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HOUSE OF COMMONS
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PARLIAMENTARY DEBATES

(HANSARD)

Friday 2 February 2024

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The House met at half-past Nine o'clock

PRAYERS

The First Deputy Chairman of Ways and Means took the Chair as Deputy Speaker (Standing Order No. 3).

Jo Gideon (Stoke-on-Trent Central) (Con): I beg to move, That the House sit in private.

Question put forthwith (Standing Order No. 163) and negatived.

Pensions (Special Rules for End of Life) Bill

Second Reading

9.35 am

Mr Laurence Robertson (Tewkesbury) (Con): I beg to move, That the Bill be now read a Second time.

This very small Bill is narrow in scope, but it will provide financial assistance and fairness to people who are terminally ill who have seen the sponsors of their pension schemes become insolvent. It will do that by changing the definition of "terminally ill" for this purpose. I thank the legislative team of the Department for Work and Pensions and my staff for their help preparing the Bill.

I think everyone in the House would agree that those who receive the devastating news that they have a terminal illness should receive as much financial help as possible in their final days. The loss of their right to pension payments is a blow that they should not have to suffer, and that is what the Bill seeks to address.

By way of background, the Bill focuses on the Pension Protection Fund and the financial assistance scheme. The Pension Protection Fund was established by the Pensions Act 2004 and pays compensation to individuals when the sponsors of defined benefit pension schemes—usually their employers—become insolvent and lack the necessary assets to pay those pensions to the level that the Pension Protection Fund would ordinarily pay. That applies to insolvency that has taken place on or after 6 April 2005. The financial assistance scheme applies to individuals whose pension schemes were unable to meet their pension liabilities in full if those schemes started to wind up between 1 January 1997 and 5 April 2005.

The Bill relates to compensation payments from those schemes made to people with terminal illness. When meeting the liabilities of pension schemes, the Pension Protection Fund can pay a one-off lump sum to someone who is terminally ill. The financial assistance scheme can start to make pension payments, but not pay a lump sum, to someone at any age with a terminal illness. The issue is the definition of a terminal illness. The Pension Protection Fund and the financial assistance scheme use the same legal definition of terminal illness, which is that a person is terminally ill

"at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within 6 months."

Richard Fuller (North East Bedfordshire) (Con): I commend my hon. Friend on bringing forward this Bill, and I hope that he will not mind that at times I will ask some questions about it; I may also make some comments later. He was talking about the assessment of what is a terminal illness. Can he spend a bit more time on who is making that decision, and what the range of illnesses is? Are the illnesses set down by the NHS? Is there a limited list of those illnesses? Who assesses whether a person is within the bounds of what would be called a terminal illness for the purposes of this Bill?

Mr Robertson: I thank my hon. Friend for his intervention. As I understand it, the assessment is made by a health professional. What illnesses he or she is entitled to take into account goes beyond the scope of this Bill, and I do not think that I can list those illnesses. The Bill is about the length of time someone is expected to live. If he will allow me, I will leave my explanation there.

Sir Greg Knight (East Yorkshire) (Con): On that point, is there provision for a second opinion to be obtained in cases where there is doubt? If my hon. Friend cannot answer that today, will he write to me?

Mr Robertson: I thank my right hon. Friend for that intervention. I am not aware of the process that someone would have to go through when being assessed. The assessment of the time that someone has to live, which is a technical legal point, is particularly concerning, but I am certainly happy to look into that.

The definition of "terminal illness" is a disease that can reasonably be expected to bring an end to somebody's life within six months. The Department for Work and Pensions used that definition for calculating benefits, but in the Social Security (Special Rules for End of Life) Act 2022, that six months was extended to 12 months. It therefore seems logical to change the definition of "terminally ill" applied by the Pension Protection Fund and the financial assistance scheme, so that it is consistent with the definition that is applied when considering social security payments. The Bill seeks to make that extension from six to 12 months.

It is hard to know how many people would benefit from this legislation. I suppose, paradoxically, we do not want people to benefit from it, because that would mean that the sponsors of their pension fund had become insolvent, which we do not want to happen. However, the Bill will help terminally ill people where that is the case.

While the Bill's scope is technically limited to the Pension Protection Fund and the financial assistance scheme, I hope that my bringing it forward will encourage any workplace pension scheme that does not have provision for members with a terminal illness who have a life expectancy of 12 months or less to consider putting that in place. Many private pension schemes can already make what are called serious ill health payments under tax law to a member who has up to a year to live. That would be a change well worth making.

Richard Fuller: My hon. Friend has made another interesting point. He says that the Pension Protection Fund is there for when a pension fund fails, and that the Bill may be an incentive for viable pension funds that do not already use a 12-month period to do so, and to

[Richard Fuller]

mirror what the Pension Protection Fund does. Will he, or perhaps the Minister, tell me whether there is an understanding of how many pension funds have a 12-month provision? Will the Bill increase that in viable pension funds?

Mr Robertson: I grateful to my hon. Friend for making a good point. I do not have those figures, and I do not necessarily expect the Minister to have them to hand, but we should look into that, and try to take that point forward.

Rob Butler (Aylesbury) (Con): My hon. Friend is making a powerful speech that I am sure most of us will have no difficulty agreeing with. In the lead-up to the Bill's introduction, has he spoken to charities and other organisations about what impact extending the period from six to 12 months will have on people's real lives, and on their families and friends?

Mr Robertson: I thank my hon. Friend for that. Yes, I spoke in particular to the Marie Curie charity, which told me of some very sad cases. It is important to stress that the Bill refers to occasions when the pension fund or its sponsoring company becomes insolvent, so the Bill is narrow in scope. However, he makes a good point. The charity gave me a number of examples, and there are many others. That brings us back to my point that we should look to extend the 12-month provision beyond the Bill to other pension schemes. The last thing that someone given a terminal illness diagnosis needs is more financial problems. If there is anything we can do about that, I am happy to take it forward with the Minister and the Government. I thank my hon. Friends for their interventions.

Determining the length of time that someone has to live falls to health professionals, and it is a heartbreaking and difficult judgment to make. Modern medicine, surgery and palliative care—such as that provided by the excellent Sue Ryder hospice in my constituency—and the general care provided by our NHS staff make that judgment even more difficult. I therefore feel that it is right to extend the definition of "terminally ill" from the very narrow band of six months to the more accommodating threshold of 12 months. That is fairer not only to the people who are ill, but to those who have to make that very difficult judgment—a judgment that it is especially difficult for health professionals to make when they know that a person's pension payments may rest on it.

The Bill extends throughout the United Kingdom, and would come into force in England, Scotland and Wales

"on such day or days as the Secretary of State may by regulations appoint",

and in Northern Ireland when the Department for Communities appoints by order. I am about to wind up, but I think my right hon. Friend the Member for East Yorkshire (Sir Greg Knight) wishes to intervene again.

Sir Greg Knight: My hon. Friend is generous. I think he is referring to clause 2(4). Is he entirely happy about the wording of that subsection? The Bill could be passed with unanimous support from all parts of the House, but under that subsection, a Minister could later decide not to implement the measure. We would be unable to do anything about that.

Mr Robertson: I am grateful to my right hon. Friend for mentioning that point. The Government have been very co-operative while I have been preparing the Bill, so I remain confident that they will not hesitate to name the day. Technically, the Bill will not come into force until the Government decide that it will, but I am confident that that will happen. I thank my hon. Friends for their interventions, and for all the reasons I have stated, I commend the Bill to the House.

9.47 am

Philip Dunne (Ludlow) (Con): Good morning, Madam Deputy Speaker, and thank you for calling me so early in this important debate. Let me start by congratulating my hon. Friend the Member for Tewkesbury (Mr Robertson) on introducing this Bill. He shares with me the prospect of joining the ranks of the pensioners in our community later this year. He failed to declare that in his speech, but I am glad to put that on the record for the benefit of Members of the House. It is a time of life that we will be fortunate to reach, if we get that far.

Thanks to the good work of the NHS, more and more of us manage to achieve pensionable age. As of last May, nearly 12.7 million people were claiming the state pension. The over-65 pensioner population in England and Wales has increased from 9.2 million in 2011 to over 11 million in the most recent 2021 census. Pensioners represent some 18.6% of the population, although now that the pension age is going up, the figure will be slightly different.

My constituency probably shares with my hon. Friend's constituency the characteristic of having a significantly above-average proportion of the population who are pensionable, at 30.2%. I mention that because, although the Bill is narrow in scope, it is possible that any of us, pensionable or not, could be diagnosed with a terminal illness. Although the Bill applies to members of defined benefit or defined contribution schemes, who are a subset of that population, and hopefully very few of them will have such a diagnosis, it is important that we provide equity to those who do, as he said so well. I therefore think that the objective of my hon. Friend's Bill is entirely honourable and appropriate, and one that we should support.

On the subject of pensions, as we have the Minister here, I would like to raise a case that was brought to my attention in my advice surgery last Friday by a constituent, whom I will not name, who is a member of the Boots defined-benefit pension scheme. The scheme was acquired by Legal & General, quite properly, last December. According to my constituent, the new scheme administrator has decided, seemingly without consultation with members, to remove the option to take an early pension from the age of 60, so that pensions have to be taken from the age of 65.

If that decision has been taken without consultation with members, I urge the Minister to look into whether the trustees were duly authorised to undertake such a significant potential change in terms for their members without consultation—I would not expect her to know the answer to that now. I have also written to the Secretary of State on this matter, because the Boots pension scheme is probably one of the largest membership schemes of any retail business in the country.

Having put that on the record, I commend my hon. Friend the Member for Tewkesbury for his Bill today, which I shall support.

9.51 am

Jo Gideon (Stoke-on-Trent Central) (Con): Since we are putting it on the record, I declare that I am a proud pensioner as well as an MP. I thank my hon. Friend the Member for Tewkesbury (Mr Robertson) for bringing forward the Bill. While technical in nature, it addresses a much wider issue that concerns us all.

More than 90,000 people in the UK die in poverty each year, and the figure for my region is over 8,200. Being diagnosed with a terminal illness is shattering, whatever a person's circumstances, but for those living in poverty the impact can be even more profound. On the news recently, I heard a devastating story of a woman named Helen, who was dying of cancer and of cold. She talked of how she switched off her boiler because she could not afford to pay for heating. Her cancer affected the circulation in her hands and feet and, when the cold started to creep in, she could not hold things and was worried about falling. Helen envisaged travelling during her retirement; instead she was stuck at home worrying about how she could afford to pay her bills in her last months. Helen has been working with Marie Curie on its campaign to ensure that everyone who receives a terminal diagnosis is granted immediate access to their state pension.

As a society, we should be looking out for and looking after the needs of those who are suffering. Those who are terminally ill should not be left to fight for every scrap of warmth. Making ends meet can become impossible once someone receives a terminal diagnosis. Their expenses go through the roof—their heating costs alone can be twice as high—often just at the point when they have to give up work because of their illness. Covering the higher costs of heating, travelling to appointments, childcare and essential home adaptations with little or no income is leaving thousands of dying people and their families in a desperate situation.

People of working age who die are twice as likely to spend their final years of life in poverty compared to people of pension age. Accessing their pensions early would give people back some dignity and independence. Marie Curie estimates that most people of working age who die have paid more than 23 years of national insurance contributions. As a civilised society, we should not put people through the burdensome and time-consuming benefits process or interviews with work coaches that are inappropriate for a person who will never return to work. Some patients have died waiting for the welfare benefits they need, which does not seem right or fair.

Everyone has the right to the best end of life care and support. In Stoke-on-Trent, we are lucky to have the wonderful care provided by Dougie Mac, which in September was named the best charity to work for in the UK. Local people are hugely proud of it, so I was delighted to hear that recognition of just how special the charity is to the people it looks after, both in the hospice and in the local community, and to its staff. It is very much a local charity, supported generously by local individuals and businesses. Last year alone, I heard of a group who canoed an intense 60-mile journey from Fort William to Inverness, and others who cycled the 186-mile "Game of Thrones" route. Some held a one-day book festival in Stoke-on-Trent, and one individual ran the brutal Marathon des Sables—all to raise money for Dougie Mac. We should all show that much care and respect for people approaching the end of their lives.

The small change in this Bill, from a six-month to a 12-month approach, would help ensure that people get the financial help they need as quickly as possible in the most challenging of times. It would be a significant step forward, and all of the experiences shared by individuals in the long process to get to this stage are valuable and important. We need to ensure that more people with a terminal illness can concentrate on making the most of the limited time they have left, rather than worrying about their finances. This must be a time spent in love and laughter, with dignity and compassion. I sincerely hope these changes are implemented quickly to ensure that no more people already facing the most difficult time in their lives have to wait to claim the support that they so desperately need and are entitled to, so I support the Bill.

9.55 am

Philip Davies (Shipley) (Con): It is a pleasure to follow my hon. Friend the Member for Stoke-on-Trent Central (Jo Gideon), who gave an excellent speech about why this Bill is so important and will make a material difference to many people. To that end, I thank my hon. Friend the Member for Tewkesbury (Mr Robertson) for bringing forward the Bill, because this is a very important issue for a number of people and the Bill sets out some important principles. I want to come on to the important point made by my right hon. Friend the Member for East Yorkshire (Sir Greg Knight) about when the Bill will come into operation, because it deserves more explanation from the Government.

For a person to find out that their illness cannot be cured must be a terrifying experience not just for the sick individual themselves, but for their friends, family and loved ones. As a Parliament, we should be committed to alleviating the pressures facing those nearing the end of their lives. Since the 1990s, the Department for Work and Pensions has provided access to key benefits through what are referred to as the special rules for end of life. These are benefit rules that allow people who are nearing the end of their lives to get fast-track access to certain benefits.

The special rules were first introduced in attendance allowance in 1990, following a recommendation by the Social Security Advisory Committee. Attendance allowance claims are subject to a six-month waiting period, and the Committee was concerned that some terminally ill people were dying before that period had lapsed. Eligibility for the special rules was therefore limited to people diagnosed with a condition that meant they were unlikely to live for more than six months, as established in the Social Security Act 1990. Since then, the use of special rules has been extended to disability living allowance, employment and support allowance, personal independence payments and universal credit, all with the same eligibility criteria.

The current pension legislation contains provisions that allow a patient who is deemed terminally ill to claim under special rules and get the highest rate of financial help, and faster. Paragraph 25B(3) of schedule 7 to the

[Philip Davies]

Pensions Act 2004 and paragraph 12(3) of schedule 5 to the Pensions Act 2008 both define the eligibility criteria for a terminal illness lump sum, which allows the patient to apply to exchange all their ill health benefits for a one-off lump sum payment if they are diagnosed with a terminal illness and do not expect to live longer than 12 months. The then Work and Pensions Minister said that this would be

"using the same rules to define 'terminally ill' as those that are used in the financial assistance scheme and in DWP benefits."—[*Official Report, House of Lords,* 14 July 2008; Vol. 703, c. 1060.]

Historically, people eligible under the special rules have not had to wait as long as others to start getting benefit payments, as no waiting period is applied. They are not required to go through medical assessments or face-to-face appointments, and in most cases they have qualified for higher rates of financial help. The form supporting a special rules claim is completed by a clinician and is called an SR1. To access the fast-track route, people have to have been assessed by their healthcare professional as having six months or less to live. This has become known as the six-month rule. My hon. Friend the Member for Tewkesbury made the point about it being a healthcare professional who makes the assessment.

The Pensions Act 2004 established the Pension Protection Fund, which provides compensation to members of eligible defined-benefit pension schemes in cases where the sponsoring employer becomes insolvent on or after 6 April 2005 and the scheme lacks sufficient assets to fulfil its pension liabilities up to the level of compensation offered by the Pension Protection Fund. The financial assistance scheme initially covered schemes that wound up between 1 January 1997 and 5 April 2005. Since its inception, it has undergone reviews and expansions in both coverage and the level of assistance provided. The scheme offers payments to members of qualifying schemes who are unable to fully secure their pension liabilities.

Currently, the Pension Protection Fund has the authority to issue a one-time lump sum payment to individuals who are terminally ill and have not yet received their protection fund compensation. Similarly, the financial assistance scheme allows for the early disbursement of financial assistance in cases of terminal illness.

Both the PPF legislation and the FAS regulations employ the same definition of terminal illness. It is currently defined in pensions legislation as if

"the person's death in consequence of that disease can reasonably be expected within 6 months".

That means that both the PPF and the FAS currently make payments when medical evidence shows that a member has a life expectancy of up to six months. This eligibility criterion was set in line with the social security special rules for end of life provisions for certain benefits, originally introduced in 1990. The eligibility rules were extended to 12 months by the Social Security (Special Rules for End of Life) Act 2022, which we all supported.

The Bill seeks simply to restore the original policy intent that there should be an alignment between the Pension Protection Fund and the financial assistance scheme. For more than 30 years, the special rules have ensured that at this most difficult time people have had the financial support to which they are entitled, and that they get it quickly and easily.

Richard Fuller: I am listening to my hon. Friend's speech with great interest. He is providing a lot of detail, so I hope he will not mind my asking some specific questions. He will be aware that the Pension Protection Fund does not necessarily pay up 100% of what people would have got had their pension fund not become insolvent—and often, insolvency occurs through no action of the employees themselves, but is about how the directors of the companies made contributions. He will also be aware that shortfalls in the Pension Protection Fund are covered by a levy that is charged on other pension funds. I am almost certain that the effect of the changes—which, as my hon. Friend has rightly said, are supported generally throughout the House—will be significant, but has he made an assessment of the cost changes? Has he had any thoughts about what the implications might be for how the Pension Protection Fund might have to change its rules and/or what it might mean for the levy charged on other pension funds?

Philip Davies: My hon. Friend raises typically astute points that need to be considered. The short answer is yes, I have. If he will bear with me, I will come to that, because I have sought professional advice on the implications for those funds. I promise my hon. Friend that I will come to that; if he feels that I have not done so sufficiently, he can feel free to have another bash, so to speak.

Since the special rules were introduced, there have been significant advances in how the NHS treats and cares for people nearing the end of their lives, meaning that many terminally ill people now live for longer with their illness. Given the advances, the then Secretary of State for Work and Pensions announced in July 2019 that the DWP would undertake an in-depth evaluation of how the UK benefit system supports those nearing the end of their lives.

As part of that consultation, the Department sought feedback from the terminally ill, those who support them and clinicians. Much of the reasoning and findings from that report are directly applicable to the Bill.

The purpose of the evaluation was to consider the policy and implementation of the special rules relating to people defined as "terminally ill". It aimed to take a holistic view of the support provided, and took into account direct contributions from people nearing the end of their life, who shared their first-hand experiences of accessing support via the special rules, as well as from charities and organisations supporting them. As well as receiving written evidence, the evaluation team held engagement sessions, including an event for people living with or affected by motor neurone disease; conducted telephone interviews with people nearing the end of their life; and met charities that provide support for people nearing the end of their life.

The study also took into account the views of healthcare professionals who work with and support people approaching the end of their life, through national expert palliative and end-of-life care clinical groups; and nearly 1,000 clinicians from a range of professions, in England, Scotland, Wales and Northern Ireland, also had a chance to respond through a survey. Their views should not be underestimated, as they play a large part in respect of access to financial benefits under the special rules, which is the bit I want to look at in a little more detail.

The Department's findings agreed with the purpose of the Bill, showing that there was a consensus across all groups that the Government should extend the current six-month rule and support for the Department for Work and Pensions to adopt a 12-month end of life approach that would allow people in the final year of their life to claim under the special rules. An added benefit of the 12-month approach was that it would also bring greater consistency with the definition of "end of life" used by the NHS and right across Government.

The overwhelming evidence of medical advances in the past 30 years, since the special rules were first implemented in 1990, demonstrates that the law in its current state is no longer fit for purpose. In general, public health has changed dramatically, both with the pandemic, and with the advances in pain relief and other trial drugs that now make living with a terminal illness for longer more likely. The leaps and bounds made in both the care for terminal patients, and the identification and diagnosis of these patients, have progressed extensively. All forms of palliative care have progressed, from how people nearing the end of their life are treated and cared for, and how their conditions are managed, to how clinicians define people nearing the end of their life. That is why the questions from my hon. Friend the Member for North East Bedfordshire (Richard Fuller) are so important: it is because of these huge changes that have taken place.

New approaches in care have been developed using the Gold Standards Framework and the Daffodil standards. The "Ambitions for Palliative and End of Life care: a national framework for local action 2021-2026" NHS guidance has also led the way in reforming caring for people nearing the end of their life. The Gold Standards Framework is a registered charity and has been the UK's leading training provider for generalist frontline staff in caring for people in the last years of life for more than 25 years. Its aim is to enable a gold standard of care for everyone with any condition, in any setting, given by any care provider, at any time in a person's last years of life. That is focusing on the medical side of things, and this Bill hopes to provide the equivalent standard in terms of pensions. Both frameworks have been integral to the improvement in palliative care and the greater life expectancy of terminally ill patients, because with better care and treatments, the longer people will live, and hence the need for the amendment proposed by the Bill.

One of the largest issues relating to the Bill is how clinicians define who should be eligible for the special rules. The DWP survey showed a consensus across all groups that the current definition is not fit for purpose, for several reasons. Some patients who have fluctuating conditions or uncertain life expectancy found it difficult to access the special rules, as their life expectancy was indeterminable. Many conditions progress rapidly and then plateau, and some conditions do that regularly. Two groups of patients who struggle with that are motor neurone disease sufferers and cancer patients. In preparing for today's debate, I contacted the Motor Neurone Disease Association to ask how it feels about the change and how it will affect people diagnosed with MND. I am sure everyone in the House is familiar with the "Scrap 6 Months" campaign, led jointly by the MNDA and Marie Curie, which my hon. Friend the Member for Tewkesbury (Mr Robertson) mentioned and which is supported by thousands of campaigners across the country. They told me:

> "This Bill will ensure that a greater proportion of people living with MND will be"—

able to receive—

> "terminal illness payments from the Pension Protection Fund and Financial Assistance Scheme...
>
> This is important given the context of the financial impact of living with MND, especially as symptoms of the condition increase".

So, on that basis, they very much support the Bill.

Macmillan Cancer Support plays a large part in end-of-life care and has its national call centre based in my constituency in Shipley. It told me that it was supportive of the decision to widen the criteria from six months to 12 months, ensuring that those with a terminal diagnosis have timely access to financial support when they need it most.

In some cases, the six-month rule forced clinicians and patients to have very distressing conversations about life expectancy either too early or at the wrong time for them. There are two ways in which this issue can be tackled. The first is the 12-month rule, which is where we are with the Bill, mirroring the end-of-life approach used by NHS England. The second is taking out the timescale and instead using a clinical recommendation supported by guidance, which does not have an explicit timeframe attached to it—in effect, looking at the nature of somebody's condition.

The first option is an increase in the term of life expectancy to 12 months, which is what the Bill would do. Obviously, this approach aligns the welfare state with the work of the NHS, and so would make it easier for organisations across the UK that support people nearing the end of their lives to understand the application of the special rules, because it makes them all consistent. Clinicians have many difficult conversations when discussing end-of-life care, and this could be added into those conversations instead of being had separately, also saving the NHS time.

However, I just want to point out that any time-bound rule could be subject to the same problems, as life expectancy can fluctuate and nothing is certain—even within a year. There is therefore an argument for basing it on a clinical diagnosis, rather than a fixed term, which by definition is always going to be slightly arbitrary.

Sir Greg Knight: Will my hon. Friend just clarify the position? Is he saying that he would prefer the Bill to be amended, or is he happy with it as it stands?

Philip Davies: I am grateful to my right hon. Friend for his question. I support the Bill, because it is far better than the status quo, and it sensibly evens up those situations, which is what my hon. Friend the Member for Tewkesbury intends with the Bill—in effect, to ensure that the rules for benefits and pensions are the same and that one does not diverge from the other. My point is that this should not be the last word on the matter, because it may not necessarily be the best outcome. It is a sensible measure to take, but there is a bigger issue here about whether—across benefits and pensions—this is the right approach to take. My point is that we should not be wedded to the idea that a time limit is the right way to do it. This matter therefore warrants consideration as to whether fixed-time limits are the right way to go.

[Philip Davies]

The benefits of an open-ended time period clinical recommendation is that it would allow greater access to pensions under special rules for those who have an uncertain prognosis, many of whom still have difficulty accessing benefits, whether it be six months or 12 months. The drawback of that approach is that a broader definition of terminal illness would make it difficult for clinicians to make decisions about who is eligible, which could lead to people missing out.

