With all that in mind, I urge hon. Members to withdraw the motion.

Peter Dowd: I hear what the Minister says, and I will withdraw the motion. It was a probing amendment in an attempt to give consideration to this issue, which affects so many people—our constituents—day in, day out; I gave the figures. As I said, I recuse myself from giving examples, because they are dreadfully distressing for people and I do not want to distress Members any more than I need to. I recused myself from giving examples, of which there are so many, but I hope the Minister hears the spirit of what I tried to say. It is not about people wanting vengeance; it is about getting an element of justice. I hope the Government will give serious consideration to these matters, because at some point they will come back.

I acknowledge and accept that this is not a transport Committee, but my proposals are within the scope of the Bill, so the Government have the power to pursue them if they wish. I ask the Ministers to take them away and think about them. I will be in touch with the Department for Transport, although, as I mentioned earlier, Departments are often packed out with work. None the less, this issue is of such import—it impacts on the lives of our constituents day in, day out—and we and the Government must consider it very carefully as early as practically possible. I beg to ask leave to withdraw the motion.

Motion, by leave, withdrawn.

New Clause 19

USE OF ANOTHER PERSON'S DWELLING PLACE FOR CRIMINAL PURPOSES: CUCKOOING

"(1) A person 'P' commits an offence if—

(a) P makes regular use of or takes up residence in a residential building lawfully occupied by another person 'R',

(b) P uses the residential building as a base for criminal activities including but not limited to—

(i) dealing, storing or taking unlawfully held controlled drugs,

(ii) facilitating sex work,

(iii) taking up residence without a lawful agreement with R in circumstances where R is under duress or otherwise being coerced or controlled, or

(iv) financially abusing R.

(2) For the purposes of this section—

(a) 'building' includes any structure or part of a structure (including a temporary or moveable structure), and

(b) a building is 'residential' if it is designed or adapted, before the time of entry, for use as a place to live.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both)."—*(Alex Cunningham.)*

This new clause would make cuckooing an offence. Cuckooing is where the home of a vulnerable person is taken over by a criminal in order to use it to deal, store or take drugs, facilitate sex work, as a place for them to live, or to financially abuse the occupier.

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

The new clause would make cuckooing a specific offence. I believe that action on what should be a clearly defined crime has support across the House—including, I understand, from the right hon. Member for Chingford and Woodford Green (Sir Iain Duncan Smith) and the hon. Members for Hornchurch and Upminster (Julia Lopez), for Eastbourne (Caroline Ansell) and for Hertford and Stortford (Julie Marson), among others.

I have also received support from the Police Superintendents' Association for the new clause. The PSA states:

"There is clear need for legislation of this kind, with evidence showing that cuckooing is a widely used tactic in many serious offences, including those linked to serious and organised crime, such as county lines drug supply and human trafficking. Vulnerable people are often targeted and exploited to facilitate long-term criminal operations, through the use of their property. These amendments would provide police and partners with an effective means of tackling this and better safeguarding those at risk."

It goes on:

"Any legislation would need to ensure that evidence thresholds are clear and that exact wording around offences is robust, so that vulnerable people can be appropriately safeguarded. Vulnerability must be reflected in this legislation, with clear reference to those victims who consent to criminal activity under duress or who are unaware of the activity being carried out."

The PSA raises other points that it believes should be considered:

"Inclusion of reference to evidence of a written legal agreement or clear proof which must be provided by a suspect, to show compliance on the part of any individual suspected of being subjected to cuckooing; Including local authorities as interested parties, with reference to 'R', as properties owned by local authorities or housing associations are typically used in the committing of these offences; Wider legislation for repeat offenders that move on to additional victims/properties."

The National Crime Agency explains that cuckooing occurs when drug dealers or other criminals

"take over a local property, normally belonging to a vulnerable person"

and use it as a base from which to run their criminal activities, with the person still living in the property. I hope that, working across the Benches, we can ensure that those who prey on such people are properly held to account. Cuckooing is often associated with county lines drug supply, in which illegal drugs are transported from one area to another, often by children or vulnerable people who are coerced into doing so by organised criminal groups. It cannot be stressed enough that it can also be an independent venture, with one or more people preying on individuals by taking over their homes and controlling their lives. As well as having to live with what is effectively a drugs—or other crime—den in their own home, the victims may see their home being used for accommodating sex work, or be financially abused by the criminals.

