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# HOUSE OF LORDS
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| Lab | Labour |
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| PC | Plaid Cymru |
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# House of Lords

*Friday, 23 October 2015.*

*10 am*

*Prayers—read by the Lord Bishop of Southwark.*

## Oaths and Affirmations

*10.05 am*

*Lord Trevethin and Oaksey and Lord Oakeshott of Seagrove Bay took the Oath, and signed an undertaking to abide by the Code of Conduct.*

## Arbitration and Mediation Services (Equality) Bill [HL]

*Second Reading*

*10.06 am*

*Moved by* ***Baroness Cox***

That the Bill be now read a second time.

**Baroness Cox (CB):** My Lords, I am deeply grateful to all noble Lords speaking in this debate and to many other noble Lords, too many to mention by name, who have expressed their support for the Bill but who are unable to be here today. For example, my noble friends Lord Singh of Wimbledon and the former Archbishop of Canterbury the noble and right reverend Lord, Lord Carey of Clifton, have assured me of their support. In the words of the noble and right reverend Lord, Lord Carey:

"The Bill will strengthen the position of vulnerable women who need protection from exploitation. It will ensure that all such women, whatever sect or creed, get the help they need to enjoy full lives. There can be no exceptions to the laws of our land which have been so painfully honed by the struggle for democracy and human rights".

I very much welcome the noble and right reverend Lord's message, which highlights the two interrelated issues which this Bill seeks to address: the suffering of women oppressed by religiously sanctioned gender discrimination in this country; and a rapidly developing alternative quasi-legal system which undermines the fundamental principle of one law for all—a matter of especial significance as we mark the 800th anniversary of the signing of Magna Carta.

The Bill is also strongly supported by many organisations concerned with the suffering of vulnerable women, including the Muslim Women's Advisory Council, Karma Nirvana, Passion for Freedom as well as by the National Secular Society: I am grateful to them all.

The concerns which the Bill seeks to address are even more urgent today than three years ago, when the Bill received a previous Second Reading. As the courageous Muslim woman Habiba Jaan said in her recent report *Equal and Free?*:

"There is a growing concern that many Muslim women in Britain today are suffering severe gender discrimination but lack knowledge of their rights under British law".

Or, to use the words of another brave Muslim lady who shared her story with me:

""I feel betrayed by Britain. I came here to get away from this and the situation is worse here than in the country I escaped from".

Many noble Lords here today have heard deeply moving and disturbing first-hand accounts of the suffering of women in our country during meetings of the All-Party Parliamentary Group on "Honour" Based Abuse. Some noble Lords will remember the story of Roma—a pseudonym, of course. She was physically abused by her husband, an overseas Pakistani student, but was so in fear of being rejected by her community that she did everything possible to avoid a divorce. However, when her husband could not obtain a visa, he sent Roma an Islamic divorce by post. She showed us a plain piece of paper with the words "I divorce you" three times. To use her words, and I will never forget the yearning in her voice,

"I felt that plain piece of paper was a mockery of my human rights",

in this country.

Roma also referred to the process of halala, whereby a husband divorces his wife, possibly by saying "I divorce you" three times. If he then wishes to remarry her, she must marry another man, have that marriage consummated, then undergo another divorce; and only then can she remarry her original husband. Roma said that some husbands do this just to taunt their wives, and this is happening in Britain today.

Time permits only one more example. A consultant gynaecologist described to me a request from a 63 year-old man for a repair of the hymen of his 23 year-old wife. The gynaecologist refused as this is an illegal operation, whereupon the man became intensely angry, claiming that doctors in his town, not far from London, frequently undertake this operation under another name. He wanted this surgical procedure for his wife in order to take her back to their country of origin to marry another man. Her next husband could then obtain a visa to enter the UK. He would probably abuse and then divorce his wife and marry another or more wives here. The man who asked for this operation said that he earned about £10,000 for effecting this arrangement, which was very helpful as he was unemployed. Such shocking cases surely cannot be allowed to continue. The rights of Muslim women and the rule of the law of our land must be upheld.

On a related issue, my Muslim friends tell me that in some communities with high polygamy and divorce rates, men may have up to 20 children each. Clearly, youngsters growing up in dysfunctional families may be vulnerable to extremism and demography may affect democracy.

That brings me to identify the specific concerns to which the Bill seeks to draw attention. I recognise that its provisions cannot solve all the sensitive and complex issues involved, or many collateral issues, but I have been assured by the women whom they seek to help that they would be immensely useful. One Muslim woman phoned me this week to tell me that literally thousands of Muslim women are supporting this.

[Baroness Cox]

First, the Bill seeks to address arbitration tribunals which apply discriminatory rules. The Arbitration Act 1996 allows parties to agree how certain civil disputes, often financial, should be resolved, including disputes according to the law of another legal system. This permits arbitration to operate according to sharia principles. The Bill recognises legitimate forums for arbitration, including Muslim arbitration tribunals. It will not affect the continuation of these provisions in accordance with the law of the land.

However, there is a concern that even when these tribunals are operating within the terms of the Arbitration Act, some are practising sex discrimination, such as: inequality between men and women with regard to access to divorce; polygamy—a man can marry four wives; child custody, whereby in the event of a divorce a father may claim custody of his children, often at the age of seven; inheritance provisions under which women and girls receive only half of the amount of a legacy given to men and boys; and rules of evidence whereby the value of a woman's testimony is deemed to be half that of a man's. That is why the Bill seeks to close any loophole which might remain in the Equality Act 2010 and strengthens court powers to set aside rulings when discrimination has taken place, if the woman is subsequently unhappy.

The second concern relates to arbitration tribunals acting outside their remit; for example, by deciding cases relating to criminal law, such as those involving domestic violence and grievous bodily harm. The Home Secretary said in March that,

"there is evidence of … wives who are forced to return to abusive relationships because Shari'a councils say a husband has a right to 'chastise'".

I therefore very much welcome the Government's commitment to launch an independent review to understand the extent to which sharia law is, to use the Government's own phrase,

"being misused and applied in a way which is incompatible with the law".

The suffering of vulnerable women subjected to abuse can be exacerbated by the nature of the closed communities in which they may live, where they can be subjected to enormous pressure not to seek outside professional help because that might be deemed to bring "shame" on the family or the community. In many cases, women have suffered further difficulties because police, civil authorities and professional personnel have been reluctant to take action that might be deemed to give offence to the leaders of these communities.

This relates to the third concern that the Bill seeks to address: the crucial matter of consent, which must be at the heart of both arbitration and mediation. Arbitration or mediation ought to be voluntary. But women may be pressured by their families into going to sharia councils or courts. They may also lack the knowledge essential for an informed choice, such as the English language and their rights under British law. I quote from the Government's recent *Counter-Extremism Strategy*:

"Most concerning of all, women are unaware of their legal rights to leave violent husbands and are being pressurised to attend reconciliation sessions with their husbands despite legal injunctions in place to protect them from violence".

The Bill therefore creates an enhanced mechanism for court orders to be set aside if they were based on non-consensual agreements.

Any woman who does come forward needs the full protection of the law because she may well be doing so in the face of intimidation and overwhelming pressure not to bring shame on the family and community. That is why the Bill also makes it explicitly clear, in Clause 5, that a victim of domestic abuse is a witness to an offence.

The fourth concern relates to the estimated 100,000 couples in Britain who are living in Islamic marriages not recognised by English law. Of course, any person is entirely free to be in a religious marriage without legal registration. However, it is important for people doing so to be aware of the legal disadvantages. The 2014 Aurat report by Habiba Jaan, to which I have already referred, described Muslim women's experience of marriage in the West Midlands. The majority of women who had a religious-only ceremony were unaware that their marriage was not officially recognised by English law. Many were deeply disturbed when they discovered their predicament and said they wished they had known the reality of their situation and its implications.

I raised this issue with an amendment to the Anti-social Behaviour, Crime and Policing Bill in 2013. It would have required the celebrant of any religious, non-legally registered marriage to ensure that both parties to the marriage were aware of the implications. Unfortunately, the Government missed this opportunity to help these women. I trust that Government will now take the opportunity to support the Bill's very moderate provisions, which simply place a duty on public bodies to ensure that women are not misled as to the legal status of their marriage.

In conclusion, it is important to emphasise that the Bill does not specify any particular faith tradition. If women from other faiths experience systematic discrimination, the provisions of the Bill would also be available for them. It is also important to recognise that that the Bill does not interfere with the internal theological affairs of faith groups. If a woman with devout convictions accepts religiously sanctioned gender discrimination, the Bill would not inhibit the practice of her faith. But the problems I have highlighted often arise because choice is not informed or genuinely free.

I hope, therefore, that the proposals will receive a more sympathetic response from the Minister than on the previous occasion, when the Government claimed that there was no need for such provisions as all citizens can access and benefit from their rights according to law. The chasm between the de jure situation and the de facto reality is an abyss into which countless women are falling. I trust that, with the evidence that has been accumulated since the previous Second Reading, the Government's response today will be more realistic and will welcome the modest provisions of the Bill, which are strongly supported by Muslim women and organisations that represent them, as well as those committed to the preservation of the fundamental principle of democracy of one law for all. I beg to move.

**Lord Gardiner of Kimble (Con):** My Lords, I respectfully advise that if we keep to the advisory time of five minutes, it will mean that the House can rise at 4 pm.

*10.19 am*

**Lord Mackay of Clashfern (Con):** My Lords, I thank the noble Baroness, Lady Cox, for introducing the Bill and for introducing it so clearly in the speech we have just heard. My purpose is to say a word or two about arbitration and the position it holds in the law of England and Wales.

The freedom to profess and practise religion is one of the fundamental freedoms of our country. When people agree in a fully voluntary and unintimidated way to a particular request relating to their religion, it is right that that should be respected. However, there is a certain amount of subtle pressure involved sometimes in relation to religious organisations. That is perhaps particularly true in relation to the family. The important situation, it seems to me, is when the arrangements of public law come into a dispute: the basic principles of our law should then be respected because the ultimate authority for the enforcement of the resulting awards is in the law of this country. Therefore fundamental principles of the law should be respected throughout the whole of the procedure.

Under the Arbitration Act, arbitrations have a considerable effect when they have been properly set up. The Arbitration Act, which the noble Baroness referred to, was set up principally to deal with the problems that had arisen in relation to commercial arbitrations in this country, including the difficulties caused by repeated applications to the courts, which had the effect of holding up progress, as they almost certainly always do. The Act was intended to simplify and clarify the effects of arbitration and the principles by which arbitration should be conducted.

One of the fundamental principles of our law, referred to in the Bill, is the treatment of gender on the basis of equality. We know that in certain situations there is a presumption in some religions in favour of men, and the result is discrimination against women. I sincerely hope that that is not a general situation in our country, but it is an important point notwithstanding. It seems to me to be essential that all aspects of any arbitration, if it is to be authorised ultimately by the legal authorities of this country, should be conducted in accordance with the principles of non-discrimination. That is one of the fundamental provisions of the Bill, and I strongly support it.

Various types of negotiation can have the same effect, and it is important that if these are to be considered as authoritative in our law, they too should be in accordance with the fundamental principles of non-discrimination. For me, therefore, the part of the Bill that deals with this is very worthy of support, especially when there is evidence, to which the noble Baroness referred, that this is not always observed in all forms of those arbitrations which are based on certain religions.

*10.24 am*

**Baroness Deech (CB):** My Lords, as I did three years ago, I welcome the Bill and congratulate my noble friend Lady Cox on her persistence and her unflinching exposure of the evidence that necessitates these provisions. Equality is what the Bill is all about: it is about closing any loopholes that might remain, or might be picked, in the Equality Act 2010. All religions have had to rethink certain practices as a result of decades of addressing equality and non-discrimination: Roman Catholic adoption agencies have had to close; a registrar who was unable to preside over same-sex weddings had to give up; and the JFS school was held to have discriminated when applying the age-old Jewish definition of who is a Jew. It applies all round.

In this era of legal aid cuts, it is right and proper that arbitration and mediation should be permitted—but all arbitrations have to comply with the overarching equality provisions of this country's secular law. Article 9 of the European Convention on Human Rights promises freedom of religion, but there may be such limits as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others.

The Bill raises the enormously significant issue of the relationship between democracy and religious beliefs. The issue is more acute than ever, not only because of the forcible way it was brought to our attention by the Charlie Hebdo massacres but because of the mass movement of people of different religions and practices across Europe at the moment and the consequent need for integration and for many substantial minorities to live together in peace and harmony.

There has been much talk of British values. There is one simple token of all of them, which is Magna Carta. I am well aware that Magna Carta was based on a sexist, classist and unfree society, and the way we see it now as an ideal and a symbol of the rule of law took centuries to unfold. But it if means anything today, it is that all of us should be subject to the same system of law, have equal rights to access it and be treated equally by it. All across Europe there is debate about the place that sharia courts should occupy, if at all, in the national system. Some places across the world are more forbidding than others, including several American states and Greece.

I will focus on the family law aspects of the Bill. One problem is marriages that are not valid under English law because they have completely avoided the recognised methods of marrying. The solution is not to treat women who are not married as if they were wives, it is to press for every mosque to register as a legal wedding venue by getting a licence. Nothing could be easier, and then the couple need only have a wedding in the mosque and not have go to a register office. Maybe this could be made a condition of planning permission in the case of new buildings. The information that the women need may be extended by use of the public sector equality duty. As far as religious divorce goes, it needs to be preceded by a secular one, and every effort must be made to promote the welfare of the children, for their welfare may be seriously compromised if women are forced to accept conditions about their upbringing as the price of a religious divorce. Domestic abuse is another area where it is reported that jurisdiction creep by sharia courts has taken place. English law recognises rape within marriage as a crime: it does not accept that women must subject

[Baroness Deech]
themselves to men physically, and we must not tolerate the sweeping of violence against women or children under the carpet by any religion in the name of faith.

When the Bill was introduced in 2011, there was a response to it in a booklet published by the Islamic Sharia Council. Inter alia, in relation to family law, it claimed that the English legal system should not intrude into private lives and that if it did, we would end up with Big Brother watching the bedrooms of citizens. In relation to concerns about unequal inheritance laws, the pamphlet said that the law has no business telling individuals how to dispose of their property. These comments show such ignorance of the rule of law and the function that legal systems serve. The law most certainly reaches into allegations of violence no matter where it happens, whether within marriage or any other context, for the physical protection of its citizens. A religious marriage is not to be treated as the creation of a free-for-all zone immune from the reach of the law where violence and exploitation may have occurred, any more than in any other relationship. As for the denial that the law affects the disposition of property, there is no area where greater legal control exists—especially for inheritance—for the good of individuals and society.

In the end, the clash between national and religious law, the prevention of poor treatment of women, comes down to education from the earliest age in the legal rights and duties of UK citizens. Give women the information to free them. If they are denied the use of the English language and that information, they cannot know the security and proper concern for them and their children that English family law is offering.

*10.30 am*

**Lord Dholakia (LD):** My Lords, first, let me thank the noble Baroness, Lady Cox, for her Private Member's Bill. Over the years of my membership of your Lordships' House, the noble Baroness has raised important issues affecting the rights and liberties of people in many parts of the world. She has travelled far and wide, at times to places which are hostile and unwelcoming, but that has not deterred her speaking at first hand and with experience on matters which have often escaped public attention. There are many who will agree with her; equally, there are those who may construe that as interference in their beliefs based on the faith they practise.

In a democracy, we have long considered the development of a value-driven society as a core goal. The issues highlighted by the noble Baroness will not go away. We live in times where the impact of globalisation, devolution and immigration has been substantial. This does not mean that faith-based practices are under attack; it is quite the opposite. We must not run away from the decline of ethical behaviour on the one hand and the growth of fundamentalism on the other.

Article 1 of the Universal Declaration of Human Rights reads:

"All human rights are born free and equal in dignity and rights",

and Article 3 reads:

"Everyone has the right to life, liberty and security of person".

I do not underestimate that communities feel threatened when cultures and practices that have existed for hundreds of years are discussed and debated, but cultures do not remain static. Communities change. Conflict often occurs on matters of gender, generation, religion, language and the community's relationship with wider society. We should not be frightened. The successive generations of people settled in this country are now witnessing fusion in music, the arts, fashion and food. Changes are inevitable. It is right that there is a sensible debate, and we should question what happens when an individual's or group's belief impinges on other people's lives and liberties. Debates on community cohesion are useless if we shy away from tackling the very essence of one law for all.

It was as early as 1965 that the then Government proclaimed that Britain was a multiracial society. Since the early days of Commonwealth migration, successive Governments have been proactive and valued equality and diversity as one of Britain's core values. Britain has been at the forefront of legislative and other machinery to establish equality of opportunity for all its citizens, with strong new legislation on race, disability, gender, age, faith and sexual orientation. It is equally true that for too long we have assumed that our liberties are protected by a set of traditions and customary activities assisted by general consensus within our society about the liberty of individuals. Lawyers have often argued that we have no written constitution and limited guidance in legal process and documentation, and it is for this reason that the Private Member's Bill promoted by the noble Baroness requires serious consideration.

Let us not forget that, in the absence of specific protection of individuals and communities, we have not hesitated to promote legislation to eradicate discriminatory and other practices. Let me give a few examples. Who would have thought in the late 1950s and early 1960s that we would promote race relations legislation to eliminate race discrimination and promote equality of outcomes for all our citizens? The same applies to sex discrimination, forced marriages, FGM and other practices that cried out for equality of outcomes and fairness for all. By these actions we have sent a clear message that, in a democracy, law is an unequivocal statement of our public policy. Individuals now have access to protection and remedy through our courts.

Let me concede straight away that in many parts of the world there are informal and accepted practices to resolve disputes without recourse to a legal process. I see nothing wrong with that. Many land disputes, family disputes et cetera are resolved by involvement of community elders. The questions that need to be addressed are as follows. Do informal processes treat individuals fairly? Do they show satisfaction with outcomes? Do informal interventions comply with the law of the land enacted by Parliament? Evidence so far produced confirms that in many cases, in particular on matters of gender equality, this is not so. Too often, women are victims because formal or informal arrangements to resolve disputes are made by men.

Let me conclude. In this fast-moving world, there is a change in attitude. The successive generations growing up in this country are better educated and more

questioning of authority than ever before, and they are better informed. We need to understand that they are putting great pressure on the antique structures and, often, our antiquated ways of thought.

The Bill requires serious consideration. Law is an essential element of our democracy. It is not enough to say that everyone has access to our laws and there is no need to introduce the Bill. This will not do. As a start, the Government have a duty to monitor outcomes of informal procedures. They will find that, in many cultures, women are not only disadvantaged but discriminated against in the way that procedures deal with them. It is time to rebalance this anomaly.

*10.36 am*

**Baroness Donaghy (Lab):** My Lords, I am very happy to speak in support of this Bill for three reasons. First, I supported the noble Baroness, Lady Cox, in similar circumstances three years ago. Secondly, speaking as a former chair of ACAS, I say that arbitration and mediation should not be the subject of confusion or brought into disrepute. Thirdly, I played a part in fighting for the rights of women, and I believe that every woman should have access to those equal rights.

In my contribution three years ago, I told the story of my visit to the electricity showroom—it shows how long ago that was—in the Chiswick High Road in the 1960s to take out a hire-purchase agreement on an electric fire. I was told that I needed my husband's signature for something that I was paying for. I became a feminist overnight.

Progress can sometimes seem very slow, but it must not be transient. For ACAS, arbitration and mediation represent its bread and butter. It is important to distinguish between the two. Arbitration is where two or more parties agree an independent person who will decide their dispute. The terms of reference have to be mutually agreed beforehand and there has to be acceptance of the final outcome. Mediation involves a neutral person trying to help the parties identify common ground and reach a mutually satisfactory agreement. It is the parties which settle in this case, not the mediator.

Many of the reports which I have read show that arbitration and mediation are confused in sharia courts. Their remit is sometimes unclear and sometimes exceeded under the cloak of a judicial remit. It is sometimes said that a woman who attends these courts or councils is attending by mutual consent. I think that the definition of mutuality is sometimes being stretched. A woman is said to consent to a process when huge cultural and family pressure, a language barrier, ignorance of the law, a misplaced faith in the system or a threat of complete isolation from her community mean that the use of the word "mutual" in those circumstances is an abuse of the woman and an abuse of the English language.

Listening to and reading about the stories of women who have experienced real trauma in those courts is harrowing, and takes me back to women's rights nearly 50 years ago. I appreciate that the Minister was a carefree teenager then—or perhaps there is no such thing as a carefree teenager. Domestic violence and rape within marriage were tolerated, and I lost count of the times I was asked whether I was going to get married or become a teacher or secretary. Visiting my mother's family in Yorkshire, it was even more basic. I was asked, "Do you bake?". This did not have the same connotations then as it does now, with so many TV programmes on baking making it so popular. "Do you bake?" was putting me in my place. I assure the House that I am not trying to compare something as trivial as my baking capabilities with decisions being taken on behalf of some women today about their marital status, inheritance or personal safety; I am simply saying that, historically, it is not that long ago that women were unequal before the law. We cannot afford to go backwards and tolerate a situation in which any woman is living in fear and isolation.

The Government may feel that the Bill is unnecessary, as the law is sufficiently adequate to ensure justice in that area, but I argue that more needs to be done. This is not confined to sharia law or the Muslim religion; I believe that these parallel laws discriminating against women have existed and may still exist in other religions. As long as some women live in fear and are trapped in their situation, we should act. This is about equal rights for women. I hope that the Minister will be able to say in what way the Government intend to help women in this predicament. No one pretends that passing this Bill will solve all the problems, but it will promote what one of the campaigners whom I greatly admire has called a "shared vision of citizenship". I support the Bill.

*10.41 am*

**Baroness Eaton (Con):** My Lords, it is hard to believe that circumstances in the United Kingdom in the year 2015 for some women can be so unacceptable as to make this Bill necessary. I congratulate the noble Baroness, Lady Cox, on bringing to our attention the various issues that highlight the need for this Bill. The noble Baroness, Lady Donaghy, will be most interested that I was fortunate, being brought up as a woman in Yorkshire, that both my mother, who was born in 1906, and her mother before her were exceptional, independent and liberated women, who ran their own businesses—a very unusual occurrence in that generation. In my family, equality in all contexts was a given. For equality to be denied for so many in this country is totally unacceptable.

My working-life experiences as a politician and a teacher have brought me into contact with women for whom equality in the sense that we experience it, both socially and before the law, is unknown. I have become increasingly concerned that many women and girls in the United Kingdom are in this day and age suffering systematic religiously sanctioned gender discrimination. There is, as we have heard, increasing evidence to suggest that in some instances sharia law is being used as an alternative to proper legal process. I have many female friends and acquaintances born and educated in this country who have grown up with their families respecting the rule of law in this country first and foremost while still being devout Muslims. However, many women not born here, lacking language and education, are in a much more vulnerable position, often unaware of their rights under British law. As leader of a council, I became aware of many women living in close-knit communities, suffering domestic

[Baroness Eaton]
violence which was condoned by the family, and women who were being divorced against their wishes, who had no legal redress and who were left to live in penury.

We must all be very clear that nothing in this Bill has any negative impact on ecclesiastical courts with a religious and spiritual jurisdiction; nor does it prevent the individual's right to practise their religious faith. Anyone who wishes can surrender their rights under English law in favour of religious rulings. The right to practise a religion as one wishes will not be affected. This Bill recognises legitimate forums of arbitration, including Muslim arbitration tribunals. As mentioned earlier, problems arise when these tribunals pretend to have actual legal power when, in fact, they have none. As the current law has not been sufficiently effective, I welcome the fact that the Bill creates a new criminal offence of falsely purporting to act as a court. All those who have read the testimonies given by so many and listened to the contributions from your Lordships today will, I am sure, welcome this Bill and wish it a speedy passage.

*10.45 am*

**Lord Green of Deddington (CB):** My Lords, I pay warm tribute to my noble friend Lady Cox for her skill, tenacity and courage in bringing this Bill before the House, and I congratulate her on the very powerful case that she made in opening this debate. The provisions of the Bill are based on three essential propositions: that there can be only one law in our society; that religious freedom shall be protected for all religions; and that women in Britain should not suffer discrimination in the resolution of disputes and, to this end, should be made aware of their rights. I strongly support all three propositions, and I suggest that this Bill is a measured and intelligent attempt to achieve that outcome. The endorsement of the noble and learned Lord, Lord Mackay, is very significant in this context.

I speak as someone who spent 16 years living in the Arab and Muslim world, including seven years in Saudi Arabia, at the heart of Islam. Sharia law can be made to work, in largely Muslim countries, but nobody can realistically claim that in those countries women have the equality of status that is nowadays central to our society. The best that can be said is that there can be countervailing family pressures that can help some women in some circumstances. But our society is an entirely different one, and those who come must accept that—indeed, that is why many of them come in the first place. At the same time, we must be prepared to insist that there can be only one law; we must get away from what might be called the "Rotherham complex", where the authorities were so afraid of offending a minority community that they turned a blind eye to the appalling abuse of young, mainly British girls. I pay tribute here to Andrew Norfolk, a correspondent of the *Times*, and to the editor of that newspaper, for their courage and persistence in uncovering such outrageous behaviour. Other cases have since been unearthed that suggest that there has been a widespread failure to apply the law for so-called cultural reasons. Indeed, there can be little doubt that the many disturbing examples provided by the noble Baroness are but the tip of a very large iceberg.

It is time to make a stand against the abuse of women of whatever community and in favour of the rule of law—one law. I commend the Bill to the House.

*10.48 am*

**Viscount Bridgeman (Con):** My Lords, this is a timely and important Bill, and I pay tribute to the noble Baroness, Lady Cox, for her persistence in following this matter and for her brilliant exposition today. We are fortunate to live in a democracy that enshrines the principle of equality before the law. The purpose of this Bill is to address some of the difficulties that have arisen over the relationship of religious-based law—primarily, in this case, Muslim sharia law—to the civil law of England and Wales. It is important to be clear what the Bill does not intend to do, which is to interfere with the internal theological affairs of various faiths. To quote an excellent briefing that I have received, the Bill does not force a Muslim woman to give up religious law and, if she wishes to practise her religion as she wishes, the Bill will not take away her freedom. These provisions do not force her to take up her rights under English law; they merely give her the right to do so, should she so wish. This could not have been more clearly stated.