The aforementioned survey of clinicians' views on this matter relating to the benefits system found that, when asked what they thought the time criteria should be under special rules, 38% of respondents preferred a 12-month model, 34% preferred a model without reference to a time limit, and only 10% supported the existing six-month model. That goes to the heart of what my right hon. Friend the Member for East Yorkshire was saying, which is that, whereas everyone agrees that the six-month rule should be changed, and that therefore my hon. Friend the Member for Tewkesbury is absolutely right to bring forward the Bill, there is not much in it between whether people think it should be 12 months, or there should not be a specific time limit. Those views should be expressed in this debate for further consideration, given the subject we are debating.

The conclusion on this point from the Department was to make a legislative move to the 12-month rule, which is a perfectly reasonable decision to make based on that survey. That is now codified in the Social Security (Additional Payments) Act 2022, and the exact same reason has been applied in my hon. Friend's Bill. Changing the six months to 12 months is clearly the most popular option, based on that evidence, and it brings it into line with the rest of the benefits system. It would maximise the opportunity to improve awareness of the special rules and provide consistency in their application. We should be making it easier for people nearing the end of their lives to access their pension benefits and any other financial aid they are entitled to under the special rules system.

The second argument taken into consideration for access to special rules was awareness and communication. The DWP evaluation showed that much more could be done to improve awareness, and respondents felt that the information and guidance regarding access to special rules could be improved. Again, we might want the Bill to say something about making people aware of the change in the rules, because it is no good having those changes if nobody is aware of them. That is something else that needs to be considered.

Of course, charities are vital in helping people to make a special rules claim, as people are often unaware that there is financial assistance and support available from the Department for Work and Pensions for people nearing the end of their lives. However, clinicians can also play their part. Apparently, as written in a DWP report, some are not aware of special rules or have limited knowledge of them. When the Department aligned benefits with the 12-month end of life approach, it expected to be able to improve awareness among clinicians by taking advantage of training and educational resources and that, through those resources, the language should also be simplified. That was the Department's conclusion and I assume the same will be valid in this case too.

On the point about the report, I should also mention that the clinicians raised concerns over the term "terminally ill", which is used in the Bill. They say that the term is being used less and less these days, and patients are now more commonly referred to using terms such as "end of life." That is a change within the field of palliative care, and one that maybe could be taken into account with the language in the Bill and in the rules that the Government use.

What actually happens when someone tries to submit a special rules claim? Is that something the Bill could make easier too? People nearing the end of their lives, or those who support them, provide the DWP with medical evidence that provides details of their clinical condition, treatment and response to treatment. That is most commonly done by a clinician completing an SR1 form. That form can be completed by GPs, by hospital doctors, or by registered nurses working in roles such as advanced nurse practitioner, Macmillan nurse, clinical specialist nurse, or practice nurse with expertise in long-term conditions management. That form can be submitted in either paper or electronic copy, and, in England, by NHS staff using an online tool.

As I said, some clinicians are not aware of the special rules or have limited knowledge of them. Therefore, the clinicians who provide SR1s do not always fully understand the special rules and what needs to be included in them. That means some patients find getting an SR1 or other medical evidence more challenging than it should be. In the DWP's survey of the clinicians who had completed an SR1 form, the majority believed it was of value; 73% of respondents agreed or strongly agreed with the statement that the form is

"an effective way of providing evidence to support a patient's benefit claim under the Special Rules criteria",

but 12% disagreed or strongly disagreed. When asked to explain their reasons for their views, the majority said the form was perceived as easy and clear to use, but some considered that it failed to capture certain information that they felt was important, particularly where the patient meets the definition but is receiving active treatment, or where it is necessary to explain the details of a condition other than cancer.

If the Bill succeeds, as I hope it will, and the change is made from six months to 12 months, that will offer an even bigger chance to develop a more cohesive approach between the Department of Work and Pensions and clinicians, to ensure that the right people are claiming special rules. In order to get benefits, there must be requirements for claims and ways to claim. The Department found that more support around making a claim would improve the experience. It also received feedback on what happens once a special rules claim is made. There was a consensus from those who fed back into the evaluation that having access to an online portal or some information on the progress of their claim would be helpful.

I promised my hon. Friend the Member for North East Bedfordshire that we would talk about the fiscal side of the Bill. I contacted Tim Middleton, the director of policy and external affairs at the Pensions Management Institute, about that—I thank him for giving up his time. Two questions must be considered about the financial repercussions of the policy. First, how many applications for full commutation on the grounds of serious ill health are received by the Pension Protection Fund scheme

each year? I was told that the number is in double figures—it is really not many. I should say that Tim Middleton has been working in the pensions industry since 1987, and he has only ever encountered three cases of a special rule being applied to a Pension Protection Fund scheme, so we can safely say that it is not a big number.

The second question, which my hon. Friend the Member for North East Bedfordshire rightly asked, is were the application period extended from six months to 12 months, as the Bill anticipates, what additional costs would the Pension Protection Fund incur? A member being able to apply within the extended 12 months of a diagnosis, rather than six months, would be a change. Tim Middleton, who is an expert in the field—of course, if the Government have any different figures, we would all be delighted to hear them— has said:

"Whilst there is likely to be an increase in cost, it does not seem likely that this would be significant, and, in any event, for a scheme as large as the PPF, it is expected that these costs could be easily absorbed."

That should give my hon. Friend some comfort that the scheme will not be burdened beyond its means, but it certainly needs to be considered. It would be helpful if the Minister let us know whether her assessment is the same as the one I have been given. By way of context, in the European Court of Justice judgment in the Hampshire case in 2018, it was estimated that the additional annual cost to the Pension Protection Fund would be £215 million, and that it would affect approximately 1,200 members. The Bill changes would see nothing like that figure.

For completeness, I looked at whether anything other countries did could be usefully included in the Bill, based on their practices and experiences. Comparing the terminal illness definitions of countries with comparable systems, I found that Belgium uses the phrase "palliative status", which is defined as

"expected survival of a maximum of 2 months, due to one or more irreversible disorders and with the intention of dying at home".

The Netherlands defines it as

"with an expectation to die within 12 months".

Australia and New Zealand use an "average life expectancy of less than 2 years". In Canada, a terminal medical condition is a disease that

"cannot be cured or adequately treated and is reasonably expected to result in death within 6 months".

Spain refers to people who will

"benefit from palliative care for example, those with an incurable, advanced and progressive disease; limited life forecast; low possibility of response to specific treatments… frequent crisis of needs; intense emotional and family impact; impact on the care structure; high demand and use of resources".

From those definitions, we can see that there is no clear international definition of what constitutes a terminal illness for the purposes of a welfare system, whether that is a benefit system or a pensions system. Some countries, as we can see, have taken a time-based approach, and others have gone for a clinical definition. This is a wider area that needs more consideration generally, but my hon. Friend the Member for Tewkesbury's Bill is exactly right to make the point that the two systems—the benefit system and the pension system—should be exactly the same. There is absolutely no reason why they should not. Whatever system we have in future, I very much hope that we will always be able to keep a consistency of approach, because otherwise it is not fair.

On the Bill's commencement, my right hon. Friend the Member for East Yorkshire was absolutely right—to be fair, my hon. Friend the Member for Tewkesbury set it out clearly in speaking to the Bill, so it is not as if anything was being hidden—to focus on the fact that the measures

"come into force on such day or days as the Secretary of State may by regulations appoint."

I share his concern. We all think something is a good idea, the House of Commons passes a Bill, as does the House of Lords, but lo and behold, nothing happens. I think most of our constituents will find that to be an intolerable situation.

Can the Minister explain why we must have such a woolly starting point in the Bill? I cannot see the need for it. Why can we not have a specific starting date? Surely, at the least, a "no later than" date—based on the reasons any delay might be needed—could be inserted. It is important that the Minister explains why we cannot have a specific date, why there might be a delay, and why we cannot have a "no later than" date added to the Bill. I am pretty sure that we will all want to consider that again either in Committee or the subsequent stages.

Sir Greg Knight: Has my hon. Friend examined clause 2(7), which gives the Secretary of State the power to make transitional arrangements, so that a nine-month period could be introduced for a specific time. I do not understand why we are giving the Government that flexibility. If the House and the other place approve the Bill, and the monarch signs it, it should become law and be implemented.

Philip Davies: My right hon. Friend makes a good point. One duty of Members in scrutinising legislation and holding the Government to account is to ensure that on a day like today, when people are anxious to get through as much as possible, the Government do not sneak into the Bill a few powers to change things more easily in future—powers that perhaps the House might not otherwise want to give them. At the moment, this House passes far too many things that give the Government of the day sweeping powers to change things without coming back to the House for meaningful scrutiny. My right hon. Friend is absolutely right to be wary of those measures.

This is a fairly short Bill, but the most extensive part is clause 2, which basically gives the Government powers to vary this and that, introduce the measures when they want, and so on. We should always be nervous about legislation that is a convenience for the Executive rather than a benefit for our constituents. It is incumbent on the Minister to explain why the Government need those powers. Is there a specific reason that each of those powers has been added to the Bill, or is it a typical catch-all—"Let's shove the lot in there just in case we might need it at some point in the future"? We should always be wary of such measures. If there is a good reason that each subsection in clause 2 is needed, let us hear it so that we can all make our own minds up about them. If they are not needed and have just been shoved in for a bit of convenience in case the powers are needed at a later date, perhaps the House might want to say, "Well, we don't think you should have those powers. If you want to do something different, you should come back at a later date and make that case." I look forward to hearing the Minister's response on that.

[Philip Davies]

Those are perhaps things that we could come back to in the Bill's remaining stages, but in the meantime, I certainly support the thrust of what my hon. Friend the Member for Tewkesbury is doing. He should be commended for focusing on something that is important to many people and will make a massive difference to their lives, and he will be thanked by many in my constituency and beyond. On that basis, I support the Bill's Second Reading.

10.29 am

Rob Butler (Aylesbury) (Con): It is a pleasure to follow my hon. Friend the Member for Shipley (Philip Davies). I must warn the House that I do not have his great detailed knowledge of this subject, so I hope right hon. and hon. Members will forgive my comparative brevity as a result.

I congratulate my hon. Friend the Member for Tewkesbury (Mr Robertson) on tabling what is an excellent piece of legislation. Being diagnosed with a terminal illness elicits a whole spectrum of emotions for the individual, their family and their friends: initial shock, perhaps denial, then a struggle as they cope with the harsh reality of their prognosis and the plethora of emotional responses that it entirely unsurprisingly generates. On top of that, many have to grapple with getting their affairs in order, adding stress and anxiety, to ensure they can support themselves in their final days and months while also perhaps thinking ahead to provide for those they leave behind. We know from charities and campaigners that financial concerns loom large in the minds of those entering the final stages of their lives, precisely at the time when they understandably want to be focusing on other things.

As such, I am pleased that this Conservative Government have taken action to help those who are terminally ill by extending the definition of terminal illness from six months to 12 months. As has been said, the Social Security (Special Rules for End of Life) Act 2022 ensures that people can claim financial support in the form of personal independence payments, disability living allowance, employment support allowance and universal credit. That is absolutely right, so I am pleased that my hon. Friend's Bill is before the House today, because it will amend the rules around the Pension Protection Fund to be largely in accordance with those other measures that are already in place. It is a simple administrative change that will allow terminally ill people to claim assistance from the Pension Protection Fund and Financial Assistance Scheme if their death can reasonably be expected within the next 12 months, rather than the current six months. It may seem a small step, but it is a hugely significant one that will provide certainty for terminally ill people and their families at a time of real stress and anxiety.

I also concur with my hon. Friend the Member for Tewkesbury that although the number of people affected may be small, the Bill sends an important signal to pension providers more widely. I hope they will look at the Bill and the decision of this House today and reflect on how they might better look after people who are protected by their individual pension funds. The Social Security (Special Rules for End of Life) Act received cross-party support; I hope the same will be true of my hon. Friend's Bill. I will certainly be wholeheartedly supporting its Second Reading today.

Madam Deputy Speaker (Dame Rosie Winterton): I call the shadow Minister.

10.32 am

Vicky Foxcroft (Lewisham, Deptford) (Lab): I congratulate the hon. Member for Tewkesbury (Mr Robertson) on bringing the Pensions (Special Rules for End of Life) Bill before the House today for its Second Reading. The Bill seeks to expand the eligibility criteria for receiving terminal illness payments from the Pension Protection Fund and the Financial Assistance Scheme to all those with less than 12 months to live, an increase from the existing six months. That will bring eligibility in line with the Department for Work and Pensions' own definition of terminal illness for the purposes of social security payments.

The shock and distress caused by a terminal diagnosis for the individual and their loved ones cannot be overstated. Those with a terminal illness should have the dignity of spending the time they have left in comfort; their stress should not be further compounded by financial worries. Therefore, we wholeheartedly agree with the aims of the Bill. It will, of course, only benefit a relatively small number of people: it relates only to those who have a defined benefit pension that is being assessed by the Pension Protection Fund or the Financial Assistance Scheme. However, it is a step in the right direction, and I hope we can build on it to improve things for all those living with a terminal illness, because at the moment, the reality is truly shocking.

I pay tribute to the Marie Curie charity for all the work it has done to highlight the financial struggles of the terminally ill. Research carried out by that charity in 2022 painted a harrowing picture: 90,000 people die in poverty in the UK every year, one in four people who die while of working age are in poverty at the end of their life, and one in six UK adults would be wholly reliant on benefits if they became terminally ill. The cost of living crisis has worsened since those figures were published, so I fear that the situation is more severe now.

As I say, the DWP's definition of a terminal illness for the purposes of social security rules is now set at

"less than 12 months to live",

having been increased from six months by the Social Security (Special Rules for End of Life) Act 2022. We supported that legislation as it was the right thing to do, it and should provide some small reassurance to those in the most difficult circumstances. I question why the DWP did not look this issue at the time of the change. While the issues do differ—that legislation related to benefit payments, while this Bill relates to workplace pensions—it is important to have consistency, so that those with a terminal illness have clarity on their entitlements. With that in mind, I hope the Minister can offer some reassurance that the definition of a terminal illness will be consistent across the DWP and its various agencies if this Bill makes it on to the statute book.

The Conservative cost of living crisis continues to hit families hard. This Government's reckless decisions crushed the economy, sent mortgage rates soaring and sent energy bills through the roof. Receiving a terminal diagnosis is incredibly difficult at any time, but too many people are spending the time they have left in poverty. That cannot be right. The Government must do far more to help these people.

I conclude by once again congratulating the hon. Member for Tewkesbury on his dedication in bringing forward this important Bill. It is a step in the right direction, and we fully support its aims.

10.36 am

The Minister for Employment (Jo Churchill): It gives me great pleasure to confirm that the Government give their full support to this private Member's Bill. I thank my hon. Friend the Member for Tewkesbury (Mr Robertson) for bringing forward what he said was a small and limited piece of legislation, but we have heard over the past hour and a bit how important these small changes will be to those affected. I thank my hon. Friend the Member for North East Bedfordshire (Richard Fuller), my right hon. Friends the Members for East Yorkshire (Sir Greg Knight) and for Ludlow (Philip Dunne), and my hon. Friends the Members for Stoke-on-Trent Central (Jo Gideon), for Shipley (Philip Davies) and for Aylesbury (Rob Butler) for their contributions.

My hon. Friend the Member for Shipley explained why the alignment is ultimately a good idea. As we have heard, a life-limiting illness can cause unimaginable suffering for the patient and their loved ones—and that is just at diagnosis, yet alone across the trajectory of the disease. Many people have said that they feel as though they have been hit by an emotional tsunami, and we should do anything we can to help and support those nearing the end of life. My hon. Friend the Member for Stoke-on-Trent Central poignantly outlined some of the challenges that people can face at this stage in their life.

Many charities have been mentioned, but I pay particular tribute to Marie Curie, which often provides nurses who sit with people as they near the end of life. It is an incredible service for our constituents, and ensures that people do not die alone. Its work is incredibly important—its motor neurone disease campaign has been mentioned—but we must also thank people in the hospice sector and more broadly across the NHS, particularly those who work in end-of-life and palliative care.

We have heard much about the Social Security (Special Rules for End of Life) Act 2022, which changed the special rules process to allow simple and fast access to financial support through the benefit system. The changes made in the Act covered the disability living allowance, the personal independence payment and the attendance allowance, and ensured that people at this most difficult of times could receive their support more quickly and easily. The special rules were then extended to universal credit and employment and support allowance through secondary legislation that came into force on 4 April 2022. Under those rules, claims are fast-tracked and a medical assessment is not required. No waiting period is applied, and in the majority of cases the highest level of benefit is awarded. Since 1990, eligibility under the special rules had been limited to those who had been diagnosed with a condition that meant that they were unlikely to live for more than six months. The changes that the Government made in 2022 meant that people receiving certain social security benefits who were thought to be in the final year of their life were shown additional compassion and were able to receive that vital support six months earlier.

When the 2022 regulations came into force, they were welcomed by key end-of-life charities such as the Motor Neurone Disease Association, whose chief executive said at the time:

> "I welcome the announcement that changes to the Special Rules will come into force next month. This change will enable more people living with complex and unpredictable terminal illness like motor neurone disease to access the support they need swiftly and sensitively. This is an important first step and we hope that this positive change can be enacted for other applicable benefits as soon as possible."

Marie Curie also welcomed the changes, saying that they would

> "make it easier for terminally ill people to access support quickly",

and that

> "the scrapping of the six-month rule for fast track access to benefits is a significant step forward."

Macmillan Cancer Support said:

> "Patients deserve better co-ordination of care into the last year(s) of life and this change gives us a brilliant opportunity to help them benefit from end of life financial support while having treatment, so they can make the most of the last year(s) of life."

This Bill takes a further step in supporting those with a terminal illness by extending similar support through compensation payments made by the Pension Protection Fund and payments under the financial assistance scheme. As my hon. Friend the Member for Tewkesbury explained, the Pension Protection Fund pays compensation to members of eligible defined benefit pension schemes if the sponsoring employer became insolvent on or after 6 April 2005 and the scheme has insufficient assets to meet its pension liabilities. Members can claim their compensation payments before their scheme's normal pension age, generally from the age of 55. The financial assistance scheme makes payments to members of qualifying schemes that are unable to meet their pension liabilities in full.

Currently, members of the PPF who are not yet entitled to receive compensation may make an application to their scheme for a terminal illness payment if they are expected to live for six months or less. Terminal illness is currently defined in legislation as

> "if... the person's death in consequence of that disease can reasonably be expected within 6 months."

The Bill amends that definition to ensure that members with a life expectancy of up to 12 months can now receive the payments. It will restore the original policy intention of alignment between the social security special rules and the Pension Protection Fund. The same definition applies to the financial assistance scheme, and the Bill therefore amends that definition as well. The financial assistance scheme differs from the PPF in that a terminal illness diagnosis allows payments from the financial assistance scheme to be put in place immediately, rather than a specific lump sum being provided.

My right hon. Friend the Member for East Yorkshire and my hon. Friend the Member for North East Bedfordshire asked what consultation we had carried out. As I think my hon. Friend the Member for Shipley mentioned, we have consulted general practitioners, consultants, specialist nurses and other medical professionals.

Some may argue that the Government should take a more open-ended approach and not put any time limit on the payments. That argument, as we have heard, may be particularly pertinent for those who have conditions such as motor neurone disease, chronic obstructive pulmonary disease, Parkinson's disease and a plethora of other conditions that can make it exceedingly difficult for clinicians and doctors to accurately predict how much time a patient has until the end of their life.

[Jo Churchill]

Unfortunately, there is not a clearcut, correct answer on how terminal illnesses should be defined, so as my hon. Friend the Member for Tewkesbury said, that should be left to the professionals. In recognition of that, the 2022 Act was preceded by an evaluation in which the majority of clinicians who responded said that a 12-month definition was preferable, as it would bring the special rules for benefits into line with NHS practice and NHS initiatives, such as the gold standards framework. The Department agreed, and the 2022 legislation aligned the definition of terminal illness with that used in the NHS, providing consistency for clinicians and tying the special rules into the NHS long-term plan to provide proactive, personalised and well co-ordinated care for all those in their final year of life.

This Bill builds on the previous legislation by aligning the definition used for the Pension Protection Fund and financial assistance scheme payments with that used more widely in the Department for Work and Pensions and the NHS. The Government believe that the 12-month timeframe is appropriate for defining the period for serious ill health payments in tax law. For an individual to meet the definition of a person in serious ill health, evidence is required from a registered medical practitioner that the individual is expected to live for less than one year.

The Pension Protection Fund may be a compensation scheme, rather than a pension scheme, but in many ways it is treated as a pension scheme for taxation purposes. That means that the Pension Protection Fund terminal illness payment falls under the category of a serious ill health lump sum. That allows it to be paid without triggering unauthorised payment tax charges on either the individual or the Pension Protection Fund. Extending the definition of terminal illness to longer than a year would open up members to significant tax charges on their terminal illness payments, which is not what the Government want at all.

My hon. Friend the Member for North East Bedfordshire asked about the impact on the levy. We believe that the cost to the Pension Protection Fund will be marginal. Most members will simply get their payments earlier. He also asked about pension funds having a 12-month provision. The benefits provided will depend on scheme rules. We do not know how many schemes have such a provision, but we believe that many schemes already provide early access to lump sums for terminally ill members, or those with a life expectancy of 12 months or less, because that is allowed under tax law.

My hon. Friend the Member for Shipley and my right hon. Friend the Member for East Yorkshire asked about commencement. As with any Bill that passes through both Houses, it will come into force on a day appointed by the Secretary of State. It is the intention for that to be as soon as practicable after Royal Assent, to ensure that all measures relating to the Pension Protection Fund and financial assistance scheme come in at the same time.

I heard that my right hon. Friend the Member for Ludlow had written to the Secretary of State, and I will make sure that an answer comes to him in a timely way. He asked who makes the decisions; the answer is clinicians, medical assessors and specialist nurses. In response to my right hon. Friend the Member for East Yorkshire, let me say that one can obtain a second opinion, and that goes for all the illnesses that I mentioned.

I thank all hon. and right hon. Members for their contributions, and for the sensitive way in which they have approached this matter. I appreciate the "time-bound" argument that my hon. Friend the Member for Shipley put forward, but these matters are always a challenge for clinicians. I agree with him and my hon. Friend the Member for Stoke-on-Trent Central that a better conversation about end of life, and how we treat issues as we move forward into that stage of our life, would be a very good thing for us all. We should be a lot more discussive about it.

I thank my hon. Friend the Member for Tewkesbury for bringing forward the Bill and all right hon. and hon. Members for their contributions. These changes will make a significant, positive impact for people nearing the end of their lives by ensuring that most pension fund members will be able to receive a payment at an earlier stage. That will give them the financial support they need at a most difficult time for them and their families, as well as help them plan more effectively to get the most out of the finances they are due. These changes send a message about end of life: that the conversation must be alive and vibrant for us all, so that we do the best we can. I am pleased to support the Bill and wish it a speedy passage through both Houses.

Madam Deputy Speaker (Dame Rosie Winterton): I call Mr Laurence Robertson to wind up, with the leave of the House.

10.50 am

Mr Robertson: I thank the Minister for that response and the shadow Minister for her contribution. I also thank my right hon. and hon. Friends for their speeches and interventions. They all raised good points, but I think the most important one, made by my hon. Friend the Member for Shipley (Philip Davies), was that the Bill takes us in the right direction but should not be the last word on this issue. We must look at assessing people in terms of illness, because it is not just about time; it is about the diagnosis and the seriousness of those illnesses. I am pleased that the Minister picked that up. We must look to extrapolate this principle into other pension payments and schemes, as I mentioned in my speech.

Finally, I am pleased that the Minister confirmed that the Government intend to ensure that the Bill starts to have an impact as quickly as possible after Royal Assent. I look forward to working with her and the Government on that basis.

Question put and agreed to.

Bill accordingly read a Second time; to stand committed to a Public Bill Committee (Standing Order No. 63).

Joint Enterprise (Significant Contribution) Bill

Second Reading

10.52 am

Kim Johnson (Liverpool, Riverside) (Lab): I beg to move, That the Bill be now read a Second time.

Before I begin, I pay tribute to the incredible people who have made it possible for us to be here today, challenging the shocking miscarriage of justice that is joint enterprise. I want to say a massive thanks to Joint Enterprise Not Guilty by Association families and campaigners both inside and outside prison, some of whom are in the Gallery. Their perseverance and determination has allowed me to present the Bill. Since the early days of the campaign back in 2010, they have fought fearlessly and tirelessly against some of the most powerful British institutions for truth and justice to get to where we are today. They have never given up, and the Bill is a result of their work. I am so proud to have the privilege of working alongside them and bringing their campaign to Parliament.