Cuckooing is a terrifying experience for the vulnerable adults who are targeted by these criminals. I do not think that any of us can comprehend what it would mean to have our home taken over in such a way. I suspect that there is not a member of this Committee who does not have a vulnerable adult in their constituency or know someone who lives alone and could be targeted by such unscrupulous criminals. Everyone should feel safe in their home.

Police work with local authorities to deliver a safeguarding response for victims of cuckooing. For example, the Metropolitan Police Service has dedicated cuckooing officers, who work with partners to safeguard victims and divert them from the criminal justice system. However, cuckooing is not defined in legislation and is not a specific offence, and data on cuckooing is limited. An article in *Inside Housing* in November 2023 showed that only seven police forces recorded cases of cuckooing, and many local authorities do not record cases either, as analysis by the London Assembly Labour group last year showed. I do not know why we do not have more records of this kind of behaviour. I suspect that it goes on across the country, particularly in areas of deprivation and areas where vulnerable people do not have the support that some of us would hope for and expect. Perhaps the Minister could outline any plans she may have to require crimes of this nature to be reported.

[Alex Cunningham]

Because of the sensitive nature of the crime and the vulnerability of the victims, it is difficult to illustrate it in any detail. One example that has come to light involves a vulnerable man in Leytonstone whose mother died two years ago. His life effectively fell apart, and he had difficulty coping. His house was taken over by a criminal—or perhaps criminals—who has been using it for drug dealing, possibly prostitution and other criminal activities. I am told that the takeover of this vulnerable person's home happened in what is considered a nice residential street, so as one can imagine it has been a massive shock for all the neighbours.

As it stands, the law does not provide sufficient authority to enable the police and local authority to address the situation properly. If our new clause had already existed, there could have been an earlier and therefore more effective intervention to protect this man, whose life in his own home has been made hell. I hope, for that reason alone, that the Committee and Government will support our new clause. The Ministers and Government Members can feel entirely comfortable in doing so, as it is Conservative policy—or, at least, it was until late last year.

11.15 am

The Government's "Anti-Social Behaviour Action Plan" from 2023 says:

> "Additionally, we intend to target the awful practice of 'cuckooing' or home invasion and will engage with stakeholders on making it a new criminal offence. By 'cuckooing' we mean criminals taking over a premises (often the home of a vulnerable person, such as an individual with limited physical or mental capacity, or substance addiction) to use for illegal activities. This has a serious impact on the victim being exploited but can also affect local communities that are likely to suffer a range of anti-social behaviour as a result."

Given that the plan is very new, I cannot understand why the Government said late last year that they had decided not to create a new offence. The issue has nothing to do with party politics, and the cross-party support for a new law demonstrates that this is another missed opportunity by the Government.

The Minister may draw attention to the fact that there is room in the current legislation for charging individuals specifically for activities relating to cuckooing in some circumstances. For example, the Crown Prosecution Service states that cuckooing may be charged under section 1 of the Modern Slavery Act 2015 in cases where victims are deemed to have been held in servitude or subjected to forced or compulsory labour. However, in 2021 the Centre for Social Justice suggested that the CPS regularly refused charges under the Act where it was not clear whether the victim had been forced to participate in the illegal activity. It has proposed that the Government make an addition to the Modern Slavery Act to make it an offence to occupy or exercise control over another person's home without their consent.

We have seen cross-party support for making cuckooing a separate offence. The hon. Member for Eastbourne asked a question during Prime Minister's questions to draw attention to its exclusion from the Bill, and the hon. Member for Hertford and Stortford spoke supportively on it on Second Reading. I have deliberately not read out the new clause to the Committee, as I believe that it is not just clear, but relatively simple. The cross-party support is there, so will Ministers assure me that they will get on with bringing about cuckooing as a specific offence so that people can feel safe in their own homes?