My noble and learned friend Lord Mackay has given us a very concise exposition of the arbitration network and pointed out that the Act can apply to jurisdictions outside English civil law. More difficulties arise under mediation where a third party does not decide the matter but simply helps the parties to settle their dispute between themselves, which on the whole does not form part of the Muslim practice of resolving disputes. Sadly, there is much evidence that so-called mediation in sharia courts is another word for persuasion, forcible or otherwise.

Sharia courts in one large category are constituted as arbitration tribunals but operate outside their legitimate scope. A very large number of courts present problems because they have little or no legal status but claim to operate within particular communities as if they have the power to make authoritative, binding rulings—and this is where we come to the problem of intimidation which is addressed in Clause 5. There is evidence that a refusal to settle a claim in a sharia court can lead to ostracism by the individual's community and to him or her being labelled a disbeliever. Going to the police or to non-Muslim professionals can be considered in the eyes of the local Muslim community to be disbelief. Most seriously, there are fatwas, which I understand are sharia legal judgments or legal opinions, many of which specify or imply that sharia law takes precedence over British law. I am very pleased that this is addressed, at least in part, in Clauses 4 and 6.

Finally, I will touch on some of the dangerous effects of unsatisfactory Muslim marriages. It is not uncommon in certain Muslim communities for men to have up to 20 children, a point raised by the noble Baroness. The likelihood is that many of these families will be dysfunctional and easy prey to radicalisation in the closed communities in which they operate. The noble Baroness, Lady Cox, has done a great service in persuading a number of Muslim female witnesses with great courage to come forward with their case histories.

This Bill may not be able to address in their entirety the very serious problems faced by many Muslim women in England and Wales, but it is an important first step, and I hope your Lordships will give it a Second Reading.

*10.52 am*

**Lord Maclennan of Rogart (LD):** My Lords, I congratulate the noble Baroness, Lady Cox, on bringing forward this timely Bill. The growth of abuse has been considerable in the past decade. The noble Baroness has given good examples of the abuses, and they need not be repeated. The suffering of women oppressed by religiously sanctioned gender discrimination must be addressed as part of our protection of human rights. The emergence of a parallel legal system which undermines the fundamental principle of one law for all must also be recognised. There is an urgent need to take these issues seriously and adopt appropriate measures to help women suffering in ways which are completely unacceptable in Britain.

In the United Kingdom, there has been considerable growth in sharia forums—I believe there are 85—and sharia arbitration councils which discriminate against women. Section 1 amends the Equality Act 2010 to put this right. Subsection (4) seeks to protect those who marry according to certain religious practices but not according to the civil law. The need to make this remedy open and clear is very strong. Many of those who are subjected to improper practices are not aware of their rights. Those who are in polygamous marriages need to be protected because they can be impoverished if their husbands simply divorce them by repeating three times that they are divorced.

The amendments to the Arbitration Act 1996 to preclude discrimination against females are also very important. They exclude an imbalance of evidence between men and women. Sharia law sees that as acceptable, but it is not acceptable in accordance with the laws of this country. Property distribution between sexes in cases of intestacy is also covered by the Bill. The amendment to the Family Law Act 1996 which is proposed gives power to courts to set aside mediation agreements if they decide that one party's consent was not genuine. That enables the police to investigate the circumstances. If this Bill is enacted, it will become an offence falsely to claim to have legal jurisdiction or the power to arbitrate without any basis under the Arbitration Act 1996. That seems very necessary.

The Bill seeks to ensure equality before the law and stop the coercion of women in this country. It will help women to know their legal rights and clarifies that discrimination law applies to arbitration. This Bill needs to be enacted to prevent the operation of a parallel legal system. Provided that faith groups operate within the civil law, they will be free to resolve their disputes within the framework of religion. That has been made clear by the noble Baroness, Lady Cox. The Bill is very worth while and needs to be enacted.

*10.58 am*

**Lord Cormack (Con):** My Lords, my old friend the noble Lord, Lord Maclennan of Rogart, the ninth speaker in this debate, has made the job of my noble friend Lord Faulks, who will reply, easier by the minute or more difficult. If my noble friend Lord Faulks does, as we would all wish, give a warm welcome to the Bill and promise to act upon it, he will leave the Chamber basking in reflected glory. If he has to give the sort of disappointing response we suffered last time, there will be a collective sigh, and it will be heartfelt.

We all owe an enormous debt to the courage and persistence of the noble Baroness, Lady Cox. She is a shining light for us all. She goes to places where others fear to, she reports to this House with graphic simplicity and she embraces causes that we should all be glad to make our own. I have had the privilege of attending a number of the meetings convened by the noble Baroness, where I have met some truly remarkable women—women whose courage emulates hers. It is different, though: she observes, they suffer. She has brought their suffering to our attention, and we would be a churlish lot if we did not give this Bill a fair passage.

The noble Baroness, Lady Deech, is one of those who has referred to Magna Carta. Because of Lincoln's possession of one of the prime originals, I have been much involved this year in Magna Carta commemorations and celebrations. There could be no better commemoration and celebration as we approach the end of Magna Carta year than by giving this Bill, or something very like it, a fair wind. I say "something very like it" because Governments always nitpick and often like to bring in their own version. Fair enough, but a version there must be.

The noble Baroness, Lady Cox, quoted the noble and right reverend Lord, Lord Carey. I am bound to say, although I am one who is very admiring of the Bishops, that it is a pity that we have a Bishop speaking in the next debate and in the final one but not in this one. I think we ought to hear the voice of the established church. A Bishop for whom I have enormous regard—I will not name him so as not to embarrass him—said to me, "Freedom of religion should not extend to barbarous practices". It should not. What we are talking about today are barbarous practices. Whether those barbarous practices are the work of an obscure Protestant sect or the work of those adhering to a mainstream religion, they should not be tolerated.

It would be a travesty if we entered 2016 and people could still be treated as chattels. That really is the nub of this matter. These women are being treated not just as second-class or third-class citizens but as possessions. We passed an anti-slavery Act, and I am delighted that we did; I rejoice in the fact that my parliamentary hero was William Wilberforce. This is another form of slavery, in a way. The noble Baroness has done the House a great service by her persistence, and I hope it will be rewarded.

*11.03 am*

**Lord Anderson of Swansea (Lab):** My Lords, like the noble Lord, Lord Cormack, I join the consensus of concern. I agree with my noble friend Lady Donaghy that this is essentially a women's issue. I join, too, with the noble Lord, Lord Dholakia, in praising the noble Baroness, Lady Cox. I have long admired her tenacity and the way in which she has fought for human rights abroad in an even-handed way, be it for Muslims in Burma or Christians in South Sudan. She is no less

[Lord Anderson of Swansea]
keen in promoting human rights at home, as is shown by her persistence in bringing forward this Bill after the failure in 2012.

As she has pointed out, there is a danger of vulnerable people being misled as a result of a misunderstanding of the relationship that they are forming. Contrary to their beliefs, their so-called marriage ceremony may be of no legal standing in this country, and all too late at the time of their divorce they find that they are without remedy. For example, Islamic religious weddings cannot be recognised if they take place abroad, but of course a licence can be obtained, just as for non-conformist churches. Aurat, the women's rights organisation, found in its case studies on Muslim women living in the West Midlands that around 90% who said that they were married were not actually in marriages recognised by our law. The *Times* of 3 July stated that it is considered that as many as 100,000 couples in Britain are estimated to be living in Islamic marriages not recognised by UK law.

My experience, both as a long-term constituency MP and as a barrister whose practice included some family law, gave me experience of women who came to the UK to marry, often from traditional societies, who accepted without question that the marriage was legally valid in the UK. Often they lacked adequate language skills, were timid and subject to community pressure, and would remain ignorant unless properly advised. The problem now appears to have been recognised by the Home Secretary, who said in March this year:

"There is evidence of women being 'divorced' under Sharia law and left in penury, wives who are forced to return to abusive relationships because Sharia councils say a husband has a right to 'chastise', and Sharia councils giving the testimony of a woman only half the weight of the testimony of a man".

Surely there is a danger of a parallel legal system being created. Women should not be subject to that sort of pressure to submit and not pursue their rights under our law. It is therefore all the more surprising that there was such a weak response from the Government in 2012: that every woman has access to her rights under the law of the land. We look forward to a more positive statement from the Minister this morning. I accept that in their Written Answer of 24 September the Government have now conceded that,

"Sharia councils may be working in a discriminatory and unacceptable way",

and have undertaken to commission a full and independent review. I say in passing that I hope the review will not be of Chilcotian length and will have very clear terms of reference.

Nevertheless, I hope that the Bill will receive a Second Reading, that the question of the legal validity of marriages will be assured, that the principles against our own law—giving more weight to a man than to a woman, intestacy and so on—will be examined and that if these key procedural principles of English and Welsh law are not fulfilled, the proceedings can be struck out. If these practices are not stopped, not only will they continue but they are likely to be extended. I therefore welcome the fact that the Government have now changed their position and recognised that there is a real problem. The principle of equality before the law should be upheld. I trust that the terms of reference of the proposed review will be sufficiently wide to encompass all the concerns expressed so well by noble Lords in this debate.

*11.08 am*

**Lord Elton (Con):** My Lords, the breadth of the compassion of my noble friend Lady Cox is equalled only by the depth of her energy. I am astonished, as I think we all are, by what she accomplishes for human rights right around the world. We are very lucky that she has focused today on this particular important human rights situation. She started more or less by saying that all are equal under the law and that no person, organisation or ethnic group, no religious persuasion and no speaker of a foreign language is exempt from the law, either from its constraints or from its protection, unless the law so provides. Where it exists to protect the weak from the strong, it must be known to the weak so that they can seek its shelter, and to the strong so that they know the limits of their authority. If the law is to be effective, it must therefore be as clearly expressed as legislators can make it. It follows that where it applies for those who do not speak English, it must be available to them in their own tongue.

If practices or a system of practices developed under a different jurisdiction or culture are established in this country and are recognised to be incompatible with the judicature or culture of our own country, the law must be developed to prohibit them. Where that practice or set of practices result in serious harm to individuals, the application must be swift. It follows, perhaps controversially, that that application should not wait on the painstaking development of case law or interpretation; that is, of statutory law as it exists. It should be applied, as is now proposed, by legislation. If it is in contravention of any point of existing law, which I very much doubt, it needs to be amended. If it is not, I suggest that the remedy of overlap should surely await consolidation.

In the present case, we are dealing with matters of great importance and very great sensitivity. The practices at which the Bill is directed have arisen in a particular religious persuasion and perhaps within particular ethnic groups. It is therefore of the greatest importance that it is made absolutely clear that it is the practices themselves, and only the practices themselves, at which the Bill is directed. As has been drawn to your Lordships' attention, it is so drawn that if they occur in any group—religious, ethnic, cultural, linguistic or any other—it will bear equally heavily upon them. That is how it should be, and that is exactly what the Bill achieves.

The next task is surely to see that there is a mechanism for getting an understanding of this to all those affected by reliable machinery, supervised by those who are empowered to enforce it, and that it should be in their language and, most difficult of all, if they cannot read, it should be given to them verbally. That is of great importance in this particular case. I repeat my admiration and thanks to the noble Baroness. I apologise for beating the same drum as many other noble Lords; I just hope that the rhythm has been slightly different.

*11.12 am*

**Baroness Flather (CB):** My Lords, I am sure that your Lordships have heard everything about the noble Baroness, Lady Cox, but that will not stop me from saying my piece. I have been fortunate enough to have her as a very close friend, and I have been working with her on this legislation, which she desires to bring in. She has undertaken so much work; I sometimes wonder whether she eats and sleeps at times. To be honest, I have never seen her eat—and of course I would not see her sleep. It is wonderful that she has got the Bill to this stage, and it is for us to make sure that at least the best of it comes out.

We just heard from the noble Lord, Lord Anderson, that this is a women's issue. It is not. We should be very careful not to mark it as a women's issue, because it is an issue for the country and for all of us. We should not have any parallel system in this country. It is incorrect, and it works against the ethos of what we have been used to. So it is an issue for all of us. Yes, it is a particular issue for women, because they are deprived of rights, but it is an issue for men as well because they must show other men that they have to behave properly.

I am sure that all noble Lords remember the retired Bishop of Rochester, Michael Nazir-Ali, who has made a special study of sharia. He would tell noble Lords that there is no doubt whatever that discrimination is built into sharia. I saw him yesterday and said, "I've been quoting you". "Oh", he said, "what have you been saying?". I said, "You've been saying that you said that there is inequality in sharia". "It's true", he replied. Therefore, let us be clear that even religious practices that may be more hidden from our eyes may also impact badly on women.

For that reason I am very nervous of sharia, because it does not fit in with this country. If people come to live here they have some duty to conform. If you look at some of the urban areas where large numbers of Pakistanis have settled, there is no desire to integrate—to become part of the nation. If we can do anything to make that happen, obviously that would be a good thing. If they do not integrate, in time they will become a state within a state, and we should guard against that very fiercely so that they do not start building their whole community system on the basis of how they have been brought up.

I also point out that the term "culture" has been very damaging. "Oh, it's their culture", people say. Do noble Lords know what culture means? It is usually something you practise. It does not mean that all the things you practise are culture—they are just social practices. Because we call it culture and give it that status, we do not like to go against it. Social workers say, "But it's their culture". What do they mean? What about our culture? We want our culture to be practised in our country. I have adopted this country as my own, so I can say that in my country I want my culture to be practised, not the culture of an Islamic country. This is very important when you look at the issues of grooming or other issues where everybody is so scared to say anything in case they upset the "culture".

My friend Sir Malcolm Grant, who is chairman of NHS England, told me that he asked his team to look at heart disease in Muslim communities. They said, "Oh, but it's very sensitive to ask them these questions". My goodness—you ask us those questions and it is all right, but it is sensitive if you ask them? Why do you want to have two levels? What you do with us you should be able to do with any other group living in this country. Either they are part of this country or they are not.

This is the biggest thing I want to fight against. We need them to start thinking of integration and to make some commitment to this country. We treat them as a special group—we must not touch them, and so on. On halal meat, we do not know whether it is pre-stunned or not. Why do we not know this? Cutting the head off an animal is not much good. They showed it on television; my husband saw it, but thank goodness, I did not. However, I have stopped eating halal meat. I would like to; if they told me it was pre-stunned, I would. We could easily do these things.

Women married under British or sharia law can get a British divorce but not a sharia divorce. One women whom I met through the noble Baroness waited for six years for a sharia divorce. I said to her, "Why? You've got the British divorce". She said, "If I go to Pakistan, he'll come and take the children away". I will not go on, because I have run out of time. I ask noble Lords to please give the Bill a fair wind.

*11.18 am*

**Lord Sheikh (Con):** My Lords, I say at the outset that I have met and spoken to many people across the Muslim community in recent weeks concerning the Private Member's Bill. It should be noted that the Bill does not name any religion. However, there is widespread concern that it seeks to demonise Muslims in particular by giving an incorrect impression of our values.

First and foremost, it must be appreciated that in any dispute—civil or otherwise—one party may feel aggrieved if a decision does not go in their favour. We must talk to all the parties concerned.

There is an incorrect presumption that sharia councils arrive at decisions that are legally binding. Normally, in fact, they provide mediation services and do not consider themselves above the law. Any agreement arrived at following mediation is binding only if both parties mutually agree to it being endorsed by a court of law. If both parties prefer the matter to be considered by arbitration, this should be allowed. In such cases, the normal rules of arbitration apply and the arbitration is binding on both parties unless there has been an error in law.

There is a misconception that Muslims in this country would like sharia law to be applied generally. However, the reality is that nobody talks about sharia law as the law of the land; Muslims are clear that English law should, and does, ultimately prevail.

Some Muslims have an Islamic marriage, known as a nikah, without also having a civil wedding. Ideally, I would like to see imams performing a nikah only after a civil wedding has taken place. We should perhaps look at the possibility of amending the Marriage Act 1949 to address this issue. Having said that, if an imam receives a request to perform a nikah without a prior civil wedding, it is imperative that he emphasises to both husband and wife the drawbacks of a nikah-only marriage.

[LORD SHEIKH]

Many couples choose to cohabit without getting married and we do not pass any judgment on them—nor should we. More than 3 million couples in this country are cohabiting at the moment. When a nikah takes place, a contract is signed between the man and the woman containing the terms and financial obligations of the marriage. Under Islamic law, a man can divorce his wife by stating this. If a woman feels that her marriage has broken down and that they should divorce, she can ask the man to divorce her. If the man refuses to divorce her, she can approach the sharia council and petition for a divorce to be issued. It is therefore essential that there are sharia councils that she can approach for this to take place. I believe that all Muslims should be encouraged to use the already-drafted Muslim marriage contract, which perhaps needs simplifying.

I should emphasise that sharia councils do not obstruct or attempt to influence proceedings where issues such as domestic violence are concerned. In fact, women are advised to contact the police.

At one point the Bill refers to intestacy. It must be noted that, in the event of the death of a person who has not left a will, the estate will be administered according to the principle of the laws of intestacy in the country. Sharia law is not therefore relevant. If a person wishes to make a will distributing his wealth according to sharia law, he must be entitled to do so.

**Lord Carlile of Berriew (LD):** I apologise for interrupting the noble Lord. As a matter of fact in sharia law, if a man wishes to obtain a divorce, does he have to ask his wife first, before he approaches the sharia council?

**Lord Sheikh:** No. Under sharia law he does not have to do that. If sharia councils make unfair decisions, these must be dealt with on a case-by-case basis. I feel that there must be a mechanism to deal with such cases and that we should put in place an appeals procedure.

**Baroness Flather:** Is the noble Lord saying that there is equal treatment of women and men under sharia or is he saying that whatever sharia prescribes is correct? I am not sure; I think he is saying that whatever sharia prescribes is correct and proper. However, is there not discrimination against women?

**Lord Sheikh:** It depends on what the noble Baroness means by discrimination.

**Baroness Flather:** I see that the noble Lord has not found that out yet.

**Lord Sheikh:** That might be amusing to the noble Baroness but it is not amusing to me.

**Baroness Flather:** It is not funny to me—I am a woman.

**Lord Sheikh:** I will continue. In the same way as sharia councils cannot claim to make legally binding decisions, some religious decisions have no place in English law. In any case, mainstream courts are not able to deal with matters of religious custom. If Muslims or those from any other religious group wish to undertake mediation or even arbitration according to a set of religious principles, they should be free to do so and there should of course be no coercion. I would like to see the UK Board of Sharia Councils become a prominent, self-regulatory body of which every sharia council should be encouraged to become an accountable member. I have spoken to heads of sharia councils and I know that there is enthusiasm for this.

There are problems affecting Muslim women who are denied religious divorces and women who enter into religious marriages with no legal protection. If there are problems with some practices, it is incumbent on the Muslim community to deal with the issues and take remedial action. We must work together with the community to find the solutions. This Bill will not help us to achieve this.

*11.26 am*

**Lord Taverne (LD):** My Lords, I have long much admired the campaigns of the noble Baroness, Lady Cox, in favour of human rights and I strongly support this Bill. It reasserts the principle that there must be equality for all under a single law of the land, especially in one area where the principle is widely ignored and denied—namely, the rights of Muslim women. I have not previously spoken on the subject and will concentrate on one issue only.

I had one major reservation about the Bill—a reservation which, to some extent, is shared by the noble Baroness, Lady Uddin. Since there is such strong evidence that English law and procedure have been ignored in so many ways in so-called sharia courts, and given the difficulties that clearly exist in effectively protecting the rights of Muslim women, is not the simple answer to outlaw sharia law outright in any judicial or quasi-judicial proceedings in the United Kingdom?

I have been persuaded against that argument by someone who is, I am told on very good authority, regarded as one of the wisest counsellors in dealing with Islamic extremism and radicalisation, Councillor Saima Ashraf of Barking and Dagenham. She has had strong personal experience of discrimination but still favours keeping the option of arbitration and mediation under sharia law.

As a non-believer, I accept that, unless there are strong reasons to the contrary, we should respect and protect the right of faith groups to decide disputes in accordance with their religious beliefs. I can see that those who are brought up under strict sharia law, as the law for true believers, might regard a total ban as the imposition of alien values and as an example of discrimination against Islam. That would not be the best way to promote tolerance and understanding between religions, and in fact the Bill does not outlaw so-called sharia courts but provides the safeguards against discrimination which exist under English law, and these must prevail.

However, my adviser stresses two very important issues which have not been mentioned so far: monitoring and education. It is absolutely essential that we have effective monitoring to ensure that the safeguards are

being observed, and this must be accompanied by education. I believe that we should make sure that Muslim women in England are made explicitly aware of the rights that they have here, and that should certainly include Muslim women who do not speak English. There are many cases at the moment of women being ignorant of their rights and even of their legal status. If, however, monitoring does not provide an effective safeguard or it shows that the abuses which are now widespread continue, then outlawing all sharia law will be the only course left.

*11.30 am*

**Baroness Massey of Darwen (Lab):** My Lords, I thank the noble Baroness, Lady Cox, for introducing this debate so effectively. I admire her courage and tenacity. I sometimes sit in the women Peers' rooms and see her dashing off to catch a plane, going on some ghastly journey to some troubled part of the world.

I am speaking today because of a deep concern, shared by many—by all, I think—for women and children. Some women and children get a poor deal in some circumstances: discrimination in employment, domestic violence, sexual harassment and rape, cruelty and degradation, and appalling treatment in situations of war and conflict.

My late, lamented dear friend, Baroness Rendell of Babergh, was not only a great novelist but she spent much time combatting the odious practice of female genital mutilation. Indeed, she introduced to your Lordships' House the Bill that became the Female Genital Mutilation Act, and we have seen progress, if slow, in legislation—things are possible. Baroness Rendell used to say that we must stand up for those people who are invisible or who cannot or dare not speak up for themselves. I think that that is a mark of a civilised society.

I welcome and rejoice in religious and cultural diversity. However, culture and religion should not be contrary to the law of the land or to the rights and welfare of any section of society. In your Lordships' House, I have heard men and women from different ethnic, religious and cultural backgrounds support this view—we have heard that today. If we do not raise controversial issues, in whatever fora we can, issues will stagnate and fester.

I am a patron of the British Humanist Association and an honorary associate of the National Secular Society. Both organisations have challenged, as I do, customs that impinge on the rights of women and children.

Two tenets of this Bill stand out for me. One is that, to be effective and not discriminate, arbitration must be in line with UK equality laws. The second is that quasi-legal structures have grown up which women may not understand and they may therefore be confused about what is according to UK law and what is not. Of course, a woman's freedom also includes the freedom to arbitrate and mediate on private affairs. However, women must engage in alternative dispute resolution freely, and their right not to be discriminated against on the grounds of gender must be followed, as enshrined in the Equality Act, the Human Rights Act and the European Convention on Human Rights.

The 2012 arbitration scheme from the Institute of Family Law Arbitrators includes divorce and the care of children. This relates to the Children Act, which states that the welfare of the child must be paramount. Courts of arbitration have no legal right to arbitrate on child custody. Divorce and the care of children are complex issues in any legal dispute but they are made worse if the woman is deemed to have fewer rights; for example, if her testimony is worth half that of a man's.

Decisions on inheritance can be enforced only if compatible with UK law and public policy. For example, the unequal division of an estate between male and female children on intestacy would not be enforceable in UK law.

There may be pressure on women to submit to a religious court rather than a UK court for the determination of family or inheritance disputes. Women may think that their marriage, divorce or rights over children are guaranteed. Women must be better educated to understand what they are getting themselves into. I believe that there should be education, beginning in school, about the differences in law and that an information campaign should be set up to inform women about their rights in law.

All this would be useful, as are debates such as this one. Any highlighting of problems, and the discussion of those problems, can help rethinking and awareness. In the case of women suffering discrimination, it can help them unite to protect their rights and persons—I know that this is happening. Therefore, I hope that this Bill will serve to encourage discussion, information, clarification and change. Once again, I welcome the opportunity that the noble Baroness, Lady Cox, has provided.

*11.35 am*

**Baroness Buscombe (Con):** My Lords, I, too, congratulate the noble Baroness, Lady Cox. It takes real courage to bring and keep this important, and uncomfortable in many ways, issue in the open. I speak as a member of the English Bar, a member of the Joint Committee on Human Rights and a founder member, of many years, of the international foundation for arbitration and dispute resolution, so I understand the issues. I will not repeat the legal and technical arguments. That would be otiose, given the many excellent speeches by your Lordships already in support of the Bill today.

I want to reference two examples of practical experience. Back in 1997, I fought for the parliamentary seat of Slough. I well recall going into brilliant grammar schools during the day to talk to the girls and boys. But in the evening, when I went to their homes, I was not even allowed to look at those same girls, let alone talk to them. They would go home with their brothers and change into their different dress. Their brothers would be allowed to mix with and meet people, such as myself, but the girls were sent straight into the kitchen, no one was allowed to speak to them and they were not even allowed to serve me food. I was treated as an honorary man. When I raised the issue of rights for women, I was thrown out of those houses. Indeed, I remember visiting a mosque one day—this is back in 1997—and turning to my husband to say, "We are

[Baroness Buscombe]
storing up serious trouble in this country, given that so many young British citizens are not allowed to behave as we do and mix as we do". Secondly, I will always remember one young Muslim who I knew quite well and who was born in this country. He came up to me one day and said, "The trouble with you British people, we do not respect you; you are weak because you do not stand up for what you believe".

I come to my central question to the Minister, to which I hope to receive a definitive reply. Will he agree with me that our jury system is no longer sustainable, given that a growing number of people in this country—British citizens, with all the amazing rights that citizenship bestows upon them—do not respect our rule of law and fundamental human rights? Does he agree that when a man has a genuine and heartfelt belief that the rights of women are different from the rights of men, our jury system is broken? We talk about improving the prospect for opportunities for ethnic minority judges. Will the Minister tell us whether we can, and do, allow judges to preside over our system of law when their fundamental beliefs are different?

We must face up to the fact that many Members of Parliament have turned a blind eye to what is happening, and what has been happening in their constituencies for years, for fear of losing votes. Indeed, many of us have been afraid to speak up for fear of being accused of Islamophobia.