I thank the many other people who have supported this campaign and helped to raise awareness of and support for our demands. My deepest gratitude goes to Jimmy McGovern, the indomitable screenwriter from my home city of Liverpool, Colin McKeown, the talented Northern Irish film maker, their teams and whole cast of the film "Common", some of whom are in the Gallery. That film, brought to our screens a decade ago, accurately depicts the injustice of joint enterprise. Massive thanks to LA Productions for so generously producing a half-hour condensed version for us to show at our event in Parliament this week. I urge those who have not seen "Common" to watch it—it is more powerful than "Mr Bates vs The Post Office", and I understand that it will be available shortly.

I pay tribute to the work of Becky Clarke and Patrick Williams at Manchester Metropolitan University, who went above and beyond to produce research on the costs of joint enterprise and have reminded us of the importance of not losing sight of its devastating social cost. Their guidance and expertise throughout this process have been invaluable. I thank Felicity Gerry KC, Professor Matthew Dyson and Nisha Waller from the University of Oxford, who as part of a wider working group organised by the Centre for Crime and Justice Studies drew up the simple, common-sense wording of the Bill. I also thank them for their legal support during the campaign. Their commitment to righting this wrong turn in the law has helped to bring the campaign as far as it can possibly go through the courts. Now, together, we have brought it to Parliament. I hope that today will be another step towards righting this massive wrong.

I thank the many hon. Members who have taken up this campaign and helped us to get where we are today, notably my hon. Friend the Member for Huddersfield (Mr Sheerman) and the right hon. Member for Sutton Coldfield (Mr Mitchell). I give special thanks to my hon. Friend the Member for Bootle (Peter Dowd) for his assistance by tabling an amendment to the Criminal Justice Bill just this week that mirrors the Bill we are discussing today.

When I was informed that I had been successful in the private Member's Bill ballot, I was a bit like a frightened bunny rabbit in the headlights, but with the help and guidance of the hon. Member for Castle Point (Rebecca Harris), I feel confident that I made the right choice by picking joint enterprise as the subject of my private Member's Bill. I also thank the Under-Secretary of State for Justice, the hon. Member for Newbury (Laura Farris) for her constructive dialogue in the run-up to this debate.

Dawn Butler (Brent Central) (Lab): I congratulate my hon. Friend on her excellent Bill. The work by all the people she has mentioned, including Joint Enterprise Not Guilty by Association, on the Bill has been so important. The Supreme Court has said that joint enterprise has been wrongly interpreted by criminal trial judges for the past 30 years. Does she agree that that is terrible?

Kim Johnson: I do, and I will come to that point later in my speech.

I thank the cross-party sponsors of my Bill, notably the hon. Member for Bromley and Chislehurst (Sir Robert Neill), the esteemed Chair of the Justice Committee. His support throughout this process has been invaluable and has demonstrated clearly the potential of the Bill to create cross-party consensus.

Florence Eshalomi (Vauxhall) (Lab/Co-op): My hon. Friend is making a powerful speech. She mentioned the hon. Member for Bromley and Chislehurst (Sir Robert Neill). His support shows the cross-party support for looking at how a majority of our young people are wrongly criminalised and locked behind bars, and their lives thrown away. Does she agree that this Bill is important, and that we should take the criminalisation of young people away from party politics?

Kim Johnson: I totally agree with my hon. Friend's point about the criminalisation of our young black people. We need cross-party consensus.

Lastly, I thank my A-team, Becky and Charley, who have been truly amazing.

Before I begin my arguments, I recognise that this is an incredibly difficult and sensitive topic, because behind each joint enterprise case there are victims of crime and their families, many of whom have lost loved ones in situations that most of us find difficult to comprehend. Behind each joint enterprise miscarriage of justice there are people—loved ones, whole families—whose lives have been torn apart by an unjust lifelong sentence where someone has been wrongly punished for the crime of another.

Jeremy Corbyn (Islington North) (Ind): My hon. Friend is making an excellent contribution about a very important Bill. Does she agree that many of the predominantly young people ensnared by joint enterprise come from inner-city black communities? Their families are devastated and often lack the media and political connections to mount an urgent and rapid legal case or campaign, so these young people end up spending several years in prison for an offence they did not commit. Their lives are subsequently damaged severely. This Bill is very necessary. The injustice has gone on for a very long time.

Kim Johnson: I agree that the Bill will look at righting those wrongs and challenging those miscarriages of justice.

Philip Davies (Shipley) (Con): Can the hon. Lady confirm whether the leader of her party supports the Bill?

Kim Johnson: I can confirm that the party will be looking at this Bill when we are in power and when we get rid of—well, when we are in power.

It is possible both to uphold the law by providing powers to prosecute those who play a significant role in a crime and to prevent innocent people from going to jail. There is cross-party consensus that things need to change and that it is now up to Parliament to act. That is what this Bill seeks to do—no more, no less.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): Does my hon. Friend agree that the campaign on joint enterprise is not about guilty people getting off, but about having a justice system that works for everyone? The Chair of the Justice Committee and I co-chair the all-party parliamentary group on miscarriages of justice, and we believe that this is the biggest injustice in the criminal justice system. There is a growing feeling across the criminal justice system, including among senior judges, that the balance has to be got right.

Kim Johnson: I totally agree with my hon. Friend, and I will cover some of those points in my speech. I hope that the Minister will listen closely to the arguments I put forward today and fully consider this opportunity to end this injustice, which has destroyed so many lives and places undue burdens on the courts, the prison system and the taxpayer.

As the Minister will know, joint enterprise is the centuries-old legal doctrine that was intended to give powers to prosecute people who were not the primary actor but nevertheless played a role in a crime, such as a getaway driver in a bank robbery. However, something has gone profoundly wrong in the way the law has been used for the past 40 years, as the Supreme Court recognised in the 2016 landmark case of Ameen Jogee.

Apsana Begum (Poplar and Limehouse) (Lab): My hon. Friend is making a powerful speech. Research including the 2022 report from the Centre for Crime and Justice Studies has found that following the landmark 2016 Supreme Court judgment, which had been expected to lead to a reduction in these types of prosecutions and convictions, not only has there been no discernible effect, but the number of black people convicted of murder has actually risen. Does my hon. Friend agree that that is one of the reasons the Bill is needed?

Kim Johnson: My hon. Friend makes a valid point on the consequences of the landmark case of Ameen Jogee, whose mum is in the Gallery today. People are being given mandatory life sentences for murders that they did not commit. Thousands have been locked up for life because they have been deemed, in effect, guilty by association. Since that ruling very little has changed, with only one successful appeal, as is shown in the research by the Centre for Crime and Justice Studies that my hon. Friend referred to.

Grahame Morris (Easington) (Lab): I compliment my hon. Friend on bringing forward this private Member's Bill. Through her good offices, I have had the opportunity to meet some of the families involved. To describe some of the cases as egregious injustices is no understatement. One of the appalling things I have found is the inconsistent way in which joint enterprise guilt by association has been applied. There are cases where one might think it would have been applied, such as in the murder of Jay Abatan in 1999. I would like to highlight the Justice for Jay Abatan campaign, which is still fighting for justice 25 years on.

Kim Johnson: I thank my hon. Friend for raising that point and particularly for raising the Justice for Jay Abatan campaign, which is very similar to the Stephen Lawrence campaign.

The Centre for Crime and Justice Studies suggests that the 2016 judgment had little to no effect on the number of joint enterprise charges or convictions. Indeed, since 2016 there has been a new legal problem, whereby juries are deliberately not directed to consider the contribution that a person made to a crime, as in the case of Faisal Fiaz, who was in a parked car that was streets away from where the murder for which he was convicted occurred. Only Parliament can fix this.

A charge of joint enterprise too often leads to an assumption of guilt in the courtroom, with the defendant having to prove their innocence, turning our justice system on its head. This is a failure of our justice system, which is supposedly the best in the world, and an affront to the taxpayer, who is left footing the bill for sloppy sentencing. To quote Jimmy McGovern's "Common",

"joint enterprise might allow it, natural justice does not."

If passed, my Bill will fix this wrong turn and help to return the law to its original intention.

Joint enterprise is currently wielded as a blunt instrument by the courts, allowing people who have not made a significant contribution to a murder to receive a mandatory life sentence. Lawyers and campaigners often describe the decision to prosecute or sentence someone to life as Russian roulette. My Bill seeks to enshrine in law the condition that a person can be prosecuted under joint enterprise only where they are proven to have significantly contributed to a crime. This would raise the bar for prosecution and provide the jury with the tools to differentiate between defendants who deserve to face a mandatory life sentence for the role they played in a serious crime and those who do not. There are countless cases where it is clear that we need a change in the law to provide juries with the basic legal test contained in my Bill.

Richard Fuller (North East Bedfordshire) (Con): May I compliment the hon. Lady on bringing forward this Bill? I am very grateful to her, because it has enabled me to look at some of the background information in the note that she sent and at some of the judgments that the Supreme Court made, which I would not have been aware of. I am grateful to her for pointing out at the start of her speech that there are victims involved. We have to make sure that we protect them and their feelings, and that justice is seen to be done.

One of the concerns that we on the Government side of the House have is that, in the past, people who were given life sentences for serious crimes would have been out after six or seven years—life sentences did not mean life sentences. I want to make sure that when judges hand down a life sentence, it really is a life sentence. However, that intent stands directly at odds with the rules on joint enterprise. When someone who has committed a crime is sentenced, I would not want to be in the position

of seeing someone who was there but who had not played, in the hon. Lady's words, a significant part in the perpetration of that crime getting caught up in that. Does she not see that, without some of the changes that she is making with the Bill, the intentions of those of us who want life sentences to mean life would fall into an even greater sense of legal jeopardy?

Kim Johnson: The hon. Member makes some valid points, and these issues have been raised by the campaign groups. Life has meant life for people prosecuted under joint enterprise—often 27 years and upwards, but starting with 14 years. This is the miscarriage that we are looking at.

I want to give some examples. Jordan Cunliffe was 15 years old and awaiting a double eye transplant at the time he was accused of complicity in a joint enterprise murder. His mum Jan is in the Gallery today. Jordan was nearly totally blind and unable to see the incident or to run away. Despite the confession of two boys who were directly involved in the struggle that led to the death of the victim, the judge charged Jordan along with four others, leading to a life sentence for a crime he did not commit.

When Tommy was sentenced for life for joint enterprise murder, the judge told the courtroom, including his mum Lisa, who is in the Gallery today:

"remarkably there is no evidence. I can't say you were at the scene or you carried a knife. There's no DNA, no eyewitnesses. I don't have a role for you. But I'm going to sentence you on a secondary role and give you an 18-year mandatory sentence".

At the time of his conviction, Tommy was 20 years old.

Dean Winston was sentenced to life in 2014 for joint enterprise murder. His mum, Bee, is also in the Public Gallery today. Dean was 19 when he was sent to prison for 24 and a half years. Despite the confession of his co-defendant, Dean received a longer sentence than the man who committed and admitted to the murder.

Those are just snapshots of wrongful joint enterprise convictions, from JENGbA families who have campaigned for well over a decade to bring to light this grey area of the law. In their own words, this is a miscarriage of justice on the same scale as the Post Office Horizon scandal. People are being sent to prison for crimes they did not commit.

Florence Eshalomi: I thank my hon. Friend for highlighting some of those cases. One of the other issues with joint enterprise is that we have seen young women and girls criminalised for the actions of their boyfriends. If we are honest, in some of those cases—this is an issue that I have campaigned on—a number of those young women and girls are coerced or are being exploited, including sexually exploited, by those men. Is this not why we need a change, so that we are not destroying those women's lives? Sadly, this is not just about young men; it is also about a number of young women who are being criminalised and sentenced for crimes they did not commit.

Kim Johnson: I thank my hon. Friend for those comments. I totally agree, and I will cover some of that later in my speech.

With joint enterprise, it is often children or young people who are being put away for life. Felicity Gerry KC, who is also in the Public Gallery, has been instrumental in challenging the way joint enterprise legislation is misused, especially in her role as lead counsel on the landmark 2016 R *v.* Jogee case at the Supreme Court, and has helped every step of the way with this Bill.

Dr Gerry has provided some joint enterprise examples, all 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 another area where a stabbing occurs, and the 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 no contact with the victim and have no weapon; children exploited to sell drugs who get caught up in the actions of others; and even a woman looking for her shoes during a violent disorder.

In the debate on new clause 16 on joint enterprise in the Criminal Justice Bill Committee on Tuesday, my hon. Friend the Member for Birmingham, Yardley (Jess Phillips) mentioned another case, in which a woman who was a victim of domestic abuse was charged under the crime of joint enterprise and, because she pleaded not guilty, received a longer sentence than the person who abused her and actually pulled the trigger and killed someone.

I am sure the Minister will share my concerns about the way joint enterprise has been used in those cases. I would be happy to write to him with details, if he would find it helpful to follow them up. I hope he will come to the same conclusion that I have: that the new law needs to change and we must therefore take the opportunity before us today.

Apsana Begum: Does my hon. Friend agree that one of the problems with the current law is that it perpetuates a system whereby the fear of being convicted under joint enterprise leads to innocent people pleading guilty to lesser crimes, and that this is an injustice as well?

Kim Johnson: I totally agree, and we all saw that play out in the Post Office Horizon scandal.

I believe that the cases I have referred to prove beyond a shadow of a doubt that the current law allows for far too broad an interpretation of complicity and has enabled joint enterprise to be used as a dragnet for sweeping arrests and prosecutions that cannot be justified on the basis of natural justice or public safety, and that come at great cost to the taxpayer, placing an undue burden on our overcrowded courts and prisons.

John McDonnell (Hayes and Harlington) (Lab): Let me follow up on the point made by the hon. Member for North East Bedfordshire (Richard Fuller) in relation to sentencing overall. Although the Bill would have a radical effect on the families and the people suffering from this legal abuse, what is required is simply a clarification of the law. A consensus has now built up across the legal system—from practitioners expressing concerns in court to members of the justice union, which includes the Prison Officers Association and others—that Parliament is holding them back in securing justice for people. It is believed that there needs to be a relatively minor change in the law to enable the courts to dispense justice in the way that they wish to do so.

Kim Johnson: I totally agree with my right hon. Friend. That is what my Bill would do, by making a small change to the 1861 Act. During cross-party discussions with Ministers and shadow Ministers and at the Criminal Justice Bill Committee, I have yet to hear a persuasive argument put forward against this formula. I hope the Minister will agree that this wording is a common-sense approach that would keep the decision-making power with the jury, and perhaps strengthen the law by restoring its original intention, removing those current uncertainties that give rise to the miscarriages of justice that I have discussed today. Let me clarify that the Bill would cause no unintended consequences, or make it harder to punish people who have committed a crime, in line with the law as it is intended.

Mr Sheerman: One of the arguments that we hear time and again is, "Are you going to let the getaway driver get away with it?" Does my hon. Friend agree that this Bill would not do that, and that there is no intention for it to do so? The Bill that she is introducing is fair and balanced. I was with a senior retired High Court judge last night who said that it was about time that we put this matter right.

Kim Johnson: I welcome my hon. Friend's contribution; that is exactly what the Bill is intended to do.

To illustrate my point further, I shall turn to the 2010 Victoria station attack, which the Under-Secretary of State for Justice, the hon. Member for Newbury, referred to in Tuesday's debate at the Criminal Justice Bill Committee. In that incident, a group of young men chased and then attacked another young man, who was repeatedly stabbed and died. The coroner could not determine who had struck the fatal blow, so the whole group of assailants were put on trial and a number were convicted of murder and of manslaughter. They were clearly making a significant contribution to an awful crime.

Another commonly cited case is that of the racist killers of Stephen Lawrence. Again, there was damning evidence that the many accused did play an active and intentional role in his murder. My revised Bill would allow for their joint enterprise prosecutions. Another recent high-profile case concerns the murder of a young woman in Warrington. Both defendants were successfully, and correctly, prosecuted under joint enterprise.

My Bill is intentionally drafted to allow the use of joint enterprise laws in such cases to prosecute multiple defendants, where there was clearly evidence of a significant contribution by the accused to the death of the victim. It will be for the courts to decide in each case what constitutes a significant contribution, and it will form a basic legal test alongside many others used by juries to aid in their deliberations and protect against miscarriages of justice, while upholding the law as it is intended.

In response to the joint enterprise amendment on Tuesday, the Minister recognised the importance of the law on joint enterprise and the consequences that result from convictions on which both she and I find common ground. Ultimately, however, she was unable to support the new clause, saying:

"We think that it is too difficult to require the prosecution to prove a significant contribution".—[*Official Report, Criminal Justice Public Bill Committee,* 30 January 2024; c. 485.]

Following that, I was grateful to meet the Minister yesterday to discuss the issues raised at the Bill Committee regarding the language of "significant contribution". She reiterated her concern that "significant contribution" could prove too difficult a legal test for the prosecution. In particular, she referenced cases where contribution to a crime is difficult to prove and where, with multiple assailants, it is impossible to tell who dealt the final blow that caused the death of the victim.

Although I recognise the Minister's trepidation, I find that a disturbing and worrying argument that amounts to an admission that, within our legal system, there is an area where we do not believe it is necessary to prove that a person must have made a significant contribution to a crime before locking them up and throwing away the key—and, indeed, that the Government are content with this state of affairs. It removes the burden from the prosecution to prove guilt and instead places the burden on the defendant to prove innocence. No other area of our law reverses that principle, and I hope the Minister will clarify the Government position on that and reconsider.

I find it confusing that a 14-year-old stabs and kills a young girl in Liverpool, is charged with murder and sentenced to life to serve a minimum of 13 years, while the young men mentioned throughout my speech did not commit a crime yet have been issued life sentences. Joint enterprise allows the prosecution to use a racist gang narrative to imply guilt and persuade juries using prejudicial stereotypes in place of cold, hard evidence.

Florence Eshalomi: My hon. Friend will be aware that the Crown Prosecution Service conducted a six-month trial that looked at the racial bias, after legal challenge from campaigners, and the results were stark. In 190 cases, involving more than 680 defendants, the CPS found that it disproportionately impacted BME men and children aged 14 to 17, and that a whopping 93% of joint enterprise defendants were male. That shows that this law, as it is being used now, disproportionately impacts too many young black men.

Kim Johnson: I thank my hon. Friend for her intervention; I will address that point about the CPS a bit later.

Last year, the human rights groups Liberty submitted one such case to the Criminal Cases Review Commission after 11 defendants, all black, were collectively convicted and sentenced to a total of 168 years in prison for a single murder. Evidence included a rap video made online a year earlier, photos of some of the defendants using hand signs, and the alleged favouring of the colour red. In that and similar cases, the prosecution called police officers as experts to give their opinions on alleged gang culture, a concept that carries with it racist stereotypes intended to sway a jury.

I believe that my Bill is the right approach. If there is no evidence of a significant contribution to a homicide, how can it be right that we prosecute for a mandatory life sentence? It is precisely this justice gap that systematically drives prosecution and conviction based on inference, stereotypes, gang narratives and the criminalisation of culture as a replacement for cold, hard evidence. It will be up to the jury to decide whether someone has made a significant contribution to a crime, and if a person played a part in a fight in which someone was killed, the test will clearly be met for significant contribution. I urge the Minister to consider this carefully and, when he responds, explain to me and the families sitting in the

Gallery how we can justify continuing to lock people up when we cannot prove that they made a significant contribution to a crime.

It may surprise the House to note that the CPS case management system does not currently enable joint enterprise cases to be flagged. However, in September last year the CPS reported on a six-month pilot project, forced by a legal challenge by JENGbA and Liberty. In my meeting with the Minister and her team yesterday, I was grateful to hear about the progress being made by the CPS in this area, and that by the end of this month the CPS hopes to have in place systems to flag joint enterprise cases, so we will be able to analyse the data. I was also pleased to hear more about the national scrutiny panels. I have written to the Director of Public Prosecutions to discuss the work further. It was definitely encouraging to hear that more work is being done in this policy area. It shows that it is widely accepted that there is an issue that needs to be challenged. Parliament has a key role to play in that.

Data from the six-month CPS pilot reveal that more than half those prosecuted under joint enterprise were under 25 and that black people are 16 times more likely to be prosecuted for homicide or attempted homicide under joint enterprise laws. Young working-class and black boys are being sentenced for longer than they have been alive for crimes that they made no significant contribution to. It is truly astounding that nothing has been done about this sooner; it is a stain on our system and must be stopped.

On that note, I am grateful to have received support from the UN Working Group of Experts on People of African Descent, which has raised concerns about the impact of joint enterprise. I take the opportunity to read out a statement the group sent to support my Bill: "The Working Group of Experts on People of African Descent confirms the critical importance of the Joint Enterprise (Significant Contribution) Bill towards addressing the treadmill of convictions that young people of African descent are disproportionately subjected to in the United Kingdom. The Bill needs to apply retrospectively to remedy the injustices perpetrated by the law, which is directly in conflict with people."

It is a testament to the years of campaigning by the families that we have now received this recognition of the injustice of joint enterprise by the UN working group, and I truly believe it is a case of when, not if, this legislation will be amended and put right. I hope that the Minister will help today by taking a further step in the right direction. While data is scarce, the full scale of joint enterprise remains as yet unknown. The pilot study undertaken by the CPS last year indicates that more than 1,000 people are tried every year for joint enterprise, at a time when we have record backlogs in the courts and our prisons are dangerously overcrowded. Parliament must take urgent action to end the over-zealous application of joint enterprise prosecutions and sentencing. To conclude, a miscarriage of law is a miscarriage of justice. As I have laid out today, there is a cross-party concern and there are serious questions about the letter of the law.

11.26 am

Philip Davies (Shipley) (Con): First, let me congratulate the hon. Member for Liverpool, Riverside (Kim Johnson) on bringing this matter before the House. I believe she said at the start of her speech that she was as nervous as a kitten when she came out of the ballot with a high ranking. I do not think anybody would have recognised that, as she made a powerful case, and I commend her for that.

I rise to oppose the hon. Lady's Bill and make the case that in many regards the law on joint enterprise does not go far enough. I will give some examples. I also want to address the point made by my hon. Friend the Member for North East Bedfordshire (Richard Fuller) that for those of us who believe that "life means life", the cases that she mentioned undermined our argument; I do not think they do at all. When people say that life should mean life, they mean that they want honesty in sentencing and that the sentence handed down by the court is the one the person should serve. If we adopted that honesty in sentencing, many of the people that the hon. Lady mentioned in her speech would not be given a life sentence; they would be given a fixed tariff that they would be able to serve. Therefore, the honesty in sentencing that I want to see, as does my hon. Friend, judging by what he was saying, will help in the cases that the hon. Lady brought forward, because if we had that honesty in sentencing, we would not have these widespread life sentences being given out willy-nilly, which never in a million years mean life.

This is only a short Bill, but it has wide-ranging implications. It would repeal section 8 of the Accessories and Abettors Act 1861, which defines a secondary party. There are three types of joint enterprise. The first led to the creation of the 1861 Act in response to the case of the Crown *v.* Swindall and Osborne in 1846, which involved two cart drivers engaged in a race. One of them ran down and killed a pedestrian, but it was not known which cart and driver had perpetrated the fatal action. The court took the view that as both had equally encouraged each other in the race, it was irrelevant which of them had actually struck the man, as they were both participating in the race, so both were held jointly liable for the death; this is about a situation where two or more people join in committing a single crime, in circumstances where they are, in effect, all joint principals. The case founded the principle that the parties must share a common purpose and make it clear to each other by their actions that they are acting on their common intention. Each individual assumes responsibility for the other members involved in the act. Therefore, a participant in an offence can be convicted even if the prosecution is unable to prove his or her precise role. It suffices that participation itself, whether as a principal offender or as a secondary party, can be proven and, as such, the principle of common purpose was codified in law in section 8 of the Accessories and Abettors Act 1861. The codified offence reads:

> "Whosoever shall aid, abet, counsel, or procure the commission…shall be liable to be tried, indicted, and punished as a principal offender."

The next landmark case, and second type of joint enterprise, cements the joint enterprise doctrine. In 1952, Derek Bentley was convicted for the shooting of a police officer. The actual murder was committed by an accomplice, Christopher Craig. Bentley was convicted after he said the famous words, "Let him have it," which formed a key part of the evidence for the case against him, as he was deemed by the jury to be encouraging the

[Philip Davies]

defendant. Consequently, he was held jointly responsible for the murder. However, as we all know, the conviction was quashed on appeal.

In effect, that is an example of the principle of where D assists or encourages P to commit a single crime, which is the test used by the Crown Prosecution Service to proceed with a prosecution. Now, as we all know, for a jury to find someone guilty of a criminal offence, it must be satisfied that it is sure that the defendant both committed the crime, known as the actus reus, and had the requisite state of mind to carry out the crime, known as the mens rea.