Jess Phillips: I support the shadow Minister's every word and point out, as he has done, the level of cross-party support for a change to this particular piece of law. In some way, I hope to outline some of the reasons why not many cases of cuckooing have been brought forward. I saw a case of a young woman, who was exploited from childhood into adulthood through the care system—and then in her own private property; men would come around to rape, sexually assault and sell her in her own property. People might, perfectly reasonably, say, "Why wouldn't you call the police?" Well, there were kilos of cocaine and heroin left in her property, and she was absolutely convinced—nothing that I could convince her otherwise—that she would be criminalised if she called the police to her home. In other cases, there might be a cannabis farm in the ceiling, for example, and people are convinced that they will be criminalised.

Without doubt, there are more people in our prisons who have been victims of human trafficking than there are human traffickers. Certainly, for those charged under any of the crimes in the Modern Slavery Act, there will be many more people in our prisons who should actually have been saved by the provisions in that Act that say that criminalisation should not occur—yet it does, every single day; we continue to criminalise people in that manner, even when they are the victim of the crime. The vulnerable people in these cases know that, so they do not report the crimes.

We have had lots of discussions about finding weapons that are not just a kitchen knife in people's houses. If authorities were to go into the home of a young woman who had been in the care system and had been difficult at times, and they found lots of drugs and weapons, do we honestly think that she would not be convicted of that crime? If we do, we are not living in reality at all. It is vital to have an understanding of what happens in these cuckooing cases. We need to recognise it to try to overcome some of the criminalisation, and the threat of criminalisation, that already exists.

I have met girls who have had photographs taken of them holding guns that have been used in fatal injuries, as a threat to them that they will be put up for that crime. When somebody has been groomed that well, they will believe it, no matter what I say—even if I say, "I will stand next to you in the courtroom and I will make sure this doesn't happen." It does happen. Recognising in law that this crime is specifically about taking over a home, and leaving incriminating evidence around the place, is really important in changing that.

Chris Philp: It is, as always, a pleasure to serve under your chairmanship, Mrs Latham. I thank the hon. Member for Stockton North for the thoughtful and considered way in which he moved the new clause. He and the hon. Member for Birmingham, Yardley both expressed sentiments about protecting vulnerable individuals from the practice known as cuckooing, and I will start by saying that the Government are just as concerned as they are. We are united in our shared desire to protect

vulnerable people from the exploitation that they both described, so we are unanimous in our objectives in this area.

As the hon. Member for Stockton North said, most commonly the practice of cuckooing is associated with drug dealing, but it can be associated with other forms of criminality. I will raise a couple of points about his new clause. First, as it is currently drafted, there would be no requirement for there to be any coercion. For the proposed new offence to be made out, it would simply be sufficient for somebody—the perpetrator or alleged perpetrator—to occupy a residential building lawfully occupied by another, and then to commit a criminal offence.

The new offence of cuckooing would be made out even if there was no coercion and, in fact, even if it was done consensually. If the person who owned the house gave their free consent, without coercion, to the alleged perpetrator, the new offence proposed by the new clause would be committed. As I say, there is no requirement in the drafting for any form of coercion or even non-consent, whether or not there was coercion or exploitation. The way it is drafted goes beyond what I would expect in a cuckooing offence, where I imagine there would be some form of coercion, and non-consent by the person who owns the property.

Alex Cunningham: Subsection (1)(b)(iii) includes

"taking up residence without a lawful agreement with R in circumstances where R is under duress or otherwise being coerced or controlled".

It does address coercion.

Chris Philp: With respect, those sub-limbs of paragraph (b) say "or". It is only one of those requirements that needs to be met, not all of them. Although it is true that in the hon. Member's drafting, subsection (1)(b)(iii) does require coercion or duress, the other sub-limbs—(i) and (ii) in particular—do not require duress. If that had been an "and", it would be different. That would require all the conditions to be met, including criminality and duress. However, because the end of the line in sub-paragraph (iii) says "or", that is only one possible sub-limb that can be met. The other sub-limbs, which the criminal offence includes but is not limited to, could be engaged as well. For example, if somebody was dealing drugs, that would engage paragraph (b)(i) even if there was no control or coercion. I think the Committee can see that because of that word "or"—

The Chair: Order.

11.25 am

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

Adjourned till this day at Two o'clock.