What is the solution? That young British man who said that we are weak was quite right. At the core of a safe society, one that our Prime Minister rightly regularly refers to, is a cohesive society. If we are to gain the respect of everyone of all religious beliefs living in this country, we must now to do two things: allow this Bill to pass into law, and seriously rethink and introduce rigour into our rules for citizenship of this country, including rules that spell out and demand equal rights, regardless of gender, under one rule of law—our rule of law—with one system of justice for all.

*11.40 am*

**Lord Kalms (Non-Afl):** I thank the noble Baroness, Lady Cox, for leading us into this critical area of re-establishing British justice. She has rung the bell of a new enlightenment.

Islamic religious fundamentalism is a system that will always be in conflict with western liberal democracy. It is a system of non-negotiable theocratic edicts which runs completely against our concepts of human rights and equality. Intolerant religions always make unacceptable encroachments when they are in a minority and cause catastrophes wherever they dominate. The enlightened western democracies long ago separated religion from the making of laws and have generally enjoyed good social achievements as a result. Man-made laws and religious structures should have much in common, and both must be able to flourish in the same place. But in democratic societies, where the elected represent the views of citizens, the laws of that society must always stand supreme. It is the intention of the Bill to ensure that that condition continues in the UK. In clear and unequivocal words, the line is now drawn.

Those who desire to prioritise their faith may continue to do so, but on a set of non-negotiable principles. No excessive pressures of conformity may be applied; no British laws will be broken, bent or diluted; and no seditious acts can be preached. This marks the issue. A failure to respect those conditions breeds the creation of a wholly unacceptable pseudo-legal system.

One question that the law has been struggling with in recent years is: when is a court not a court? One answer is when pre-formed judgments make a judicial conclusion, which means that claimants have wasted their breath. Situations where the conclusion is irrelevant to the evidence are better known as kangaroo courts.

Beneath the calm surface of many of our Muslim co-citizens lies a historically accepted judicial system based on the Islamic faith. Their judgments are not our responsibility, except that we have a duty of care to be satisfied that the rulings do not breach or run contrary to any of the basic laws of this country. Our laws are supreme over every religious court and subject only to the Parliament of this country. It is a good and well-respected system. If a plaintiff or defendant is satisfied by going through sharia courts for arbitration which does not conflict with British laws then so be it, but there must be no extension or overreach, as there has been in cases reported in this country. If such an overreach occurs, then the full force of the law must be used against anti-British justice.

As to equal rights for both men and women, but particularly women, one law for all applies uncompromisingly: British law. If any woman in front of a sharia court is not fully aware of her rights under the British law, any judgments must have no binding basis. All involved should be charged with what amounts to perversion of the course of justice. It is striking that, despite numerous reports of overreach by sharia courts already, such charges have never yet been brought against a sharia court in this country.

The fundamentalist sharia courts are not about legal ignorance; they are not about misleading those who stand in judgment; it is a blatant refusal to accept that, in this country, the only law is that based entirely, 100%, on British law. In giving judgments contrary to British law, they show that they are not fit for purpose but are instead committed opponents of our system of justice. The wilful mistreatment of those who come to them for justice includes unacceptable levels of financial exploitation.

**Lord Sheikh:** Does the noble Lord appreciate that these are not sharia courts; they are sharia councils and they do not have any legal effect?

**Lord Kalms:** I heard all the explanations given by the noble Lord, Lord Sheikh, previously and I reject them completely. I think that the noble Lord stands for views which are totally incompatible with ours in this country.

These courts are a breeding ground for a wider application of sharia which, both historically and around parts of the country today, is not limited to questions of arbitration. Honour killings and other barbarities, including horrible mutilations, are their legacy as day follows night in the wider application of sharia beliefs.

It should have been unnecessary, but tragically has become necessary, to pronounce, "Join us or leave us". We are a comfortable, mature and tolerant society. Our ground rules are generous, but our human rights rules are rigorous. It is now for the majority to reject the few so that we may all enjoy all that this country has to offer.

*11.45 am*

**Lord Blencathra (Con):** My Lords, I congratulate the noble Baroness on once again raising this issue. She has campaigned ceaselessly for the rights of women who may be disadvantaged by the application of sharia law to their divorces.

When the noble Baroness, whom I now regard as a friend, asked me to participate in this debate, there were only five of us on the speakers list and I had drafted a fairly long speech. Now that we have a list of distinguished and learned Peers taking part—I shall be followed by a very learned Peer—I have decided to follow the advice of my favourite great actor, Mr Clint Eastwood, when he said as Dirty Harry:

"A man's got to know his limitations".

Well, I know some of mine, so I can now be brief.

When the noble Baroness raised this issue in 2012, I think that the view of the Government was that there was no real problem since women could have access to the normal civil courts as well. But the evidence that we have heard today in the examples cited by the noble Baroness shows a huge chasm between what is the technical, legal position and what seems to be happening on the ground in reality. I have also read of numerous other examples provided by the noble Baroness which all show discrimination against women who have undergone a sharia law court or council of arbitration.

It would seem to me that the fundamental principle in divorce, after consent or non-consent after a defined period, is fairness. Both parties should be treated fairly. That does not necessarily mean "equally" in terms of division of goods and finances at the end of a divorce, but "fairness" as determined by an impartial court or judge under British law.

It seems that the Home Office has now recognised that there is a problem. Paragraphs 17 and 18 of the *Counter-Extremism Strategy*, published this week, state:

"Many people in this country of different faiths follow religious codes and practices, and benefit from the guidance they offer. Religious communities also operate arbitration councils and boards to resolve disputes. The overriding principle is that these rules, practices and bodies must operate within the rule of law in the UK. However, there is evidence some Shari'a councils may not follow this principle and that Shari'a is being misused and applied in a way which is incompatible with the law … There is only one rule of law in our country, which provides rights and security for every citizen. We will never countenance allowing an alternative, informal system of law, informed by religious principles, to operate in competition with it".

That last sentence is pretty powerful stuff and my question to my noble friend the Minister is: will the Government legislate if their inquiry identifies a problem? Paragraph 48 of the strategy states:

"We will therefore commission an independent review to understand the extent to which Shari'a is being misused or applied in a way which is incompatible with the law. This is expected to provide an initial report to the Home Secretary in 2016".

That sounds a wee bit vague. Why just an "initial" report? It is not too complicated surely to goodness; let us have a full report. And when will we have it in 2016? I would like the Minister's assurance that if a real problem is identified in 2016, then we will have legislation in the gracious Speech of 2017.

Finally I say this, and I choose my words carefully. UK divorce law now treats both parties very fairly, but was that the case 30 years ago or 50 years ago? I think not—the noble Baroness, Lady Donaghy, touched on that same point. The law then was biased in favour of men, despite the fact that Christianity had moved on from Old Testament teachings. However, we know that Islam, perhaps not as written in the Koran but as practised by some in this country who are not learned Koranic scholars, is many years behind the modern view of turning the other cheek and loving one's neighbour as oneself. Therefore, I cannot believe that sharia divorce law treats women fairly. Surely it is still operating in the United Kingdom timeframe of the 19th century when, under English and Scots law, women were treated as chattel with no rights. Again, if that view is wrong, then a proper inquiry can reveal the true situation.

I commend my noble friend on her Bill. It will not become law this Session but I hope that all the evidence she has produced and the comments in this debate will be taken on board by the Government so that we have government legislation in the next-but-one Session. I congratulate her, once again, on her fortitude and perseverance.

*11.50 am*

**Lord Carlile of Berriew:** My Lords, in supporting the Bill I join in with the well-deserved tributes made to the noble Baroness. The one jarring note during the debate has been the suggestion that the Bill is an attempt to demonise Islam. If it was, of course, it would be a disgraceful Bill—but it is not. The Bill is an attempt to demonise discrimination, particularly against women, and falls within a virtuous circle in which we should all wish to stand.

The isolation of women from the law is not a new phenomenon. However, the inevitable consequence of such isolation is discrimination against women. Some of that discrimination is casual and negligent, but bad enough for that. However, some of the discrimination is misogynistic, manipulative and, most of all, obsolete. We should take action to drive that kind of discrimination out of our law. The Minister would be right should he say that this proposal was superfluous. Nevertheless, I do not agree because it would emphasise the need for such discrimination to be driven out of our law. The awareness and availability of the law will be heightened by the passing of this Bill.

I said earlier that isolation of women from the law is nothing new. Indeed, as I was thinking about this Bill, I was driven to remember another Friday afternoon, albeit in 1975, when a woman from the beautiful Welsh town of Bala was brought to my chambers in Chester. She was a middle-aged woman with children. She told me when she arrived that she had never been to England before.

**Lord Sheikh:** Does the noble Lord feel that it is for the community to take remedial action? This is how I feel and I would like his views on it.

**Lord Carlile of Berriew:** I hope the community will take immediate action but, in my view, the law needs to take action as well, and that is why we are here today.

The woman who came from Bala told me that she had never been out of Wales before—she had never been to England—and that she was suffering from violent and other abuse by her husband which was affecting her children and her home life. As I said, it was a busy Friday afternoon, and because the law was available we were able to go and see the busy judge—albeit, being a Friday, he was busy in his garden at the time. He took us into his dining room and there, because we were using the law which is available to every citizen, she was able to obtain an injunction, which had the violent husband out of the house in Bala by tea-time; she was able to secure the lives of her children; and in due course she was able to obtain all her other rights.

She had been brought by her Welsh solicitor—who, interestingly, was called Elfyn Llwyd, who later played a distinguished part in the life of this nation. She came to see me in my chambers only because one of her friends had said, "The chapel is not going to achieve anything for you. You must take advantage of what the law offers". Of course, because legal aid was available—at least at that time—her rights were obtained through the offices of the state. As the noble Baroness, Lady Cox, has said, some women today experience exactly the same kind of discrimination that the Welshwoman from my experience suffered in 1975. We have to take steps to rectify that anomaly.

I am not against religious courts. I said earlier that I used to be in chambers full time in Chester. In Chester Cathedral there is a wonderful consistory court. It is one of the most beautiful little parts of a cathedral building that you can visit. Religious courts have their place but they are for religious matters. Mediation and arbitration have their place—increasingly so—and should be used whenever possible, but there must not be a pretence that there is a form of mediation that is better than the law that applies to every citizen.

We must not do anything or allow any measure or tribunal to diminish legal rights and dilute protection, particularly for those who have not always been able to obtain their rights in an equal way, whether those rights be physical, financial or moral. It is for those reasons that I support this excellent Bill.

*11.55 am*

**The Minister of State, Ministry of Justice (Lord Faulks) (Con):** My Lords, I begin as others have done, by congratulating the noble Baroness, Lady Cox, on bringing this matter for debate in the House today. I, of course, share the admiration of all noble Lords for her tenacity. I also share in the admiration for those women who have given the evidence, often at great risk to themselves, which has provided much of the momentum behind what the noble Baroness has done in drawing our attention to the problems that undoubtedly exist in society now. The Government share her support for women's rights and access to justice and her concerns for the victims of domestic violence. We are fully committed to protecting the rights of all our citizens.

The noble Baroness's Bill is driven by a concern that sharia law principles, as applied in the decisions by sharia councils in the United Kingdom, are being used as an alternative to the legal process, resulting in the unfair treatment of women, the condoning of domestic violence and other abuses, and the undermining of equal rights and protection under the law. The measures in the Bill would, however, apply to a range of arbitration and alternative dispute resolution services, including those provided by arbitration tribunals, religious councils and boards and independent family mediation services, many of which are regulated by the independent Family Mediation Standards Board. Although these bodies and services are not identical, the overriding principle is that they must operate within the rule of law in the United Kingdom, a point made by a number of noble Lords throughout the debate and particularly by my noble friend Lord Kalms.

My noble friend Lady Buscombe asked about the future of the jury system and the personal beliefs of judges who might be appointed. She and the House will be well aware that judges take an oath to apply the law, as do jurors when deciding a particular case. There is a long and worthwhile tradition of jury trial in this country and I would not seek to say at the Dispatch Box that that should be diminished.

**Baroness Buscombe:** I would say wholeheartedly that our jury system should not be diminished. My concern is that a growing number of people who sit on our juries do not share our beliefs in one rule of law and system of justice and equality of rights for women. They therefore may have a different view as to the outcome of cases that they preside over or sit upon.

**Lord Faulks:** In this country, at the moment at least, we do not have jury panels questioned by lawyers to find out what their views and prejudices are. I would be reluctant to embark on that exercise. However, I understand my noble friend's concerns. They are matters on which opinions can reasonably differ.

There is one Muslim arbitration council, established in 2007, which operates in five English towns and cities and which applies a form of sharia law. We do not know exactly how many sharia councils or similar bodies are in operation or have the full picture of their activities and outcomes. I would like to assure the noble Baroness that the Government take the concerns raised about some of these councils very seriously and are committed to understanding more about the problems identified.

That is why, as part of the *Counter-Extremism Strategy* announced earlier this week, the Home Secretary has said that she intends to commission a full, independent investigation into the application of sharia law in England and Wales. I am grateful to my noble friend Lord Blencathra for reading out paragraphs 17 and 18 of that document, which show conclusively that the Government have taken on board many of the factors which have been featuring in this debate and that they intend to commission an independent report. Of course,

the announcement was made only this week. I am acutely conscious of the tendencies referred to by the noble Lord, Lord Anderson, along with all the Chilcot-ian observations made by my noble friend Lord Blencathra about the necessity to consider widely and not simply to provide a preliminary view of these matters. On the question of legislation, I do not want to prejudge anything the inquiry may find, although certainly legislation may be an option. But that is a matter which will be considered in due course. The investigation will enhance our understanding of any ongoing misuse of sharia law and the extent of the problem where it exists.

The Government are also facilitating a range of initiatives and working with others to promote integration in our society and the equality of all women. However, the Government do have reservations as to whether the measures in this Bill are the best way forward in tackling the undoubted problems identified. But first let me make it clear that, regardless of religious belief, every citizen is equal before the law. Decisions taken as part of an alternative dispute resolution are not binding in law, save in limited circumstances in civil matters which are carried out under the Arbitration Act 1996, and which are subject to the safeguards of the Act and recourse to the courts. In addition, criminal matters and certain types of family disputes, such as those over the custody or welfare of children, cannot be arbitrated and can be decided only by the courts. Many couples choose to resolve their difficulties between themselves, sometimes with the assistance of lawyers, mediators and other third parties. People may wish to apply their religious principles to the resolution of disputes, and it is right that they have that choice. The Government are keen to promote the continued use of non-court dispute resolution services to resolve family disputes.

While we agree entirely with the noble Baroness that the necessary standards and safeguards must be in place, at the moment we do not agree that the law needs changing to facilitate this, because relevant and specific protections are already in place in common law and in existing legislation.

**Lord Elton:** My Lords, the concern is not that the law is in place but that it is not understood and therefore is not working. If it is not understood and known, it is no use whatever. My noble friend's intention is to bring this to public attention. I am sure that he has this in mind, but I would like to hear that he has.

**Lord Faulks:** Let me reassure my noble friend that of course it is well understood that one of the main burdens of the debate has been the lack of awareness of the law. There is a rather strange legal maxim that every citizen is deemed to know the law, but that is often not the case in the sort of communities that we are concerned with. I accept entirely that increasing awareness is vital to avoid some of the difficulties which have been highlighted in this debate.

**Lord Sheikh:** Does my noble friend appreciate that there are certain women who obtain a decree absolute but who may not wish to remarry unless they can get a talaq? We need sharia councils so that women can approach them for a talaq.

**Lord Faulks:** The Government wish people to make free choices on these matters. If someone wishes to make a choice of their own volition, it is no business of the Government to interfere with that. But we also wish to have a system where women, and men if necessary, feel free to make those choices without undue pressures of one sort or another.

Let me be a little more specific about the legislative provisions. The Equality Act 2010 prohibits discrimination on the grounds of gender. The Criminal Justice and Public Order Act 1994 prohibits the intimidation of all witnesses, including victims of domestic violence. The Arbitration Act 1996 allows parties to an arbitration to agree any system of law or rules other than the national law to be applied by the arbitral tribunal to that dispute. I ought to declare an interest as a fellow of the Chartered Institute of Arbitrators, although I have never arbitrated on the sorts of disputes which this debate has been focusing upon. Religious law considerations may be applied in the context of an arbitration only where, first, the parties have specifically agreed to the arbitral process, and secondly, where all the parties have specifically chosen to use religious law considerations. But even then the decisions of such tribunals is subject to review by the courts of England and Wales on a number of grounds. If any of the decisions or recommendations were in direct conflict with a mandatory provision of national law, the law of England and Wales must always prevail.

The Arbitration Act sets out a number of safeguards, including a duty for arbitrators to act fairly and reasonably between parties. No one should feel pressured or coerced into resolving their dispute in a particular way. Any member of any community has the right to refer to a civil court in England and Wales at any point, particularly if they feel pressured or coerced to resolve an issue or to accept a decision that is unfair or unlawful. If there has been coercion, the outcome of any mediation or arbitration cannot be enforced.

I return now to the point made by my noble friend Lord Elton. That is not to say that all our citizens have equal knowledge of access to their rights within the national law or that other measures cannot be taken to improve the situation. It is the Government's view that the problems raised by the noble Baroness are due to a lack of awareness of rights, unequal access to the law and barriers to integration rather than a lack of protection within the current law. Integration requires changes to society, not necessarily changes to the law. The issues and barriers involved are often complex, and solving these problems is not just a job for the Government. It is also important that communities and community organisations take the lead in supporting equality and integration and help to raise expectations and awareness so that the rights of women and of all citizens are understood and protected.

**Lord Cormack:** I am grateful to my noble friend, who is disappointing me a little. Does he not feel that the Government have a duty to promote awareness? It is all very well saying that people should be more aware—we can all agree on that—but do not the Government have a role in this?

**Lord Faulks:** Indeed, and if my noble friend will bear with me, I will come to some of the steps which have been taken by the Government to promote awareness.

The noble Baroness raised the specific issue of domestic violence. We are determined to do all we can to tackle this dreadful form of abuse and to ensure that anyone facing the threat of domestic abuse has somewhere to turn to. In the past, it has often been either ignored or given insufficient priority. We have maintained funding of £10 million for the 2015-16 period for core domestic abuse services and national helplines. We have recently invested a further £10 million to maintain a national network of refuges, and £3 million to boost the provision of domestic violence services. A new offence of coercive or controlling behaviour has been put into the Serious Crime Act 2015 to ensure that manipulative or controlling perpetrators who cause their loved ones to live in fear will face justice for their actions. The maximum sentence of five years' imprisonment for the new offence recognises the damage that coercive or controlling behaviour can do to its victims.

The noble Baroness also highlighted the concern over religious marriages which are not legally valid in England and Wales and so do not enable parties to seek a financial settlement in the family court if the marriage breaks down. The Government are aware of this problem and are working with others to increase integration and awareness within communities. Many noble Lords will know that the Law Commission is currently undertaking a preliminary scoping study to prepare the way for potential future reform of the law concerning how and where people can get married in England and Wales. The commission is due to report on its initial findings by December of this year and the Government will then consider the next steps.

I turn now to the specific proposals included in the Bill. As to Part 1, we do not consider a change to the Equality Act 2010 so that it applies to arbitral tribunals to be necessary. Section 33 of the Arbitration Act already imposes a duty on arbitral tribunals to act fairly and impartially. Awards can be challenged in court if this duty is breached or if there is any other serious irregularity. Section 142 of the Equality Act already makes contracts unenforceable if they treat someone in a discriminatory way. That would apply to contracts as a result of mediations, including those facilitated by religious councils if they were discriminatory.

The Bill also proposes amending the public sector equality duty to create a requirement to raise awareness of the consequences of unregistered religious marriages and polygamy. We do not think that that is the best way to address this issue or that it would be appropriate to use the duty in this way. It is a deliberately broad duty and we are concerned that this breadth of application could be undermined if specific requirements of this kind were to be separately identified within it.

As to Part 2, on the proposed changes to the Arbitration Act 1996, tribunals already have a mandatory duty, to which I have referred, to act fairly and impartially. It is already the common law that criminal acts as regards child custody and welfare cannot be arbitrated.

On Part 3, on the proposed changes to the Family Law Act 1996, we believe these to be unnecessary as contracts are unenforceable if made under duress. A judge will not make an order based on a negotiated agreement unless he or she is satisfied that there was genuine consent.

On Part 4, on the proposed changes to the Criminal Justice and Public Order Act, Section 51 of the Act already makes intimidation or harm of those assisting an investigation—witnesses and potential witnesses—an offence, including witnesses of domestic violence. The Criminal Justice and Police Act 2001 contains similar offences which protect witnesses in civil proceedings and the intimidation of witnesses or others may also be punishable under common law offences of perverting the course of justice or contempt of court.

Finally, I turn to the proposed new crime of falsely claiming legal jurisdiction. It would require strong evidence that this is so, and a widespread and proper consultation before considering a new criminal offence and assessing whether it is genuinely necessary. There is not yet strong evidence of this. It may be that the investigation will find it.

In summary, the Government well understand the noble Baroness's concerns and are committed to finding out more about how sharia councils are working in this country, to tackling domestic abuse and supporting the victims of abuse, and to working in partnership with communities to promote integration and increase awareness of rights and equal access to justice. We think that these initiatives are best placed to help address the serious problems and issues raised rather than the changes to legislation proposed in this Bill.

The Government are engaged in a range of work to facilitate integration. A number of noble Lords emphasised the importance of integration, particularly the noble Baroness, Lady Flather. This includes, in 2014-15 alone, the provision of £12 million to support 30 projects and to help build strong, united communities, reaching more than 335,000 people. Over three years, £8 million has been invested to support 33,500 isolated adults to learn English. The importance of monitoring education was emphasised by the noble Lord, Lord Taverne. This is aimed particularly at Muslim women who are unable to take up all their rights due to lack of English. Since 2011, £8 million has been spent on the Near Neighbours programme and more than 994 local projects, bringing faith and ethnic groups together and benefiting more than 750,000 local people. The Government Equalities Office is also driving government and wider action to empower all women socially and economically. We are ensuring that diverse women's voices are heard at the highest levels of government.

To conclude, the Government are not convinced that introducing the measures proposed in this Bill represents the best way forward. As a Government, we are fully committed to protecting the rights of all citizens and there is legislation in place to uphold those rights. I acknowledge the point made by the noble Lord, Lord Carlile, that there may be no harm sometimes in underlining matters, which I think is the burden of what he was submitting. The rights of all women and vulnerable groups must be promoted and protected. The Government are taking forward a number of initiatives, as I have told the House, to help facilitate this.

In the course of the debate, there was considerable reference to culture and the danger that there can be of cultural relativism, and of being too timorous by acknowledging cultural differences to tackle what can be real discrimination. This is a matter which the Government have identified and many noble Lords may have heard what the Prime Minister said at the Conservative Party Conference about the dangers of "passive tolerance", to use his expression. This is an important acknowledgement that for too long we have sometimes provided exaggerated respect for so-called cultural differences, notwithstanding the very real hardships that can be caused by members of the community who live under our law.

I will, I fear, sentence myself to the less attractive of the two options presented by my noble friend Lord Cormack—either to be carried shoulder high from the Chamber or to slink away ashamed at my failure to respond to the noble Baroness. However, although the Government express reservations about this Bill, they express no reservations at all about the issues and the importance of the issues that have been identified by the noble Baroness. She has done the House and the country a great service by bringing them to the attention of this House and more widely. She has contributed greatly to raising awareness. I hope she feels reassured by what I have said and by the Home Office's response in the *Counter-Extremism Strategy* that we have these matters very much in mind. She deserves our congratulations and I thank her and all noble Lords for their contributions to this important debate.

*12.16 pm*

**Baroness Cox:** My Lords, I am deeply grateful to all noble Lords who have spoken and for the widespread support for this Bill from all parts of your Lordships' House, as well as to all those who support it in another place and outside Parliament. I am aware that there are two more Second Reading debates on very important issues. Therefore, I will be brief and not respond now to every point which deserves a reply. I assure noble Lords that if any of them have criticisms, reservations or suggestions for improvement, I would be very happy to discuss them and to consider any amendments for Committee and Report that would improve the Bill in any way.

I also thank the Minister for his response. I had sincerely hoped that, in light of ever-growing evidence of cause for concern, the Government would have moved in a more sympathetic direction to consider the very modest but much-needed measures to address some of the problems which currently threaten that fundamental principle of "one law for all" and to alleviate the problems of very real gender discrimination which cause such suffering to so many women in this country in ways that would make the suffragettes turn in their graves.

I have said previously that I appreciate the Government's initiatives, especially the proposed investigation into the operation of Sharia courts. But provisions in this Bill are in no way incompatible with such investigation: indeed, they could be helpful. Delays in implementing some of the support mechanisms for women who are suffering, in the ways the Bill proposes, will leave many women continuing to suffer without the help which could be made available if the Bill could become law. We are aware that it is not a total solution in any way but it is believed by many Muslim women, by organisations representing Muslim women and by organisations representing human rights that the modest proposals in the Bill would be of immense value now.

I conclude with a quotation from Caroline Norton, the legendary figure of the struggle for women's rights in this country who predated even the suffragettes. She said that,

"women are not appealing for an exceptional law in their favour; on the contrary, they are appealing not to be made an exception from the general protection of the laws".

Caroline Norton was campaigning, inter alia, for women's custody rights over their children, for greater equality before courts for divorce and simply for women's status before the law. It is disturbing that here we are having to support a similar campaign for women in our country, in our day, who are denied those rights. Those who say that we should be culturally sensitive to the practice of communities which deny these rights are seeking to turn the clock back not simply to the suffragettes but even further, to the battles fought by Caroline Norton and others of her time nearly 200 years ago.

I hope, passionately, that the very modest measures in the Bill will receive the support of the Government in due course and that, in the mean time, our demonstration today in your Lordships' House will give some comfort to those who currently suffer in ways which should be utterly unacceptable in our democracy with our cherished commitment to the eradication of gender discrimination and the preservation of one law for all.

*Bill read a second time and committed to a Committee of the Whole House.*

## Access to Palliative Care Bill [HL]

*Second Reading*

*12.20 pm*

*Moved by* ***Baroness Finlay of Llandaff***

That the Bill be now read a second time.

**Baroness Finlay of Llandaff (CB):** My Lords, I declare my interests as palliative care lead for Wales, chair of the National Council for Palliative Care and chair of the National Mental Capacity Forum.