An example is murder. To be convicted of murder, an offender must be shown both to have caused the victim's death and to have either intended to kill or cause really serious harm. Another example is burglary. To be convicted of burglary under section 9(1) of the Theft Act 1968, the defendant must be found both to have entered a building as a trespasser and at the time intended to commit theft or grievous bodily harm.

Joint enterprise relates to secondary liability, meaning that a conviction hinges on the court's determination of what the offender could have reasonably foreseen or anticipated, rather than what was explicitly agreed upon or even intended. For example, if two people planned a burglary together, and one, with the full knowledge of the other, took a gun and shot somebody during the course of that burglary, that would be seen as a joint enterprise, as the person without the gun could be deemed to have been able to reasonably foresee that the gun could be used to cause actual bodily harm to a third party.

This is where the third type of joint enterprise comes in, and it is of particular relevance to the Bill we are dealing with today. Until the 1980s, it seems that there were two strands. The first, referred to as the conduct element, requires that the accessory had encouraged or assisted the principal to commit the offence, and the act of assistance or encouragement may be infinitely varied. The second is the mental element, which requires that the accessory had the intention to assist or encourage the commission of the crime in the knowledge of any existing facts necessary for the principal's act to be criminal. If the crime required a particular intent, the accessory must have intended to assist or encourage the principal to act with such intent.

In 1985, we had the case of the Crown *v.* Chan Wing-Siu, which created a specific subset of secondary liability known as parasitical accessory liability—the hon. Member for Liverpool, Riverside touched on these examples in her speech—which allowed not only the principal offender and accessory to be prosecuted for crime A, but also for a second crime, crime B, that the principal offender went on to commit. Here P and D participate together in one crime, crime A, and in the course of it P commits a second crime, crime B, which D had foreseen he might commit. This case lowered the burden of proof for the mental element of joint enterprise, as a conviction could now be made on the understanding that the defendant had only to foresee that the primary offender intended to commit the second crime.

Some people argue that a number of innocent victims who did not play a significant part in the offence could have been caught up in that definition, as the hon. Member for Liverpool, Riverside, said. That possibility has attracted particular attention in murder cases, for which a life sentence is mandatory. In the words of the Justice Committee,

"the mandatory life sentence for those convicted of murder removes much judicial discretion to hand down appropriate sentences to secondary participants who may have played a minor role and may have had no intention that a murder or grievous bodily harm should take place."

Tim Moloney KC and Simon Natas, an expert in criminal law, argued for the abandonment of that principle, as it can lower the threshold for conviction in some cases. They suggested that the prosecution often finds it easier to demonstrate that the defendant foresaw the actions of the principal offender than to prove that the defendant intended for serious harm or death to occur. However, in its 2007 report on aspects of secondary liability, the Law Commission acknowledged that the principle was "severe", but recommended its retention with certain safeguards.

Crucially, secondary liability is a common-law doctrine arising from the cases that I have mentioned. According to evidence given on 1 November 2011 to the Justice Committee by Jeremy Horder, professor of criminal law at King's College London and a former law commissioner, the rules on complicity were originally

"drawn up to accommodate the notion that people have different roles in the commission of an offence",

and those rules have evolved over the years. In one of its reports on complicity, called "Participating in Crime", the Law Commission commented that

"At the core of the doctrine of secondary liability is the notion that D can and should be convicted of the offence that P commits even though D has only 'aided, abetted, counselled or procured' P to commit the offence".

The Justice Committee's 2010 report highlighted that the offence of joint enterprise plays a large part in getting convictions for who aid, abet, counsel or procure the commission of an offence, even though the principal offender does not carry out the intended act. Professor Graham Virgo highlighted the inconsistency in the courts' approach to determining the mental state required for a finding of joint enterprise: while some cases only require the secondary participant to foresee the commission of the offence, in others, the secondary participant must apparently foresee both the criminal offender's state of mind and the criminal act.

In 2011, before I was on the Justice Committee, it held an inquiry on the common-law doctrine of joint enterprise. That inquiry was prompted by concerns expressed to the Committee that the complexity and opacity of the doctrine could be the cause of injustice, whether to victims and their families or to defendants. That report was reviewed in a short follow-up report published by the Committee in 2014-15. The Committee considered the law, criticism of the doctrine, the use of joint enterprise, its application in cases of murder and gang-related or group violence, and whether the doctrine should be enshrined in statute. The Committee's final recommendation was that the doctrine should be enshrined in legislation; it stated that

"The lack of clarity over the common law doctrine on joint enterprise is unacceptable for such an important aspect of the criminal law."

In the year following the Justice Committee's follow-up report, the Supreme Court ruled in the case of R *v.* Jogee, which the hon. Member for Liverpool, Riverside, mentioned, that the courts had taken a wrong turn in pursuing the concept of parasitic accessory liability. It handed down its judgment in February 2016, ruling that the previous interpretation of the law following the Chan Wing-Siu case was wrong, and that there should be no separate form of accessorial liability. It gave a correct example:

"D2 should not be liable for offence B unless he intended to assist or encourage D1 to offence B. Whether he did have such an intention or not will be for the jury to decide. The jury might consider D2's foresight to be evidence of such an intent, but foresight would no longer be sufficient in and of itself."

The judgment summarised as follows:

"The unanimous conclusion of the court is that *Chan Wing-Siu* and *Powell and English* did take a wrong turning…The correct rule is that foresight is simply evidence (albeit sometimes strong evidence) of intent to assist or encourage, which is the proper mental element for establishing secondary liability."

Effectively, as a result of the Supreme Court's verdict, common law has already made the bar for prosecution higher again, as the mental element needed for prosecution is now not only being able to foresee a crime, but foresee a crime as evidence of intent. The Bill is clearly being introduced on the basis that despite that judgment, common law still sets the bar too low for the prosecution and, in some cases, leads to people on the fringes of a group being prosecuted when they are too remote from the murder to be charged with it.

The Bill seeks to reform part of the definition of joint enterprise and to add in reference to making a "significant contribution". The liability on the basis of joint enterprise will then read, "Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be at common law or by virtue of any Act passed or to be passed, shall, by making a significant contribution to its commission, be liable to be tried, indicted, and punished as a principal offender."

The hon. Member for Liverpool, Riverside, mentioned the amendment tabled to the Criminal Justice Bill by, I think, the hon. Member for Bootle (Peter Dowd), which, in effect, mirrored the measures in her Bill. I think—she did not make this clear—the amendment was withdrawn in Committee, but she will no doubt correct me if I am wrong.

Reforming the legal definition of joint enterprise requires careful consideration of various factors, including principles of justice and fairness, and effectiveness in deterring criminal behaviour. Of course, the addition of "significant contribution" will be subject to legal interpretation. I asked the hon. Lady whether the leader of her party, the right hon. and learned Member for Holborn and St Pancras (Keir Starmer), agreed with her Bill. I was not entirely clear from her answer whether he did—I think she said that he said he would look at it. I ask because as a former Director of Public Prosecutions, he has been invited in the past to give evidence to Select Committees in this House about joint enterprise, and it is fair to say that he was characteristically equivocal about whether he supported it. I was not entirely clear on his position after reading the evidence he gave, although he went on to say, and this is relevant to the debate,

"there needs to be some caution if there is any amendment to it, but…one can understand the concerns on either side."

When asked whether he would regard it as a serious limitation on his ability to successfully prosecute culpable people of very serious crimes if he did not have the current joint enterprise routes to take, he said,

"Yes, I think it would be,"

so we should bear that in mind.

The hon. Member for Liverpool, Riverside, mentioned the BBC drama "Common", directed by the excellent Jimmy McGovern, who is a tremendous leader in his field. The programme follows 17-year-old Johnjo, who gives a lift to his cousin and his friends, only to find himself implicated in a stabbing. Johnjo sits in the car and does not even witness the stabbing, nor does he supply the knife. In fact, he apparently thought he was driving his cousin and friends to get a pizza.

The programme follows Johnjo and his family through the police and courts system and shows the devastating impact on the family. It was very powerful, as dramas are designed to be. The drama also shows the life-altering, axis-shifting impact on the victim's family. Obviously, we should never forget that having a family member murdered is absolutely abhorrent, and I know that no one in the House would wish that on anyone; we have to take a balanced view on all these matters.

I take the view that joint enterprise works reasonably well at the moment. However, as I said at the start of my remarks, it has sometimes failed to get convictions where it should, rather than the other way around. Former Director of Public Prosecutions Alison Saunders said:

"In some cases, it's not very clear because of the circumstances of the case exactly who did what, but if we know that everyone was participating in the crime then it helps us to be able to prosecute them and to put those facts before the court."

She added:

"If you're just standing there, we won't prosecute you."

The Crown Prosecution Service charging guidance provides further evidence of the approach for such crimes. It states:

"Where D's role as an accessory is minor or peripheral and the offence in question is a minor offence, consider whether it is in the public interest to charge D at all. In particular, where a court is likely to impose only a nominal penalty on conviction a prosecution will often not be in the public interest.

Where D's role as an accessory is minor or peripheral but the offence is a serious one, consider whether a less serious charge than that charged against the principal is more appropriate. For instance, where the offence attracts a mandatory or automatic or minimum sentence, the charge may be considered disproportionate to the culpability of D. In the vast majority of cases there is likely to be an appropriate lesser charge available. However, in the unlikely event that no lesser charge is available, prosecutors must weigh carefully the merits of proceeding with a charge for the serious offence, or not proceeding at all. The decision as to where the public interest lies will depend on the facts of each case."

The guidance goes on to address the public interest test in more detail:

"Where there is sufficient evidence to prosecute, prosecutors must go on to consider whether a prosecution is required in the public interest… This approach applies to all cases involving secondary liability."

I say to the hon. Member for Liverpool, Riverside, that the CPS guidance is already pretty robust in ensuring that people are not unduly prosecuted for crimes in which they played barely any role. According to the guidance, they certainly should not be prosecuted for the same offence as the principal person involved in the crime. That covers an awful lot of her concerns.

[Philip Davies]

The more serious the offence, of course, the more likely it is that a prosecution is required. Parts b) and c) of paragraph 4.14 of the CPS code state that

"When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect's culpability and the harm caused"

to the victim; that

"Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family";

and that

"The greater the suspect's level of culpability, the more likely it is that a prosecution is required."

There are clear examples in which a case is too complex and neither party is innocent, even if one party was substantially liable. One such example is the Crown *v.* Gnango, which involved the unlawful killing of Magda, a 26-year-old Polish care worker. Magda was on her way home from work in New Cross, south-east London, when she was shot through the head with a single bullet. She was caught in the crossfire between two gunmen in a car park. The two men were in a dispute and went there with the intention of killing each other. Scientific evidence allowed the police to identify the individual who fired the fatal shot. However, I thought—as did the court—that that was irrelevant, and that both men should be considered guilty because they both played their part in her death.

Another case involving a wholly different situation was considered—even if it was given only minimal weighting—by the judges in Crown *v.* Gnango, as it also applied the doctrine of joint enterprise: Mansell *v.* Herbert's case. During the course of an attack on a house by a group of men, a woman was killed by a stone thrown by one of the group at another person. By a majority, it was decided that all were guilty of murder.

The Law Commission recommended retaining the Chan Wing-Siu principle owing to the availability of two defences. Under the first defence, a defendant can challenge a joint enterprise charge by demonstrating a fundamental difference between the agreed-upon criminal adventure and the committed crime, which I think covers much of what the hon. Lady was saying. The interpretation of that defence has led to complexity as courts grapple with determining what constitutes a fundamental difference.

The second defence relies on the defendant showing clear and unambiguous withdrawal from the venture before the crime was committed, which, again, I think is a very pertinent point. While the law about withdrawal is less complex, it is deemed overly restrictive. Moloney and Natas highlighted the case of R *v.* Mitchell, in which the defendant was convicted of murder, despite not having participated in a fatal assault, owing to her continued presence in the vicinity, suggesting her ongoing involvement in the crime. The definition proposed in the Bill will amend the defences applicable, and the defendant will now have to prove that his contribution to the offence was not significant.

I mentioned earlier that I would argue that we need some changes in the other direction, to secure more convictions in some cases. Jimmy McGovern might want to cover some of these cases in a drama to make the point as well, because as far as I am concerned, these cases are travesties of justice. Let us take the case of Donald Banfield. His wife and daughter were convicted of his 2001 murder, but their convictions were overturned despite its being accepted by everyone—including the lawyers acting for both of the accused—and recorded in the judgment in the case that Donald Banfield was murdered, that his death occurred between 11 and 16 May 2001, and that he was murdered either by both his wife and his daughter together or by one of them. Those facts are not disputed, yet these two women are free to walk around while that poor man is dead. It is outrageous that simply because neither will assist the prosecution with the case and tell them what really happened, nothing can be done to bring one or both of them to justice.

Then there was the murder of Kevin Patrick Lavelle in June 2004. I met the parents of Mr Lavelle, who have not only to live with the agony of losing their son but to face the ongoing suffering because no one has been convicted of his murder. In the Court of Appeal Civil Division judgment of 18 April 2011, Lord Justice Hooper said:

"On 24 June 2004 Mr. Lavelle was fatally injured in a fight that took place at 'The Cricketers' Arms' public house in Middleton Road, Banbury, Oxfordshire. He died in the early hours of 25 June 2004. He was 29 years old."

The judge continued:

"The cause of his death was aspiration of the contents of the stomach resulting from two head injuries to the deceased inflicted by a heavy steel weight lifting bar belonging to the deceased.

It was common ground that the deceased died in the course of a fight involving him, Mr Kirk and some, or all, of the first three respondents.

In late March 2009 following a coroner's inquest a verdict of unlawful killing was entered."

It seems very clear to everyone that Mr Lavelle was murdered, and that he was murdered by one of those people, yet no one has been successfully prosecuted for his murder and, tragically, unless something changes in the law—unless the law of joint enterprise is stiffened up—that will continue to be the case: no one will be brought to justice for that crime.

Finally, for now, there is the case of Andrew Jones, which the hon. Member for Liverpool, Riverside will know of very well because he was murdered in her home city of Liverpool. I also met the family of Mr Jones, and they too are devastated by the lack of a conviction in his case. I believe that at the inquest held in 2008, the Liverpool coroner, André Rebello, concluded that only one person was responsible for killing Andrew on the basis of the evidence that he had heard. Mr Rebello did not name that individual in court, but I understand—the hon. Lady will be able to correct me if I am wrong, because she will know far better than me—that her local newspaper did publicly name the killer, and said that if it was not them, they should sue the paper. It seems that none of the people who were there on the night are prepared to say who threw the fatal punch, although obviously one of them knows it was them and it is likely to have been witnessed by at least one other. Yet this has happened under the current legal joint enterprise framework, and it paints a very different picture from the one portrayed by the Bill's supporters today.

When I asked the Crown Prosecution Service about these cases, Alison Saunders, then the Director of Public Prosecutions, provided a reply explaining the issues involved:

"Turning to the general points that you raise, each of the cases that you have highlighted have raised very different issues and demonstrate that the law regarding participation by a number of individuals raises complex challenges. As you will appreciate, any change to existing legislation remains a matter for Parliament. The principles underpinning the doctrine of joint enterprise have been developed over many years through court cases and in recent legislation such as the Serious Crime Act 2007. I am satisfied that these principles have been correctly applied in the cases".

This is not a fault of the Crown Prosecution Service, but of the law. We should not forget that it is causing terrible heartache to families.

As it stands, joint enterprise acts as a deterrent. If this Bill was passed, it would water down the benefit of the current legal position when it comes to the deterrence of crime. Deterrence theory logically suggests that individuals refrain from committing crimes when the perceived costs or risks outweigh the potential benefits. In the context of joint enterprise, the threat of being held accountable for the actions of others may deter individuals from participating in those activities where joint liability could apply. This deterrence mechanism operates on the premise that individuals will prioritise self-preservation and avoid situations where they might be implicated in criminal conduct. Its very existence serves as a deterrent by increasing the perceived risks associated with criminal involvement. The prospect of facing severe legal consequences, including lengthy prison sentences for crimes committed by co-conspirators, can dissuade individuals from engaging in joint criminal enterprises.

Furthermore, supporters of joint enterprise, like me, would say that it fosters a sense of accountability among group members, as they are aware of the possible repercussions of their collective actions. High-profile cases where joint enterprise convictions have been upheld, such as those involving gang violence or organised crime, often highlight the punitive outcomes associated with joint enterprise convictions, which can act as a deterrent for potential offenders.

Another good example of the benefit of joint enterprise is epitomised in a leaflet produced in the home city of the hon. Member for Liverpool, Riverside by a wonderful lady called Jean Taylor from an organisation called Families Fighting for Justice. It gives out that leaflet to children and parents in Liverpool. I will not use it as a prop, because you would tell me off for doing so, Madam Deputy Speaker, but in this leaflet, which she hands out to schoolchildren in Liverpool, she makes clear the full repercussions of being involved in a crime that could be listed as joint enterprise. She gives an example of eight young men tried for murder. They were all at the scene of the crime, but the court could not tell which one had performed the murder. Because of joint enterprise, all eight were found guilty. The story shows that someone does not have to personally commit the crime with a gang or group to be found guilty of the crime. She puts in bold:

"This highlights the risks your child takes when being in a gang."

I commend Jean Taylor and Families Fighting for Justice for all the work they have done on joint enterprise and to deter young people in her city from getting involved in gangs.

Mr Sheerman: The hon. Gentleman is making a very complex argument, and I have been listening to it. There is some interesting material in it. He has been speaking for more than half an hour, and some of us would like to contribute to this important debate. Many of us agree with exactly what he has been saying about the great need for radical reform in joint enterprise. I would have thought he could join us in supporting the Bill. Will he give the rest of us a chance to contribute to this important debate?

Philip Davies: I am slightly surprised by the hon. Gentleman's intervention, because the Member proposing the Bill spoke for longer than I have spoken.

Mr Sheerman: It is her Bill.

Philip Davies: We have invented a new rule, it seems. I have not known it before, but the hon. Gentleman has been here longer than me. Apparently there is a rule that I was previously unaware of that the person who speaks first on the Bill gets to speak for the longest. I did not know that was a rule. It is obviously one that has just been invented. I would have thought he has been here long enough to understand that in this place we are supposed to have a debate. When the hon. Member for Liverpool, Riverside sets out her position, that means that people who disagree with her are entitled to set out their position, which might differ. I appreciate that the hon. Member for Huddersfield (Mr Sheerman) only likes to hear arguments with which he agrees. This will be a novel experience for him, as today he will have to force himself to sit through somebody giving an opinion with which he disagrees. I know he does not like that, but I am afraid it is tough.

Mr Sheerman: The hon. Gentleman pointed out that I have been in the House longer than him. I have always believed that this a Chamber where we have an honest, open and fair debate. I appeal to him to give others, such as me, a chance to make a short contribution. If he has another motive—not to make a good contribution to this debate but to talk the Bill out—that is another matter. Will he be clear whether he will allow some of the rest of us to make a contribution?

Philip Davies: I am going to allow everybody else to make a contribution to the debate. Unfortunately, the hon. Gentleman, through his pointless interventions, has delayed that from happening. I have zero intention of talking out the Bill. The Bill does not need to be talked out, because, as far as I can see, it is so flawed that it has no prospect of being passed anyway.

The hon. Gentleman and his colleagues will have plenty of time to make their case during the debate. I am simply making the alternative argument—the one against the Bill—and I am taking a similar amount of time to speak against the Bill as the hon. Member for Liverpool, Riverside spent making the case for the Bill. I do not think anybody could possibly see that as unreasonable—aside from the hon. Gentleman, who, as I said, does not like hearing arguments with which he disagrees.

[Philip Davies]

Before I was interrupted, I was talking about Jean Taylor and Families Fighting for Justice. The hon. Gentleman would do well to speak to them and find out about their horrific experiences. I can tell him that Jean Taylor, unbelievably, lost her sister in 1998, her son in 2000 and her daughter in 2004, all as a result of acts of homicide, including acts of joint enterprise. She has campaigned for years to fight for victims and reduce crime. Her work on joint enterprise, as I have demonstrated, has been invaluable. I am sorry that the hon. Gentleman would rather that Jean Taylor, her work and her personal experience were not discussed in the debate, but I will certainly not make any apology for mentioning her work and her terrible experience, which I suspect is greater than his experience in this field. Jean Taylor has every right to have her views taken into account by this place.

With that—we could have got here a bit sooner if the hon. Gentleman had not pointlessly intervened—I will just say that I do not see the same problems in joint enterprise that others do. I actually think that joint enterprise as a concept has been effective in ensuring that our streets and communities are safer places than they otherwise would be. It has been effective in making sure that people are brought to account for some despicable crimes when otherwise they would not have been brought to account for them. If anything, as I set out with the number of cases I referred to earlier, the problem with the law on joint enterprise is that it is not working sufficiently—it is not drawn tightly enough—to ensure that it is used by the prosecution service in cases where, in my opinion, it should be used. It is not allowed to use the law on joint enterprise because it has been so restricted through common law, decisions by the Supreme Court and statute.

I urge the Government not to agree to any of the changes to joint enterprise sought by the hon. Member for Liverpool, Riverside, but to go away and see how we can use it to ensure that it better holds people to account and brings justice to the three families I mentioned. They have suffered from horrendous crimes and not had the closure of seeing somebody brought to justice, even though they know who was responsible. How must that it feel for people to know, even under the current law, that one of the two or three people responsible for the death of a family member still cannot be brought to account? I ask the Minister to resist the hon. Lady's request and instead to look at how we can tighten the law. I think that would serve our communities better, so I oppose the Bill.

12.4 pm

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): I thank the hon. Member for Shipley (Philip Davies) for his lengthy and constructive speech, from which I have learned a lot. He has reaffirmed my belief that this area of law desperately needs looking at, whichever way we approach it. At every level at which I have taken evidence with the all-party parliamentary group on miscarriages of justice. I am delighted to say that my old friend—and yours, Mr Deputy Speaker—Glyn Maddocks, who works with the APPG and has played such an important part in this campaign, is in the Public Gallery today.

I will try to be fair to every Member by making a short speech. I have been campaigning on this issue for a considerable amount of time. In the evidence we have taken in the all-party parliamentary group, we have listened to all sides of the argument, and we believe that something is wrong with the joint enterprise law. We have talked to everyone, including justices and the commission in Birmingham. They may have had differences in the way they nudge it, but they know that it has to be nudged somewhere to give justice in this country to everyone involved.

I have a tiny point of disagreement with my hon. Friend the Member for Liverpool, Riverside (Kim Johnson). Young black men are more influenced by this injustice in the justice system, but the evidence we heard showed that it is not a matter of colour, creed, race or religion; a diverse range of individuals have been affected unjustly by this law.

My message today is that this is a good Bill and it should go forward, because the hon. Member for Shipley and I can continue the dialogue and debate and get this right. I am sure that he would agree that, in the end, the job of Parliament is to identify things that do not seem to be quite right and constructively work together to make them better. There is no devious plan or ulterior motive. The motive is that we believe there is injustice in the system at the moment, and we agree with judges, barristers, solicitors and everyone—let us all get together and change the law.

12.7 pm

Rob Butler (Aylesbury) (Con): I congratulate the hon. Member for Liverpool, Riverside (Kim Johnson) on introducing this Bill and raising what I consider to be a legitimate and well-founded concern about joint enterprise. She explained that joint enterprise is a legal doctrine that applies where persons assist or encourage another to commit a crime—what many people would think of as aiding and abetting, and where the offender is known as an accessory. Common law developed by the courts over many years has resulted in that somewhat archaic language of "aid and abet" shifting to "assist or encourage", a simple example being where somebody acts as a lookout or a getaway driver for a burglar. In general, that is an important aspect of our law, and one with which I agree.

The concern expressed by the hon. Lady primarily relates to cases of murder, where one person unlawfully takes the life of another with premeditation. Murder is the most heinous of crimes—let us be absolutely clear about that—so it is right that those involved in such a despicable act are properly punished, and it is entirely appropriate that the law recognises that a person does not necessarily have to have wielded the lethal weapon or dealt the fatal blow in order to have an element of responsibility for an unlawful and premeditated killing.

It is not difficult to see that an absolute obligation to identify unequivocally the particular individual in a group who directly and personally caused the death of a victim could, would and has led to no person being convicted. The prospect of two or more people blaming each other in the knowledge that none would be found guilty and thus sentenced is no figment of the imagination, and would be an appalling failing of the justice system. The concept of shared responsibility for as serious an

offence as murder is therefore, I believe, an important one in our justice system, and the principle of joint enterprise is itself a sound one.