The only certainty is that every one of us will die. Nothing else in healthcare in the UK applies to 100% of our population. About three-quarters of us will need palliative care input at some level when we are dying. The UK seems to be a good place to die. It was ranked top of 80 countries in the recent Economist Intelligence Unit report. We can be unashamedly proud of our hospices and palliative care services. I am grateful to them all for their support of my Bill.

Let me explain why my Bill is needed, what it will do and why it will not incur costs but will free up resources in the system. The Parliamentary and Health

[Baroness Finlay of Llandaff]
Service Ombudsman's report, discussed yesterday in the excellent debate of the noble Lord, Lord Farmer, shows all too clearly that provision of palliative care in England is unacceptably patchy. The Minister spoke of our transparency, and although he cited that many report good or excellent care, he admitted that a quarter of bereaved relatives reported that end-of-life care was not good enough. The memory of that experience remains in the minds of bereaved relatives and can blight their lives, particularly if they are children.

The ombudsman reported that in its casework:

"End of life care is, sadly, a recurring and consistent theme".

Inadequate care is not a few isolated incidents. National audits by the Royal College of Physicians and Marie Curie, and the recent House of Commons Health Committee report on end-of-life care, and many others, all say the same: many places provide excellent care but provision is patchy and varies in quality, accessibility and reliability.

In response to the report *More Care, Less Pathway*, the Leadership Alliance for the Care of Dying People set five priorities of care in its report *One Chance to Get it Right*. The Bill is a chance to finally get it right for all. It meets the recommendations that appear consistently in reports, in particular the Health Committee report, *What's Important to Me: a Review of Choice in End of Life Care*, which is awaiting the Government's response, *Ambitions for Palliative Care and End of Life Care*, from a wide coalition of 27 lead providers and charities, published just this month, and the ombudsman's report. It would narrow the widening gap in hospice provision between affluent and poorer areas. It would ensure access to hospice care for those with non-cancer diagnoses.

The NHS Confederation describes the NHS as "at a cliff edge" and points out the need to transform the way that the health service provides care. David Behan, reporting on the state of health and social care in England, points to the need for more collaboration between organisations and services; to evidence that person-centred care is better for the individual and can be more economical for service providers; and that safe services require the right staff and skills mix.

We all know what to do—we have strategies, working parties and reports galore—but we are just not doing it all the time, everywhere. Why not? The demands on clinical commissioning groups are great. They are well intentioned, but drowning. They need a clear, simple template to bring up the standard of services. Importantly, patients and their families, faced with all the fears and uncertainties of discovering that this is likely to be their final illness, need and deserve the assurance that their care will be good and that they will not be abandoned or failed in their hour of need, wherever they are, whatever the time or day of the week.

In 2008 we had the *End of Life Care Strategy* for England and a similar national strategy in Wales that we implemented pan-Wales. Both were reinforced by the NICE guidance on what high-quality palliative care should look like, including that patients' physical and psychological needs are safely, effectively and appropriately met at any time of the day or night, including access to medication and equipment, and that those whose needs may benefit from specialist palliative care are also offered it at any time of the day or night.

In Wales, we developed a funding formula for palliative care services in 2008 to correct the wide variation in availability. We developed seven-day services, with specialist advice to any healthcare professional at any time of the day or night. We set a benchmark of provision of one actual bed, or a virtual hospice-at-home bed, per 15,000 population; a standard of responding rapidly to urgent referrals; out-of-hours "just in case" boxes for medication for patients at home; a single core palliative care IT record; and staff education initiatives. I am not claiming that we are perfect, but we know that patients consistently rate their experience of care from palliative care providers in Wales as over 9.5 out of 10 across domains of dignity, being listened to, having their concerns addressed and timely care. Indeed, scores of seven out of 10 or below set an alert.

In preparing for today I sent a freedom of information request to all 209 clinical commissioning groups. One hundred and twelve gave information about the number of beds they commission. Benchmarking against Wales on a population basis, 49 have fewer dedicated palliative care beds than Wales and 66 have more. The beds are probably there already, overall. Subject to data validation, clinical commissioning groups' spend ranged between £15 and £10,504 per patient with palliative care needs, with an average spend of £886 per patient.

Regarding levels of services commissioned, there was wide variation—a true postcode lottery. Some 78% commission 24/7 specialist palliative care advice, but what happens to patients in other areas when staff get stuck and do not know what to do? Only 29 clinical commissioning groups knew how many people they had with palliative care needs, although the *Palliative Care Funding Review* showed that 0.75% of the population have palliative care needs at any one time.

Narrative from the bereaved and professionals, reported in *Every Moment Counts*, highlights failures in co-ordinating and personalising end-of-life care, particularly pain relief. Such care is, and should be, delivered by and large by generalists, but often they lack training and confidence to open up difficult conversations, to know how to respond appropriately to distress, or to manage pain urgently.

*Actions for End of Life Care* set policy aims for 2014 to 2016. It is packed with words such as "promoting", "supporting", "facilitating partnership" and "working together". Its aims are laudable and it would deliver better care if they were all fully implemented. But we do not live in an NHS of plenty; we hear daily of cash-strapped services, of deficits, of failing to meet priorities. There are 15 million people living with one or more long-term conditions. Their admission to hospital is often avoidable.

Cicely Saunders Institute research showed that early integrated specialist palliative care significantly improved quality of life for patients with severe respiratory disease at no additional cost. Sue Ryder's Bedfordshire partnership provides out-of-hours support, resulting in lower emergency hospital admission rates.

Cancer patients receiving palliative care are half as likely to attend the emergency department in the last month of life. Those with pain and poor care are more

likely to have multiple emergency department visits in the last two weeks of life. The Nuffield Trust estimates that over that last three months of life the cost of end-of-life care in a hospice is around £550 per person, compared with £4,500 per person in a hospital—an increase largely due to emergency admissions that could have been avoided.

A new palliative care service for people with severe multiple sclerosis improved pain and care-giver burden, at a total cost saving of almost £2,000 per patient over three months. Coordinate My Care, developed by the Royal Marsden, has ensured that three-quarters of those who died while on the programme did so in the place of their choice, with an average saving of more than £2,000 per person.

Let me explain what my Bill would do. It would ensure that wherever a dying person is, whatever the time of day or night, whatever day of the week, they can receive high-standard care. How would it do this? It would do so by ensuring that commissioners commission a level of service for their populations to meet need. If you are a patient with complex needs and things become difficult, you cannot access a specialist service if it is just not there. You cannot expect staff to meet your needs if they do not know what to do and have no one to ask for help. You cannot access medication at home if your needs change, if there is no local way to get that medication urgently, and if the out-of-hours provider does not carry even the basics because they will not pay £4,504 to be licensed to hold an emergency stock. If you need equipment, you cannot wait days or weeks for it. Electronic palliative care communication systems promote better co-ordinated timely care, avoiding inefficiency and duplication. They need to be everywhere. My Bill would ensure co-ordination so that help is accessible, efficient and can meet needs. It is often said that good care costs less than bad care. Sensitive attitudes and caring behaviours by staff cost nothing, but they transform the quality of the patient and family experience.

Health Education England has indicated that it would welcome this Bill to ensure core education and training everywhere. Currently, only one-fifth of trusts have mandatory training in care of the dying. And research is essential to drive forward improvements; it is not a bolt-on.

There are around 500,000 deaths a year in England. Although three-quarters of people have an expected death, the way the deaths of the other quarter are managed can be improved by lessons from palliative care being applied to ways that family members are informed and supported, and how the critically ill and rapidly dying patient is managed.

The stories of people dying at home in distress through failures of commissioning have to stop. We know what to do but we are just not always doing it. At the end of the day, no amount of nice words will make commissioners ensure that they have in place the services to meet their population's needs.

Why legislate for this and not for other services? It is simply because everyone will die. No other area of healthcare has 100% certainty, so this will not set a precedent. This is the time to make the good care of everyone who is dying a given. I beg to move.

*12.32 pm*

**Baroness Hollins (CB):** My Lords, I congratulate my noble friend on introducing this very important and timely Bill.

I will speak mainly about mental health and well-being for people who are terminally ill. To achieve a comfortable death, it is imperative that psychological distress is understood and attended to as well as treating any physical symptoms. Parity of esteem for physical and mental disorders was mandated in law for the first time in the Health and Social Care Act 2012 and it applies at the end of life, too. Depression, which can be defined as pervasive low mood lasting more than two weeks, is a common co-morbid condition of pain and advanced illness. A systematic review of the evidence in 2006 found that up to 80% of people with cancer experienced clinically diagnosable depression, as did up to 70% of people with chronic lung disease. A considerable proportion of such mental illness remains undiagnosed and untreated, thus pointing to the need for an integrated psychiatric service in hospice and palliative care teams. Another study published in 2014 found that out of 444 advanced cancer patients in the study, 160 patients reported moderate or severe depression, often linked to anxiety. Of these 160 people, 56% showed a significant improvement in their anxiety or depression after just one supportive palliative care consultation.

Three barriers to excellent psychiatric care at the end of life have been described by the Academy of Psychosomatic Medicine: first, the challenge of diagnosing mental disorders in the presence of serious physical illness; secondly, confusion about the threshold of clinical significance—when is distress part of a process of normal psychological adjustment and when is it pathological?—and thirdly, the commonplace but unnecessary nihilism about the potential benefit of treatment for mental disorders at the end of life.

I suggest that psychiatric teams with a specialist understanding of mental health in palliative care have a crucial role to play in the provision of truly holistic end-of-life support. Research points to stigma as a barrier to diagnosing depression. One paper reported that,

"patients were ashamed to admit to psychological symptoms of depression because of their fear about the stigma attached to it".

Stigma leads to both a reluctance by individual patients to seek help and a reluctance by healthcare professionals even to broach the subject. It will be through effective training in communication and in diagnosing mental illness that these barriers will be broken down, and psychiatrists need to be involved in supervision and reflective practice with the multidisciplinary team.

The *Oxford Handbook of Psychiatry in Palliative Medicine*, published in 2009, described the multifactorial function of the psychiatrist: first, as a clinical consultant contributing to direct patient care, liaising with other palliative care clinicians and working with families; secondly, as an educator to leverage knowledge about mental health issues and teach communication skills when difficult dynamics are involved; and, thirdly, as an investigator undertaking and supervising research about what works best at the end of life.

[Baroness Hollins]

My noble friend's Bill explicitly includes a clause specifying that Health Education England should ensure that health and social care providers deliver good-quality training to all healthcare professionals in four specified fields related to palliative care: pain control; communication skills; the appropriate use of the Mental Capacity Act; and how to support families and carers of people with palliative care needs. I would ask my noble friend if the Bill's provisions adequately include a mandate for training in mental health and for the provision of specialist mental health care, and whether her intention would be to emphasise the importance of parity for mental and physical health care in guidance.

The Bill is not just about care for the dying person. The legacy of a traumatic death can have lifelong negative repercussions for those left behind. The Childhood Bereavement Network estimates that around 33,000 children under 18 are newly bereaved every year. Being open about death and allowing them to understand what is happening can reduce otherwise negative sequelae. My own research with Dr Abdelnoor found that, compared with their peers, parentally bereaved children scored an average of half a grade lower in their GCSEs. Other researchers found that bereaved children are one and a half times as likely to have a mental disorder and three times more likely to have physical health symptoms in the clinical range.

As I said in this House yesterday, access to palliative care services does not require just geographical equity but equal access for all individuals in our society. People with learning disabilities, children and individuals with severe mental illness may all need reasonable adjustments to be made to their care and treatment. My research with people with learning disabilities has shown that collaboration between services is the most effective way to ensure that they receive satisfactory palliative care. The problem is not people's inability to communicate but our inability to understand their way of communicating. We know that in general health services, people with learning disabilities die earlier than they should and face disproportionate barriers to care. Unsurprisingly, the Confidential Inquiry into Premature Deaths of People with Learning Disabilities found problems in advance-care planning, poor adherence to the Mental Capacity Act, and carers not feeling listened to. These areas are also identified in the Bill as needing improvement in end-of-life care. If we could get it right for people with learning disabilities, we would probably get it right for everyone.

I was grateful to the Minister for his response to yesterday's Question for Short Debate in the name of the noble Lord, Lord Farmer, and his announcement of the planned thematic review by the CQC of inequalities in end-of-life care. Such initiatives will help improve services but legislation is needed to make a significant step change in the availability of adequate palliative care services. I support the Bill wholeheartedly.

*12.39 pm*

**Baroness Walmsley (LD):** My Lords, I, too, congratulate the noble Baroness, Lady Finlay of Llandaff, on introducing this Private Member's Bill. Its admirable intention is to ensure that everyone receives the best possible care when they are at their most vulnerable, usually towards the end of life.

There have been a number of reports in recent years highlighting the failings in palliative and end-of-life care. Notable themes have included: serious concerns about staff numbers and competence; poor communication between clinicians and patients, their relatives and carers; the lack of a named senior clinician accountable for end-of-life care; poor access to specialist care out of hours and at weekends; and inadequate care of patients in their own homes. In addition, we have received numerous briefings containing very disappointing statistics.

By the way, I find it very disappointing that some of these highly paid lobbyists think it is adequate to send us their briefings the evening before the debate—I often even get them on the same morning just before I come into the Chamber. It is both irritating and frustrating because they often contain really useful information that is too late to be used. Somebody is paying these people to fail to influence us.

Having got that rant over, to return to the actual statistics, there seems to be an imbalance between the percentage of the medical research budget that is spent on understanding how to improve matters for people at the end of life and the amount their deaths cost the health service. Either we need to spend more on research or spend less by giving more people what they want. As the noble Baroness, Lady Finlay, said, it does not cost more; it costs less to do it properly. Supporting families and carers to care for dying people at home—where they want to be—is far cheaper, even when a package of excellent services is provided, which I am afraid is rare. I was also concerned at the Royal College of Nursing survey, which told us that over 58% of nurses said that patients' wishes could not be fulfilled because of a lack of time or training.

The Bill seeks to resolve many of these issues and we on these Benches support its principles and call for the wide implementation of the standards and procedures contained in it. However, we would like to discuss whether it is right to enshrine these in primary legislation rather than ensuring that they become the standard best practice everywhere. There is a danger of a legal minefield here but I am sure we will talk about that at later stages.

There is just one item missing: the Health Select Committee's recommendation that a senior named clinician in each NHS trust is given responsibility for monitoring how end-of-life care is being delivered within their organisation. We might consider laying an amendment to that effect at the next stage of the Bill and I hope that the noble Baroness, Lady Finlay, would support that.

The Bill contains many important elements but I particularly welcome Clause 2(2)(c) and (i) and Clause 3(1)(d), which all refer to support for those who care for the patient. Clause 2(2)(c) refers to support for other health and care workers looking after the patient other than the clinicians. Clause 2(2)(i) refers to a point of contact being available at all times for those looking after patients in their own homes. Clause 3(1)(d) requires health workers to be trained in,

"ways to support families and carers",

and to involve them in decision-making.

I particularly support those elements of the Bill because, in a Bill which focuses mainly on the medical aspects of palliative care, it would be all too easy to forget that the patient's well-being and the peace or otherwise of their death depends very much on the ability of those around them to be confident about what they are doing. That confidence only comes from knowing that further support is there when they need it. If that support is not there, families, and even some professionals, will reluctantly agree for patients to be taken to hospital, even when they know that this would not be their preferred place to die. By the way, this would of course also take up time in A&E and/or an acute bed unnecessarily and add to the burdens on the health service when things could have been done better in a different way. Back in the day, people used to die at home—that was the norm. Perhaps we should go back to the future.

There is some very good practice and some very poor practice. I have a friend whose mother and mother-in-law had totally different experiences at the end of life. Her mother-in-law was diagnosed with terminal cancer some years ago. She was immediately given the support of a Macmillan nurse, who identified her wishes and helped the family put them in place. She wanted to die in her own home and, because everything was planned carefully ahead and they were fully supported, this was achieved. In stark contrast, her own mother and the family had a terrible experience, which I mentioned in my speech yesterday in the debate in the name of the noble Lord, Lord Farmer, in the Moses Room. The patient had multiple conditions, the course of which, although not as simple to predict as a single disease, should have been possible to plan for. However, there was no forward planning and care was reactive—slowly. Bureaucracy, inflexibility, lack of communication, slowness of services to respond, inadequate use of modern technology and complete lack of support for the family characterised their experience. It was a complete nightmare, which I would not wish on anyone else, and I am grateful to my friend for bringing these shortcomings to the attention of the House through me.

I wish the noble Baroness well with her campaign to highlight the shortcomings in our provision of these important services and look forward to further debates on the Bill in due course.

*12.46 pm*

**Baroness Byford (Con):** My Lords, I welcome the opportunity to speak in this Second Reading debate, so ably moved by the noble Baroness, Lady Finlay, which deals with the whole question of palliative care. Looking down the list of noble Lords taking part, I am again reminded of the depth of knowledge in this House on this and so many other subjects. My contribution will reflect on current healthcare provision that I and my family received some two years ago when my husband was taken ill. Where it was due, and in fairness, I give great credit to the service that we received, but I question, as others have and will continue to do, why you get a good experience in one place and a poor one in another one.

The noble Baroness, Lady Finlay, has given us detailed proposals to improve the current position and to stop failures. Clause 1 sets out to ensure that health and social care providers provide appropriate support to people with palliative care needs, including,

"access to pain and symptom control … support to meet their preferences in care",

and "information regarding their condition". I would add to that the importance of making sure that those family members involved in caring fully understand and are kept in the loop at all times, as they are the ones coping. It is an overwhelming experience to be told there is nothing more that can be done and that the end of life is drawing near.

We were lucky enough to receive great kindness from the Leicester Royal Infirmary. Doctors and nursing staff were available to give us time to talk through our options, and when the final decision was reached, my husband decided that he would like to return home to die there rather than go into a hospice. The Macmillan nurses put in a practical plan, and it happened very quickly. Two days later, my husband came back home with all the supplies that we needed and the team of carers arranged. I know from that experience how well co-ordinated our support was, but I am also too well aware that not everyone has the same experience.

In Clause 2(2)(h), the noble Baroness, Lady Finlay, wishes to,

"enable healthcare professionals to access essential medication at all times for palliative care patients being cared for in their own homes".

Again, I cannot state how important this is. No one should be left in dreadful pain when medicines are available to ease their discomfort. The one thing that helped us as a family to see my husband's fight against bowel cancer was the knowledge that pain could be relieved. Surely, quality of life at the end of life, and dignity in dying, is something to which we all aspire. The Bill calls for advancing education, training and research into palliative care, which is dealt with clearly in Clauses 3(1)(a) to 3(1)(d). My earlier observations reinforce the advantages that having good clinical communications and skills benefits both the patient and those caring for them.

I could not speak yesterday, as I was attending yet another friend's funeral. I pay tribute to the work done in our care homes and, particularly, in the hospice movement. In Leicestershire we have a long-standing hospice, LOROS, and a newer one, Rainbows, which specialises in helping families with young children. Nor would I want this opportunity to go by without thanking most sincerely the Macmillan and Marie Curie nurses for the wonderful support that we had. I add to that the important link with the district nurses, who have not yet been mentioned, but may well be later. They were available 24 hours a day and always said to me, "If in the night your husband really is in trouble, pick up that phone and ring us". So we had someone, and I wonder how many others did.

As has been said, about 350,000 deaths are expected each year, of which about 170,000 will require specialist palliative care. Some of those are young at heart, others are young children. All should have respect in the way that we deal with them in future. In yesterday's debate, the Minister concluded that the Government were building with reference to their wish to give more control over healthcare services. The Bill of the noble

[Baroness Byford]
Baroness, Lady Finlay, gives practical ways in which improvements could be achieved, and I am very happy to support it and wish her well.

*12.50 pm*

**Baroness Butler-Sloss (CB):** My Lords, I, too, congratulate the noble Baroness, Lady Finlay, who has led a number of wonderful campaigns to try to improve healthcare in this country.

I am a vice-president of Hospiscare, which is based at the Royal Devon and Exeter in Exeter. It looks after about 1,000 patients a year in Exeter and its environs. About 42% of the patients looked after by our hospice care die at home. Although not every patient should die at home, it is impressive how well our local community volunteers, as well as nurses, are looking after the people of that area. The bed occupancy in our hospice is generally only between 10 and 15 days at the very latter end of patients' lives, which again is a tribute to our community nurses. We have two day centres, one new, but only 19% of the cost of keeping this going comes from a grant, so I can tell you that we are all kept pretty busy trying to raise the rest of a very substantial amount of money.

The point I want to make from this is the enormous importance of community nurses, whether the district nurses which the noble Baroness, Lady Byford, mentioned or the nurses and volunteers from the local hospice. The particular point made to me by the chief executive when I asked her what I should be saying was her concern at the inequality of provision even in our area. She estimates that another 1,700 people would benefit from help by those who are trained to recognise, assess and triage palliative care needs—not necessarily coming through the hospice, but by people who actually know how to look after those people. That is lacking.

As you can imagine, our hospice, like all the other hospices in the country, as I understand it, is enormously supportive of the Bill. I would like to raise two particular points. The first is the importance of the duty to commission. That is crucial. The other, perhaps even more important, which again was raised by the noble Baroness, Lady Byford, concerns education, training and research. They come back to the work of those on the ground identifying who needs help and helping them. I wish the Bill well.

*12.53 pm*

**Lord Davies of Stamford (Lab):** My Lords, the Bill is an excellent initiative, and I congratulate the noble Baroness, Lady Finlay, on bringing it forward. I cannot imagine that anyone would object to the substantive provisions of the Bill. Some people might think that it is too prescriptive, that it overrides local initiative and clinical commissioning groups and forces everyone into the same Procrustean bed, but there will always be a trade-off between having some local autonomy in the health service and having a national health service and avoiding a postcode lottery. If we have to err—and one does always have to err in human affairs—we should err more on the side of having a national service, because that is both what the public expect and what the consensus in this country has believed that we have, ever since the 1946 Act and the 1944 White Paper.

One of the great problems of the NHS is the complete lack of external accountability. It is a platonic system in which the experts—or supposed experts; mostly they are no doubt genuine experts—provide for the public as a whole, the hoi polloi, what they think the public need. There is no accountability and no way in which to second-guess that. In the private sector you can of course shop around and go elsewhere, but in the public sector—in the NHS—that does not work. The experiment with GP commissioning, allowing GPs supposedly to commission secondary healthcare all over the country, never worked. We do not even have the indirect democratic accountability that we now have with the police service, with elected police commissioners setting out what should be the strategy and priorities in their own area. In those circumstances, Parliament has a very important role, and an initiative like today's Bill is a very good idea, because we are at least accountable to the public in Parliament and it is important to make sure that we set down the sort of standards and norms that the public are entitled to believe will be applied in the health service.

There is one thing that I believe should be in the Bill—and if the Bill goes forward to its next stage, as I profoundly hope that it does, I might venture an amendment of my own along these lines—which is that in this matter of palliative care, above all, the patient must be sovereign. There must be an absolute obligation or condition, so long as the patient is conscious, to explain fully the facts of the patient's diagnosis and prognosis and the implications of any change in treatment or proposed change in treatment, and implications of any change in venue. For example, being downgraded from an intensive care bed to a general ward or acute bed will reduce considerably the chances of a successful resuscitation, if it is to be attempted. If a patient leaves a general hospital—I totally agree with the argument put forward in favour of often doing this and in favour of a hospice in the last moments of a patient's life—the patient will be in a facility that probably does not have certain means of life support such as dialysis or ventilation. Indeed, I once asked staff in a hospice whether it had drips for providing intravenous hydration and nutrition to their patients. They looked at me rather strangely and said that they had them but they rarely used them. The implications were fairly obvious.

If I am ever in a hospice, I shall be absolutely terrified every time I receive an injection. I shall wonder whether it is the last one and it is the moment when I am going into palliative sedation, as it is euphemistically called—I tend to call it a palliative coma—from which I shall never awake. I want to be in charge and I want to know what is going on, and so long as I have breath in my body and a mind that is working I want to be able to conduct a dialogue with my clinicians. Above all, I want to be able to choose. If a patient wishes to choose to have the full apparatus of medical science apply to maximising his or her longevity, the patient should be entitled to that. If he or she wants to choose palliative sedation along the lines of the Liverpool or some other pathway, he or she should be entitled

to that. If he or she wants to choose the exact moment, timing and method of his or her death, with all the legal safeguards set out in the late and much lamented Bill of my noble and learned friend Lord Falconer, in my view he or she should have that—and that is a matter that remains open, to which Parliament must return. I hope that it will, in the next Parliament.

*12.58 pm*

**Lord Ribeiro (Con):** My Lords, I too thank the noble Baroness, Lady Finlay, for introducing this important Bill. I shall address Clause 3, on education and training. In the debate proposed by the noble Lord, Lord Farmer, on palliative care yesterday, we noted the many harrowing accounts of treatments delayed, patients' wishes to die at home denied and junior doctors unable to provide timely device and treatment. As a house surgeon in 1968—a long time ago—I felt well supported, not only by my medical colleagues but by the wise ward sister who provided immediate care and support for me. It is best to remember that nurses are much closer to patients and their advice on treatment should never be ignored.

However, times have changed. We no longer work an average of 100 hours a week or are resident on call. We now require junior doctors to work shifts of an average of 48 hours a week. Continuity of care has become a big problem, and handovers of the care of patients mean that some are occasionally overlooked. This is not the sort of care terminally ill patients require. The Parliamentary and Health Service Ombudsman's report makes the need for education and training in palliative care mandatory, yet a report in the *BMJ* in 2013 found that 63% of doctors felt that they required specific training in palliative care. A national audit on care of the dying found that mandatory training for doctors occurred in 19% of trusts and for nurses in 28% of trusts. Given that only 21% of the sites audited had access to face-to-face palliative care services seven days a week, it is clear that we have a long way to go, and I hope that this Bill will help to accelerate the process.

A review of the Liverpool care pathway in 2014 found that medical training in palliative care was inconsistent and often inadequate and left many junior doctors ill prepared to care for dying patients. Breaking bad news and managing dying patients are difficult to learn and often require trainees observing how more senior staff or consultants do it. Part of learning is to reject practices which lack compassion and sensitivity. I agree with the noble Baroness, Lady Finlay, that end-of-life care should be part of all medical school curricula, as it is in the Intercollegiate Surgical Curriculum Programme—ISCP—for surgical trainees. The MRCS exam tests candidates' ability to manage patients in need of palliative care. It uses actors in examination bays to play of the role of patient and challenge candidates to manage them not just correctly but with compassion and care.

My hospital—Basildon University Hospital—employs a care pathway for terminally ill patients which has an escalating treatment plan. It is established on admission. If there is an expectation of deteriorating health, agreement is reached on whether the intensive care unit is to be used or a programme of palliative care is to be introduced. The end-of life pathway should be consistently applied across all trusts, and I believe that the purpose of this Bill is that that should be the case.

It is also important to remember that not all patients who enter hospices go there to die. My wife, a physiotherapist, worked in a hospice for 10 years. She saw many patients come in and go out again having had their pain controlled, their anxieties, which have been referred to, alleviated and relieved and having been helped to mobilise, if they had previously been unable to do so.

We need to shift the balance from dying in hospitals to dying in hospices and at home in the community, as the noble Baroness, Lady Byford, so clearly explained. Providing access to palliative care seven days a week, 24 hours a day, will encourage more GPs to use those services rather than relying on acute hospitals for their dying patients. In doing so, we can reduce the cost in hospital because caring for patients in hospital is expensive and most terminal patients spend an average of 30 days in the acute hospital sector, which we should seek to avoid.

*1.04 pm*

**The Lord Bishop of Carlisle:** My Lords, I declare an interest as a fairly active patron of Eden Valley Hospice in Cumbria and of Hospice at Home Carlisle and North Lakeland. They work together to provide outstanding end-of-life care for people in the community as well as for those in a hospice bed. Like so many others, I am also most grateful to the noble Baroness, Lady Finlay, for initiating this significant Bill.

Reflecting on the now defunct Liverpool care pathway, several medical practitioners of my acquaintance suggested that the real problems lay not in the principle behind it, which was essentially a good one, but in the lack of training given to staff who used it and in the sometimes inadequate way they communicated what was going on, especially to relatives.

Interestingly, training and communication are two of the issues that emerge most clearly from the plethora of recent documents on palliative care, including the ombudsman's report and those briefings from charities that most of us will have received, however belatedly. They are also two of the issues that are addressed head-on by the Access to Palliative Care Bill, and they have already been mentioned several times today by your Lordships. That is why I want to make training and communication the focus of my brief remarks today.

First, I shall address training. Like end-of-life care itself, as the noble Baroness, Lady Finlay, mentioned in her introduction, and as the noble Lord, Lord Ribeiro, has just explained, the training offered to generalists in this whole area is distinctly patchy. In some trusts it is excellent: indeed, one of the main tasks of a consultant friend of mine who is an end-of-life lead is to educate the whole workforce in her huge hospital. That includes training in electronic care planning and advanced decisions. In other trusts it is not so good and, as a recent article in the *Nursing Standard* pointed out, a lack of training can be exacerbated by staffing shortages and the stress that results. No wonder the chief executive of Marie Curie says that,

"the government must make training in care of the dying for all health and social care professionals a priority".

[The Lord Bishop of Carlisle]
This is addressed in Clause 3 of the Bill.

I should also mention in this context the importance of providing training for prison staff that addresses the particular needs of prisoners and their families. In yesterday's debate on palliative care, my right reverend friend the Bishop of Rochester indicated that there is some very good practice on this in prison but, as in the wider population, it is inconsistent. With an ageing prison population, it is important to recognise that prison staff and prisoners need some basic understanding of palliative care needs. It would be helpful if this ultimately could be mentioned in the Bill.

I turn to communication. This applies in part to communication across trusts and between members of multidisciplinary teams. Without good communication and close collaboration, people can easily miss out on good end-of-life care plans and specialist support. But it also applies to communication with patients and with their families, which, as the ombudsman's report makes clear, is sometimes woefully inadequate. The importance of this sort of communication is highlighted by the House of Commons Health Select Committee report, which makes it the second priority of care and indicates that there is occasionally a reluctance on the part of healthcare professionals to talk about end-of-life issues. There is of course an overlap here with training. It is vital that staff should be able to recognise and acknowledge the spiritual dimension of palliative care. In yesterday's debate I referred to the close link between spirituality and compassion.

Then there is the crucial matter of communication with, and care for, children and adolescents at the end either of their own lives or of the lives of their parents and friends. Palliative care for children has often been neglected in the past, and some major children's hospitals still have no palliative care team. There is much more that can and no doubt will be said on this very important subject.

I am very glad to give this valuable Bill my warmest support and that of the Church of England. A relatively small initial financial investment, combined with more effective use of existing resources, could make a huge difference to the cost, consistency and overall quality of the care that one day every one of us will need.

*1.09 pm*

**Lord Mackay of Clashfern (Con):** My Lords, in this country we have a very high level of skill in palliative care as a specialty in medicine, which I think is unique in the world. However, as the noble Baroness, Lady Finlay, said in opening this debate, the question is how to get that care to the people who need it, because they are spread across the country. The noble Baroness, whom I congratulate on bringing the Bill forward, knows much more than I do about the practical steps that are required to bring that about. The Bill gives a good level of practical scope to achieving what we want to achieve: that patients everywhere, as they approach the certainty of death, will have proper palliative care. Of course, sometimes one of the difficulties is knowing how long care may have to last. As we know from other studies, it is quite difficult to predict when death will happen, unless you bring it about artificially in some way. Therefore, sometimes the strains of palliative care have to go on for much longer than might have been anticipated at the beginning.

It would be completely wrong to leave out of this account the terrific work of the hospices. I remember going to a hospice in Edinburgh and meeting a lady who said to me, "If you have to die, this is the best place to do it". My noble friend Lord Howard of Lympne is president of the national hospice body and I am sure that he will have more to say on this than I. It is also important to notice the need for palliative care, not only for cancer patients, where there is a degree of concentration on that, but also for people with heart disease and other illnesses which require specialist treatment.

I am particularly concerned with the area of giving palliative care to people in their own home in remoter areas far from centres, which is extremely important. Hospices have developed a way of dealing with these points in their own areas; the help of the Macmillan nurses in particular in that connection is very important. However, we know that it is difficult enough to get GPs in these areas, never mind elaborate palliative care. On the other hand, the palliative care may be done by instruction and principle, and the nurses are certainly vitally important in that.

One of the problems that exists in the general area of palliative care, particularly as between hospitals and your own home or a hospice, is the social care and funding of the service of health as distinct from the mode of funding social care. The problem of elderly people receiving palliative care in hospital who could have it equally and more comfortably at home has to do to some extent with that divergence of funding. It is a difficult issue, which I hope in due course may be addressed. It is disappointing to see people kept in a hospital bed at considerable expense when they want to be at home and—with the arrangements that can be made there—are fit to go home, simply because a care plan or whatever else you like to call the arrangements has not been made. They can therefore remain in the hospital for an unnecessarily long time.

The practical steps that are indicated in the Bill by the noble Baroness, Lady Finlay, are extremely valuable and important, and must go some way to achieving the aim which her Bill sets out to achieve. I congratulate her very warmly on that.

*1.14 pm*

**Lord Crisp (CB):** My Lords, I, too, congratulate the noble Baroness on introducing this Bill and on her very eloquent speech, in which she drew out all the essential points.

The provisions of the Bill are important in themselves but the Bill is also important in raising issues of dying with dignity and good care at the end of life, not all of which, of course, can be legislated for. However, it is significant in another way in that it is about some of the wider changes in priorities in health that are beginning to take place. We are beginning to see both globally and nationally much more focus on disability and on mental health, which I am pleased to see is keeping the Minister busy in this House. There is much more focus on social care, on care more generally and on what are called non-communicable diseases or long-term conditions,

where the task is not to produce curative effects but to help people to live with disability and limitations. As the noble Baroness, Lady Finlay, said, it is also about quality, care and costs.

There are things that all those emerging or renewed priorities for health have in common, and I want to mention three of them. The first is the very strong individual, and indeed family, focus. The point has already been made that palliative and end-of-life care needs to be about what individuals want. It is not just about offering a menu of choice; as the noble Lord, Lord Davies, said, it is about control. I am reminded of my father, who, in the last year of his life in his 90s, discharged himself from hospital against the advice of the medical staff. I was quite sure, as I believe were the medical staff, that that act of rebellion—or, if you like, bloody-mindedness—was very good for his morale and probably affected the length of time that he subsequently survived. Therefore, this is about control as well as about a menu of choices, but it is also about families.

Although I agree with the provisions of the Bill, it is a question not just of having a professionalised death but of people being a bit more willing to talk about death, having those sorts of conversations and thinking about death in a much wider way. I am aware of the important point made by the noble Baroness, Lady Hollins: that the person who is dying dies but there is often a serious aftermath, which I guess all of us know something about.

The second important point is variation, and it keeps coming up. We have some absolutely excellent practice—I am sure we all wish to congratulate the UK on coming top of the palliative care table in a recent *Economist* Intelligence Unit survey—but we also have some awful care. Therefore, it is important to manage variation. The other point that needs to be brought out here is that we need to understand who misses out. We often talk about averages and so on in healthcare but we need to know who is likely to miss out by disaggregating the data and gaining an understanding of whether it is men or women, poorer people or less educated people. Interestingly, in palliative care there is some evidence that one of the groups that seems to miss out is the very elderly—the over-85s. Again, this is a global issue. In the recently agreed sustainable development goals, the great phrase was "Leave nobody behind", and that must be true of where the noble Baroness, Lady Finlay, is taking us with palliative care.

My final point, which joins up all these emerging priorities, concerns technology—not just assistive technology, pharmaceuticals and so on, which are all extremely valuable, but IT and communications technology. My noble friend Lady Lane-Fox, who is not able to be in her place today, is happy for me to say that her new organisation, Doteveryone, believes that digital health and new technologies can radically transform services. Importantly, Doteveryone will be working on a project focused on older people at the end of life, reaching those traditionally seen as the most excluded—the over-85s. It will be very interesting to see where that project takes us.

I want to make a couple of specific points. First, I know that we have all been lobbied about children's palliative care. We have not really mentioned it so far in the debate, although I do not know whether others will raise it. It seems important that there is some reference to the particular and specific needs of children when we talk about palliative care.

Secondly, I agree very strongly that this is about all health and social care workers; it is not just about the specialist few. It is about everyone understanding this holistic approach to care.

Finally, in her opening remarks the noble Baroness, Lady Finlay, said that it is time to act and that the Bill is about saying, "These are some mechanisms to make something happen". That is very important in the context that she and others have articulated—that improving quality is very often about eliminating waste and wasteful procedures. Getting it right and therefore improving quality in many cases also has a beneficial effect on costs. For all those reasons, I very much support the introduction of the Bill to this House.

*1.20 pm*

**Lord Howard of Lympne (Con):** My Lords, I declare my interest as chairman of Hospice UK, the umbrella organisation for all hospices in the United Kingdom.

The concept of a good death has, in recent years, been increasingly recognised, and recognised as something that should be available to all. This Bill will go some way towards achieving that objective in this country, and I add my thanks and congratulations to the noble Baroness, Lady Finlay of Llandaff, for bringing this forward.

The *Economist* Intelligence Unit survey, which placed the United Kingdom top of the 80 countries surveyed in terms of the quality of their palliative care provision, has already been referred to. It is worth noting that the previous survey carried out by the *Economist* Intelligence Unit, in 2010, five years ago, reached a similar conclusion—the United Kingdom was again rated as the best in the world. I hope that I can be forgiven for emphasising the contribution of hospices to that achievement, and I am grateful to those who have already spoken in the debate who have expressed their appreciation of what the hospice movement does. It is a movement, of course, that started in this country. People still come from all over the world to see how we do it. I am proud to stand here and say, without any fear of contradiction, that the care provided by hospices, both in hospices and for people who die at home looked after by hospices, is second to none. The recent ONS survey found that 85% of bereaved people whose relatives had died in a hospice or at home looked after by a hospice thought that the care they had received was "excellent" or "good". The Care Quality Commission has rated more than 90% of hospices "good" or "outstanding". In yesterday's debate, the Minister referred to the observation of the chief inspector of the CQC, who said:

> "I know from what my inspectors are finding",

that,

> "hospices provide amazing care and support for people at the end of their lives".

To take up a point made by the noble Lord, Lord Crisp, hospices do not deliver professionalised care. Of course many of the people who work in hospices are professionals, but there are very many volunteers too. To illustrate

[Lord Howard of Lympne]
the difference between hospices and hospitals, I tell the story of a man who was very reluctant to go into a hospice. Eventually, he was persuaded to by his family. When he got there, the first thing they said to him was, "Is there anything you really want?". He said, "The one thing I would really like is a bowl of porridge", and, within half an hour, he was provided with a bowl of porridge. With the best will in the world, no one can imagine that happening in any of our hospitals.

The ratings for hospices, which I have mentioned, are far superior to those that hospitals receive. So I repeat today my call to the Minister for help in reducing the number of people who die in hospital. Most people do not want to die in hospital—they do not need to die in hospital and they should not have to die in hospital. It would actually save the NHS money if these people were not in hospital but were transferred instead to hospice care. Many hospices work closely with the NHS trusts in their areas to achieve this. One example was quoted by my noble friend Lord Farmer in yesterday's debate. We want to evaluate the best way of doing this so that we can put forward to the Government the most effective arrangements for taking the 50,000 people a year who currently die in hospital out of hospital and into hospices or hospice care at home. To carry out that proper evaluation would cost what in this context is the paltry sum of £250,000. I repeat my call to the Minister to make that available.

I particularly welcome the provisions in the Bill which would place a duty on clinical commissioning groups in relation to the funding of palliative care. Three-quarters of hospices have had their NHS funding, which on average provides only a third of their costs, either cut or frozen in 2014-15. The record of hospices in meeting the shortfall from charitable sources is breathtaking. Collectively, 200 charitable hospices in the UK raise £1.9 million a day from local charitable sources. It is an extraordinary achievement, but if that shortfall is increased, as it has been, it will be increasingly difficult for hospices to continue their successful work.

Finally, I draw attention to the briefing that we have received—I hope, in time—from Together for Short Lives, which looks after babies, children and young people with life-threatening conditions and is affiliated to Hospice UK. It has asked for some amendments to the Bill which no doubt we will return to and which I hope will receive sympathetic consideration when we get to Committee stage.

The *Economist* Intelligence Unit survey quoted the words of the national director for hospice care at Hospice UK. She said:

"The things that make a better death are so simple … It's basic knowledge about good pain control and conversations with people about the things that matter".

This Bill will help bring about a better death for many people. On behalf of the hospice movement, I wholeheartedly welcome it.

*1.26 pm*

**Lord Howarth of Newport (Lab):** My Lords, it is a pleasure to follow the noble Lord, Lord Howard of Lympne, whose work on behalf of hospices I admire just as I admire the hospices themselves. I add my congratulations and thanks to those offered to the noble Baroness, Lady Finlay of Llandaff, for tabling this Bill, which I fully support.

I shall start by talking about the needs of children in palliative care, responding to the urging by the noble Lord, Lord Crisp. I am sure that all noble Lords have received the briefing from the admirable charity, Together for Short Lives, which tells us that, in the United Kingdom, some 40,000 children live with life-threatening or life-limiting conditions.

Children's palliative care is different and needs to be different, if only for one important reason: because it may well, sadly, be needed for the whole of a child's life. Yet the availability of resources for children's palliative care is even more inadequate than it is for adult palliative care. Clinical commissioning groups contribute on average 10% of the cost of children's hospices compared to 30% of the cost of adult hospices. Thirty-five per cent of children's hospices had their funds frozen between 2013 and 2015 and 23% had their funding cut. Some families in remote rural areas have no access to specialist children's palliative care. There is a dearth of people with the skills and knowledge to care for children who suffer from complex and life-threatening conditions.

The Health Select Committee noted also that a wide variety of childhood conditions can cause death before adulthood. Many of them are rare and, therefore, the requirement for diversified specialist care is all the greater. A Royal College of Nursing survey in 2015 found that nearly a third of children's nurses said that they did not have the resources to deliver adequate care in a home setting, which of course is what most families want; and 31% of nurses acknowledged that they lacked the confidence to discuss end-of-life issues with children and their families.

The RCN calls for a greatly increased number of undergraduate training places to address what it describes as,

"massive gaps in children's nursing".

Only 17 community children's nurses were due to qualify in 2014-15. Many consultants in this field are approaching retirement; too many are not trained to level 4. The training of general practitioners in paediatrics and in physical and mental healthcare for children needs to be improved. There is a 15% vacancy rate among children's social workers. The commissioning of children's palliative care is patchy and inconsistent, insufficiently integrating the various disciplines and agencies that need to be involved. The Bill addresses this range of problems. I do not know whether the noble Baroness intends in due course to provide model guidance, but guidance would be preferable to amendments to the Bill.

As to the predicament of children who are bereaved or face bereavement, the Childhood Bereavement Network, to which the noble Baroness, Lady Hollins, referred, has again briefed us extremely helpfully. Its 158 members are supporting children before and after bereavement. The network estimates that some 30,000 children under 18 lose a parent each year and, of course, more lose a sibling or a grandparent. It is a very sensitive issue and it is very difficult for children, parents and professionals to communicate in these situations.

Gillian Chowns, writing in *Bereavement Care* and reporting on her research among adolescents facing the death of a parent from cancer, quotes those children. We hear their own voices describing their struggle with their isolation, their anxiety—who is going to care for them when a parent is gone? They want to know the full truth and they need the opportunity to release strong emotions. All such children should have access to well-organised support, proper information, a plan as to who is to do what, and advice and support for other family members, carers, their peers and their teachers. Only 65% of local authorities have an open-access service for bereaved children and most of those services are provided by the voluntary sector through charities such as the wonderful Winston's Wish.

As the noble Baroness, Lady Hollins, also mentioned, children who suffer bereavement typically face worse outcomes in their future lives, including earlier mortality, mental health problems and entanglement with the criminal justice system. It is not only better but cheaper to ensure that these children come through the emotional crisis of losing a parent or someone important to them without being traumatised.

Many noble Lords will have read the beautiful book by Atul Gawande, *Being Mortal*, in which he argues that the role of those caring for the terminally ill is not to fight death to the ultimate but to ensure well-being—to ensure what the noble Lord, Lord Howard, called good deaths.

I will make one final point. The arts have an important contribution to make in palliative care. Music therapists, storytellers and those practising other art forms are able to help terminally ill people to prepare mentally, emotionally and spiritually for crucial transitions; to turn depression into hope; to have a sense of agency; to integrate feeling with cognition and sensation; and to gain insight and a sense of meaning and value in what would otherwise be a deeply unhappy and traumatic situation. The arts provide a safe opportunity to organise intense, confusing and contradictory thoughts and feelings; to find self-expression; to share important information that has previously been too difficult to talk about; and to mitigate isolation.

*1.34 pm*

**Lord Maclennan of Rogart (LD):** My Lords, it is a privilege to follow the noble Lord, Lord Howarth, who focused very much on the area I intend to speak about, which is children. I am grateful to the noble Baroness, Lady Finlay of Llandaff, for bringing forward this Bill because I believe that the best palliative care is helpful to families as well as to dying people. We need to spread this form of care, which at its best can be very good, across the country.

The Royal College of Physicians points out that only 21% of sites have access to face-to-face palliative care seven days a week, which is a recommendation that has long been advanced. It also shows in its *National Care of the Dying Audit—Hospitals*, which was completed in 2014, that mandatory training in care of the dying was required for doctors in only 19% of trusts and for nurses in 28%, despite national recommendations that such training should be provided. That is not satisfactory and this Bill should help the position considerably. The audit also mentions that 53% of trusts have a named board member with responsibility for care of the dying, but 47% do not. That seems unacceptable, and I hope that it will be taken into account in the implementation of this Bill.

The clinical reader in palliative medicine at Oxford University, who no doubt sent his letter to most Members of the House, points out that there needs to be an awareness that palliative care is a form of emergency medicine and intensive care. It needs to be proactive to prevent crises as well as reactive to cries for help, and that sensitive communication skills embedded within a holistic approach is key to quality palliative care.

On the issue of children, we have had an extensive and thoughtful briefing from the charity Together for Short Lives. It is somewhat disturbing that the number of children with life-threatening and life-limiting conditions has gone up from 30,000 10 years ago to 40,000 today. It is clear that we need to be specific about how to help children and young people. The noble Lord, Lord Howarth, was very specific and I embrace what he had to say. However, we have heard that between 2013-14 and 2014-15, 23% of children's hospices have had their funding cut as a result of financial restrictions on NHS commissioners. I hope that that will be noted by the Government and that their response will be positive. The treatment for young people with the expectation of short lives is clearly different from that for older people reaching the end of their normal lives. It requires specialist education, and I hope that that will be considered. The professional skills, experience and competencies needed to care for children and young people are not adequate, and should be a necessary part of the education of nurses and doctors.

*1.39 pm*

**Lord Suri (Con):** My Lords, not long ago I made one of the most difficult choices that I have been asked to make in this place. I speak of voting against the Assisted Dying Bill, sponsored by the noble and learned Lord, Lord Falconer. I voted against it because I believed that it was an absolute affront to our creator to take our own lives. I felt this self-murder to be a crime against nature and I could not support the state allowing it to happen. This all informs my view on the legislation that has been set before us. While those who are in intense pain may wish to kill themselves, they must also be allowed to access the services that could help them maintain their dignity despite their suffering.

This Bill will ensure that those with complex needs will be able to get support and will focus end-of-life care back on the patient. The case studies explored by the Parliamentary and Health Service Ombudsman show how badly some people have been let down at the end of their lives. I am not for one moment criticising the work done by the health service. I have used the NHS for many years, as have my family. I have been lucky enough to see its excellent work up close.

It is the systems of end-of-life care that are to be reformed through this Bill, not the people. On reading the report, what struck me was how unclear the instructions for communication were at this critical stage. One subject, Mr N, suffered unnecessary pain

[LORD SURI]
due to a lack of clear instruction for co-ordinating a response between specialists. This will be remedied by the new requirement for a single point of contact, as proposed in the Bill. The new responsibility that the CQC checks the provision of palliative care during inspections will also serve to uphold standards, as will the requirement for medical professionals to receive additional training in pain control and communication.

As ever with new legislation, there will be sceptical voices demanding to know how we will pay for it. I agree with the noble Baroness, Lady Finlay, that this Bill, if implemented properly, can save money. Promoting better standards of care and making the decision-making process more streamlined will save the time of our medical professionals and generate efficiencies that can be harnessed.

I urge this House to think of the gigantic human cost involved. To lose a relative is a devastating emotional blow in itself but to see them die in agony, devoid of the dignity with which they were born, is even more crushing. The considerations of the families are, to my mind, enough to justify the passing of this Bill. For that, and the other considerations, I urge noble Lords to approve this Bill.

*1.43 pm*

**Lord Warner (Non-Afl):** My Lords, as this is the first time on which I have spoken from this position in the Chamber, perhaps I could clarify my status. I am not a Member of the Cross-Bench group at this stage but a non-affiliated Member of your Lordships' House. Let me reassure your Lordships that I have not had a personality transplant because I speak from this place—some may say that that is a shame.

One of my long-established views is to improve the end-of-life experience and, in particular, to give people more choice on how and where they end their lives with the maximum dignity. Clearly, good-quality, affordable and accessible palliative care is an important part of the end-of-life choices we should all be able to exercise when our time comes. That is why I strongly support the Bill and warmly congratulate the noble Baroness, Lady Finlay, on her initiative in bringing it forward.

I have no problems with the Bill's structure and I very much support the points made by the noble Baroness, Lady Finlay, and others about the need to tackle the huge geographical variation in access to good-quality palliative care. However, I will explore in more detail a particular aspect and think about bringing forward amendments in Committee. I hasten to add that the issue I shall raise is not assisted dying. I still strongly support legislation on assisted dying along the lines of the Bill proposed by the noble and learned Lord, Lord Falconer. I gently say to the noble Lord, Lord Suri, that good palliative care is a partner with choice on assisted dying. They are not rivals, but part of the end-of-life choices that many people would like to have.

That brings me to the area I would like to strengthen: the choice to die at home, or the place that people regard as home. I have a Private Member's Bill on this, the Right to Die at Home Bill, which is unlikely to be reached in this Session. As drafted, my Bill does not sit well with this Bill. It is no purpose of mine to damage this Bill by trying to force it into the structure of my Bill.

Here I turn briefly to the excellent briefing from the End of Life Care Coalition. The bull point to emphasise is one made by a number of other people: about 50% of people in the UK continue to die in hospital, despite this being the place where most people would least prefer to be. It is also the most expensive in care cost terms and is rated substantially lower than care at home, in a hospice or in a care home. We have achieved something quite remarkable in this country. Each year we allow half the people who die to do so in the place they least want to be, which provides the least acceptable care and is the most expensive for the taxpayer. That is no mean achievement when the NHS is in such a parlous state financially and needs to care for far fewer people in hospital.

I want to explore with the noble Baroness, Lady Finlay, how we might frame an amendment that captures the spirit of my Bill without damaging the structure or purpose of hers. After a helpful discussion with the clerks, I think that this might be done by giving patients a right to receive palliative care at home right up to the point of death. I believe that this would effectively provide people with an effective right to die at home or the place they regard as home. It would help to change some of the cultural and professional problems that we have in this area, which a number of other people have drawn attention to, in particular the noble Lord, Lord Crisp. It would prevent what happened to my father, who was discharged from a hospice to die in hospital—in my view, quite unnecessarily. I have an instinctive feeling that that is going on from time to time in some parts of the country, apart from for the people who get to receive hospice care.

Before I sit down, I shall touch briefly on money—a subject that I know is dear to the heart of the Minister. Allowing more people to die at home will save the NHS money, but some of those savings—this is a point I want to emphasise—will have to go to boost social care, which is still scandalously neglected by all the political parties. Macmillan has shown that palliative care delivered to people's home is about a third of the cost of that delivered in an institution. Let us have a bit of sensible, integrated public policy-making. I hope that we can give this Bill a prompt passage.

*1.49 pm*

**Lord Cavendish of Furness (Con):** My Lords, it is a pleasure to follow the noble Lord, Lord Warner. I have always listened to him with great respect and, however he describes the seat he is in now in this House, I will continue to do so. I wish him well. However, I regret that, along with the noble Lord, Lord Davies, he chooses to keep alive the question of the Assisted Dying Bill following the rather conclusive vote in the other place recently.