However, beyond that starting point is a great deal of nuance. The facts around crimes, even those as horrific as murder, are not always black and white. For that reason, I believe the hon. Member for Liverpool, Riverside is right to bring attention to this subject. I agree with much of what she said in her speech, and I do so partly as a result of my experience in the criminal justice system prior to coming to this place. During the course of many years variously as a magistrate, a member of the Youth Justice Board, a non-executive director of what was then Her Majesty's Prison and Probation Service and a member of the Sentencing Council, I encountered numerous people who had been either accused or convicted of offences under joint enterprise. Usually that was right, but sometimes it was not—and on occasion it was blatantly wrong.

As has already been mentioned, right hon. and hon. Members will be very familiar with the ability of television drama to highlight miscarriages of justice, for example through ITV's excellent recent series, "Mr Bates vs The Post Office". As we have heard, 10 years ago we saw another powerful drama, Jimmy McGovern's "Common", which was inspired by the real case of a young man sentenced under joint enterprise. It is a powerful piece of television, highlighting the difficulties surrounding the legal doctrine of common purpose.

I am grateful to the hon. Member for Liverpool, Riverside for reminding us of that drama when she showed an abridged version of it at a meeting she held earlier this week in Parliament with the campaign group JENGbA, which has been widely referred to already—many members of the group are in the Gallery today. Numerous of them have relatives serving lengthy prison sentences under joint enterprise, and I was grateful that she gave me the opportunity to speak briefly to those families at that event.

As we have heard, Dr Felicity Gerry KC, the lead barrister in a high-profile appeal case, has set out a number of scenarios in which someone could be convicted under joint enterprise despite having limited or no involvement in the crime. The hon. Lady went through a very full list, but I think it is worth mentioning just two or three of them to highlight why there is a legitimate concern here.

Although anonymized, these examples are all based on real-life cases. They include a boy cycling to and from an incident, who had no contact with the victim; autistic children who find it difficult to assess what others will do; children who are exploited to sell drugs and are caught up in the actions of others, and even a woman looking for her shoes during a violent disorder. All those scenarios describe circumstances in which people can be convicted of serious offences despite making no significant contribution themselves to that crime. It is the question of the degree of involvement that this Bill seeks to address.

It is important to acknowledge that concern over the application of the doctrine of joint enterprise has been recognised. As we have heard, in 2016 the Supreme Court ruled in the case of R *v.* Jogee that the law on joint enterprise had taken what was described as a "wrong turn" for more than 30 years. The result was that only those who intended to commit or assist a crime, rather than those who might have foreseen it, could be properly convicted. However, research by the Centre for Crime and Justice Studies suggests that the judgment has had little to no effect on joint enterprise charges or convictions, and furthermore that appeals that were anticipated as a result of that judgment have not been allowed.

Consequently, in and of itself, the 2016 Supreme Court judgment has not addressed a number of the fundamental concerns about joint enterprise. That is why I believe the proposal in the Bill warrants detailed consideration by the Government, even if they cannot, for good reason, accept the Bill itself today. The word "significant", which the hon. Lady seeks to introduce, carries a meaning that is widely understood in court and that a judge could adequately describe to a jury. It is not an extremely high threshold. The word proposed is not, for example, "substantial", and the concept of a "significant contribution" will depend on the individual circumstances of the offence.

I contend that it would be perfectly feasible for lawyers for both prosecution and defence to put arguments to a jury so that the jury, properly instructed by the judge, could determine whether or not there had indeed been a significant contribution to the offence by the defendant. I would point out that the word "significant" features throughout sentencing guidelines used by all courts in England and Wales. Indeed, it is used in the sentencing guideline for murder, where considerations that judges should take into account include, for example, whether there has been a significant degree of provocation or a history of significant violence or abuse towards the offender by the victim.

I know that the Government have some justifiable concerns about the term "significant" in this legislation that need to be thought through and fully addressed. I therefore hope that the hon. Member for Liverpool, Riverside may consider pausing the progress of her Bill to enable that full consideration and to allow for joint enterprise legislation that will definitely work in the way that she rightly intends.

I reiterate that I am not suggesting that the entire concept of joint enterprise is wrong. I agree with the Lord Chancellor, who said last October that abolishing it

"would mean that a lot of people who have helped or encouraged the commission of offences get away—in some cases, with murder."—[*Official Report*, 16 October 2023; Vol. 738, c. 72.]

But I fear that the balance is not right at present. I acknowledge that the Crown Prosecution Service publishes extensive guidance on its website, which outlines when the Crown would seek to push for a joint enterprise conviction, but it is clearly not working perfectly.

I also acknowledge some of the points made by my hon. Friend the Member for Shipley (Philip Davies). I agree absolutely that deterrence is important, and I join him in praising those who work in their communities to dissuade people, children in particular, from becoming embroiled in crime. He is also right to highlight other miscarriages of justice, where people who should have been prosecuted have not been. That is not tenable either, but two wrongs do not make a right and two injustices do not cancel each other out.

Joint enterprise is an important and valuable concept, but at the moment its application is undermining that value and carries the risk of diminishing confidence in our justice system. I repeat my congratulations to the

[Rob Butler]

hon. Member for Liverpool, Riverside on drawing attention to this topic. While I accept that the Government may have good reason for not supporting the Bill today, I hope that the Minister will commit to considering a review of how joint enterprise is applied.

12.16 pm

Dawn Butler (Brent Central) (Lab): It is a pleasure to follow the informative speech from hon. Member for Aylesbury (Rob Butler)—we share a surname, and I too was a magistrate. I congratulate my hon. Friend the Member for Liverpool, Riverside (Kim Johnson) and support her extremely important private Member's Bill, and my heart goes out to everybody who has lost somebody to murder.

It is important that the law works as it should in this country. The Supreme Court said that joint enterprise has been wrongly interpreted by criminal trial judges for the past 30 years—a long, long time. The Joint Enterprise Not Guilty by Association campaign group, which my hon. Friend has been working closely with, has been doing a lot of important work on this topic. As she said, the principle is right, but the law is open not only to interpretation, but to abuse. The judicial system is riddled with bias, and this law makes that worse in many cases. It is nearly four years to the day since I stood in this Chamber to raise the case of my constituent Reshawn Davis, whose only crime was being a1in the wrong place at the wrong time. Mr Davis served two months in prison due to the joint enterprise law, and that sentence has had a devastating effect on him and his family.

Some will say that the joint enterprise law is not all bad, and they would be right. It has led to some high-profile convictions, such as bringing some of the racist murderers of Stephen Lawrence to justice, for which we should all be grateful. But it has also seen many innocent people sent to prison for crimes they did not commit. No one who believes in how the law should work could approve of that. Imagine if everyone was found guilty by association. It may be unwise, but it is not illegal, to be friends with someone who is a liar or a cheat. If it were, Mr Speaker, plenty of MPs in this place would be arrested.

Some will be surprised to learn that joint enterprise has been applied to predominantly children and young adults, of whom 57% are from an ethnic minority background. It is not only wrong, but lazy and unjustified to use the law in this way, criminalising a whole group of children and limiting their life chances, just because they may have known somebody from school. Those of us who have spent our lives fighting for justice are acutely aware—

Jeremy Corbyn: My hon. Friend makes a very strong point. Does she agree that there is a sort of perverse incentive on the police to be quite lazy about investigations of often serious incidents, because they know that, at some point in the future, they can deploy the law of joint enterprise and therefore do not necessarily have to get hard evidence against every single one of the people who may have been in the vicinity of the crime, but not participants in it?

Dawn Butler: I thank my right hon. Friend for that intervention. Yes, it is lazy. It also means that we have a target-driven process rather than an informative-driven process, which needs to change. The system penalises and has a disproportionate effect on people of colour. Those with high melanin are judged more harshly because of the colour of their skin. If a person is Afro-Caribbean, they are eight times more likely to get stopped and searched, five more times likely to die in police custody, and 16 times more likely to be charged under joint enterprise than their white counterparts.

It is absolutely fundamental that our legal system is fair and can be trusted by everyone no matter the background or the colour of one's skin. It is the cornerstone of our democracy. As a civil society, we must aim to hold criminals to account and invest in good policing, good laws and good judges. It is time to reconsider the implications and the unintended consequences of joint enterprise and remove the harm that it has done to too many innocent people whose families are with us today. I pledge my support for the Bill. Although I know the Government may have reservations about some aspects of it, I hope they will commit to my hon. Friend's Bill and bring it back to the House, so that we can have a system that is fair and right for all.

12.22 pm

Jeremy Corbyn (Islington North) (Ind): I shall be very brief, because, clearly, there is a mood in the House to take the Bill forward.

I congratulate my hon. Friend the Member for Liverpool, Riverside (Kim Johnson) on producing this Bill, and take the opportunity to thank many people over many years who have been campaigning on this. Jimmy McGovern has been mentioned as have all of those involved in Joint Enterprise Not Guilty by Association. I first met them with my right hon. Friend the Member for Hayes and Harlington (John McDonnell) about 10 years ago. As members of the Justice Committee, we were able to persuade the Committee to undertake an investigation into the case. I have never forgotten the power of the evidence that they brought forward of the effect on families. I have met many of the families affected, including those in my constituency. I heard how young people were ensnared into the criminal justice system, because of an incident that took place. Sometimes they knew the people from school. Sometimes, they happened to be on the same bus, or in the same vicinity on the street. It did not mean that they either commissioned or took part in the criminal act that took place. As a result, they received a criminal sentence.

I spent a day—again as a member of the Justice Committee—listening to young people in Feltham describe why they were there and what had happened. It was eye-opening and instructive to learn of the life opportunities they had lost because of the use of the joint enterprise law.

Mr Sheerman: I do not know whether my right hon. Friend is aware of this, but I got involved in this matter when, as chair of the Westminster Commission on Autism, I discovered the number of young people on the spectrum who were getting involved in these cases. That is how I got involved. It is remarkable that there is such a link. Does he agree that we should be careful of that as well?

Jeremy Corbyn: My hon. Friend makes a very important point. Looking at the make-up of the imprisoned youth population as well as the adult estate, we find a wholly disproportionate number of people who are on the autism spectrum or other spectrums, because of the complications of their lives. As my hon. Friend the Member for Brent Central (Dawn Butler) correctly pointed out, a wholly disproportionate number of young black people are taken into custody and get prison sentences as a result of the law of joint enterprise.

I think everyone accepts that there is a problem here, and the Bill introduced by my hon. Friend the Member for Liverpool, Riverside offers a way to take this issue forward so that we can reform the law to ensure that each person who receives a sentence is convicted because there is evidence against them as an individual, not because of an association that they happen to have with somebody who has committed a crime. If someone lives in an inner-city area, they are likely to spend a lot of time with a lot of people, some of whom commit crimes and some of whom are criminals. It does not mean that everybody else is a criminal. We almost get into a mood of collective attack on young people because of their association with people who have done bad things, so this Bill is an important step forward.

I understand what the hon. Member for Aylesbury (Rob Butler) was saying, and he made a very interesting and important contribution. There has to be some clarification of the law. I understand that the Minister will express some reservations about this Bill. However, I hope the Government will encourage the Bill to progress today, so that they can go into discussion with my hon. Friend the Member for Liverpool, Riverside on the way we can take this issue forward. This is a parliamentary opportunity to right a wrong—that is what we are here for, and it is what Friday debates are all about. It is also about coming to listen to the hon. Member for Shipley (Philip Davies), and I am grateful to him for his 30-minute speech—sometimes they are longer.

It has been a very effective debate, and I hope the Minister will understand that those of us who support this Bill do so out of a genuine concern to ensure there is a proper and effective system of justice in which people can have confidence. In an intervention on my hon. Friend the Member for Brent Central, I made the point that it is too easy to get prosecutions by using the joint enterprise law. It should never be easy to get a prosecution; it should be effective to get a prosecution against somebody who has committed a crime.

Florence Eshalomi: A few weeks ago, I spoke in a debate on knife crime. Getting prosecutions before the courts is an issue that we have all raised in this House and that our constituents have gone through with us. It beggars belief that victims who are grieving and have lost close family members are trying to get their cases before the courts, yet we are seeing people being convicted just because of where they are, the music they have listened to, who their boyfriends were or who they knew. This is totally unacceptable.

Jeremy Corbyn: My hon. Friend makes a very powerful point. Like her, I represent a constituency where, sadly, we do experience knife crime and death by knife crime. I always visit the families that are victims of knife crime to try to share their pain at what is a horrific experience.

I ask the Minister to recognise the importance of the issue and the burden of the argument that has been put forward by those of us who strongly support this Bill. I hope he will be prepared to have discussions with my hon. Friend the Member for Liverpool, Riverside and the promoters of the Bill to see whether it is necessary to table any amendments in Committee. I do not want to hear warm words that, at some indeterminate point in the indefinite future, there will be a proposal coming forward to deal with what we all acknowledge to be a wrong. We have been down too many cul-de-sacs before, and this is an opportunity. Let us take the opportunity to right a wrong in our criminal justice system.

Mr Deputy Speaker (Mr Nigel Evans): I call the shadow Minister.

12.28 pm

Janet Daby (Lewisham East) (Lab): I congratulate my hon. Friend the Member for Liverpool, Riverside (Kim Johnson) on her success in the private Members' Bills ballot, and I am pleased to be responding to the Second Reading debate on her Bill today. It is important that this issue has been brought to the House's attention. Children and justice is an area of concern for many when joint enterprise is considered and it has been campaigned on for several years. The Bill highlights that, but I am aware that an amendment similar to this Bill has been tabled to the Criminal Justice Bill. Before I go further into the discussion of this Bill, it is right to say that although it is critical of joint enterprise, and there are very convincing arguments for amendment to it, joint enterprise is also a necessary tool in the criminal justice system, as I will explain further.

I thank all Members who have participated in and contributed to this debate: my hon. Friends the Members for Vauxhall (Florence Eshalomi), for Brent Central (Dawn Butler), for Huddersfield (Mr Sheerman) and for Poplar and Limehouse (Apsana Begum); my right hon. Friend the Member for Hayes and Harlington (John McDonnell); my hon. Friends the Members for Birkenhead (Mick Whitley) and for Easington (Grahame Morris); the hon. Member for Aylesbury (Rob Butler); the right hon. Member for Islington North (Jeremy Corbyn); and the hon. Member for North East Bedfordshire (Richard Fuller). I have also noted the many comments made by the hon. Member for Shipley (Philip Davies).

Having listened to the debate, the clear overall message is that joint enterprise needs to be reviewed. As we have heard, it allows an individual to be jointly convicted of the crime of another if the court finds that they were involved in the commission of the crime. There is a strong case to tighten the definition currently used to ensure that justice is fair and proportionate. As in the case of R *v.* Jogee in 2016, the Supreme Court has ruled that joint enterprise had been wrongly used for 30 years—that is extremely concerning. The ruling stated that it was not enough for the prosecution to prove that the defendant foresaw the possibility of violence occurring. Instead, the prosecution should now prove that the defendant intended to encourage or assist the person who committed the crime. Yet, a list of controversial joint enterprise cases continue to this day. The Manchester 10 case, which many in this Chamber will know, was tried under conspiracy legislation, but activists say this mirrors crimes prosecuted in the UK as joint

[Janet Daby]

enterprise. The trial's use of drill music to convict the 10 defendants has also been criticised; this is a common feature of joint enterprise prosecutions for defendants from minority backgrounds. I am aware of the campaign by Art Not Evidence that aims to stop the criminalisation of those who engage in rap and drill music.

Dawn Butler: Does my hon. Friend agree that it is important that we do not judge people by the music they listen to? Judging one music to be violent, as against another genre, is a very subjective measure.

Janet Daby: I absolutely agree with my hon. Friend on that; she makes a very meaningful point. There are lots of words in lots of different types of music, and we should not be judged by that.

I have also met Janet Cunliffe, a co-founder of Joint Enterprise Not Guilty by Association—JENGbA—whose son was imprisoned under joint enterprise. She is a tireless campaigner, who has shared in the experience of her son's sentence. In 2020, JENGbA released a research report written by academics at Manchester Metropolitan University arguing that women are negatively impacted by joint enterprise. It stated:

"Women were often marginal to the violent event, with almost half not present at the scene and almost all never having engaged in any physical violence".

And yet, as the report found, women were being seriously penalised.

JENGbA has highlighted the case of a teenager, Carrie. She was 15 years old when, in the early hours, she was walking with two other older people. They had all been drinking and a fight broke out with another group of local adults. One person from the other group was killed by an injury caused by a broken bottle. In the summing up of the case, the judge acknowledged that Carrie was so drunk she did not have the ability to join in with a fight. The judge warned that

"mere presence is not enough there must be some form of participation".

During the trial, judgments were made about Carrie's character and not her actions. That became central to her prosecution. The offence was committed by a 35-year-old man. The jury found the man guilty of murder. Carrie, 15 years old at the time of the event, was found guilty of manslaughter. The report found that there are many other women like Carrie in prison.

I have been critical of joint enterprise, but there is a place for it in our courts and the wider criminal justice system. Joint enterprise has helped to secure convictions that otherwise would not have been successful. The conviction of some of the men who killed Stephen Lawrence was secured using joint enterprise legislation. By using joint enterprise legislation, it was found that it did not matter whether Gary Dobson and David Norris carried out the killing; rather, it was important that they were part of an attack that could end in serious harm. Indeed, it did. It has also been successfully used to prosecute paedophile rings and those who commit economic crime. That should not be forgotten.

I am glad that the Bill does not seek to abolish joint enterprise in its entirety. Labour has previously said that it would look to reform joint enterprise, and that remains our ambition. Furthermore, the Lammy review in 2017 advocated for the reform of joint enterprise laws. In particular, recommendation 6 said:

"The CPS should take the opportunity, while it reworks its guidance on Joint Enterprise, to consider its approach to gang prosecutions in general."

With regard to that recommendation, the CPS commenced a pilot to monitor joint enterprise homicide and attempted homicide cases in February 2023. The results were concerning. Black people make up only 4% of the UK population, but according to the CPS, under joint enterprise cases, black defendants make up 30% of case loads. It was also revealed that joint enterprise prosecutions disproportionately affect children, young people and men.

There has been progress on gathering more data, with the commencement of a full national scheme in all CPS areas. The CPS has said that a report of homicide and attempted homicide cases brought on a joint enterprise basis will be produced annually, and it will contain a breakdown by the protected characteristics of ethnicity, sex, age and disability. I believe that the CPS today convened a scrutiny panel with a focus on joint enterprise cases in which evidence of gang association is a feature.

Let me be clear: the Bill is perfectly reasonable and commendable. However, for the best chance of proper reform, it is important to wait until the CPS has built up more data before legislation is used to tackle the problem. We can solve the issue only when we have the full picture; that way, the law can work as intended.

Many from across the political spectrum believe that change needs to happen. There are some cases of people being convicted of serious crimes despite making no significant contribution to them; we have heard such examples given from across the Chamber. It is not in the public interest to prosecute those who have not made a significant contribution to a crime. I am interested to know whether the Minister agrees.

In reply to an amendment on joint enterprise in the Criminal Justice Bill Committee, the Government said:

"there have been examples of case law since the Jogee case that show that approach being fairly applied."—[*Official Report, Criminal Justice Public Bill Committee,* 30 January 2024; c. 484.]

What is the Minister's view on the reported disproportionate impact of joint enterprise on diverse communities?

The Government must end the criminalisation of children and young people associated with rap and drill music, and put in place protective factors to ensure that they are not disproportionately criminalised under joint enterprise.

Philip Davies: I am not sure what point the hon. Lady and Labour Members are making when they talk about the disproportionate amount of people from various ethnic minorities who have been prosecuted under joint enterprise. Is she saying that the Crown Prosecution Service is institutionally racist? Is she saying that juries are institutionally racist? Is that the allegation she is making from the Labour Front Bench?

Janet Daby: That is an interesting intervention. I find it concerning and alarming that hon. Members in this place do not appear to be aware of how racism and discrimination acts. So much evidence and information, and so many reports, inquiries and reviews on the subject have come out of this place and many other institutions and public organisations across our country

for many years. I find it alarming and disturbing that he questioned that in the way he did. I look forward to the Minister's response.

12.39 pm

The Parliamentary Under-Secretary of State for Justice (Gareth Bacon): I thank the hon. Member for Liverpool, Riverside (Kim Johnson) for introducing the Bill. I know the issue is of significant interest to her and indeed to other Members of the House. However, I must say at the outset that the Government are unable to support the Bill in its current form.

I will explain our reasons for that later in my speech, but let me begin by saying that the Government understand and recognise the importance of the law of joint enterprise and the consequences that result from convictions for such crimes. We recognise that they can be extremely difficult for defendants and their families to accept, but equally the impact of any crime is devastating for the victim and their family, particularly when the crime is murder. For any Government, there is a need to ensure that any perpetrator who commits a crime, or aids, abets, encourages or assists in one, is brought to justice. Victims and their families especially have an expectation that all those involved in that crime, particularly a crime as serious as murder, will be prosecuted.

We have heard powerful and sincere speeches from both sides of the House, and I pay tribute not only to the hon. Member for Liverpool, Riverside, but to my hon. Friend the Member for Shipley (Philip Davies), the hon. Member for Huddersfield (Mr Sheerman), my hon. Friend the Member for Aylesbury (Rob Butler), the hon. Member for Brent Central (Dawn Butler), the right hon. Member for Islington North (Jeremy Corbyn), and the hon. Member for Lewisham East (Janet Daby). For the benefit of the House, I will give further explanation of the law on joint enterprise and how it works in practice, and then I will outline why the Government are not supportive of the Bill today.

We have all read the headlines about joint enterprise cases—the individuals who are charged and convicted of crimes, despite stating that they did not commit them or were not there when the crime occurred. However, more often than not, those headlines reduce to a few sentences extremely complex cases involving a significant body of evidence that needs to be considered in detail in order to truly understand what happened. That is rightly the job of the independent courts.

As many right hon. and hon. Members have mentioned, joint enterprise is a complex area of law. It is a common-law doctrine that can be applied to most offences, and generally applies where a person assists or encourages another to commit a crime. The principles that apply to joint enterprise cases remain the same whatever the offence, and apply equally to planned and spontaneous acts of joint enterprise.

Where two or more individuals are involved in committing a crime, the parties to the offence may be classed as principals or secondary parties. Each offence will have at least one principal, although it is not always possible or necessary to identify who the principals are. A principal is the perpetrator of the substantive offence, and a secondary party is one who aids, abets, counsels, procures—more commonly known as assists—or encourages a person to commit the substantive offence without being the principal offender.

It is a fundamental principle of the criminal law that an accessory to a criminal offence can be tried, convicted and punished of an offence in the same way as the principal, even if it was not their hands that personally struck the blow, ransacked the house, smuggled the drugs or forged the cheque. Where they encouraged or assisted those physical acts and had the necessary intention, the law says that it is right that they too are found guilty. Similarly, an accessory to a crime shares culpability precisely because they encouraged or assisted the offence.

No one doubts that if the principal and the accessory are engaged together in, for example, the armed robbery of a bank, which was mentioned, the accessory who keeps guard outside is as guilty of the robbery as the principal who enters with a shotgun and extracts the money from the staff by threat of violence. Nor does anyone doubt that the same principle can apply when, as sometimes happens, the accessory is nowhere near the scene of the crime when it eventually transpires. The accessory who funded the bank robbery or provided the gun is as guilty as those 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 they participated in the crime as either one or the other. That said, the threshold for anyone to be prosecuted and found guilty under the joint enterprise principle is very high. They must intend to assist or encourage the commission of the crime, and therefore must know of the existing fact necessary to make it criminal. If the crime requires the principal to have a particular intent, the secondary must intend to assist or encourage the principal to act with that intent.

Mr Sheerman: Will the Minister give way on that point?

Gareth Bacon: With the greatest respect to the hon. Gentleman, I am not going to take interventions. There are other Bills that need to be debated, and it is important that the Government's case is put. We have had a lengthy debate. Section 8 of the Accessories and Abettors Act 1861 provides that a secondary party can be prosecuted and punished for the indictable offence as if they were the principal offender. That is the provision that the Bill seeks to amend.

Until the judgment given in the case of R *v.* Jogee, the courts had identified three ways in which liability for an offence committed with others might arise. The first is where two or more people join in committing a single crime in circumstances where they are, in effect, all joint principals—for example, where a group goes on a shoplifting spree, taking goods out of shops without payment. In such a scenario, those involved are joint principals. The second is where a person encourages another to commit a single crime; an example would be one person providing another with a weapon, so that they can use it in a robbery. The person providing the gun would be liable as an accomplice. The third is where two or more individuals participate together in a crime and, in the course of committing that crime, such as a robbery, one member of the group commits a second crime—for example, he shoots the security guard. The other members of the group may be prosecuted as accessories if they foresaw that the person with the gun was likely to use it. This type of joint enterprise is known as parasitic accessory liability.