I can only guess at the amount of work that goes into drafting a Bill such as this. I pay tribute to the noble Baroness, Lady Finlay, not just for this Bill but for all the pioneering work that she does for palliative care in the widest sense. It speaks volumes for the

cause as well as the high regard in which the noble Baroness is held that so many of us are mustered in your Lordships' House this Friday afternoon.

In the time available to me, I want to make three points: one general and two specific. I need first to declare an interest. Referring noble Lords to the register of interests, I merely say that whatever small value I might add to the debate stems from a very close involvement with St Mary's Hospice in south Cumbria since its inception some 25 years ago. What a long way we have come since then, but there are still pockets of ignorance. I still occasionally hear a doctor saying that palliative care is no more than common sense—just give the patient a jab of morphine. I still hear people in care homes claiming that they can do the job as well as hospices. But death, dying, loss, grief and bereavement have been largely demystified in the last 10 years or so. They are discussed much more openly than they used to be. I look forward to what has been described as "the cultural aversion to talking about death" being entirely a thing of the past, a point which was eloquently made in the powerful contribution of the noble Lord, Lord Crisp. The culture is changing and changing for the better, even if we have a long way to go.

Earlier this month I participated in a conference organised by the Cumbrian hospices, with which the right reverend Prelate the Bishop of Carlisle is associated. In the morning we heard from, among others, Professor Allan Kellehear. In a compelling talk delivered with blunt Australian succinctness, he emphasised that responsibility for all end-of-life issues lay with everyone—with all of us. He called for leadership in the community to achieve these goals.

In this connection I think it is worth my saying that when we started at St Mary's all those years ago, I felt that we should never look for, or accept, more than the cost of the clinical costs which we were incurring, which was then, and remains, I think, about 30% of the whole. Of course, it was a very long haul, with great financial crises along the way and some quite difficult moments, but the result was real ownership by the community. Huge benefits flowed from that ownership. It attracts money, as the noble Lord, Lord Howard, mentioned, and it attracts volunteers. The staff develop a sense of accountability to their local community and feel proud and happy to have that. It gives the trustees confidence that they are no longer alone in carrying the financial burden. In a very real sense ownership is shared. My contention is that this sense of community ownership adds force to the aims of this Bill. A group of local worthies asking for something is one thing, a united community demanding it is quite another, and by magnitudes more powerful.

The afternoon session of the conference was dedicated to motor neurone disease. Three MND spouses spoke to us with huge courage and answered our questions. Two of the suffering partners were living and one had recently died. We heard moving and harrowing tales of living with this awful condition. We heard that the NHS provision was excellent but we also heard, with great sadness, that the agency provision, as reported, was absolutely shocking, with untrained, underpaid, overworked and unreliable staff; and always in a great hurry.

I subsequently spoke to the husband of a wonderful and inspiring neighbour who suffers from MND. He confirmed that their experience with the local NHS was excellent but that the care provided by the agency carers was deplorable. I hope and believe that this experience is not universal but I wonder whether such companies will fall under the provisions of this Bill. Perhaps my noble friend the Minister will be able to comment when he responds on the position of agency staff in general and whether or not it applies to the Bill before us. The same gentleman also told me that the generous provision of equipment was withheld from his wife on the grounds that she was over 65 when diagnosed. If that is correct, it seems very unfair and arbitrary. Again, I wonder if my noble friend could help with this. I have not given him any notice of this question but I would be very grateful if he could write to me.

To my mind, the advances in palliative care and the progress of the hospice movement in my lifetime rank among the great achievements of this country. That there is powerful demand for the best palliative care to be universally available is not unreasonable. The Bill represents another milestone in the long march towards that goal. It deserves our wholehearted support.

*1.55 pm*

**Baroness O'Neill of Bengarve (CB):** My Lords, this is a Bill on the right topic—on assisting the dying. That term has been used recently for a quite different Bill which was aimed at only a very narrow number of those who sought death and was about assisting their suicide. Here we have something that speaks to the many who die each year. So it is the right topic—and quite necessary.

It is also the right time, as the demography shows. We are going to have more deaths each year in the fairly near future. That may sound depressing but it arises out of a rather happy fact. Currently we have about half a million deaths in England each year, about 30,000 in Wales and about 55,000 in Scotland—so in round numbers, 550,000. The figure that has been referred to of 350,000 is the number of so-called expected deaths. But that figure of 550,000 will rise. Although we are all living longer, this increase in life expectancy is not a promise of immortality for any of us. The number of people who are likely to die is projected—it is only a projection but it is significant—to rise over the next 20 years to about 670,000 per annum in England, Scotland and Wales. That is a big increase on 550,000.

Every death will be sad in its own way but every death could be well or badly managed and it is clear that we know how to do it well in this country. The finding of the *Economist* Intelligence Unit is very reassuring in that respect. As my noble friend Lady Finlay of Llandaff said, the problem is the patchy availability, not the standard that we reach in many cases—not just exceptional cases. The quality of the best is excellent but it is availability at the time of need that is very bothering.

Unsurprisingly, availability at the point of need is less good for certain communities in the inner cities and for certain ethnic minorities, but I have personal experience of the fact that it is less good in many

[Baroness O'Neill of Bengarve]
places that do not fall into those familiar categories. My brother died in leafy West Sussex. He was a well-organised person and when he knew he was dying, he contacted the local hospice and made arrangements to die there when the time came. When the time came and my sons and I could no longer look after him at home, I rang the hospice. They said, "Oh yes, we can take him in three weeks". As he observed to me, "I shall be dead then"—as he was. We then turned to the GP, who was about to go on his Christmas holiday, and arranged admission to a care home. I cannot fault the standard of care given in that care home but the staff were not permitted to increase the dose of painkillers above what had been prescribed initially. It was Christmas weekend. He died on the day of the tsunami, in very great pain.

The continuation of that sort of event tells us that we are not doing it right at present and that it would not be complex to improve matters. Among the Bill's many sensible provisions, those that focus on the unavailability of adequate pain relief at the point of need are particularly important. Pain comes in waves, as many people know. It does not wait for working hours, the end of bank holidays or for other events. He died with good care but appalling pain relief.

The problem is not that we do not know how to do it or that we cannot afford it—it would save money. It is a question of a will and a way, and this Bill points the way. I hope we can support it on to the statute book.

*2 pm*

**Lord Haskel (Lab):** My Lords, in the years that the noble Baroness, Lady Finlay, has served in your Lordships' House, she has been a fighter and a champion for better palliative care, particularly in her home country of Wales. As a result, Wales has a system of seven-day specialist palliative care which many organisations say is good and successful, and when the noble Baroness wants to bring this to us here in England, we should sit up and take notice.

As the noble Baroness explained, here in England it is up to the clinical commissioning groups to allocate resources to palliative care departments in hospitals or to buy it in from hospices and other organisations—not only beds but their expertise. Apparently there are many guidelines, and many separate agencies—as well as doctors, nurses and the carers themselves—are involved. There are new ways of controlling the pain, as the noble Baroness, Lady O'Neill, just told us about. The Bill seeks to bring order and lay down a more comprehensive approach. The Care Quality Commission is required to examine and evaluate this. This requirement for better care, better organisation and better targeting surely must be welcomed because, as the noble Baroness, Lady Finlay, said, the variation between what is done and what should be done is quite large. This month's report from the *Economist* Intelligence Unit points out that such improvements in end-of-life care need not cost more—it just has to be managed and organised better, which is what the Bill seeks to do.

I therefore welcome the Bill; but does it go far enough? For my part, I would welcome a clearer framework for people approaching the end of life to make their own decisions. Other noble Lords have referred to this. The Bill refers to advance decisions to refuse treatment and the Mental Capacity Act, but conversations and discussions need to start early. The Bill deals with patients once they have been confirmed as being end of life. But would discussions and earlier identification not help? That would enable more input from the patients themselves, so that people can have the end-of-life care that they wish for and which is right for them. I welcome the briefing from Compassion in Dying—yes, it did arrive in time—which supports, and even provides, advance decision forms. Can the noble Baroness, Lady Finlay, say how her Bill will help earlier identification and help people to make choices for end-of-life care and know that their choices will be respected?

I congratulate the noble Baroness on the Bill. The changes it proposes and the standards it lays down for the best palliative care possible deserve the support of all noble Lords.

*2.04 pm*

**Lord Elton (Con):** My Lords, I begin, as we all do, with thanking the noble Baroness and congratulating her on getting this slot. I also thank her for the enormous dedication, expertise and persistence with which she has pursued this task—this calling—of easing the way out of this world for so many hundreds of people. I should say that I come to this debate as a learner, not as a teacher. I am far from certain that I have grasped all the issues—I have certainly not grasped the final solution—but I would like to make a couple of observations and one suggestion.

My noble friend Lord Crisp was advocating greater openness in discussion about death. I reflect that, to initiate that, you need a largish community with a high average age containing a number of medical professionals and a scattering of clergy. Indeed, here we are, doing what he asked.

My interest and motivation, apart from that which all of our age share, comes from having contrasted the experience of a close friend of mine, whose death at home I observed, wonderfully supported by the local palliative care team, and a report from another friend of an appalling end of life where the person was for several days in such pain that, whenever the person was conscious, the bed was vibrating. That is an inequality which is absolutely insufferable in a civilised society.

Two images float into my mind that suggest how compassion enters into this. The first is the telephone answered after midnight for the noble Baroness, Lady Byford, when her husband was dying. The other was the bowl of porridge mentioned by the noble Lord, Lord Howard of Lympne, brought to a man coming from a hospital into a hospice and, I fear, on the way out.

The number and diversity of people involved in evolving a proper, coherent service seems to me one of the biggest difficulties, and there is the question of establishing communications between them, one with another. We are talking about professionals, who have the royal colleges, and clinicians, who have endless conferences around the world, all of them highly productive, but we are also talking about non-professionals, non-clinicians

—care workers, paramedics, sometimes policemen or prison officers, all of whom have been mentioned. There is no forum for them.

It would be wrong to try to attempt that in legislation, but an early focus of attention after the Bill either goes on to the statute book or does not ought to be how to remedy that. How good are communications between different clinical commissioning groups? Should there not be a central, national forum for them—perhaps there is, I do not know, I am a novice—in which each group or cluster of groups could exchange notes on their practice? From the evidence that we have been sent and the stories we have been hearing, practice differs violently between one area and another.

There should be an established, respected and, I think, independent but supervised forum that could begin to generate a corpus of accepted best practice that could be shared around the country—indeed, across the nations; we have three nations represented here, and how much other groups seem to be able to learn from the Welsh groups. This is the beginning of that process. How it gets carried down to the next level of the variety of people involved is for another debate, and certainly for someone more learned in these things than I am, but I hope that we can get the fertilising cross-flow of experience between groups to begin.

*2.09 pm*

**Lord Quirk (CB):** My Lords, of course I, too, must begin by joining those who have thanked my noble friend Lady Finlay for presenting Parliament with this authoritative and timely Bill. There can be no one in this House, no one in this country, so well qualified in the whole area of palliative care, and we can be sure that every single detail in Clauses 2 and 3 of the Bill, for example, addresses issues that have been expertly identified by my noble friend in her personal experience as a clinician.

About 500 years ago, Francis Bacon memorably noted:

"Men fear death as children fear to go in the dark".

He was using "men" in the gender-inclusive sense, of course. But I wonder why pharmacological progress in pain management, especially in the last half-century, does not seem to have mitigated or reduced this primeval fear of death. Perhaps it is because so little is known or understood of the comfort and relief that can be afforded by the current standard of palliative care when it operates at its best. Why else is there this trickle of desperate folk to seek terminal help in Zurich? Why else does a steady majority in this country, identified by opinion polls, favour the assisted suicide advanced by the noble Lord, Lord Joffe, and, in recent months, persuasively, by the noble and learned Lord, Lord Falconer of Thoroton.

The sad fact is that those with a good knowledge of current standards in palliative care know also how "patchily", as my noble friend said, a high standard of such care is available in this country. We should, of course, be proud of our enviable record in this field—proud to be voted this very year, 2015, as the best in the world, just as we were in 2010. We should be proud of such selfless trailblazers as Sue Ryder and Cicely Saunders. Indeed, one of my own proudest moments as vice-chancellor of the University of London came when both these ladies accepted honorary degrees.

We can be proud, too, of our great charities, as the noble Lord, Lord Howard, noted. When in the late 1960s Dame Cicely approached Sir Isaac Wolfson, he and his trustees were enthused and began at once to join in the funding of this new wave of hospices. His son and successor as chairman, Leonard, later Lord Wolfson, was equally enthusiastic, as were a succession of trustees, such as the noble Lords, Lord Turnberg and Lord McColl of Dulwich, right down to the present, to the tune of many millions of pounds. The Wolfson Foundation has supported no fewer than 130 hospices across the UK, all reducing the fear Bacon spoke of, as, whether children or adults, we make our way into the dark.

Proud as we can be of this litany of praise and success, we have a very long way to go, and the rest of the world has relatively further still. Even in such a relatively well-provided area as London, the variation in provision from borough to borough is alarming. Such variation is gravely amplified when we look at the UK as a whole. In some quite extensive areas, patients seek in vain palliative care of the kind they need. This Bill specifies succinctly and authoritatively what needs to be done as a matter of urgency, and it surely deserves our wholehearted support.

*2.15 pm*

**Lord Carlile of Berriew (LD):** My Lords, I apologise to some noble Lords who spoke earlier, whose speeches I unavoidably had to miss. The noble Baroness, Lady Finlay, and I have stood side by side on the legislative battlefield on numerous occasions. I have always been willing to serve as her Baldrick, but when I use that comparison I do her an injustice because she is most certainly no Blackadder. Indeed, on all subjects, but especially on this one, she is very wise and knowledgeable, and I know that there are Members of your Lordships' House other than myself to whom she has generously given private time when they have had issues around what we are talking about today. I support this Bill wholeheartedly.

This Bill is, of course, essentially about death. We should not have to feel gloomy about death in the way that seems so traditional in our country. I carry in my mind memories of my father's death. I was lucky as I had a wise and wonderful father and his death was therefore a great sorrow to me. As I recall the last 24 hours of his life, every moment of which I witnessed, I can get almost a precise replay in my mind's eye of everything that happened, everything that he said and all the thoughts that we exchanged before he was no longer able to speak, and it brings me great joy.

Today, 2,000 families in this country will face a death in the family. I wish that they could enjoy what I and, I believe, my father enjoyed on that day more than 25 years ago. My father did not want to die, but he was not afraid of dying. What occurred was almost the perfect end to life, but I am well aware that that does not happen everywhere.

Settings for death differ, and I have witnessed some of them. They include hospitals, nursing homes, residential homes and homes. I agree with the noble Lord,

[Lord Carlile of Berriew]

Lord Warner—wherever he cares to sit in your Lordships' House—that if at all possible people should be able to die at home as long as home is the right place for them to die and the circumstances are there. Wherever possible, those circumstances should be provided. That is much of what this Bill is about.

Let us face it: in most cases death is predicted, at least within a relatively narrow timeframe. We prepare for birth over a period of nine months. We do not know exactly when the birth will occur, in most cases, but we are ready for it. We are ready to move as a family; we are ready to drop everything; we are ready to be part of a great family event at which we rejoice. I wish that we could do the same about death. In many cases, we can prepare for it and be at the side of the loved one who is departing from the family.

What has happened is that there has been almost a postcode lottery in relation to the way in which death is managed. In some parts of the country, provision has been very good and holistic; in other parts, and I have seen this too in my own family, it is, frankly, haphazard and disconnected, and you depend on the chance that there is at least one nice and sympathetic person present as the relative dies.

The Bill is about creating much wider knowledge and of creating training so that people are ready to deal with death. Dr Twycross, emeritus clinical reader in palliative medicine at Oxford University, wrote a very compact and telling letter to me about this. One of the things he said was that lectures are not enough, and that apprenticeships of an appropriate length and intensity are vital, particularly for doctors training to become specialists in gerontology, oncology, respiratory medicine, cardiology, neurology and pain medicine. I agree with him absolutely that training is about much more than lectures; it is about creating standards and knowledge. I believe that the noble Baroness's Bill would help to achieve those high standards and good knowledge.

*2.20 pm*

**Viscount Bridgeman (Con):** My Lords, I am the last of many speakers today to congratulate the noble Baroness, Lady Finlay of Llandaff, on this, her latest contribution in her distinguished record of palliative care treatment in this country. I declare a non-pecuniary interest in having been for 11 years chairman of the hospital of St John and St Elizabeth in St John's Wood, London, which, unusually for the hospice movement in this country, has within it St John's Hospice, forming part of the same charity. In common with most other hospices of similar size—in this case, 22 beds—St John's has contracts with a number of adjacent health authorities, in its case seven in north and west London. I have to say that patients who are near the end of their lives, whether they wish to spend their last days at home, in hospital or in a hospice, are liable to find themselves participants in a postcode lottery—rather surprisingly, in such a small area of London.

I shall give your Lordships some examples. Hospice at home is developed by many hospices. It is vital but it has administrative problems. Statistics show a slow but steady increase in end-of-life patients wishing to spend their final days at home. Some of the health authorities in the group pay for hospice at home but some do not. Some commissioning groups, which are the flagship of the innovations in the 2012 Act, pay great attention to palliative care but, regrettably, others—again, this is the experience of the hospice with which I am familiar—have palliative care low down on their list of priorities, a point that has been raised many times in this debate. Again, I refer back to hospice at home: here there are, more than ever, likely to be continuing problems of communication as most are elderly patients, many with varying degrees of dementia and of course in dispersed locations. In the catchment area of St John's, several CCGs do not include in their team the post of palliative lead GP, a GP who, being especially experienced in palliative care, is ideally placed and qualified to ensure good communication with patients at home, and indeed good communication between hospice and CCG. Here again, some CCGs have this very important post and some do not.

A final example of the postcode lottery is the matter of contracts between hospice and health authority. In the St John's group, only two out of seven health authorities have contracts for more than one year —in both cases, for three years. This is probably outside the scope of the Bill but the advantage to both parties is obvious with regard to long-term planning, and it is surely likely to be reflected in the treatment and facilities available to end-of-life patients with the right postcode.

How, therefore, is all this addressed in the Bill before your Lordships? I suggest that that very point I have sought to raise is addressed directly or indirectly in the Bill under Clause 2(2). In its 10 paragraphs there is in effect a series of minimum benchmarks of performance which I am confident should serve to raise minimum standards across the board and thereby go some way to eliminating the more glaring effects of the postcode lottery to which I have referred.

In conclusion, I must say a word about funding of the hospice movement, which has been referred to, particularly by my noble friend Lord Howard of Lympne. Traditionally the funding of hospices by Governments of all parties has varied widely, from 50% of operating expenses down to percentages in the 20s. The noble Lord, Lord Howarth of Newport, has of course referred to children's hospitals, where funding is even lower than that. Therefore the shortfall has to be found from appeals and other fundraising events, and £1 million a year is probably the bottom-line requirement. I suggest that there is degree of cynicism on the part of government in all this. This is not a party-political point—it is common to all Governments. Every Government know that in the end virtually every hospice always gets its operating costs funded from somewhere.

I therefore say to the Minister: what a marvellous opportunity for the Government to show their appreciation for this marvellous movement, which, as the noble Baroness, Lady Finlay, has reminded us, leads the world, by at least raising across the board the average percentage of support which they are able to give.

*2.26 pm*

**Baroness Scotland of Asthal (Lab):** My Lords, first, I thank the House for allowing me to speak in the gap in support of the most marvellous Bill of the noble

Baroness, Lady Finlay. She will know that I have been figuratively speaking by her side through all this, but rarely have I had an opportunity to add my voice, so I thank the House for that.

The expertise of the noble Baroness, Lady Finlay, has given us a great treat, because we have an opportunity to do that which will make a difference to so many. One of the tragedies, of course, is that so many of us fear death because of the possibility of dying in pain or alone. Yet each of us aspires to die with those who are with us, love us and care for us, and we hope to die without pain. The Bill, therefore, enables us to derive hope that those who will care for those in need at the moment of their death will have the skill and expertise to be able to give that which is needed. I agree with the noble Baroness, Lady O'Neill, that this is the right topic and at the right time. As the noble Baroness, Lady Finlay, said in opening, whoever a dying person is, whatever the time of day or night or day of the week, they will be able to receive high-standard care. That is the aspiration, and the Bill will help us to deliver it.

Both my parents died after having suffered a severe stroke and after a long period of illness—one for more than a year and the other shortly before that. Yet, as we have heard from the noble Lord, Lord Carlile of Berriew, for me it was the most extraordinary journey to go on with them. I saw strength, care and love, and I too will never forget that. However, both my parents did not die in this country but in the country of my birth, Dominica, where they had no benefit of the National Health Service, and where my family had in effect to create a hospice. I would like to see us here in the United Kingdom make sure that every individual has an opportunity to die not in fear but surrounded by those who love and care for them. The Bill will enable us to do that if we choose to do so. I hope that this House will choose to do that.

*2.29 pm*

**Lord Hunt of Kings Heath (Lab):** My Lords, the Opposition warmly welcome the Bill. I hope that it can make progress and get to the other place in time to get on to the statute book this Session.

Clearly, we have much to be proud of in palliative care—in the hospice movement, in particular, but also in parts of the NHS. However, the ombudsman's five key themes make salutary reading. Frankly, in many places people are not recognised as dying and therefore the service is not responding to their needs. There is poor symptom control and poor communication. There are also inadequate out-of-hours services, poor care planning and delays in diagnosis and referrals for treatment. As my noble friend Lord Turnberg said in yesterday's palliative care debate, there is no shortage of guidelines. An enormous number of guidelines is available; the conundrum is that they are not being implemented consistently. The question that we want to put to the noble Lord, Lord Prior, is: what can be done to ensure much greater consistency? I know that NHS England has established palliative care networks across England which are meant to support improvements in palliative care and share good practice, but I hope that the noble Lord, Lord Prior, will be able to report on progress.

I also want to ask the Minister about staff training, which a number of noble Lords have mentioned. We often depend on many young doctors, nurses and care workers, but inevitably they may be ill prepared to deal with death. They certainly need support. I thought that the BMA's submission to noble Lords on that was very interesting. It says:

> "Caring for dying patients will always be difficult for doctors, regardless of their level of experience".

It continues by saying that,

> "doctors are not being equipped with the right tools to provide this care",

and it refers to the review undertaken into the Liverpool care pathway, which,

> "found that medical training in palliative care was inconsistent, and often inadequate, resulting in a large number of junior doctors feeling ill-prepared to care for dying patients at the beginning of their careers".

That could also apply to nurses and other care workers. Again, I should like the noble Lord to say what the Government can do to get consistency in training.

My third point concerns leadership. The Health Select Committee in the other place recently said that evidence provided to the committee showed a clear lack of leadership at national level—at the centre of government—in relation to end-of-life care. It recommended that:

> "The Department of Health and NHS England should ensure that end of life care is prioritised and embedded in future planning at all levels".

Noble Lords have already mentioned the other recommendation concerning the identification of,

> "named individuals who will be responsible for ensuring that the new approach to end of life care … is delivered nationally".

Again, I ask the noble Lord whether the Government accept that recommendation.

The noble Lord, Lord Prior, in a very sympathetic response yesterday, put a lot of eggs into the CQC basket. Of course, we will have to wait to see the outcome of this work, but I was struck by the fact that he did not mention clinical commissioning groups. A number of comments have been made today about commissioning. Clearly, there is an inconsistency. We have to be honest and say that the capacity of CCGs to commission services is often very limited—they do not have the people with the expertise to do it. Does the noble Lord think that the situation might be better solved by having a national strategy in which a template as to what should be commissioned locally is required by CCGs? That would be entirely consistent with the terms of the noble Baroness's Bill.

On funding—a point referred to by the noble Lord, Lord Howard, and the noble Viscount, Lord Bridgeman, in particular—there are two issues. One is the level of funding and the second is what I would call stability. The points on the level of funding have been well made, but my experience is that one of the problems—I speak as a supporter of Birmingham St Mary's Hospice—is that hospices often do not know very much in advance how much they are going to get. Indeed, often they do not know until after the start of the financial year. I would have thought that one instruction that Ministers could give would be that hospices should be entitled to a three-year rolling contract so that they know exactly what they are going

[Lord Hunt of Kings Heath]
to get and can plan ahead. The figures given to them are, frankly, so low compared to the entire NHS budget that I do not believe it is unreasonable to ask clinical commissioning groups to do it. I think they often forget what it is like to be an organisation that is not certain of its funding. They get their funding—it might be tight but there is certainty of funding—but for hospices, there is no certainty of funding. At the very least, they ought to know and be able to plan ahead.

Time presses on, but I hope that the Minister will say that the Government are also going to accept the recommendations of the Health Select Committee on free social care, and I echo the point raised by my noble friend Lord Warner.

One thing I would ask the noble Baroness, Lady Finlay, is about the implications of the duty in the Bill compared to the general duties laid on the NHS in other Bills. If I were a Minister I would probably ask her what the hierarchy of importance is. I do not know whether we could explore this in Committee or whether the noble and learned Lord, Lord Mackay, and my noble and learned friend Lady Scotland might perhaps be able to help with an appropriate amendment in relation to that.

We wish this Bill well. I hope that we will have time for a proper Committee stage, as there are clearly a number of issues to be discussed. However, we wish to send this Bill on, with progress, to the other place.

*2.36 pm*

**The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con):** My Lords, first, I join with everybody else in thanking the noble Baroness, Lady Finlay, for raising this issue and bringing the Bill before us. She has a long history of passion, commitment and experience in this area, and we all recognise that. There seems to be violent agreement from all sides of the House on the substance of her Bill, and so I congratulate her on the support that she has garnered, which of course goes way beyond noble Lords in this House.

Before I address the Bill directly, I want to draw out three themes that have emerged out of the debate today. The first is that, despite the report from the ombudsman and some very upsetting individual stories, the UK does pretty well in this area. My noble friend Lord Howard referred to the report in the *Economist*. For the second time—the first being five years ago—out of all 80 countries surveyed, the UK came top, and that includes all the richer nations. We come significantly higher than most other European countries. In part, that is because the hospice movement in the UK has been extraordinarily successful. My noble friend Lord Howard referred to the CQC report. It is quite extraordinary that 90% of all hospices inspected have been "good" or "outstanding".