[Gareth Bacon]

Parasitic accessory liability was crystallised in the case of R *v.* Powell, which involved two defendants who went to a drug dealer's home to buy cannabis, during which one of the defendants shot the drug dealer. Both were convicted of murder; it was held that the other defendant had foreseen that the other party might use the gun, and he was therefore convicted as an accessory. That case adopted the reasoning set out in the case of R *v.* Chan Wing-Siu, which involved three defendants who broke into a victim's flat, with one defendant stabbing the victim to death and wounding his wife. All three defendants were convicted of murder, which resulted in the principle that if two or more people set out to commit an offence and, in the course of it, one of them commits another offence, the second person is guilty as an accessory to the latter crime even if he did not necessarily intend the commission of that offence; it is enough that he foresaw it as a possibility. The precedent was therefore established that a secondary party to a joint enterprise would be deemed to have intended to encourage or assist every one of the principal's offences.

However, as we have heard, the case law moved away from that principle as a result of the Supreme Court's decision in R *v.* Jogee. Ameen Jogee was initially convicted on the principle of parasitic accessory liability for the murder of former Leicestershire police officer Paul Fyfe in 2011. The Crown court heard at the time that Mr Jogee had "egged on" his friend Mohammed Hirsi, who stabbed Mr Fyfe in the heart. Mr Jogee argued that he was not inside the house when the incident took place and could not have foreseen what his friend intended to do. He was convicted of murder, with a minimum custodial sentence of 20 years.

Mr Jogee appealed against his conviction for murder to the Court of Appeal. Following this, in October 2015, he asked the Supreme Court to review the doctrine of joint enterprise and to hold that the court took a wrong turn in Chan Wing-Siu and the cases that followed it. Mr Jogee argued that the Chan Wing-Siu decision was based on a flawed reading of earlier authorities and questionable policy arguments. The respondents disputed those propositions and argued that even if the Supreme Court were persuaded that the courts took a wrong turn, it would be for the legislature to decide whether to change the law, since the law as laid down in Chan Wing-Siu had been in place for 30 years. The Supreme Court handed down its decision in Mr Jogee's case in February 2016.

Mr Sheerman: Will the Minister give way on that point?

Gareth Bacon: I have already said to the hon. Gentleman that I am not going to give way.

Mr Sheerman: On a point of order, Mr Deputy Speaker. What is going on? There is a feeling at the moment that junior Ministers will not take interventions, which is against the whole spirit of a Friday open debate. What is the matter? All I want to know is whether the Minister is content with the joint enterprise situation at the moment. Will he please tell the House that?

Mr Deputy Speaker (Mr Nigel Evans): Order. It is the decision of the person who is on their feet as to whether or not they take an intervention. The Minister has decided not to.

Gareth Bacon: With the greatest respect to the hon. Gentleman, I gave my reasons earlier. It is not because I am trying to curtail this debate; it is because other debates are due to take place after this one. In answer to his substantive question, I am outlining the Government's position on joint enterprise.

In considering Mr Jogee's case, the Supreme Court considered the issue of parasitic accessory liability and concluded that a person should not be guilty merely for foreseeing that an accomplice might commit a second offence during the course of the original planned crime. It considered that the law should revert to the well-established rule that exists in relation to other types of joint enterprise offending—that is, that a person can be guilty of offences committed by other members of the group only if he or she intentionally encouraged or assisted those offences to be committed. Where somebody participated in an offence that involved a clear risk of harm, and death resulted, although with no intention that it should happen, he or she could still be convicted of manslaughter.

This led the Supreme Court to conclude that the law had taken a wrong turn 30 years earlier, by equating foresight with the intent to assist. The correct approach was to treat foresight as evidence of intent to assist in the crime. Following the decision, Mr Jogee was cleared of murder by the Court, but retried and found guilty of manslaughter. His previous sentence of life imprisonment with a minimum of 20 years was replaced by a fixed term of 12 years.

As a result of the decision reached in Jogee, parasitic accessory liability no longer applies as a basis for criminal liability. However, this narrow change to the law on joint enterprise has been widely misunderstood as meaning that all convictions under joint enterprise would now be found not guilty on appeal. In circumstances in which parasitic accessory liability previously applied, the principles applicable to all cases of secondary liability now apply.

The decision in Jogee effectively resolved what the Government view as the most troubling aspect of the joint enterprise law. The Government are aware that the ruling in Jogee was initially welcomed by the academic world and families of convicted offenders, but the change in the law also appears to have been widely misinterpreted as applying to joint enterprise overall, when the change is much more limited—that is, the change relates only to cases involving parasitic accessory liability. This has obviously led to defendants' families feeling further disappointment that the decision in Jogee has had little or no impact on those serving time in prison for such crimes.

Let me turn now to appeals, which serve as an important corrective function for individuals, whether to correct a miscarriage of justice, such as the conviction of someone who is factually innocent, or to correct a legal error, such as a harsher sentence than is legally permissible having been imposed. They also serve important public functions in ensuring that the criminal law is interpreted and applied consistently and predictably.

I know that the substantive injustice test has previously been raised in the House in connection with joint enterprise—specifically, in respect of whether legislative change affects the validity of a conviction under the previous law. The Law Commission is considering that issue as part of its full and extensive review of the law in relation to criminal appeals and procedure.

On 27 July 2023, the Law Commission published an issues paper seeking evidence on whether reform to the law on appeals in criminal cases, including the tests applied by the Court of Appeal and the Criminal Cases Review Commission, is necessary. This will help to inform the wider consultation paper on appeals law that is planned for publication later this year. The Law Commission intends to produce a final report with recommendations in 2025, and the Government will consider them.

It is worth making the point that before anyone is charged with a crime, whether as part of a joint enterprise or not, the Crown Prosecution Service will consider prosecuting only if the case satisfies the full code test set out in the code for Crown prosecutors. That test has two stages: the first is the requirement for evidential sufficiency, and the second involves the consideration of the public interest.

At the evidential stage, a prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. That means that an objective, impartial and reasonable jury—or bench of magistrates, or judge sitting alone—properly directed and acting in accordance with the law, is more likely than not to convict. It is an objective test based on the prosecutor's assessment of the evidence, including any information that he or she has about the defence. A case that does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. If the evidential stage is satisfied, the prosecutors must then go on to consider the second stage and whether a full prosecution is in the public interest.

Having set out the background, let me move on to the Bill before us, the purpose of which is to amend section 8 of the Accessories and Abettors Act 1861. The amendment to section 8 appears to propose that for a person to be

"tried, indicted, and punished as a principal Offender",

they must

"aid, abet, counsel, or procure"

the commission of the offence by

"making a significant contribution to"

the commission of an indictable offence.

The Government note that the declared purpose of the Bill is to better reflect a defendant's actual contribution to a crime where this is committed as part of a joint enterprise. We also note that the proposed change to section 8 retains both its application to indictable only offences and its territorial extent, which is to say that the Bill proposes that any amendment to section 8 will continue to apply in England, Wales and Northern Ireland.

The Government are unable to support the Bill because it is technically flawed, and the overall impacts of such a change will need very careful consideration. As I said, joint enterprise is an extremely complex area of law—

John McDonnell: On a point of order, Mr Deputy Speaker. I do not wish to drag you into the debate; I am simply requesting a procedural clarification.

The Minister has just said that the Government are unable to support the Bill in its current form. In other words, they are not supporting it today. It is procedurally correct, is it not, that the Government could allow Second Reading and then delay any Committee proceedings until after the consultation on the Law Commission's proposals and its examination of the issue overall, and amendments could then be tabled? If the Government fail to do that, it is difficult to see—unless they are committing themselves to introducing legislation—whether there is a serious or imminent proposal to reform the law in this instance.

I just wish to clarify that, because a great many people watching the debate will be confused by the process that we are going through. The opportunity is still there for the Government to allow the Bill's Second Reading, thus bringing forward a reform that they may well wish to support at a later stage.

Mr Deputy Speaker (Mr Nigel Evans): The case that the right hon. Gentleman has just stated is correct procedurally, but after the Minister has finished his speech I will call Kim Johnson, with the leave of the House, to see what the Member in charge of the Bill wishes to do.

Gareth Bacon: Thank you, Mr Deputy Speaker.

Section 8 of the 1861 Act is intrinsically linked with other inchoate offences such as those specified in sections 44 to 46 of the Serious Crime Act 2007: intentionally encouraging or assisting an offence, encouraging or assisting an offence believing it will be committed, and encouraging or assisting offences believing one or more will be committed. It is also linked to section 44(1) of the Magistrates' Court Act 1980, which makes similar provision to that contained in section 8 of the 1861 Act, but in relation to summary only and triable either way offences.

Of key concern, however, is the fact that the proposed change to section 8 would place a requirement on the prosecution to identify the precise nature of a defendant's role in aiding, abetting, procuring or counselling the commission of the crime committed in order to prove that the defendant had made a "significant contribution"—a threshold that does not currently need to be met. This change could lead to difficulties in securing a conviction and therefore bringing offenders to justice, even when there is significant evidence that the defendants did participate in the crime, simply owing to evidential difficulties in trying to establish the precise role that each party played—that is to say, whether they were a principal offender or an accessory—and how much weight should be given to those roles in terms of their "significant contribution", which is not defined.

It is also unclear whether this change was actually intended, as the Government believe that the stated intention of the Bill is to clarify, and not to amend, the law on secondary liability. An additional concern is that no definition has been provided on what is to be determined by "significant contribution". Without such a definition, that would mean that a perpetrator's contribution to an offence could be determined differently, with the bar being either lower or higher depending on the assessment undertaken by the specific jury in question. In effect, there may be no real parity in such assessments, which in turn could lead to appeals on the basis of how a significant contribution to a crime has been assessed when compared with other such cases. That could result in an incoherent framework and would jeopardise the certainty of the law.

[Gareth Bacon]

I am conscious of the time, Mr Deputy Speaker. I thank the hon. Member for Liverpool, Riverside again for her Bill, but the Government must oppose it for the reasons that I have outlined.

12.58 pm

Kim Johnson: With the leave of the House, I thank everybody who has contributed to my debate today, and particularly to the parents in the Gallery from Joint Enterprise Not Guilty by Association. I thank the Minister for putting forward the Government's case. He did say that he was not supporting the Bill today, so I am taking that positively. I ask him whether he would consider reviewing that. Given that we are pushed for time and there are other Bills to be debated today, I am willing for the debate to be adjourned to another day.

Ordered, That the debate be now adjourned.—*(Rebecca Harris.)*

Debate to be resumed on Friday 21 June.

Dogs (Protection of Livestock) (Amendment) Bill

Second Reading

1 pm

Dr Thérèse Coffey (Suffolk Coastal) (Con): I beg to move, That the Bill be now read a Second time.

I apologise to the House, but my vocal cords will support only a short speech and I will need to decline interventions. Livestock worrying is an issue of significant concern for farmers and rural communities. It causes much distress and cost to animals and farmers. It is already an offence through the Dogs (Protection of Livestock) Act 1953, but the police have sought greater powers to more effectively detect and enable the prosecution of such offences.

The Bill provides for the inclusion of attacks as well as worrying as offences. It extends the area covered beyond the land to a road or path, in order to address attacks where livestock are moved to different parts of the farm. It provides the powers of entry and search through warrant and allows dogs to be detained to avoid further attacks while an owner is awaiting trial for such an offence. It allows for more modern ways to gather evidence from a dog, including taking dental impressions and other relevant samples, and updates the fines that can be imposed. The Bill will include camelids—alpacas and llamas—in the definition of livestock for the purposes of the 1953 Act.

In keeping this speech short, I am conscious that I have not been able to answer several of the questions that people inside and outside the House may have on why this or that specific issue is not covered in the Bill—or at least not yet. I know that the Minister has a good briefing pack and may cover some of those points. However, I want to thank various groups, including the National Farmers Union, for their support of the Bill.

When the Animal Welfare (Kept Animals) Bill was set aside and the Government explained at the time why that was, I pledged to the House that the Government would support our manifesto commitments in that Bill to be enacted through single-issue Bills. That is now happening, including through this Bill. We want to see an effective deterrent to this kind of harm to livestock, and I believe the Bill will achieve that. I certainly hope to speak to it more in Committee. I therefore commend the Bill to the House.

1.2 pm

Philip Dunne (Ludlow) (Con): I congratulate my right hon. Friend the Member for Suffolk Coastal (Dr Coffey) on her perseverance in not only presenting this Bill, which I know she was interested in when she was Secretary of State, but managing to get here and deliver her speech today despite her affliction. I will speak very briefly. I should declare my entry in the register as a farmer, including of livestock, and my interest as a dog owner. One of my dogs has had occasion to chase deer—they are not categorised as livestock, I do not think, in the Bill—in woods, which can be a cause of considerable distress when she does not return despite our entreaties.

I rise on behalf of farmers across the country, but in particular in my constituency in Shropshire, where a quarter of all sheep across the UK are produced from within an hour of Craven Arms, in the centre of my

constituency. There are a great many livestock farmers, and sheep producers in particular, along the Welsh borders, as the House will appreciate. This measure is in considerable part directed at helping those farmers with these unfortunate incidents. A survey of NFU Mutual members—that is the insurance arm of the National Farmers Union, of which I am a member; it is my insurer—estimates that the cost of dog attacks on farm animals was £1.8 million in 2022.

This is a real and present issue for livestock farmers, in particular in spring—the time of year we are about to enter—when sheep are lambing or on the point of lambing. If pregnant ewes are chased, it can lead to the abortion and loss of the lamb they have carried for months. It can impact not only on farm incomes, but on the health and wellbeing of the livestock managers themselves if they have to deal with dangerous dogs causing trouble to their livestock.

If the Bill proceeds to Committee, I hope that some consideration will be given to the requirement to keep dogs on a lead not just in open fields but on open common land. There are many commons along the Welsh borders in my constituency, most of which are grazed by sheep. It is important that, if sheep are present, people keep their dogs on a lead on a common, which is not the normal practice in many of the commons that I visit locally. That might need to be looked at in Committee. I am conscious that this will be a short debate, so I will conclude by assuring the Minister that the Bill has my support.

1.5 pm

Richard Fuller (North East Bedfordshire) (Con): It is a great pleasure to speak to the Bill introduced by my right hon. Friend the Member for Suffolk Coastal (Dr Coffey), which I fully support. As you will know, Mr Deputy Speaker, she is well known in this House as being the main organiser of karaoke sessions. If her voice were in full throttle, I am sure she would have made her case with all the gusto with which she belts out songs at those karaoke evenings. Alas, we will have to wait for another day for that.

This is an important Bill. In my time in Parliament, I have been involved in amendments to the Dangerous Dogs Act 1991 and, more recently, in my private Member's Bill on hare coursing. This Bill gets the fact that it is not about the dogs but about owners. It is about the possession of the dogs. It is about trying to improve the behaviour of dog owners.

Mr Deputy Speaker, I hope that you will allow me a point of levity—it is kind of serious. My hon. Friend the Member for Ynys Môn (Virginia Crosbie) is about to speak. I fear that her contribution will include a story about her dog Violet, a lovely cocker spaniel. I therefore feel that I need to own up to something. It was one of those days when Back Benchers were asked to go canvassing in a by-election. Obviously, the Conservatives were looking forward to a resounding victory in that by-election. I was joined in a small group of Conservative Back-Benchers by my hon. Friend the Member for Ynys Môn and some others. We were knocking door to door, and someone had to hold the cards and mark down people's voting intentions. My hon. Friend decided that she would do that, and she entrusted to me the safe custody of her lovely dog Violet.

My hon. Friend asked me to go to house No. 1 and meet the family. I went to that door in that particular street, and immediately heard barking from inside. I took Violet and moved her behind me. The lady answered the door and said, "Don't worry, he's on a lead." A few seconds later, her husband left with a dog—it was the dog that was on the lead. He left to one side, and my eyes carefully followed the dog, with Violet protected behind me. It was only when the gentleman got into his car that another dog came out and attacked poor Violet. One can imagine my hon. Friend's feelings, barely three minutes after she had entrusted me with the dog, when I ran down the street with Violet in my hands, blood rushing from her neck.

My point is not only to put on record my apologies to my hon. Friend the Member for Ynys Môn. I am sure my hon. Friend the Member for Wyre Forest (Mark Garnier) will be laughing, because he was there, too. My point is that control of animals is a risky business, whatever the circumstances. Control of dogs with the best of behaviour is a risky business. The Bill seeks to ensure that that behaviour is kept to the highest standard and, importantly, to bring up to standard some of the powers that the police need to enforce the law.

One of the issues related to the Hare Coursing Bill was that the police did not feel that they had the appropriate measures, in particular the ability to seize and detain dogs. In those instances, the dogs doing hare coursing were being gambled upon, and therefore were valuable to the owner. But in all cases the ability of the police to take away the dog and to charge the kennel has a deterrent effect. I am pleased to see those provisions in this Bill.

I am also pleased, perhaps unusually, to see clause 4, which gives a justice of the peace the power to authorise the police to enter and search a premises. A survey by the National Sheep Association asked how many times animals have been worried or attacked, and I think 70% of respondents reported such an experience, but in only 14% of cases—barely one in 10—did the owner of the dog alert the owner of the livestock to the crime. Either people do not feel that a crime has occurred or they do not think it is important enough, so a lot of the evidence and information will be taken away. Therefore, in these circumstances, it is crucial that the provisions in clause 4 are put into law.

I welcome this Bill, and I again congratulate my right hon. Friend the Member for Suffolk Coastal on moving it forward. This is a live issue, and I heard a case at a constituency surgery just last Friday. It did not involve livestock, but it certainly did involve out-of-control dogs worrying local people. My constituents are worried about attacks. In fact, one constituent's dog had just been ripped to pieces by dogs that were loose. For the sake of my constituents in Moggerhanger, for those who have pressed the issue of dangerous dogs in towns and villages, for those who have suffered from hare coursing on their properties, and now for farmers who want to look after their livestock, I fully commend the Bill to the House.

Mr Deputy Speaker (Mr Nigel Evans): I think we are all awaiting an update on Violet. I call Virginia Crosbie.

1.11 pm

Virginia Crosbie (Ynys Môn) (Con): I start by congratulating—llongyfarchiadau—my right hon. Friend the Member for Suffolk Coastal (Dr Coffey) on bringing forward this important Bill.

One of the first things I did as a new MP in 2020 was meet with local farmers Brian Bown, Celfyn Furlong and Peter Williams in the Tafarn Y Rhos in Rhostrehwfa, and they were concerned about livestock worrying. To ensure that my farmers' voices were heard in Westminster, I undertook a journey to act on their behalf. I visited farmers like Tecwyn Jones at his farm in Bodedern and Gareth Hughes at Cleifiog farm in Valley. Tecwyn lost seven pregnant ewes and three rams in an attack by an unknown dog or dogs, described by police as "brutal" and "horrendous".

I held meetings with Rob Taylor and Dave Allen from the North Wales Rural Crime Team, NFU County Adviser Iestyn Pritchard, the National Trust and DEFRA officers, whom I thank, to understand how the existing legislation is failing and what would be required to protect farmers and promote responsible dog ownership in future. For my Ynys Môn farmers, I am delighted that my name is on this important Bill as a sponsor, but credit should go to them for raising this important issue. My farmers made it clear to me that the legislation currently covering livestock worrying, the Dogs (Protection of Livestock) Act 1953, is outdated and no longer fit for purpose. This is hardly surprising given that it has barely been touched in over 70 years and has not kept pace with dog ownership, leisure trends, DNA technology or modern farming practice.

Working together, we developed a ten-minute rule Bill to amend the 1953 Act, which I laid before Parliament in July 2021. That Bill would have given the police powers to seize a dog or other items and to take DNA samples where they have reasonable grounds for suspicion that the dog has worried livestock; provided a clearer and tighter definition of the phrase "close control", making it a legal requirement that dogs must be on a lead when near livestock of any kind; and removed the maximum £1,000 fine so that irresponsible dog owners realise the full financial impact of their actions.

The proposals in my Bill were subsequently put forward for incorporation into the proposed Animal Welfare (Kept Animals) Bill. However, in May 2023 the UK Government announced that, in order to get important legislation through Parliament, the kept animals Bill would instead be taken forward as a series of single-issue Bills. Like many, I was disappointed that the passage of the kept animals Bill was stopped. However, I am reassured that the Government have been true to their word and are putting the proposals through as individual pieces of legislation, as we can see in this important debate. I am delighted that DEFRA is now prioritising livestock worrying and has asked my right hon. Friend, the former Secretary of State, to take the changes forward in her private Member's Bill.

Agriculture has been the backbone of Ynys Môn for centuries. At the beginning of the 13th century, the island was known as "Môn Mam Cymru" and "the granary of Wales". In the 17th century, livestock rearing and dairy farming began to replace arable land. The systems of hedgerow enclosures still form our landscape today. Many of our farms are still small—most are between five and 100 acres—compared with those in other parts of Britain. Consequently, herds are relatively small, and livestock can feel like members of the family. That is why brutal dog attacks hit Ynys Môn farmers particularly hard.

Let me tell the House a little more about farmer Tecwyn Jones from Bodedern. Tecwyn went out one day to tend his sheep and found seven pregnant ewes and three rams dead in his fields. They had been killed by an unknown dog or dogs in what police described as a "brutal" and "horrendous" attack. When I visited Tecwyn's farm, he told me about the impact that the attack had had on his business and his wellbeing. His account of the event was harrowing. He shared the awful moment when he found his sheep brutally killed: he came across one dead carcase after another in the pouring rain. Those sheep, which he had lovingly reared and cared for, had clearly suffered horrendously. Tecwyn was visibly upset and shaken when he related the story to me. The dogs that carried out the attack have never been identified. Even if a dog were suspected, the law has no teeth to identify and seize it unless it is found unsupervised at the scene of the assault. For Tecwyn, it was not just the financial loss that hit him—although that went into the thousands of pounds—but the emotional loss of those prized animals, which he had put time and devotion into rearing.

Tecwyn is not alone. This is a huge issue for farmers across the UK. Livestock worrying takes place when dogs that are not kept under proper control attack or chase livestock, particularly sheep. Although attacks are not officially recorded, and it is widely accepted that many incidents go unreported, it is estimated that around 15,000 sheep are killed by dogs each year. Over the pandemic, many of us were encouraged to get out into nature, and there was also an increase in dog ownership. That led to an increase in livestock worrying, which continues to be a problem today. National Farmers Union data indicates that the average insurance claim for attacks is over £1,300, and some claims reach the tens of thousands of pounds. In 2020, the cost of livestock worrying to the farming community was estimated to be £1.3 million.

The Government's animal welfare action plan refers to the need to keep dangerous dogs legislation effective. I am very pleased that the Bill picks up many of the changes that I proposed three years ago, which included giving the police powers to seize a dog or other items and to take samples such as dental impressions where they have reasonable grounds for suspicion that the dog has worried livestock; and putting the financial responsibility on the dog owner rather than on the farmer. Dog attacks can cost farmers tens of thousands of pounds, so it is only right that the dog owner is made to pay for the damage caused.

Surveys show that only 40% of dog owners accept that their dog could injure or kill a farm animal, and that 64% of dog owners allow their pets to roam free in the countryside, despite half of them admitting that their dog does not always come back when called. Experience shows us that the natural instincts of even the most well-behaved domestic dog can take over when other animals are in close proximity. Even without physical contact, sheep can die or miscarry as a result of the distress and exhaustion caused by a dog chase.

By their very nature, pet owners and farmers almost universally care deeply about animals, and much of solution to this problem is about raising awareness of the countryside code through legislation. It is vital that dog owners who live near or visit land on which livestock is being raised understand that.

As a dog owner myself—my cocker spaniel, Violet, sends her regards to my hon. Friend the Member for North East Bedfordshire (Richard Fuller)—I hope that this legislation, alongside an effective communication plan, will serve to educate dog owners. On behalf of Tecwyn and all farmers who have suffered financial and emotional loss through dog attacks, I support this excellent and important Bill. Once again, I congratulate my right hon. Friend the Member for Suffolk Coastal on introducing it. Diolch yn fawr.

Mr Deputy Speaker (Mr Nigel Evans): I call the shadow Minister.