However, in praising the hospice movement and the care that it delivers at home, let us reflect for a minute on how difficult it is to provide good-quality palliative care in a very busy acute hospital. It is true that they probably do not do it as well as it is provided in hospices, but, given the circumstances, they often do a remarkable job. My noble friend referred to the bowl of porridge that was provided in a hospice. I refer him to the Wrightington Hospital, where a lady coming near to the end of her life said that her one last wish was to see her horse. They brought the horse to the hospital and wheeled her down to see it. We do see these extraordinary acts of kindness and compassion in NHS hospitals as well. That is the first point that I would like to make: the UK does this pretty well.

Secondly, the most important point to come out of today's debate is the patchiness of how we do it. Variation, I am afraid, is a problem that runs right through the NHS. The noble Lord, Lord Davies, went right back to 1946. Whether it is in end-of-life care, orthopaedics, stroke care or cancer care, there has been this level of variation since the inception of the NHS in 1946. The way that this Government have decided to try to confront this level of variation is through transparency.

It is a fact that, outside healthcare, the only way to drive out variation is through a market—we all know that. If you have choice and competition, they will drive out variation. It is much more difficult in an area such as healthcare, where there is such imperfect information and such imperfect choice. Our approach is to try to confront this issue of variation through transparency. It is not just through CQC reports but through having a much more open culture within the NHS. I say to the noble Lord, Lord Warner, that choice is also a key factor in that, where it is possible.

The third key theme to emerge from this debate is the importance of out-of-hospital care. Where we can deliver good-quality, safe care outside hospital, it tends also to be at lower cost. If it is at lower cost, we have more resources to spend elsewhere in the system. I say in response to my noble friend Lord Howard that I know that Hospice UK is in discussions with NHS England about whether it can help us deliver more care outside hospital. Other noble Lords referred to the huge importance of district and community nurses. Delivering out-of-hospital care to people who are at the end of their lives requires considerable expertise; you need district and community nurses on hand to administer pain relief and the like. In the case of my own mother, who died very recently in an NHS hospital, it was essential to have people there all the time who could adjust the level of pain relief, oxygen and the like.

Those were the three general points that I wished to make. I am afraid, however, that the Government cannot support the Bill and I will set out the reasons why. The most important reason is not that we disagree at all with the underlying intention of the Bill—we are in full agreement with it—but that we do not feel that primary legislation is the right way of tackling the issues raised because it could lead to unintended consequences. Most importantly, we feel that it attempts to deal with issues that, in the main, are best tackled by clinicians, ideally together with patients, carers and loved ones, based on a combination of the patient's individual condition, preferences and the clinician's professional expertise.

There is no other part of the healthcare system, be it cancer, stroke, maternity—the beginning of life as well as the end of life—where we have the mandated system that is proposed in the Bill. I will withdraw the

following analogy if it is not fair. When the Liverpool care pathway was introduced—I was a huge supporter of it—there many parts of the country and many hospitals where it was implemented sensitively and where it contributed greatly at the end of many people's lives. Yet, because in some parts of the system it became a tick-box solution where people were ticking the box and missing the point, I sometimes feel that a top-down, central directive, be it through legislation or from another source, can interfere with best-practice decision-making. That is the primary reason why we oppose the Bill.

However, there is a second reason—it is probably less strong, but it is strong nevertheless. It is that we feel that the Bill goes against the whole concept and principle of local autonomy that was established in primary legislation through the Health and Social Care Act 2012. I accept that clinical commissioning groups are still in their infancy—they have only been there for just over two years—but they are bound by a duty to commission health services based on the assessed needs of their local population, and palliative care is included in that stipulation. There is also concern that legislation on this issue as set out in the proposed Bill could stifle local innovation by NHS bodies, including commissioners, as they seek to improve the quality of care and provision.

As well as the responsibilities given to the local commissioning bodies, the 2012 Act also enshrines specific responsibilities for health education and training on Health Education England. This Bill would supersede those provisions, thus undermining the role and responsibilities of Health Education England, which works in partnership with local training and education boards to commission and deliver appropriate training and education.

I could go on and talk about what the Government are doing in this area, but that is the fundamental point and I should probably leave it there. We have huge sympathy for the underlying intent of the Bill.

**Lord Elton:** My noble friend has put local autonomy at the centre of his argument. If local autonomy results in unacceptable variations between localities, will the Government be on the look-out for this? It has only been running recently, as my noble friend says, but will he keep it at the forefront of his watch? If it increases or does not diminish, then something will have to be done about local inequalities.

**Lord Prior of Brampton:** My noble friend makes a good point. There is tension in the health service between local autonomy, local accountability and the National Health Service. There has always been this tension. We believe that in driving up standards it is best to have the local autonomy. However we must also have transparency so that we know who is falling behind and who is forging ahead. As to transparency at a clinical level, I was talking to a former president of the Royal College of General Practitioners recently—she comes from a different political background from myself—and she said that within the DNA of all doctors is a huge sense of competition: they want to deliver better care than the next-door doctor. That is true of surgeons probably more than anyone, but also true of GPs, physicians and hospitals, and increasingly it will be true of CCGs as well. My response to my noble friend is that we are embedding a much higher degree of transparency into the system and it is through that transparency that we will drive improvement by highlighting the best and the worst.

**Lord Davies of Stamford:** On the matter of transparency, does the Minister agree with my point that it is important that the commission should be transparent vis-à-vis the patient and that there should be a policy of full disclosure to the patient of the diagnosis, prognosis and any implications involved or deriving from changes in treatment or changes of venue from, for example, hospital to hospice or otherwise?

**Lord Prior of Brampton:** I accept and agree with that. One should not underestimate that even sophisticated, well-informed people put huge trust in their clinicians. How many of us, confronted with a difficult diagnosis, say, "What would you do?". That is the question that most people put to their doctors. Of course individual choice is extremely important, but the role of the clinicians and the trust that we as patients put into them should not be underestimated.

In conclusion, let me reiterate how much we support the underlying intent of the Bill but that we do not believe that legislation is the right way to address the problems that the noble Baroness has outlined.

*2.49 pm*

**Baroness Finlay of Llandaff:** My Lords, I am most grateful to everyone who has spoken in this debate. They prepared for it carefully and highlighted the inequities in provision. I thank all those who support the Bill. I believe that patients and relatives out there, hearing that the Government do not support legislation that would drive up standards of palliative care provision, will be horrified. This has not been plucked out of the air. In Wales we have been doing this for seven years. It is a template as the result of a natural experiment between England and Wales. Through the Bill, we are trying to share best practice.

The Bill is indeed only skeletal. Since coming to this House, I have learnt that you do not put into a Bill what can go in guidance. The issues that have been raised by Peers over possible amendments I would certainly expect to see set out in guidance because that is the right place for them. The reason is that systems change over time, healthcare professional responsibilities change, and you do not want to be locked into something that becomes archaic.

This is not the Liverpool care pathway in another guise. In fact, I have to say publicly that we did not adopt the Liverpool care pathway in Wales because we predicted that it would run into trouble. We developed a slightly different, modified system of our own.

The principles of the Health and Social Care Act 2012 have to work out, and over time they will, but this Bill will not stifle innovation. In fact, it will make sure that there is innovation because research has set out in the Bill. It will make sure that those who provide specialist care have to keep up to date with what is going on and

[Baroness Finlay of Llandaff]
participate in research. No longer will they be able to duck out of it using all kinds of weasel words and excuses about wanting to protect patients from people who want to find better ways of care and thus improve it. Those people are called researchers who, like those at the Cicely Saunders Institute, have delivered most of the data to provide the transparency the Government want. I am greatly indebted, particularly to Dr Felicity Murtagh, Professor Irene Higginson and other colleagues there, who have provided me with an enormous catalogue of evidence to check out what is in my Bill.

As for consent and control, we already have the framework in place. No one should be treated against their wishes, so we have a framework that enables people to make advance refusals and statements of wishes. They can do it now, when they are well and long before disease strikes, and they can make changes if they change their mind. That is what the Mental Capacity Act 2005 is all about. It ensures that no one is treated against their will. I know that I now have an uphill struggle in trying to get it properly implemented, but it is a challenge that I take on willingly and I am humbled at being given the chance.

I am also alarmed at the thought of care being discriminatory against people on the basis of age and so on. As for people wanting to be cared for at home, I am cautious about anything that tries to put into legislation specific pathways of care because people change their mind. I have had patients change their mind about what they want and where they want to be in their dying moments—not about the place of care, but even about trying chemotherapy or asking for a second opinion about surgery. We have to be flexible all the time with our patients until they are dead because they may change their mind about what they want in the last few minutes. It may be a minor issue, such as whether the family is in the room or out of it, but those wishes need to be respected.

I am saddened that some have tried to link this Bill with the debate on the Assisted Dying Bill. The House of Commons looked at the proposal for physician-assisted suicide very comprehensively and has spoken very clearly. That Bill is unsafe and should not be brought back into either House of Parliament. It is actually an abuse of the House even to think about doing so. If people want assisted suicide, then go away and write a Bill that is safe, but do not saddle doctors in palliative care with it. They are the group that wants to provide better care and do not want to be involved in such a process. Those doctors also have the right to behave ethically and to do what they want for their patients; they do not want just to give in to demands.

I am also saddened that the Government have been so blunt; they will not even look at ways to improve the situation. We will watch the position over time. I hope that the Bill will have a Committee stage because I want to debate some of these issues further, and I also want transparency. But above all, I want every person dying in this country to be secure in the knowledge that they will get the care they need, but I am afraid that the response I have had today from the Government does not give me that assurance.

*Bill read a second time and committed to a Committee of the Whole House.*

## Advertising of Prostitution (Prohibition) Bill [HL]

*Second Reading*

*2.55 pm*

*Moved by* ***Lord McColl of Dulwich***

That the Bill be now read a second time.

**Lord McColl of Dulwich (Con):** My Lords, as noble Lords will know, I have previously introduced a Private Member's Bill to address human trafficking on two occasions. I am very pleased that, after many debates over a good number of years, this House played such an important part in changing the law to bring in new offences on human trafficking and new mechanisms to provide support for victims. The Bill that I am bringing forward today addresses similar concerns to those Bills—that is, how to prevent harm to those who are in vulnerable situations.

I had the privilege of listening to hours of evidence on human trafficking, including as a member of the Joint Committee that examined the draft Modern Slavery Bill and as part of the all-party parliamentary inquiry, which ran from 2013 to 2014, on the laws in England and Wales on prostitution. As I said when I spoke on a similar subject on 1 December, the group published our report, *Shifting the Burden*, in March 2014. I encourage noble Lords to review its findings.

The inquiry reinforced for me the concerns I have had about the negative impact on individuals involved in providing sexual services and the circumstances in which they find themselves. I recognise that this does not apply to all individuals, but, as I said in December, the evidence I have seen indicates that the majority of individuals in prostitution today are victims of exploitation and violence of one form or another. I set out some of that evidence in my speech then, and I hope the House will indulge me if I repeat some of the arguments again as they are very pertinent to my Bill.

Multiple academic studies, including data compiled for the Home Office, demonstrate that the majority of people who sell sex are incredibly vulnerable and subject to real exploitation. For example, research has shown that homelessness, living in care, and debt and substance abuse are all common experiences prior to a person entering prostitution, which is sometimes reflected in the evidence received by our all-party group inquiry.

Many of those in prostitution have suffered abuse and violence in the home. Dr Max Waltman of Stockholm University notes that international studies have consistently found that,

"the majority of prostituted persons—somewhere between 55% and 90% … were subjected to sexual abuse as children".

The 2012 study, which was carried out for the charity Eaves, interviewed 114 women in prostitution in London both on the street and indoors. Of the women interviewed, 50% said that they had experienced some form of coercion from a partner, pimp or relative, or through trafficking. The same study found that 32% of those interviewed had entered the sex industry before the age of 18. Other studies have found higher numbers than this. For example, the 2004 UK study found a figure of 52% entering before the age of 18.

Numerous studies have found that between 50% and 95% of women in street prostitution are addicted to class A drugs. Professor Roger Matthews, an expert in prostitution law and policy has written:

"Street prostitutes frequently report that they work to support not only their own habit but also that of their boyfriend, pimp or partner. In some cases, male drug users/dealers will seek out female prostitutes as 'partners' since they make good customers and providers".

The Eaves study I referred to also found that drug and alcohol misuse was not restricted to those in street prostitution, with 83% of their interviewees having a current or previous problem, which in a significant number of cases had begun or increased after entering prostitution. The evidence indicates not only that most people entering prostitution are vulnerable, but that the experience of prostitution compounds that vulnerability, putting them at risk of significant physical and mental harm. A comparative study of prostitution in nine countries, with more than 850 subjects, found that 73% had been physically assaulted. Some 61% of the women surveyed in 2012 by Eaves reported experiences of violence from buyers of sexual services.

Prostitution has also been shown to have a negative impact on people's mental health. One comparative study in Glasgow looked at the mental health of female drug users, some engaged in prostitution and others not. The study found that those involved in prostitution experience more abusive incidents as adults and more mental health problems than those who are not. The authors concluded:

"Higher rates of adulthood abuse among prostitutes may explain the greater proportion of prostitutes than non-prostitutes meeting criteria for current depressive ideas and lifetime suicide attempts".

The Council of Europe succinctly summarised my concerns in a parliamentary assembly resolution last year:

"Prostitution is a complex issue presenting various facets that should be taken into account. It affects the health of sex workers with consequences ranging from increased exposure to sexually transmitted diseases to higher risks of drug and alcohol addiction, physical and mental traumas, depression and other mental illnesses".

However, it is not only the statistics that persuade me that the harms of prostitution are such that it can be seen as a form of violence against women and a dehumanising practice damaging for individuals and society as a whole. It is the stories of individuals who I have met that have been the most compelling. Earlier this week I had the privilege to listen to the powerful account of a woman who had been through prostitution and who now campaigns against sexual exploitation. She said the following:

"When you are prostituted, however you arrived there, you sign a social contract that comes with the highest cost; for the small print of this contract, the terms and conditions are harsh, disturbing and unjustifiable. So it would appear to most that we stand free on the street and yet everywhere we are in chains".

She went on to say:

"It is my firm belief that every human is entitled to live a dignified life, and prostitution is the systematic stripping of one's human dignity and I know that because I have lived and witnessed it, and it must no longer be tolerated".

I agree with her entirely. The dignity and value of every individual person must be our priority.

All these facts lead me to the conclusion that a reduction in the levels of prostitution is essential, and that this would positively impact not only those domestically but also individuals who might be trafficked into England and Wales in the future.

Noble Lords will remember that we have international obligations to reduce the demand for human trafficking in both Article 18 of the EU directive and Article 6 of the Council of Europe convention on this subject. Indeed, last year the European institutions advocated action to reduce demand for human trafficking and for prostitution. I am sure some noble Lords are thinking that we have covered all this in the Modern Slavery Act. That is, indeed, a fine piece of legislation but, as I said at the time, it did nothing to fundamentally address the demand for human trafficking for sexual exploitation—a very serious oversight given that, according to the NRM figures, sexual exploitation is consistently the most prevalent form of human trafficking in England and Wales.

My Bill before us today seeks to address some of that demand by preventing the advertising of prostitution. It does so by addressing an anomaly in the law on prostitution whereby it is currently illegal to organise or profit from prostitution by running a brothel or allowing premises to be used for prostitution and to cause, incite or control prostitution for gain, but it is not illegal to advertise those same services in newspapers or on the internet. As the Independent Anti-slavery Commissioner, Kevin Hyland, said to me yesterday, we would not accept adverts for a stolen bicycle or for illegal drugs and yet many prostitution adverts contain clear indications of other offences by referring to the availability of several women and, when combined with reference to ethnicity, should at least raise suspicions of trafficking.

I am not naive enough to think that if this Bill becomes law all advertising for prostitution will cease. That is not the criterion by which we should measure its success. My goal is twofold: first, that the law will help to reduce the amount of advertising and thereby help reduce the demand for paid sex, and all the attendant suffering and exploitation that comes with it, and help us fulfil our international obligations to address the demand for paid sex; and, secondly, that it will send a very clear message that we as a society reject the culture of prostitution advertising which commodifies and dehumanises women.

It is for those reasons that I am bringing this Bill before the House. In so doing, I would like to draw the attention of your Lordships' House to the fact that this proposal is not without powerful international advocates. The European Parliament has noted that,

"advertisements for sexual services in newspapers and social media can be means of supporting trafficking and prostitution".

This connection was poignantly highlighted by the case of a family in Bolton jailed last month for trafficking and exploiting two women in prostitution. According to the *Guardian* newspaper report, the court was told that one of the traffickers,

"set up profiles for the two women on adult websites, and when clients called he and his father would tell the women what to say. The victims, aged 30 and 21, were forced to see up to five clients a day and worked 'whenever the phone rang'".

[Lord McColl of Dulwich]

The proposal to ban advertising of prostitution was recommended in a 2014 resolution of the Council of Europe parliamentary assembly. That resolution, which was passed by an overwhelming majority last year, states clearly that,

"trafficking in human beings and prostitution are closely linked … legislation and policies on prostitution are indispensable anti-trafficking tools".

The resolution calls on Council of Europe member states to,

"ban the advertising of sexual services".

My Bill meets that call.

The Purple Teardrop Campaign, the United Kingdom organisation committed to ending human trafficking, has a petition calling on Her Majesty's Government to ban what it terms "sex for sale" advertisements, saying:

"Many 'sex for sale' advertisements are placed by traffickers and so contribute to the demand for sexually exploited women and children".

I understand that more than 36,300 people have signed the petition to date.

My Bill is short and to the point. Clause 1 makes it an offence for a person to publish or cause to be published, or distribute or cause to be distributed, an advert for prostitution. Clause 4 ensures that the offence applies to a business as well as to an individual. Clause 5 defines an advert as,

"every form of advertising or promotion, whether in a publication or by the display of notices or posters or by the means of circulars, leaflets, pamphlets or cards or other documents or by way of radio, television, internet, telephone, facsimile transmission, photography or cinematography or other like means of communication".

Clause 2 sets out that the punishment would be a fine, the level of which would be set by the Secretary of State. Clause 3 provides a defence that the person,

"did not know and had no reason to suspect that the advertisement related to a brothel",

or prostitution.

This is a modest but important Bill and I urge noble Lords to give it a Second Reading. I beg to move.

*3.11 pm*

**Baroness Butler-Sloss (CB):** My Lords, I congratulate the noble Lord, Lord McColl, not only on the Bill but on the enormous amount of hard work and campaigning he has done over many years in his efforts to combat modern slavery and the trafficking of all people, including women, into this country. I am co-chairman of the All-Party Parliamentary Group on Human Trafficking and Modern Slavery and a trustee and vice-chairman of the Human Trafficking Foundation. In those capacities and personally, I very much support closing the loophole in the law and the purpose of the Bill.

As the noble Lord said, the sex industry includes many victims of sexual exploitation, including many who are trafficked to this country. I have a vivid recollection of going to a Romanian prison where I met a number of traffickers who were serving long sentences. One of them was very proud of what he had done. He ran a very big network across the whole of western Europe, mainly in Spain, but he was happy to tell us that he had brought a lot of women—from Romania, mainly, but also from Bulgaria and other eastern European countries—to the United Kingdom for the purpose of prostitution. He said, and it was quite patently untrue, that they were all very glad to be doing it. But I knew from going to Romania on several occasions that many of them were in fact victims of trafficking working in this country and other parts of western Europe.

I support any measure that will reduce the opportunity for those who are sexually exploited to be identified and to be working. But I had a very interesting email from the opposite point of view. In fairness to the people who sent it, I thought I should spend a moment or two on it. The National Ugly Mugs, or NUM, and the UK Network of Sex Work Projects, or UKNSWP, are opposing the Bill. One of their main reasons is that the impact would be the criminalisation of legally working sex workers, mainly in the escort industry. This, they say, is very unfair. They say it will give additional work to the police but they also say it is not enforceable. They say that there are benefits from advertising because it gives them the opportunity to identify and give support to sex workers. They also make the fascinating point that there is a danger that what they call responsible owners of escort advertising will be warned off and less responsible people will take over the advertising for sex workers. My example of the Romanian in the prison in Romania, working the whole of western Europe, makes me think that there are pretty irresponsible and very well-heeled workers running escort agencies—I have no doubt about that. I do not accept what those organisations have said but thought that, in fairness to them, since they have taken the trouble to email me, I ought to give your Lordships at least some of their point of view.

I very much support the Bill. I had not appreciated that advertising for sex workers was still legal. I hope the Government will listen to what the noble Lord has said and support the Bill.

*3.15 pm*

**The Lord Bishop of Derby:** I too congratulate the noble Lord, Lord McColl, and thank him for introducing the Bill and for his important work in this important area. I will make a couple of points about the context and about the issue that we are debating. First, there is the scale of it. I was at a lecture on Saturday where somebody explained that demand for the purchase of sex increased enormously in the 1990s with the increasing availability of online pornography. The statistics went from one in 20 men buying sex to one in 10. That is a massive increase in the market. In its briefing paper, the Institute of Economic Affairs almost celebrates that by saying that it is a business worth £4 billion a year. This is not about money or business; it is about abused and oppressed human beings. As the noble Lord, Lord McColl, says, it is part of an increasing scenario of violence against women in our society and treating women as commodities that can be bought and sold.

This very week, some of my colleagues who work with prostitutes in Derbyshire visited a prostitute who advertises her services on the internet. This week, she was visited by somebody through that advertising and horrifically assaulted. Advertising can be an avenue

for people to attack and abuse very vulnerable women, with horrific consequences. Because many of the women who are drawn into this trade are vulnerable, as the noble Lord, Lord McColl, said, we have to look at being consistent with our concerns about safeguarding. We are rightly concerned to safeguard vulnerable adults and children. Many of the women drawn into this trade are vulnerable in the most terrible way. Some time ago, I met a women here in London who was trying to escape from prostitution. The advertising that her pimp organises led to her being raped 10 times a day—the advertising provided the means for that to happen. That is the kind of human cost that we are looking at.

There are some issues about whether this is practical. I remind noble Lords that in the 19th century there was a lot of debate in this House and the other place about legislation to stop women and children being exploited in factories. At the time, one of the arguments was that you would never eradicate it. Of course it never was eradicated—it still is not—and some families really suffered. The point of the legislation then, as with this modest proposal now, is about what kind of marker the state should put down to say how we value people and how we want to protect them. This would be a powerful marker in a world that is obsessed with and dominated by advertising. I would be interested if the Minister has any comment on what kind of marker the state should put down through this proposal.

Another issue is what it says about the health of society when sexual services are advertised so freely in the press and on the internet. All the research shows that the great majority of men who use the services of prostitutes are either married or in stable relationships. Think of the cost to our society of relationships that are so unstable and immature that all this is going on. The cost is enormous. Should we not be trying to go back a bit to look at what is fuelling this demand? What is happening in the upbringing of boys and young men so that, when they grow up and become older, they patronise this kind of industry?

Advertising, if it is allowed, normalises that kind of behaviour. It normalises being able to buy a woman for sex in a very unequal power relationship. There is nothing equal about it. To allow advertising normalises buying a woman for sex.

Also at the conference on Saturday, I was with a woman, a former prostitute, who talked very movingly about being drawn into a world of fantasy. People who respond to the adverts come into a world of fantasy. She said: "The tragedy was, nobody asked the right question about me. They just wanted me to play along with a fantasy world that everybody thought was fine". Underneath, she was hurting, she was heartbroken, she was frightened, she was being abused, but nobody asked the right question. Is it mature and right to allow human beings to escape into these fantasy worlds at such terrible cost to fellow human beings?

My last point, on which the Minister may want to comment, is that a lot of this advertising is enabling organised crime to flourish. We need to look at the link between organised crime and advertising for illegal activities to take place. I hope that we will support the Bill.

*3.20 pm*

**Lord Davies of Stamford (Lab):** My Lords, I start by saying that I totally share the horror of the noble Lord, Lord McColl, and the whole House, at the ideas of violence, exploitation—I think that he had in mind living off immoral earnings—intimidation and, although he did not mention it, rape, having sexual intercourse without consent. These are real horrors. We have pretty strong laws against them with pretty strong penalties, but if the noble Lord can make out a case to strengthen the penalties or enforcement, I may well be with him. I do not think that he has made a case that the solution is to criminalise prostitution itself. I am quite certain that he has not made a case that the right way to criminalise prostitution is to do it on the back of this Bill, which is ostensibly about something else.

In my view, legislation should always be open, overt, frank and transparent. It should not be carried surreptitiously, casually on the back of some other Bill. It is very important that the whole House, the other place and the public have a chance to think through the long-term consequences of new legislation, particularly radical legislation of the kind that the noble Lord proposed in his introductory speech, which is criminalising prostitution itself. A lot of perverse consequences would flow from that. The noble Lord shakes his head, but we must be in a position to consider those consequences specifically in relation to the proposal that he has now made to the House to abolish prostitution, not the proposal in the paper that he has put forward, the Bill, which is simply to criminalise advertising for prostitution purposes. There is a lack of frankness in that approach of which I strongly disapprove.

My view about legalising or criminalising prostitution is, above all, based on a fundamental principle, which is that set out so lucidly by JS Mill 150 years ago, which I think is dear to the hearts of everybody who believes in freedom. That is that the state should not restrict the freedom of any citizen except to the extent required to protect the freedom of others. It flows directly from that that acts in private between consenting adults are no concern of the state or of the law. You violate that principle at your peril.

I recognise that virtuous and respectable people, in the interests of reforming society, as they see it, are always trying to encroach on that principle. The worst case was the introduction of the legislation in the 1880s criminalising homosexuality, which continued on our statute book for 80 years. In my view, we should never have violated that principle. I would be against it even if the pragmatic arguments ran in the other direction, but actually, I see several pragmatic arguments which run very much against the idea of criminalising prostitution. In the time I have, I will mention just three.

One is a definitional problem, whether it has to be dealt with by Parliament or by the judiciary in the courts. I fear that it does not sound very romantic or edifying to say so, but I suspect that quite a lot of relationships—far more than we like to think—have some element of material interest in them. It would be extremely difficult to decide whether the material or

[Lord Davies of Stamford]
monetary interest was decisive in one particular case. The law would make an awful fool of itself if it specified that if you hire someone for sex for a night or a weekend, you are committing a criminal offence, but if the relationship, including the financial relationship, continued for months or years, you are not—in other words, that a crime, if continued long enough or repeated frequently enough, ceases to be a crime. That would be a novel jurisprudential notion.