1.19 pm

Steve Reed (Croydon North) (Lab/Co-op): I congratulate the right hon. Member for Suffolk Coastal (Dr Coffey) on introducing the Bill. I am sorry about her throat, and I hope her voice recovers quickly. Livestock worrying causes havoc for farmers up and down the country. The vast majority of dogs are much-loved and good-natured family pets, but a small minority are not keep under control, allowing them to aggressively chase down, attack and, in some cases, kill livestock. Farmers are left to cope with the stress of injury to and death of their livestock.

There is rising concern in the farming community about dog attacks. This week, I visited the Oulton family farm in Audley, near Newcastle-under-Lyme. They told me how frequently they experience dogs chasing and attacking their livestock, only to be told by the owner that the dog does not normally behave like that. Another farmer I spoke to told me that, quite horrifically, someone had deliberately brought and set aggressive XL bully dogs on her sheep, but the police had not considered it serious enough to even turn up at the scene of such an appalling crime. That is quite clearly unacceptable. The NFU's own data has found that attacks on farm animals have cost £1.8 million in the past year alone, as the right hon. Member for Ludlow (Philip Dunne) pointed out. That is a staggering cost to farmers at a time when they face the perfect storm of excessively high energy bills and record-high levels of personal taxation.

The Bill makes important progress on improving police powers to crack down on livestock attacks. It is right to raise the penalties for livestock worrying and make the regulations clearer, but we also must use this opportunity to ensure that we educate responsible owners about better controlling their dogs when they are near livestock. As the hon. Member for Ynys Môn (Virginia Crosbie) said, pet owners and farmers care deeply about the welfare of their animals, and a big part of the solution to the problem must lie in raising awareness of the countryside code. It is vital that dog owners who live near or visit land on which livestock are being raised understand that, even without physical contact, sheep can die or miscarry as a result of the distress and exhaustion caused by a dog chase.

The Royal Society for the Prevention of Cruelty to Animals concludes that most livestock worrying incidents are caused by unaccompanied dogs and, to a lesser degree, dogs being walked by their owners. Responsible dog owners can play a major part in solving the problem by ensuring that their dogs are kept on a lead and are adequately socialised and trained, so that their pet does not pose a risk to livestock. Owners must also ensure their property is secure to prevent dogs escaping from their homes and gardens. Farmers and livestock owners can take measures to ensure that there is visible signage in fields where livestock are present and to swiftly report any incidents to the local police. The police, of course, should be expected to respond promptly.

The Bill is a first step in preventing the harms that dogs can cause to livestock. Labour fully supports the Bill and will look to strengthen it, should it reach Committee and Report stages, to ensure that livestock are properly protected.

1.22 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Robbie Moore): I congratulate my right hon. Friend the Member for Suffolk Coastal (Dr Coffey) on bringing forward this incredibly important debate. I thank my hon. Friend the Member for Ynys Môn (Virginia Crosbie) for her tireless commitment in terms of meeting her constituents and the work she did through her 10-minute rule Bill. The Bill builds on the work done by my right hon. Friend the Member for Ludlow (Philip Dunne) in meeting his constituents and raising their concerns, as well as that done by my hon. Friend the Member for North East Bedfordshire (Richard Fuller). It has been good to hear the many contributions throughout the debate.

When the Animal Welfare (Kept Animals) Bill was withdrawn in May last year, Ministers committed to delivering the measures in the Bill individually, and this Bill takes forward key measures on livestock worrying from that Bill. It will amend the Dogs (Protection of Livestock) Act 1953 to strengthen police powers and extend the location and species in scope of that Act. The UK has the highest animal welfare score in the G7, according to the World Animal Protection index, and some of the highest animal welfare standards in the world. I am well aware of the support that animal welfare has in this country through the volume of correspondence that I receive not only through the Department and my officials but as a constituency MP representing Keighley and Ilkley. That strength of feeling is apparent again in this debate, and the Government will fully support this important livestock-worrying Bill through Parliament.

Animal welfare continues to be a priority for this Government, and we have already delivered against a number of commitments to date. We have increased the penalties for those convicted of animal cruelty. We have announced an extension of the Ivory Act 2018 to cover five more endangered species. We have passed the Animal Welfare (Sentience) Act 2022 and launched a dedicated committee. We have made microchipping compulsory for cats and, having visited Yorkshire Cat Rescue in Keighley, I know how important that issue is. We have successfully banned glue traps. We have introduced new powers for tackling hare coursing, which my hon. Friend the Member for North East Bedfordshire (Richard Fuller) made such committed efforts to achieve. We

[Robbie Moore]

have supported private Members' Bills to ban both the trade of shark fins and the domestic advertising of low-animal-welfare-experiences abroad. We have protected the welfare of service animals through Finn's law and banned commercial third-party sales of puppies and kittens, which, again, is something that all of us in this House have been contacted about via our constituents. We have also modernised our licensing system for activities such as dog breeding and pet sales. I hope that that reassures the House that the Government are working hard to take steps to further improve our already high standards on animal welfare.

The Bill builds on the Government's ambitious programme of animal welfare reforms, and we are pleased to support it. The Government take livestock worrying incredibly seriously, recognising the distress that it can cause both animals and farmers. Livestock worrying can have awful impacts. The behaviour of dogs that chase, attack or cause distress to livestock can result in injury and even death. There are also wider psychological impacts on livestock as a result of worrying, such as that caused by abortion, which was picked up by my right hon. Friend the Member for Ludlow (Philip Dunne). These impacts go beyond the animals and their welfare. We must also be conscious of the negative implications on the health and wellbeing of our farmers who are devastatingly impacted, as well as experiencing financial loss.

The Bill amends the Dogs (Protection of Livestock) Act 1953, which underpins livestock worrying offences and enforcement. Since its introduction over 70 years ago, the number of livestock in England and Wales has doubled. Dog ownership has increased by more than 20% between 2011 and 2020. In 2021, a report by the Pet Food Manufacturers Association estimated that 33% of households in the UK now own a dog, which is another reason it is so important that we introduce this Bill now.

The all-party parliamentary group on animal welfare estimated in its 2017 report entitled "Tackling Livestock Worrying and Encouraging Responsible Ownership" that there are 34,000 incidents of livestock worrying per year in England and Wales alone. There is also the additional financial cost, with the National Farmers' Union estimating that, in 2020 alone, the cost of livestock worrying across the UK rose by more than £100,000 to £1.3 million.

Existing legislation provides a specific offence of allowing a dog to worry livestock, with a maximum fine of £1,000. All reported crimes should be taken seriously, investigated and, where appropriate, taken through the courts and met with tough sentences. The Bill seeks to reduce instances of livestock worrying and attacking by focusing on two key areas: expanding the locations and species in scope of the offence; and strengthening police enforcement powers.

The Bill extends the scope of the 1953 Act by broadening the locations where an offence may take place to include roads and paths. This will help protect livestock when they are being moved, for example, from one enclosed field to another, such as cows going across the public highway to the milking parlour, or sheep being moved from one field to another across the public highway.

The Bill will also extend the species protected by the 1953 Act to include camelids, such as llamas and alpacas. The Alpaca Society estimates that there could be as many as 45,000 alpacas owned by its members in England, with a further 20,000 owned by non-members. The Bill will also improve the ability of the police to enforce by making provision in relation to the powers of entry, seizure and detention of dogs, and the collection of vital evidence, such as DNA from blood on a dog's collar.

We have engaged extensively on all these measures with key stakeholders, including the livestock and farming sector, animal welfare, police and veterinary sectors. These measures are vital in tackling the issue of livestock worrying and will greatly strengthen the existing legislation to decrease instances of livestock worrying and attacking. The importance of this Bill is evident from the discussion we have had today, and I look forward to its proceeding through all stages in the House. I conclude by once again thanking my right hon. Friend the Member for Suffolk Coastal for bringing forward this crucial piece of legislation.

1.30 pm

Dr Coffey: With the leave of the House, I thank all hon. and right hon. Members who have spoken today. We have seen from their constituency examples why this update to the legislation is needed. I thank the Government for their support. I thank the shadow Secretary of State for the support of His Majesty's Opposition, and I thank the officials and my parliamentary team, who have taken the Bill this far. I hope we can get it swiftly through the House to ensure that for farmers, rural communities and the animals themselves, that deterrent effect will be in place. It is much needed.

Question put and agreed to.

Bill accordingly read a Second time; to stand committed to a Public Bill Committee (Standing Order No. 63).

School Attendance (Duties of Local Authorities and Proprietors of Schools) Bill

Second Reading

1.31 pm

Vicky Ford (Chelmsford) (Con): I beg to move, That the Bill be now read a Second time.

We should all be extraordinarily proud of our nation's young people. Children in England rank 11th in the world for maths and 13th for reading. Back in 2010, when today's school leavers were just starting out in reception, the same league tables placed the equivalent cohort of children 27th for maths and 25th for reading. I am also proud that every single one of the schools in my constituency is ranked good or outstanding, up from just two in three schools 14 years ago.

There has been phenomenal progress and we must not let it slip. That is why it is so concerning that the number of severely absent or persistently absent pupils is still dramatically higher than it was pre-pandemic. While the numbers have improved over the past year, we still have over a million children or young children persistently absent or worse. As well as being a place to socialise and make friends, school is key to giving young people access to skills and opportunities for their future. The surge in persistent and severe absences risks a profound impact on educational attainment and then on longer-term outcomes.

Research by the Children's Commissioner found that three quarters of children who were rarely absent from school receive five good grades at GCSE, including the crucial English and maths, but when we look at those who were persistently absent—missing 10% or more of their school time—only one in three met that standard. For children who were severely absent, it is only one in 20.

A multi-academy trust that has a school in my constituency pointed out that even a small drop in attendance can have a profound impact. It looked at the relationship between attendance and GCSE results in one of its high-performing schools, and 82% of those who achieved 95% to 100% attendance got those five good GCSEs, including English and maths. When we look at the children who were there between 90% and 95% of the time, only 68% achieved that. Even those few missed sessions can make a huge difference.

Philip Dunne (Ludlow) (Con): My right hon. Friend offers the House a most fascinating insight into the impact on performance of non-attendance for only a relatively short part of the school year. Is that widely recognised within the teacher community, particularly among headteachers, or is that something she is seeking to draw to their attention through this excellent Bill?

Vicky Ford: I thank my right hon. Friend for that excellent intervention. The Children's Commissioner research has accurately pinpointed how these small differences in attendance can make a big difference in outcomes. Such research has been done more recently, since the pandemic. The schoolteachers I met recently were concerned about non-attendance. Clearly, when we move into severe absences, that is a big point.

The reasons for increased pupil absence are multiple and complex. Issues include support for those with special educational needs and disabilities, anxiety, and mental health issues. If a child's SEND needs are unmet, that can lead to their missing out on education. Changes in attitudes towards minor ailments may be another driving force, as parents are now more likely to keep their children at home for minor illnesses such as coughs and colds than before the pandemic, but in most cases children are better off at school, including when they have minor ailments.

For the most vulnerable pupils, regular attendance is an important protective factor, so I was concerned to hear from an expert that attendance at the alternative provision setting that he covers has dropped below 60% for the first time. Research shows that regular absence from school can expose young people to harms such as being drawn into crime or serious violence.

I am really grateful to the Children's Commissioner, who earlier this week brought together a roundtable of experts on the issue to discuss it in more depth. The group included heads of multi-academy trusts from across the country, representatives of local authorities, mental health experts, attendance experts and AP providers. Every single attendee stated their support for the Bill. They also spoke about what they have seen drive the increase in non-attendance. We heard that the economic situation has put pressures on household budgets and housing, which means that people sometimes get rehoused further away from schools. That has had an impact for some families, but is not the cause of poor attendance in the majority of cases.

Some commentators have noted that absence is higher among children on free school meals, but one MAT leader who has done a lot of research at school level suggested that may not be the case for all ethnic groups. His research compared cohorts of schools in which all schools had high levels of free school meals. The schools that also had a high proportion of pupils with English as a second language had a much better level of attendance than the school cohort that had a high proportion of white British students. That needs further investigation.

The head of a multi-academy trust with schools in my area as well as other areas explained that there had been an uptick in poor attendance by girls in years 8, 9 and 10. Other school leaders confirmed that they had seen a similar trend. They suggested that it may be linked to lower mental wellbeing and self-esteem. It is worth reading the 2023 girls' attitudes survey by Girlguiding UK, which bears that out. Girlguiding UK's excellent report shows that girls' happiness is at the lowest level since it started the survey 15 years ago. The survey reported increased online bullying, online sexism and online harms among girls, as well as a large increase in the number of girls feeling ashamed of how they look. That shows why the work that the Government have done to tackle online harms is so vital, and why it is vital that Ofcom really does implement what is set out in the Online Safety Act 2023. Of course, there is more work to be done to address that.

A number of experts reflected that they felt that the contract between schools and families had been broken by the pandemic. A report by the Centre for Social Justice goes into that in some detail. I was interested

[Vicky Ford]

that a local authority representative suggested that the breaking of that contract may have been further compounded by days off due to teacher strikes.

Some leaders suggested that there may be a link for some families between the increase in hybrid working and children missing school. As a mum, I can completely see that it may be more difficult for some parents to persuade a reluctant child to go out of the house and into school on days when one is working at home oneself. Interestingly, other countries have looked at hybrid modelling for schools post pandemic, but we need to remember that the vast majority of children are better off in school. We discussed the issue of fines, and I was told that in some cases parents asked for an education attendance order to be placed on them, as they believed it could help them to persuade a reluctant child to attend school.

In addressing the issue of school attendance, however, it is important that we do not simply lay the blame at the door of hard-working parents. Most parents want their children to do well, but many do not have the help that they need to support their children in fulfilling those aspirations. That is why securing good attendance requires a holistic approach that brings together schools, families, the local authority and other local partners. It is also why in 2022, following an in-depth consultation, the Department for Education published new guidance entitled "Working together to improve school attendance". I have a copy here and, as you can see, Mr Deputy Speaker, it is very lengthy; it runs to over 60 pages and is extremely detailed.

A great deal of emphasis in this guidance is placed on early help and multidisciplinary support. It requires every school to have a senior member of the school's leadership team acting as attendance champion, and sets out how schools and other partners should work together. Last year the Education Committee undertook a detailed inquiry on attendance, and witnesses agreed that the guidance needs to be put on a statutory footing. That was also a major recommendation by the Committee. Making it mandatory for bodies to follow that best practice guidance is supported by the Children's Commissioner and the Centre for Social Justice, as well as the Select Committee and many other experts.

The Bill will make that happen. It will not solve all the issues, but it will make the guidance statutory. It will ensure that all schools, trusts, local authorities and other relevant local partners follow the best practice guidance. It will introduce a new general duty on local authorities to exercise their functions, with a view to promoting regular attendance and reducing absence in their area. Clause 2 will require schools of all types to have and publicise a school attendance policy. Both clauses 1 and 2 will require all schools and local authorities to have regard to the guidance issued by the Secretary of State, which is to be achieved by inserting two new clauses into the Education Act 1996 under section 443.

The Department for Education has told me that it will publish a revised version of the guidance ahead of the provisions taking effect. The guidance will help to reduce unfairness in the amount of support available for families in different areas of the country and level up standards in areas with poorer attendance by requiring the provision of consistent access to support. Local authorities will need to provide all schools with a named point of contact for queries and advice. They will need to meet each school termly, use their services and levers to remove common causes of absence in their area, and work with agencies to provide support where it is needed in cases of persistent or severe absence.

Schools will be expected to have an attendance champion, to have robust day-to-day processes for recording, monitoring and following up on absences, to use their attendance data to prioritise the pupils and cohorts on which their efforts should be focused, and to work jointly with local authorities and other agencies where the causes of persistent and severe absence go beyond the school's remit. A register of children who are out of school due to elective home education is not part of my Bill, but it is part of the Children Not in School (Registers, Support and Orders) Bill tabled before Christmas by my hon. Friend the Member for Meon Valley (Mrs Drummond). That is a separate issue and another Bill is coming on that.

Finally, I thank many third parties, including the Centre for Social Justice for its research on the subject, and the Children's Commissioner and her team for their recent advice. I am extremely grateful to all those who are experts in education, and who care so deeply for children, for their support for this Bill.

School attendance is key to our children's future. This Bill will make following the guidance mandatory, so that every school, local authority and body will need to follow the best practice. It is a positive legal step that we can take to enable children to get the support they need and help them return to school. I hope all Members will support it, and I commend this Bill to the House.

1.45 pm

Philip Dunne (Ludlow) (Con): I rise to support this Bill and, in particular, to reference the continuing impact of the covid pandemic on pupils who remain at school. In talking to headteachers in the terms following the closure of schools during the pandemic, it was brought to my attention that compulsory absence from school has led to some very worrying behaviours.

A number of children have not returned to school as a direct consequence of the pandemic. Although they may be educated at home, they lack the ability to socialise with children, particularly when transitioning from primary school to secondary school, which sets the tone for them as they move into older cohorts. That then persists as they become teenagers and move into adult life. If they do not learn how to deal with people of different age groups, it has a profound impact not just on their education, but on their ability to socialise in later life. This is a particularly timely Bill to encourage school attendance, because there are still many children in secondary school—most have come through primary school by now—who have been so badly affected by the pandemic.

My right hon. Friend the Member for Chelmsford (Vicky Ford) mentioned organisations that have been helpful to her, and I would like to make another point in relation to mental health issues. In her preparation for this Bill, I believe that the Centre for Mental Health and the Children and Young People's Mental Health Coalition were helpful in pointing out to her that absence from school impacts on children's mental health. They have

recommended that an absence code for mental health be introduced. We clearly welcome the progress being made with the roll-out of mental health support teams to many thousands of schools, and perhaps the Minister will touch on that in his remarks.

My final point is that the requirement in clause 2 for schools to publish their attendance policy will help significantly in improving performance, because it will give headteachers and class teachers the ability to point out the policy to parents before students select their secondary school, and to use it as a mechanism to explain to the parents of recalcitrant children that this is an absolute requirement of the school. A requirement to publish the policy and perhaps, in due course, the attendance figures will give schools a tool that they currently lack, so I support this Bill.

1.48 pm

Jo Gideon (Stoke-on-Trent Central) (Con): I congratulate my right hon. Friend the Member for Chelmsford (Vicky Ford) on bringing forward this really important Bill. Being around teachers and friends in a school or college environment is the best way for pupils to learn and reach their potential. Time in school also keeps children safe and provides access to extracurricular activities and pastoral care.

The data that we have on school attendance includes children who are persistently absent—those who miss at least 10% of sessions, which is equivalent to about one afternoon every week. In spring 2023, that applied to 21% of all children, or an astonishing 1.5 million students. Children who are severely absent miss over 50% of lessons—they are absent more often than they are present—and in spring 2023, at least 140,000 children were severely absent. Compared with pre-pandemic school records, the number of children who are severely absent has increased by 133%.

Something has to happen: we have to have a child-centric approach where the child's voice is heard, which will help improve attendance. I am glad to hear that the attendance mentors scheme has been expanded to include Stoke-on-Trent, providing one-to-one mentoring support to pupils over a three-year period. Such schemes to tackle the factors behind non-attendance, such as bullying, mental health issues or the feeling of just being too far behind make a significant difference, as does the tutoring aspect of that scheme. However, it only reaches at most 1% of severely absent pupils, which does not represent a serious response to this unfolding crisis in our education system. We must act now to return those children to the classroom. Every day that we wait is a day that pushes them farther away from the education they deserve.

In Stoke-on-Trent, we have the highest number of looked-after children of any local authority—children who may have lacked a family support network—as well as those who have to deal with difficult circumstances at home, such as caring responsibilities for a parent or sibling. All of those children need to be in full-time education and to be provided with extra support. Some excellent work is happening in Stoke to support children who may come from those challenging backgrounds: for instance, City of Stoke-on-Trent Sixth Form College has an area that provides warm clothes and coats to children, because no child should ever be too cold to be able to learn.

I chair the all-party parliamentary group on youth affairs, and have heard directly from young people why they sometimes feel that school is not relevant. They say that the curriculum does not meet their needs: it does not include important subjects such as financial and enterprise education, or practical skills such as preparing food and preparing them for the jobs of the future. Every day of education matters, and failure to keep children in the classroom is storing up untold problems for the future, so I absolutely endorse the effort that this Bill is making to strengthen local authorities' powers, encouraging them to work with schools and instil a desire to bring every child that we can back into school.

1.52 pm

Rob Butler (Aylesbury) (Con): I congratulate my right hon. Friend the Member for Chelmsford (Vicky Ford) on introducing this Bill. Good levels of attendance at school are crucial to children's education. It should go without saying that missing classes can cause serious consequences in later life, so it is imperative that we do all we can to get children who are regularly absent back in school. As my right hon. Friend mentioned, the Bill is a simple but crucial piece of legislation that will combat the real concern about children being away from school by placing a general duty on local authorities to promote regular attendance. It should also help to ensure that schools play their part by requiring them to have a dedicated attendance policy.

I am very pleased that the Government are already committed to confronting absence, with the Education Secretary having said:

"Tackling attendance is my number one priority."

In 2022, the Department published detailed guidance for schools, academies, independent schools and local authorities to improve school attendance. The Bill aims to make some of those recommendations statutory, and while the move to that statutory footing is generally welcome, I know that some local authorities are a little concerned about the cost implications of moving from an advisory footing to a statutory one. If the Minister could say anything in his remarks about support for those local authorities, I am sure it would be very welcome.

It should be recognised that ensuring attendance is a team effort. I was very pleased that in 2022, the Department for Education launched a consultation seeking views on measures to improve the consistency of support to families in England on school attendance. The consultation had respondents from that very wide joint team effort —school staff, academy trusts, parents, local authorities and other relevant organisations—and those responses were largely in favour of implementing the changes that the Bill aims to introduce, with 71% agreeing with the proposal that schools should be required to have an attendance policy.

I welcome the Government's recent announcement that over the next three years, up to £15 million will be invested to expand the attendance mentor pilot programme, which provides direct incentives to support more than 10,000 persistent and severely absent pupils. That comes alongside the announcement that there will be 18 new attendance hubs, which will see nearly 2,000 schools benefit from advice on cutting down absences. That is a list of the good things that the Department is doing to tackle this problem, and the Bill would only add to that.

[Rob Butler]

Although the additional funding and the expansion of the hubs is welcome, the support that is currently available to families and pupils can vary significantly depending on the school the child attends and which local authority area they live in, so I am pleased that the Bill intends to end such variability. By requiring local authorities to provide all schools with a named point of contact to provide support with queries and advice, it will reassure schools that they are not on their own, and by mandating local authorities to use their services to remove common causes of absence in their area, it will, I hope, help to combat any socioeconomic factors that may be leading to lower attendance.

Like most right hon. and hon. Members—including, dare I say it, you, Mr Deputy Speaker—I frequently visit schools in my constituency, and I am consistently impressed by the dedication and commitment of the teachers and all the other staff. I am especially proud to have in my constituency a university technical college, which provides education that goes well beyond traditional academic subjects and focuses on developing skills that will be directly relevant in the workplace. That underlines the range of superb educational provision that exists in Aylesbury.

I wish to highlight the brilliant Ofsted report received this week by Aylesbury High School, which was judged to be outstanding in each and every category. That is a tremendous achievement and I hope that the Minister and, indeed, the entire House will join me in congratulating the headteacher and everybody at Aylesbury High School on it.

During my visits to schools, I sadly hear too often about the challenges of ensuring attendance. Of course, the individual school—whether it is a high school, a UTC, a primary school or whatever type of educational setting—needs to implement policies to tackle that attendance challenge, so I am pleased that the Bill will require all schools to implement robust day-to-day processes for recording, monitoring and following up absences. Those data will help the school and the local authority to assess the best ways to tackle short and long-term absences.

It is, though, important that we do not overburden our schools. This is particularly the case for some of the smaller schools, which tend to be those for children of a younger age. I saw this at first hand during a visit to a primary school in my constituency towards the end of last year. Despite it having absolutely excellent facilities, superb teaching staff and happy children, one challenge was prominent in the minds of the staff, and that was attendance.

Despite the school's considerable efforts at engagement with parents, there were some who simply refused to bring their children to school. Such was the desperation of staff that sometimes they felt they had no choice but to drive in their own cars, at their own expense, and pick up pupils themselves. That cannot be right, but they did it because they were nervous, and even scared, of the implications if they did not—if they could be construed not to have done absolutely everything possible to ensure attendance.

The staff were particularly concerned that it might result in the school's being downgraded by Ofsted. I do not think that is what the Government or anybody else intend when they say they want to secure really good attendance. We must make sure that this legislation does not increase the likelihood of that added burden and pressure on school staff, who already have plenty to keep them occupied that is rather more legitimate in achieving the best possible education for the children in their schools.

Overall, I think the Bill has the potential to go a very long way in tackling pupils' absence from school. It will further assist the Government's long-term commitment to improving education and help to ensure that children get the most that they possibly can out of school. Let me repeat my congratulations to my right hon. Friend the Member for Chelmsford on getting her Bill to this stage. I look forward to seeing it reach its next stages, both in this place and in the other place.

Mr Deputy Speaker (Mr Nigel Evans): I call the shadow Minister.

1.58 pm

Catherine McKinnell (Newcastle upon Tyne North) (Lab): I congratulate the right hon. Member for Chelmsford (Vicky Ford). I agree with her that the current poor attendance rates constitute a crisis that must be addressed as a matter of urgency. Indeed, last week Labour tabled an Opposition day motion containing a range of possible ways to address the problem, but unfortunately that long-term plan to deal with the school attendance crisis was voted down by Conservative Members.

Labour will support the Bill today, but, as the right hon. Lady herself acknowledged, it is a limited first step. Schools providing parents with their attendance policies will do little to encourage the one in four parents who, according to the Centre for Social Justice, do not view school as essential every day. Placing duties on local authorities to promote attendance will only shift the blame from a Government who have watched this situation spiral out of control to councils that have already been doing their best to deal with it. While any measures intended to deal with this problem are obviously welcome, this Bill will only scratch the surface. We need proper interventions to get children back in the classroom.

The figures are stark. Last year, under this Government, 21.2% of children were persistently absent from school. That is more than one in five, and it is double the figure just six years earlier. The number of children missing half their lessons has rocketed too. In my local authority, Newcastle City Council, it rose by 282% in just six years, and other areas have even higher numbers. How can we properly set up a child for the future if they are missing every other lesson in school?

All this is going on while the Secretary of State says that this is her "number one priority". In the Labour party we firmly believe that every child matters, and to those children every day at school matters. That is why we have set out a long-term plan that looks at the issues causing persistent absence in the round. Because we see evidence that breakfast clubs have a positive impact on attendance as well as on children's learning and development, we are pledging to roll out free breakfast clubs to every primary school in England, which we will fund by ending the non-dom tax breaks for the mega-rich.

As the right hon. Lady mentioned, we see the mental health crisis unfolding among our young people, with children languishing on long waiting lists for child and adolescent mental health services. We would recruit thousands of new staff to bring those lists down, and we would place specialist mental health professionals in schools so that children could access the support they need. We also see that there needs to be more accountability in the system so that problems like this are picked up earlier. Labour's plan will involve annual school checks covering persistent absence, as well as off-rolling and child safeguarding.

We see that children are not engaging with a curriculum and assessment system that has been described to me as "joyless" and "narrow", so we would launch an expert-led curriculum and assessment review looking at how to broaden our curriculum to prepare children for the future and give them an excellent foundation in reading, writing and maths, but without sacrificing the things that make school fun. We also see that children's early speech and language development has suffered over the last few years, and getting it right at an early stage will lead to better engagement throughout their school lives. We would equip primary schools with funds to deliver evidence-based early language interventions. Finally, we would introduce a "children not in school" register to ensure that children who are not being taught in a school environment do not fall through the gaps.

I must ask those on the Government Front Bench, is this really the best that the Tories can do to tackle the attendance crisis? We face a lost generation missing from Britain's schools, and yet we have heard so little of substance from the Government on how to resolve the problem.

We will support the Bill today because, if nothing else, it shines yet another spotlight on the lack of Government action to deal with the crisis in our schools, but we really must see more urgency from Ministers on how they intend to tackle this problem. Tinkering around the edges will not do. We need a proper, long-term plan, and if the Government will not deliver it—despite the right hon. Lady's best efforts—the next Labour Government will.

2.4 pm

The Minister for Schools (Damian Hinds): Let me first warmly congratulate my right hon. Friend the Member for Chelmsford (Vicky Ford) on her success in the ballot, and on using that success for this purpose. I am delighted that she has chosen school attendance as the subject of her Bill. It is a subject that I know is close to her heart, and one that she has championed with aplomb and with impact. She said towards the end of her remarks that attendance is the key to a child's future, and I agree. We have often said that reading is the most fundamental thing in school, because if a child cannot read properly, they cannot access the curriculum and nothing else works, but attendance is even more important. Whatever our brilliant teachers are doing in schools, if the children are not there, they cannot benefit.

I thank my hon. Friends and the Opposition spokesperson, the hon. Member for Newcastle upon Tyne North (Catherine McKinnell), for their contributions. We all recognise the importance of regular attendance not only for children's attainment, but for their wellbeing and development. There is evidence that some attitudes to absence have changed since the pandemic, with a somewhat greater propensity among some families to keep a child with a minor illness, such as a cough or a cold, at home, whereas prior to the pandemic they would have gone to school. It is worth saying that, before covid, great progress had been made on attendance since 2010, and we are committed to getting back to those levels. They will never be 100%, for obvious reasons—every child will be off school ill at some point, and sadly some children will need to be off for extended periods—but we need to get back to that pre-pandemic level of 95% or above.

I am pleased to confirm that the Government fully support this Bill from my right hon. Friend the Member for Chelmsford. We are exploring all possible avenues to make our attendance guidance statutory, including the use of existing powers. That is important because we want every child to be able to achieve their potential, and attending school regularly is obviously crucial to that. As my right hon. Friend outlined, this Bill will improve the consistency of support available in all parts of England, first, by requiring schools of all types to have and to publicise a school attendance policy and, secondly, by introducing a new general duty on local authorities to seek to improve attendance and reduce absence in their areas.

The Bill will require schools and local authorities to have regard to statutory guidance. In practice, that will see us revising and reissuing our "Working together to improve school attendance" guidance. It is widely supported by schools, trusts and local authorities, and both the Education Committee and the Children's Commissioner have already called for it to be made statutory. The guidance was introduced in September 2022 and has already started to make a difference. There were 380,000 fewer pupils persistently absent or not attending in 2022-23 than in 2021-22. Overall absence for the autumn term just gone was 6.8%, which is down from 7.5% in autumn 2022. To turn it the other way around, attendance in that term is up, year on year, from 92.5% to 93.2%.

However, while we of course welcome that improvement, there is still further to go to get to those pre-pandemic levels and better, and there are still parts of the country where families do not have access to the right support, as my hon. Friend the Member for Aylesbury (Rob Butler) rightly identified. It is important to legislate to end the postcode lottery so that any family can get the support they need, and doing so will give parents increased clarity and level up standards across schools and local authorities. That is also an important part of this Government's emphasis on a "support first" approach, meaning that schools and local authorities work together to break down the barriers that can stop a pupil attending.

To support schools and local authorities in meeting those expectations, the Government already have a comprehensive attendance strategy, and this aspect of it is only one part of a much wider whole. We have deployed attendance advisers to support local authorities and a number of trusts. We have created a new data tool, with 88% of state-funded schools signed up. At the system leadership level, we have convened the attendance action alliance to work across sectors to remove barriers to attendance and reduce absence. We have launched 32 attendance hubs, to reach more than 1 million pupils. And we have expanded our attendance mentor pilot, as

[Damian Hinds]

my hon. Friend the Member for Stoke-on-Trent Central (Jo Gideon) rightly mentioned, to reach 15 priority education investment areas.[1]

Of course, much wider work is in place as well. More children are now eligible for free school meals as a result of the protections put in place on universal credit transition; £30 million has been spent on breakfast clubs and it is targeted at where it is most needed—where it can have the most effect. I say to the hon. Member for Newcastle upon Tyne North that that does include secondary schools as well as primary schools. We also have in place the holiday activities and food programme. We are increasing the pupil premium in 2024-25 to £2.9 billion. Of course attendance is one of the great factors and important drivers in narrowing the gap between better-off and more disadvantaged pupils. We are expanding the Supporting Families programme over this spending review period, and addressing attendance at school where there is a problem is a fundamental part of that programme.

My right hon. Friend the Member for Ludlow (Philip Dunne) mentioned the lasting effect, sadly, of the pandemic and the importance of socialisation, and he is absolutely right; we often think of the early years and the effect on the youngest children, but this is actually true throughout a child's or young person's development. He particularly mentioned the year 6 to year 7 transition point, which we know is pivotal in so many ways, and a lot of schools are doing some very good work there.

My right hon. Friend specifically asked about mental health and the possibility of an absence code. I understand his motivation and that of others in raising that point. Let me just say that a practicality question is involved. At the moment someone is taking the register, it is not always practical for them to be able to say that something is one particular type of health issue or another, and there is the risk that we would have inaccurate reporting and a misunderstanding of trends as a result. He also mentioned the wider work on mental health. He will know that we are putting forward a grant for every state school to be able to train a senior mental health lead. In addition, the really important wider work on mental health support teams, supporting clusters of schools, primary as well as secondary, continues to grow.

My hon. Friend the Member for Stoke-on-Trent Central mentioned not only the mentors programme, but the importance of extra-curricular activity and pastoral care. That is really important and we need always to be saying that this is about not only learning and attainment, but everything else that comes with school. Of course, I join my hon. Friend the Member for Aylesbury in congratulating Aylesbury High School. He was right also to ask about costs for local authorities and for us not to overburden schools. In advance of issuing our existing guidance on attendance, we carried out the comprehensive new burdens assessment, which found that the expectations could be implemented by local authorities without additional funding if they had the average number of staff working on attendance. We are confident that that assessment remains accurate, based on a growing body of evidence since that assessment was published. The evidence shows that where local authorities are delivering the guidance, staffing levels have remained within those predicted levels.

But my hon. Friend the Member for Aylesbury was also right to talk about ensuring that we do not overburden schools themselves. I join him in paying tribute to school leaders, schoolteachers and wider staff for the extraordinary work that we have heard is going on and what they are doing to get children into school. I absolutely agree with him that we need to ensure that we have a proportionate approach that supports the whole system—the schools, local authorities and so on—and works with people in our common endeavour to maximise the benefit that children get from their education. This Bill, if passed, will also update our existing guidance in advance of the new school year to reflect the latest best practice and feedback that we have gathered from the sector, and to make it as easy as possible for schools and local authorities to understand the actions they need to take.

In closing, I reiterate my thanks and appreciation to my right hon. Friend the Member for Chelmsford for bringing this important Bill before the House today. Being in school has never been more valuable, with standards continuing to rise, and this Bill will help to ensure that every young person and their family, whatever their background and wherever they are in the country, can receive the support they need to do just that. I am sure we will hear more from her—and I look forward to that—as the Bill progresses through the House. I thank her again, and I urge hon. Members across the House to support the Bill.

2.15 pm

Vicky Ford: With the leave of the House, let me start by thanking everybody who has spoken today, especially those from the Back Benches—my right hon. Friend the Member for Ludlow (Philip Dunne) and my hon. Friends the Members for Aylesbury (Rob Butler) and for Stoke-on-Trent Central (Jo Gideon). They all care passionately for children and young people, and those who are educating them in their constituencies. They raised a number of very important points.

I would like to address the issue of mental health support teams. The various mental health charities that wrote to me, such as the Centre for Mental Health and the Centre of Children and Young People's Mental Health Coalition, do excellent work. They recommended the introduction of a mental health absence code. I listened closely to the Minister on this issue. It may not be as simple as one would like. In their letter to me, they welcomed the laudable—that is their word—progress made in rolling out mental health support teams to many thousands of schools. I know we would like more. They do a super job, and the difference that that initiative has made is amazing.

There is an important point about not putting extra burdens on schools and local authorities, and I thank the Minister for that. I thank, again, all the staff in the Department for Education and others who have helped with this Bill. I thank His Majesty's Opposition for saying that they will support the Bill. However, we must not talk down our children. Our children are doing exceptional things and have had very difficult times. Our children are the best readers in the western world. They have leap-frogged past so many other countries in what they achieve in reading and writing. It has been exceptional what has been achieved in the 14 years that has been a child's journey from reception to year 13. We must be so proud of them.

1. *[Official Report, 8 February 2024, Vol. 745, c. 5MC.] (Correction)*

It is this Government who put in place those early reading improvements through the use of phonics, which gave children that basis, and who introduced those early years extra hours and are rolling that out even further. If His Majesty's Opposition truly cared about attendance in school, they would have supported the Bill during their Opposition day, but they did not. This Bill was the No. 1 recommendation of the Education Committee and others. The Bill means that schools and local authorities will have to follow best practice; too many do not, and this Bill will make sure that they do. I would like to say a huge "Thank you." Let us get this Bill through.

Question put and agreed to.

Bill accordingly read a Second time; to stand committed to a Public Bill Committee (Standing Order No. 63).

Mr Deputy Speaker (Mr Nigel Evans): Congratulations.

Employment Equality (Insurance etc) Bill

Second Reading

2.18 pm

Mrs Natalie Elphicke (Dover) (Con): I beg to move, That the Bill be now read a Second time.

In this place, our nation's Parliament, change comes in many forms. Sometimes it is the clamour of the picket line, the lobby group or Members' own interests. Sometimes it comes in the shape of an MP's constituency surgery and the quiet working man; a man who knows what is right and wrong, who seizes injustice and internal fury and propels it to this place to be remedied. He fights not for himself—he knows the barriers that he faces—but for every man, woman and every one of us, as we face the cruel certainty of age, and age discrimination in the workplace. The man is Stephen Horne. I am proud that he is my constituent, and I am proud today to speak to Stephen's Bill. stand with him on tackling the endemic age discrimination in our society. The Bill aims to address the provision at the heart of the nation's challenge.

Jo Gideon (Stoke-on-Trent Central) (Con): I support my hon. Friend's Bill, as she knows. The protection of other characteristics—gender, race and religion, for example—is generally observed in employment law. Does she agree that pervasive age discrimination is a big issue that we need to tackle, as her Bill will do in a small but important way?

Mrs Elphicke: My hon. Friend is exactly right. Age discrimination is absolutely pervasive in our society. It is such a common experience that one in three people report having experienced it. We must tackle that injustice.

The Bill repeals paragraph 14 of schedule 9 to the Equality Act 2010, which allows workplace benefits to be removed from a working person solely by reason of their coming to statutory pensionable age. I was pleased to introduce the Bill under the ten-minute rule last year, and I am pleased to bring it back today with strong support from so many Members across the House who, like me, believe that we urgently need to tackle this issue.

People in their 50s and 60s commonly experience discrimination because of their age, and 37% of those incidents are at work, according to the Centre for Ageing Better. One in five employers believes that age discrimination occurs in their organisation, and many argue that ageism is a key barrier for people aged 50 to 64 who want to return to or remain in their workplace. Paragraph 14 allows active discrimination under the law, and so opens the door to other forms of indirect and unconscious bias discrimination. That was well explored by the Women and Equalities Committee, which said that it is clear that there is

"prejudice, unconscious bias and casual ageism in the workplace",

as well as inadequate challenge to current practices.

Stephen is a train driver with Eurotunnel. He helped to build the tunnel before it first opened 30 years ago, and he has driven a train since the very first went through the tunnel. When he reached the age of 66, his bosses decided to remove his workplace benefits relating to income protection and long-term sickness, and his health insurance. That puts Stephen at a disadvantage compared with other workers. He is doing the same job at 66 as he did at 65, but now he does not get the same

[Mrs Natalie Elphicke]

money's worth, or the same terms and conditions in his contract of employment. In simple terms, Stephen does not get pay and conditions equal to those of a younger worker solely by reason of his age. That is not right.

If Stephen falls ill, he cannot get the same access to speedy private healthcare that other people in his company get, including for a workplace injury, which means that he might be out of the workplace for longer. If—heaven forbid—he died, his wife Marsha would no longer have the compensatory insurance through death-in-service benefits that another worker's family would be entitled to, yet Stephen is doing exactly the same job as he was before he reached retirement age.

When looking into Stephen's case, I was shocked to discover that such age discrimination is legal. The Equality Act 2010 is supposed to provide protection for older people against age discrimination. Age is, as my hon. Friend the Member for Stoke-on-Trent Central (Jo Gideon) rightly said, a protected characteristic, and it needs to be treated as such. That exception in the Act means that Stephen and workers up and down the land face discrimination, and similar issues with terms and conditions.

We need to tackle that issue, because people are staying in the workplace longer, and because it is unfair and wrong. It needs to be tackled in this place through a change in the law. I have had discussions with companies about why they do not just do the right thing, why they do not change this unfair practice, and why they do not look after all their workers better. The answer that I have had is simple: they will not do that until we in this Parliament say that they must, because they do not want to have to pay more by offering those terms and conditions. The bottom line is that they do not want older workers like Stephen. That is not right, and it is not something this country can afford, either. People are working until a much older age; that has become more acute as the Government have changed the pensionable age.

Stephen's Bill seeks to put right the situation for every older worker in this country by changing the law on workplace benefits, so that older people are treated the same as others in any other part of the employment relationship. We know why this matters. There was a time when a pregnant woman had to quit her job and leave the workplace; indeed, there was a time when women were not welcome in many workplaces. There was a time when women were not given paid maternity leave, men were not given paid paternity leave and women would not get jobs if they were of childbearing age. We have addressed that through Parliament over decades. Now employers find that retaining women in the workplace—indeed, having them at the very top levels in the boardroom—benefits not just mothers, but businesses. Businesses can now retain the vital skills, knowledge and commitment of female workers, and that needs to happen in relation to older workers too. Older workers have skills and knowledge gained over many years in the workplace. Treating older workers fairly will encourage them to stay, and benefit the companies they work for.

I remember a time when employers used to say that a woman did not need to work, get the same bonuses as a man or be offered overtime, because men needed those opportunities in order to feed their families. We outlawed that because equal pay at work matters and equal opportunity at work matters, too. That applies every bit as much whether it is a younger or older worker doing the job.

Another excuse that is given is that covering older people becomes more expensive for everyone, because the premium for the company goes up. That is, of course, absurd. Applying that logic, would it be okay to exclude from employment benefits people who have had a heart condition, cancer, a bad back, a disability or a chronic condition, on the basis that the insurance might go up? Of course not. It would not be lawful, and it should not be lawful for that to happen simply because of someone's age. We have said in other cases that taking away someone's work benefits is discriminatory and wrong, and it is discriminatory and wrong to do so simply because they have got older. That is something that none of us can influence or affect; it will happen to us all. Even in this place and, as we have heard recently, even in Government, people's terms and conditions and severance pay differ depending on the age at which they take their role or responsibility.

It is time for us to amend this great injustice. Stephen knows that the challenge that he faces in changing the minds of his bosses is enormous, and there is no indication that they are prepared to do that. However, I know from speaking to businesses that there are things that the Government can do, beyond changing the law, to ensure that this injustice is addressed. That could include ensuring there are compensatory payments to give equivalence, on an equal pay basis, to people who do not have access to the same pay and conditions as others. That means making it unlawful for those offering insurance to have that kind of discriminatory condition, which we should do.

This is such an important time for our nation, as we look for everyone to contribute, and require people to work in, older life. It is essential that we put in place the right laws, protection and framework, so that whatever people want to do in older age, they are treated fairly and equally. That is the reason that Stephen has asked me—

2.30 pm

The debate stood adjourned (Standing Order No. 11(2)).

Ordered, That the debate be resumed on Friday 15 March.

Business without Debate

SECURE 16 TO 19 ACADEMIES BILL

Bill read a Second time; to stand committed to a Public Bill Committee (Standing Order No. 63).

WHISTLEBLOWING BILL

Motion made, That the Bill be now read a Second time.

Hon. Members: Object.

Bill to be read a Second time on Friday 1 March.

ADJOURNMENT

Resolved, That this House do now adjourn.—*(Stuart Anderson.)*

2.31 pm

House adjourned.

Written Statement

Friday 2 February 2024

CULTURE, MEDIA AND SPORT

Consultation on Renewal of Local TV Licences: Government Response

The Minister for Media, Tourism and Creative Industries (Julia Lopez): His Majesty's Government have today published a response to the consultation on the arrangements for the renewal of the local TV multiplex licence, and the renewal or relicensing of the 34 individual licences for the local TV services operating across the UK, which are due to expire in November 2025.

The consultation closed in September and responses were received from across the local TV sector, wider industry and the public. Overall, the responses were supportive of the Government's proposed approach for renewing both the multiplex licence and the licences of the individual services.

A decade on from the launch of the first local TV service, the sector continues to play an important role in the broadcasting ecosystem. However, it still faces some challenges including declines in linear advertising, maintaining consistent audience numbers, stable revenue streams and sustainably funding genuinely local content.

The renewal of the local TV multiplex licence, and the conditional renewal of all 34 local TV service licences, will secure the best outcome for the sector and provide stability for local TV services over the course of the next licence period, which will run from 2025 to 2034. The Government will also maintain the local TV objectives in their current form. These serve as a pivotal framework for local TV service operators and ensure that the main beneficiary of local TV content continues to be the viewer.

To implement these decisions the Government will, when parliamentary time allows, make an order under section 244 of the Communications Act 2003. This renewal process itself will be led by Ofcom.

A copy of the Government response will be placed alongside the consultation document in the Libraries of both Houses.

[HCWS237]

Petition

Friday 2 February 2024

OBSERVATIONS

TREASURY

Buy now, pay later products

The petition of residents of the constituency of Linlithgow and East Falkirk,

Declares that buy now, pay later products are becoming increasingly mainstream, with 37% of adults in the IL using an unregulated credit products in the last 12 months, and with many of the most vulnerable people turning to these products to cope with the cost of living crisis; further that Citizens Advice report an increase in people seeking help with these products, with some facing unmanageable debt and requiring food bank referrals and other charitable support, and notes that unregulated Buy Now Pay Later products lack consumer safeguards, such as requirement for firms to carry out affordability checks, brining lenders under the oversight of the Financial Conduct Authority, and ensuring borrowers can take complaints to the Financial Ombudsman Service.

The petitioners therefore request that the House of Commons urge the Government to implement regulation of Buy Now Pay Later products as a matter of urgency, to prevent any more people falling into serious and unmanageable levels of debt.

And the petitioners remain, etc.—*[Presented by Martyn Day, Official Report,* 16 January 2024; Vol. 743, c. 799.*]*

[P002893]

Observations from the Economic Secretary to the Treasury (Bim Afolami):

The Government thank the hon. Member for Linlithgow and East Falkirk (Martyn Day) for submitting the petition of behalf of his constituents.

As the petition highlights, buy now, pay later (BNPL) is a popular product: according to data from the Financial Conduct Authority (FCA), it was used by around 14 million people across the UK in the six months to January 2023. The Government are aware of reports suggesting that people are increasingly turning to BNPL due to cost of living pressures and, in particular, using it to buy essential items.

When used responsibly and provided affordably BNPL can be a helpful way for consumers to manage their finances and make purchases. It represents a popular alternative to traditional, interest-bearing forms of credit like credit cards and personal loans. Importantly, for some financially vulnerable consumers it may also provide an alternative to high-cost and illegal lending. BNPL is also interest free, which according to FCA data is why 46% of people chose to use the product in the 12 months to May 2022.

While the Government recognise that there is a potential risk of consumer detriment from BNPL, they have not seen firm evidence indicating that this is widespread or substantive. In fact, there is evidence that BNPL may be working well for many consumers. Evidence from the FCA suggests that consumers have a good understanding of the product, with 88% of users finding it easy to keep track of their repayments.

Because of these factors, the Government's position has always been that bringing BNPL into regulation must be proportionate so that borrowers are appropriately protected without access to these useful interest-free products being unduly restricted. The Government's consultation on proposed draft legislation to bring BNPL into regulation closed in April. Responses to this consultation were numerous and substantive, so the Government have been carefully considering stakeholder feedback to ensure a proportionate approach. They will publish a response to the consultation, which will set out next steps, in due course.

The petitioners may be interested to know that while BNPL is unregulated, BNPL users already benefit from broader consumer protection legislation, including on advertising and unfair contract terms. The FCA also has existing powers to take action against firms, which it used as recently as October to secure changes to firms' potentially unfair and unclear contract terms.

The Government recognise the challenges people face with cost of living increases and over the last two years have demonstrated their commitment to supporting the most vulnerable by providing one of the largest support packages in Europe. Their support to households with the high cost of living will total £104 billion between 2022 and 2025, an average of £3,700 per household.

HM Treasury continues to engage regularly with Citizens Advice and other organisations in the debt advice sector, like the Government-funded Money and Pensions Service, to discuss issues relating to pressures on households. It also continues to draw on research and data from these organisations to inform policy development.

WRITTEN STATEMENTS

Friday 2 February 2024

PETITION

Friday 2 February 2024

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not later than
Friday 9 February 2024

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