Equally, the law would be pretty stupid if it ended up specifying that if you pay for sex with money—cash or specie—it is a criminal offence, but if you pay by means of a diamond brooch, it is not. The law would be held up to equal ridicule and there would be a considerable sense of injustice if you targeted the poor prostitute and perhaps the relatively poor client of the poor prostitute and left the wealthy man and the successful and wealthy courtesan to enjoy themselves without let or hindrance. That would be a mistake. So the definitional problems are real, and the noble Lord needs to address them, if he wants to take further his project of abolishing prostitution by law.

Then there is the issue of the strain on the criminal justice system and particularly the police. We know that the Government are cutting police numbers in drastic fashion, which I personally think is an utterly irresponsible policy that we and even they will ultimately regret. That aside, can you imagine what would happen if the police had responsibility for chasing up every act or alleged act of prostitution in this country? Here for once I do feel that I am not speaking alone. I should be very unamused if I was told by the police that they did not have time or resources to investigate the burglary of my house because they were launched on a much more exciting case, because Snooks was alleged to be having sex with Fifi and money might be changing hands. We want to think very carefully about that aspect as well.

Thirdly, there is the whole issue of the prohibition effects. We all know what prostitution is conceptually. The exchange of money for sex or sex for money is the confluence of two powerful forces in human nature: the desire for sex and the desire for money. If there are more powerful forces in human nature, I am not quite sure what they are, and if you try to dam the tide against them you may have some very perverse effects. The Americans did that with prohibition, but I fear that the two forces that I have just mentioned may be even more ubiquitous and powerful than the desire for alcohol. So you get the same effects; you create a whole new seam of rich potential profits for criminals involved in the intermediation which obviously would be necessary if you criminalised prostitution. It is quite easy to envisage all sorts of opportunities for criminal activity, racketeering and so forth, such as happened under prohibition.

If you prohibit by law something that has been going on for a long time and for which there is a structural demand and existing supply system—we are told that it is quite pervasive; I have not seen these websites myself but I have heard about them and I gather that there are an awful lot of them—you will force a raft of people overnight to change their habits or give up their livelihoods or become criminals. There are enormous social implications from doing that which have to be thought through. None of this has been thought through on this occasion.

Finally, there is one extraordinary anomaly—an ironic contradiction at the heart of the noble Lord's Bill. He set out his intention essentially to defend women in this matter, and I have some sympathy with that: but he then brings forward a Bill that criminalises advertising. But advertising is always paid for by the supplier, not the customer, and the suppliers on these occasions are largely women. So the only people who would suffer criminal sanctions as a result of the Bill becoming law, if it ever did, would be the females involved in prostitution, and not the males. That seems to me an extraordinarily perverse outcome, and I hope that the noble Lord will think a little bit further about this Bill before taking it further.

**Lord McColl of Dulwich:** Before the noble Lord sits down, could it be by some unimaginable stretch of the imagination that he has come into the wrong debate? We are not talking about criminalising prostitution—we are talking about advertising.

**Lord Davies of Stamford:** The noble Lord's Bill, as I have just said, talks about advertising—but, as I have also said, it seems not to be his real agenda. He made it clear in his own introductory remarks that what he intended to do was to abolish prostitution, and that this was just one of several legislative instruments that he has had in mind with that particular intention. I do not think that he can get away from the fact that his introductory speech was all about criminalising prostitution and that that was his preferred solution to the problems of violence and exploitation which he started off with.

**Lord McColl of Dulwich:** The noble Lord reminds me very much of part of the Queen's speech—I refer to the Queen's speech in "Hamlet", when she says:

"The lady doth protest too much, methinks".

**Lord Davies of Stamford:** The noble Lord has brought forward a Bill which is a bit of a false prospectus. If he had talked about advertising, we would all understand that we were simply limited to talking about advertising. In actual fact, every economic activity involves advertising, because every supplier has to have some way of communicating with his customers or potential customers. So you could say that if you ban advertising you ban the activity that is advertised, anyway. We did not get into any of that at all, and I think that—

**Baroness Butler-Sloss:** My Lords—

**Lord Davies of Stamford:** I shall give way in just one second, after I finish my sentence. The noble Lord has brought forward a bill of goods that is not exactly, when you open up the content, what you find on the label outside.

**Baroness Butler-Sloss:** Before the noble Lord sits down, perhaps I may calm this a little. I have absolutely no intention of supporting the abolition of prostitution for a number of practical reasons. It is one of the oldest businesses in the world, and it is likely to go on

regardless of what Parliament might say. I am here today, when I would much rather be at home, to support a Bill which deals exclusively with advertising. I did not really hear a word in what the noble Lord said about advertising and its evils in relation to victims of trafficking and sexual exploitation. That is my line, but the noble Lord, for some reason—and I found it very difficult to understand what he was saying—seems to think that support for the Bill is support for the abolition of prostitution. They are separate subjects in today's debate.

**Lord Davies of Stamford:** When I read the Bill, I thought that it was slightly curious because, for the reasons I have just set out, if you succeed in abolishing the right to advertise, you kill the economic activity underlying it—and therefore, surreptitiously, there might be an intention to abolish prostitution, not directly by coming to the House with an explicit Bill to do that but indirectly as a result of the Bill before us.

I have to say in all honesty that the introductory speech of the noble Lord, Lord McColl, confirmed me in my suspicion that that is his long-term agenda—but we shall all have to read *Hansard* and make our own judgment on the matter.

*3.31 pm*

**Baroness Gale (Lab):** My Lords, I thank the noble Lord, Lord McColl, for introducing this important Bill, which I fully support. I am very pleased that he has brought it to the House today. I believe that there is a very strong case for this Bill on three counts: first, it corrects the obvious anomaly in our law that it is currently illegal to organise or profit from prostitution by running a brothel or allowing premises to be used for prostitution and it is also illegal to cause, incite or control prostitution for gain, but it is perfectly legal to advertise—so there is an advert, but if you respond to the advert, you are committing a crime.

Secondly, prostitution has, as we have already heard, far-reaching negative effects on the majority of those involved in selling their bodies and on society as a whole. The noble Lord, Lord McColl, has provided a detailed overview of the evidence that explains why the Bill is necessary. I shall highlight the overwhelmingly exploitative nature of prostitution by citing three stories from south Wales that were told this year in a powerful documentary called, "Selling Sex to Survive". The programme looked at prostitution in Newport, Cardiff and Swansea. It featured Emily. She once had a happy home, but life trauma led to a breakdown, which resulted in her turning to drugs and prostitution. She said, "Working on the streets, there's lots of money, lots of drugs, lots of fun, lots of boys, but it's a horrible, horrible, life". Another woman said, "You get customers that used to pay £30 to £40 but now it's £10 all in". She wants to escape prostitution. Then there was brothel worker, Sorina, who earns enough money in Wales to support her family in Romania—but it comes at a big human dignity cost. She said, "In here, in this job you must be a very cold woman, without thinking, without heart, without anything". Imagine basing your life on that: no emotion and no involvement. These stories show how awful, in most cases, it is for women in prostitution.

Thirdly, the Bill is important because it helps us fulfil our international obligations to address the demand for paid sex in relation to trafficking and prostitution generally. As the noble Lord, Lord McColl, noted, we have international obligations to reduce the demand for human trafficking under Article 18 of the EU directive and Article 6 of the Council of Europe convention on this subject.

Given both our international obligations to address demand and the fact that, according to the national referral mechanism, trafficking for sexual exploitation is the most common experience for victims of trafficking in England and Wales, it seems rather strange that the Modern Slavery Act has nothing to say about the demand for paid sex, even though it addresses the demand for other forms of trafficking through its supply chain provisions. So this Bill will help us rise to the challenge and demonstrate that we are taking our international responsibilities seriously. It will help reduce demand for paid sex and the suffering associated with prostitution.

It will also involve our society sending a clear message through its laws that it does not want to facilitate the celebration of what is an overwhelmingly exploitative practice through advertising. Enforcement will require the provision of some resources but, given the overwhelming evidence of the exploitative nature of prostitution, taking this step is necessary to challenge the exploitation of, in the main, women. Our international and moral obligations mean that we must take action.

I end with a quote from the organisation Against Violence and Abuse, which stated:

> "Over 50% of women involved in prostitution in the United Kingdom have been sexually assaulted, and at least 75% have been physically assaulted at the hands of pimps and punters. Women in street prostitution are 18 times more likely to be murdered than the general population. These terrifying statistics demonstrate the need for more comprehensive legislation preventing the exploitation of women through prostitution. It is, therefore, my opinion that the very least this government should be doing is explicitly prohibiting the advertising of prostitution, as Lord McColl's Bill so nobly argues".

I am sure that the Minister is listening closely, as he always does, to what the House is saying today, and I hope that he will be in a position to support the Bill.

*3.37 pm*

**Lord Morrow (DUP):** My Lords, I support the Bill proposed by the noble Lord, Lord McColl. I believe that addressing the demand for paid sex is one of the key challenges of our society today. It is a great disappointment to me that one of the longest-standing forms of exploitation has yet to receive the same attention and focus as modern-day slavery. I speak, of course, about prostitution.

As noble Lords will be aware, I recently helped to take a Bill to address human trafficking and exploitation through the Northern Ireland Assembly. In the course of that process I engaged in extensive consultation, read a large amount of evidence and spoke to a great number of experts in this area. I spent hours talking with groups such as Women's Aid in Belfast, which supports victims of trafficking and sexual exploitation, and Ruhama, a charity from the Republic of Ireland that supports women exiting prostitution. I visited

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Sweden and met police officers and anti-trafficking experts, who explained to me the principle and the practical impact of their laws banning the purchase of sex. Most importantly, I met survivors of prostitution.

If I am honest, when the idea to criminalise paying for sex was first suggested I was far from sure. However, after meeting survivors and then carefully studying the evidence, I was more than convinced. The scale of the evidence demonstrating the vulnerable position and terrible experiences of the vast majority of people involved in prostitution requires us to take action. I recognise that that is not the case for every person, but from all the evidence that I read and all the people I spoke to, the voice of the most vulnerable was the most compelling. At the end of the day, we as legislators have to make a choice when considering prostitution. Do we act out of primary regard for the vulnerable majority or the privileged minority? I am very clear that it should be the former. That is why I strongly agree with the noble Lord, Lord McColl, and disagree with the noble Lord, Lord Davies, that we must seek to reduce demand for prostitution.

While the noble Lord, Lord McColl, has done exactly the right thing in identifying the need to engage with demand for paid sex, the Bill does not go far enough. Rather than just focusing on advertising, a more effective way of tackling demand and attendant exploitation would be to make it an offence to purchase someone for sex. That legislative solution goes right to the root of the problem, and I am delighted to say that more and more countries are now turning to it.

Most recently, Lithuania has just changed its law, and the Republic of Ireland is currently in the process of changing its law. In Northern Ireland the decision to address the demand for paid sex through criminalising the buyer was not a decision taken lightly. The issue was debated at length, and ultimately was supported by 81 out of the 108 Members of the Northern Ireland Assembly and, significantly, by Members across the political divide, both nationalists and unionists. We must make it illegal to buy sex, because that will be the most effective way to reduce demand—which is in turn the most effective way to reduce the harm of exploitation.

Evidence from interviews with those who buy sex indicates that criminal sanction would be the most effective deterrent. Moreover, independent analysis of the long-standing employment of this approach in Sweden and Norway demonstrates that banning the purchase of sex can reduce levels of prostitution and curb trafficking. The independent evaluation of the Swedish law found that street prostitution had been cut in half as a,

"direct result of the criminalisation of sex purchases",

and there was no evidence that the decrease in on-street prostitution had led to an increase in off-street prostitution.

We must reject the tacit acceptance of prostitution in our society. That acceptance may not take the form of openly promoting commercial sex—it might even acknowledge that prostitution is a harmful practice—but if we continue to say that it "has always been with us and will never be eliminated" or seek only to make the practice of it a little less dangerous, in effect we support its continuation. The only way to reduce the harm of this ancient form of exploitation is to reduce the demand that perpetuates it.

Having explained why the noble Lord, Lord McColl, is absolutely right to propose that we address demand for the overwhelmingly exploitative practice of buying people for sex, and while suggesting that I think criminalising demand is the most effective way of doing so, I want to be very clear that I regard the proposal in the Bill to constitute a very important step in the right direction. Making it illegal to publish adverts will mean that the law no longer permits the promotion of prostitution. It will send the message that promoting exploitation is not acceptable and will reduce access to prostitution—both of which can play a role in reducing the demand that fuels the trade. I was very interested to hear the noble Lord, Lord McColl, say that the anti-slavery commissioner says that the current anomaly in the law needs addressing. That is important, and we would do well to pay attention to his concerns.

I heartily congratulate the noble Lord, Lord McColl, on tackling an issue which is too often pushed to the margins because it is too difficult, and I give the Bill my fullest support. I very much hope that the Government will take the overwhelmingly exploitative nature of prostitution much more seriously and recognise that this Bill provides them with an effective and timely means of doing so.

*3.43 pm*

**Lord Kennedy of Southwark (Lab):** My Lords, first, like other noble Lords, I congratulate the noble Lord, Lord McColl of Dulwich, on securing a Second Reading of his Bill. He raises a serious issue with his Bill before your Lordships' House today. It proposes to make it an offence to publish, distribute or cause to be published or distributed advertisements which advertise a brothel or the services of a prostitute, and thereby deals with an anomaly, as the noble Lord himself outlined. The right reverend Prelate the Bishop of Derby is right to say that allowing advertising gives the appearance of normalising this activity, which is a front for organised crime. The noble Lord's Bill provides a defence in cases where the publisher was not aware and had no reason to suspect that an advertisement related to a brothel or the services of a prostitute.

The consequences for communities and people from the effects of prostitution can be devastating: violence, extreme violence, and even people being murdered, as we see all too often in the media. One recalls the terrible events in Bradford. The right reverend Prelate rightly talked about the vulnerable women who are drawn into this trade and are terribly exploited. People who are trafficked and effectively become slaves are treated utterly appallingly. The noble Lord, Lord McColl of Dulwich, made reference to that, as did the noble and learned Baroness, Lady Butler-Sloss, who talked about traffickers and people whom she had visited in Europe.

People involved in prostitution have serious problems with drugs and alcohol abuse, and their lives are utterly destroyed. As we have heard today, more than 50% of the people in this trade are coerced into it. I agree with the comments of my noble friend Lady

Gale, who outlined the despair of women who work as prostitutes and said how important it is to develop international obligations. In addition, local communities can be destroyed by the effects of prostitution. There is important work to be done by various agencies to tackle its causes and effects. People who are abused and exploited need help and support from health, welfare and other organisations in order to exit prostitution. There needs to be a partnership approach with local authorities and non-statutory agencies to help people to find a route out.

In recent years, there has been a slight increase in the number of prosecutions of those who control prostitution. That is welcome but much more needs to be done. The noble Lord's proposal is specific and focuses on advertising the trade. He was clear in stating that it is all about violence. The Bill—which I hope will progress further—seeks to disrupt these activities by making it an offence to advertise such services. This idea has been put forward before but no progress has been made. Certainly as far back as 2010 my right honourable friend in the other place Harriet Harman suggested a similar approach, and other colleagues and other campaigns have also called for action along similar lines.

I want to make a few general remarks about how we handle Private Members' Bills, of which this is the third today. We will give this Bill a Second Reading and then it will be moved that it be committed to a Committee of the Whole House. Last year, I said to the Clerk of the Parliaments, "We have all these Private Members' Bills. They are really good Bills putting forward really good ideas but they often go no further than Second Reading. Why can't they go into Grand Committee, as other Bills do?". I was told that it is perfectly possible for that to happen. Therefore, I ask the Minister and the government Whip to take that suggestion back to the Chief Whip for discussion. I think that we could make much more progress on these Bills if we had a sitting in the Moses Room, looking at the details in Committee. We are missing an opportunity there.

I again congratulate the noble Lord, Lord McColl, on putting this issue before the House today. He is seeking to disrupt the activities of the people who control the trade and deal in violence, abuse and misery. I hope that the noble Lord, Lord Bates, will give the noble Lord a positive response, as it would be good to see the Bill make further progress in your Lordships' House.

*3.47 pm*

**The Minister of State, Home Office (Lord Bates) (Con):** My Lords, I join all other noble Lords in paying tribute to my noble friend Lord McColl. As someone who is passionate and informed in trying to improve and reform our society, he epitomises all that is good about this House. Of course, he is the principal architect of the Modern Slavery Act, which has now come into effect. As the right reverend Prelate the Bishop of Derby rightly observed, those who are trafficked are often trafficked in connection with prostitution, and therefore that legislation will be effective in tackling this problem.

Before I come to the details of the Bill, I want to set out what the Government are doing in this important area. I will then make a few comments on the practicalities of the Bill and talk about where we go from here.

First, I make it absolutely clear that we are committed to tackling the harm and exploitation that can be associated with prostitution. We believe that people who want to leave prostitution should be given every opportunity to find routes out of it. Like the noble Baroness, Lady Gale, and the noble Lord, Lord Kennedy, I pay tribute to all those organisations that work in the field of prostitution helping people to find a way out of this lifestyle.

Regardless of the legal position of prostitution in the UK, the law on rape and sexual assault is clear and unequivocal. We expect every report of sexual violence and rape to be treated seriously from the time it is reported, every victim to be treated with dignity, and every investigation and prosecution to be conducted thoroughly and professionally. This is a core strand of our wider work to eradicate violence against women and girls.

We recognise that prostitution is a complex issue that can impact on individuals and communities in different ways. Local areas and police forces are in the best position to identify and respond to the issues around prostitution in their area.

We all recognise the harm and exploitation that can be associated with prostitution. I assure the House that the Government are absolutely committed to tackling those harms. We are working across government and beyond to tackle exploitation in all its forms. This vital work is underpinned by rightly ambitious strategies focused on violence against women and girls, modern slavery and child sexual abuse.

In March this year, the previous Government outlined progress in tackling violence against women and girls over the period of the last Parliament. Our commitment continues. The previous Government ring-fenced £40 million to support victims of domestic and sexual violence—£10 million per year—and this Government are continuing that funding to April next year. In addition to that £10 million, the Government have provided an uplift of £7 million for services specifically for victims of sexual violence, and an additional £13 million for domestic abuse services, including refuges. We are currently developing a refreshed version of our strategy to be published later this year. This will set out how we will meet our manifesto commitment to provide a secure future for refuges, female genital mutilation and forced marriage units, and rape crisis centres.

Noble Lords will be aware of our concerted efforts to tackle modern slavery. Indeed, many were instrumental in their support for the Modern Slavery Act, including the noble and learned Baroness, Lady Butler-Sloss, and the right reverend Prelate. The Bill received Royal Assent in March and brings in a range of powers and measures to prevent exploitation and support victims.

Our *Modern Slavery Strategy*, published in November 2014, sets out the wider non-legislative work under four headings, the first of which is to pursue the organised criminals and opportunistic individuals behind the modern slavery trade. On this point, the noble and learned Baroness spoke of the people she visited in a

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prison setting in Romania who were responsible for trafficking. I hope that such people would now be captured, either under the Serious Crime Act or the Modern Slavery Act. That is, of course, something that ought to be clamped down on, and the proceeds of crime which that person was benefiting from would be taken from them.

Tackling child sexual abuse and exploitation is a top priority for the Government. The Home Office is leading on a cross-government programme to deliver the commitments departments made in the *Tackling Child Sexual Exploitation* report and the national group action plan. That includes recognising child sexual abuse as a national threat in the strategic policing requirement.

I now turn to the specific proposals in the Bill. Noble Lords will know that existing legislation regarding prostitution is contained in a number of Acts and has developed over time. The acts of buying and selling sex are not illegal in themselves—a point that the noble Lord, Lord Davies, made very clear. However, certain exploitative activities are specific offences. These include the running or managing of brothels, for example, or controlling prostitution—the point that the noble Baroness, Lady Gale, began with. In this context, noble Lords will be aware that it is already against the law to advertise activity that is itself illegal; for example, sex with trafficked individuals or those under the age of 18. This reflects a widely accepted emphasis on protecting the vulnerable. In terms of public nuisance, it is illegal to place advertisements relating to prostitution around public telephones.

The Bill proposed by my noble friend Lord McColl would go significantly further by prohibiting all forms of advertising for prostitution, including online. It is a proposal that deserves our attention today. I do not want to reopen the debate that took place across the Floor of the House on the wider issue of prostitution. It is clear that the issues raised in this Bill are specific but that, at the same time, they must be seen in that wider context. The noble Lord, Lord Morrow, quite rightly drew attention to his own experience from the legislation in Northern Ireland, where it is a devolved matter and where they are entitled to take such an approach. I put on record two points which are material: first, the Government will follow closely the experience in Northern Ireland as that legislation is implemented; secondly, referring to my noble friend Lord McColl's conversation with the Independent Anti-Slavery Commissioner, the whole point of having such a commissioner is that he is independent. I take seriously what he has said to my noble friend and will follow up on it.

Notwithstanding these contested issues, there is a practical point to make on the application and enforceability of a prohibition on advertising. Noble Lords may be aware that most advertisements for prostitution are not explicit—they are couched in euphemisms, which are difficult to disentangle from non-sexual services; for example, reputable massage services or saunas. It would also be difficult to apply the legislation to advertisements on the internet, which can be hosted overseas, as we are experiencing in other areas of legislation.

The Government's first priority in this area is public safety. For example, the Home Office has worked with the UK Network of Sex Work Projects to support the establishment of the National Ugly Mugs scheme, to which the noble and learned Baroness referred. This is an innovative mechanism whereby people involved in prostitution can make reports and receive alerts about incidents that have been reported to the scheme. Alert information is also fed to police forces, regional intelligence units and police analysts. We are pleased that the evaluation of the scheme shows that it has been successful in increasing access to justice and protection for those involved in prostitution.

Our focus on safety applies also to legislation: when considering legislative changes, we must consider carefully whether we are confident that they support the safety of the people involved in prostitution. For example, I am aware of communications that noble Lords may have received—they have been referred to—from the UK Network of Sex Work Projects setting out its concerns, particularly about criminalising and further marginalising an already vulnerable group, thereby exposing them to potentially greater risk or harm. I would be happy to discuss with my noble friend Lord McColl and other interested Peers the evidence of the extent to which such changes to the legal, and by extension ethical, position of buying sexual services would reduce harm to those involved.

While the issues around prostitution are complex and contentious, as we have heard today, we expect every report of violence to be treated seriously. In this context, it is important to reflect on the increased reporting rates for these terrible crimes, showing that, increasingly, victims have the confidence to report and can access the support they deserve. That is to be welcomed.

I recognise that at the heart of this Bill are the noble Lord's genuinely held concerns for the welfare of those involved in prostitution. He has made those clear in his considered presentation of his proposed Bill today. I thank him and other noble Lords for their thoughtful contributions not only to this debate but to much of the Government's work to tackle exploitation in all its forms, whether it be modern slavery, child sexual abuse or violence against women and girls. I am proud of the progress that we are making on a cross-party basis and we will continue to consider effective approaches.

In their present form, my noble friend's proposals would have a number of legal and practical implications—which I am happy to discuss with him—that were perhaps not intended. However, we recognise his sincerity and desire to protect from harm those who are involved in prostitution and to offer people captured and trapped in that world a way out to a better and more healthy life for them and for society as a whole.

**Lord Kennedy of Southwark:** My Lords, the noble Lord made a point about the practicalities and that is the point I made generally about the Bill going to a Grand Committee. With this and other Bills you can sit there for a day and work them out in great detail and get things moving forward. It is a missed opportunity.

**Lord Bates:** That is a fair point. It is for the usual channels and my noble friend Lord Gardiner, the Deputy Chief Whip, is the perfect person to hear those representations. I am sure he will consider them carefully and respond to them in due course.

*4 pm*

**Lord McColl of Dulwich:** My Lords, I thank all those who have taken part in this debate and the Minister for his kind remarks about me. However, I should like to draw attention to the amazing work that has been done by the noble and learned Baroness, Lady Butler-Sloss, the right reverend Prelate the Bishop of Derby and the noble Lord, Lord Morrow. A big team has been at work.

It has come through clearly in this debate that advertising facilitates the exploitation in prostitution of people who are trafficked and some who are not. I shall not respond directly to the remarks made by the noble Lord, Lord Davies, because they do not relate to this Bill. However, I should like to address briefly one point that he raised. He suggested that my Bill will further criminalise women who are placing adverts. The Bill was drafted with the intention, courtesy of Clause 1, to address those who facilitate and publish the advertising, such as newspapers and website operators. I shall certainly look into the question further and if I receive legal advice that Clause 1 could be interpreted to apply to an individual placing an advert rather than only to the entity publishing it, I shall certainly look into bringing an amendment in Committee.

**Lord Davies of Stamford:** I was guided in my remarks by the phrase in the first line of the noble Lord's substantive Bill:

"A person who publishes or causes to be published".

It seems to me that inevitably the supplier of prostitution services would be causing to be published any advertisements that appeared on her behalf.

**Lord McColl of Dulwich:** I shall certainly take legal advice about that and see whether we can tighten things up later on.

The Minister referred to the importance of minimising the harm of prostitution and I agree that we want to do all we can to reduce the harm experienced by people in prostitution. Indeed, that is the aim of reducing demand. By addressing the proliferation of advertising and reducing the demand it fuels, we can reduce levels of prostitution and thereby reduce the harm that is caused.

We should of course be working with the police, the courts system, the NHS and social services to try to prosecute those who commit acts of violence against people in prostitution and to help people access support to exit prostitution and build a new life for themselves. However, unless we address the demand, for each person who is assisted out of crisis, another will take their place. We need to look at the bigger picture.

I find myself in a rather difficult position because there is much I would like to respond to but we are out of time. I should like to put on record that I completely reject the suggestion that the Bill is unenforceable or that it will make life more dangerous for people in prostitution. I feel very frustrated that time does not allow me to explain why.

*Bill read a second time and committed to a Committee of the Whole House.*

*House adjourned at 4.04 pm.*

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