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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 20 June 2018

3 pm

Prayers—read by the Lord Bishop of Lincoln.

National Health Service: Mental Health Funding

Question

3.06 pm

Asked by ***Lord Cotter***

To ask Her Majesty's Government what proportion of mental health treatment is funded by the National Health Service nationally as against local funding.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government are committed to increasing spending on mental health. In 2017-18, the NHS spent an indicative figure of £11.86 billion on mental health. Of this total, £9.97 billion was locally funded by clinical commissioning groups, with the remainder for nationally commissioned specialised services.

Lord Cotter (LD): I hear what the Minister says, but parity between mental and physical health remains a concern. He knows about the facility for mental health in Weston-super-Mare and the problems associated with its future. However, I have found this problem around facilities in local areas to be widespread throughout the country. Their funding is not predominantly mainstream NHS money for mental health services, but NHS money is often used to plug holes elsewhere and local mental health units are struggling. Will the Minister address the issues of parity and funding for local mental health care?

Lord O'Shaughnessy: I agree with the noble Lord that we need to increase funding for local mental health services. That has been happening over the past few years; indeed, between 2015-16 and 2018-19 it has gone up by £1 billion. I turn to his point about mental health funding being used for other purposes. I want to be clear that there is NHS England guidance that that should not happen, and from this financial year all CCGs will have to meet what is called the mental health investment standard, which means that they are to increase their spending on mental health at least as much as, if not more than, their spending on physical health.

Baroness Uddin (Non-Afl): My Lords, regardless of what the Minister says, does he accept that there has been a systematic destruction of voluntary organisations providing many mental health services? This has had a particular impact on survivors of domestic violence. What are the Government doing to ensure that Women's Aid and other organisations that provide support for women suffering from and the survivors of domestic violence have funding available through the means to which he has referred?

Lord O'Shaughnessy: Although the particular funding the noble Baroness is talking about is a Home Office issue, I can say that £100 million is available until 2020 to support the victims of domestic violence. From the health service perspective, obviously we are increasing the amount of money spent on treating those with mental illness, regardless of the cause that gave them their illness in the first place.

Baroness Hollins (CB): My Lords, does the Minister agree that more oversight is needed—not just through the mental health dashboard—of how and how well clinical commissioning groups meet the mental health investment standard, previously known as parity of esteem? Can he also explain why the mental health investment standard does not include people with learning disabilities who have mental health needs? Further, what assurances are there that clinical commissioning groups will continue with their current level of investment once the national sustainability and transformation fund finishes?

Lord O'Shaughnessy: I reassure the noble Baroness that there is independent audit of performance against the mental health investment standard. Anyone with mental health problems, whether they have learning disabilities or not, should certainly be included in the figures. I am alarmed by what she has said and obviously I will look into it and write to her. However, it is important to say that CCGs have been increasing their spending. In 2016-17 they were expected to deliver at least 3.7% growth in mental health spending, but the actual outturn was 6.3% growth, so that is a good story.

The Lord Bishop of Lincoln: My Lords, I speak for one of the most rural parts of England. Does the Minister recognise the higher level of suicide in rural areas? In part, this is due to rural isolation and the sparsity of mental health provision. What plans do the Government have to increase local and accessible provision in these areas?

Lord O'Shaughnessy: I agree with the right reverend Prelate that, unfortunately, that is a feature of rural communities. I understand that the MHCLG has a sparsity fund to help with that issue. Indeed, particular funding is going into support and more community-based care for those at risk of suicide and other mental illness.

Lord Polak (Con): My Lords, last Thursday, I was walking past Lambeth fire station just before the minute's silence. Together with Charles Hanks, the station manager, I stood with those brave and professional firefighters. Afterwards, I asked about ongoing support and access to counselling services. Tracey Dennison, from the fire brigade, told me today that there was a slight increase in absenteeism as the anniversary approached and the inquiry began. The Fire Fighters Charity stepped up to provide family support. Can the Minister ensure, in the sad event of another serious

[Lord Polak]
tragedy, that emergency capacity for immediate and ongoing counselling support is available for our brave emergency services?

Lord O'Shaughnessy: My noble friend is absolutely right to highlight this issue. Individually, our emergency workers did extraordinary deeds of bravery, for which we are all deeply grateful, during the Grenfell fire. In the aftermath of that fire, the north-west London mental health service was the lead trust in providing mental health support for not just the families and individuals who were victims of the fire but emergency service workers who had been through that very traumatic experience. I strongly encourage any emergency service workers who are experiencing trauma—of course, that can happen many months, indeed years, afterwards—to get in contact with mental health services.

Baroness McIntosh of Hudnall (Lab): My Lords, does the Minister agree that £1 spent today on child and adolescent mental health services is likely to save the NHS a considerable number of pounds in the future? What proportion of the money spent on mental health services is going to child and adolescent services? Will that proportion increase in the future?

Lord O'Shaughnessy: The noble Baroness makes an excellent point. The emerging science tells us that heading off mental illness in adolescence is critical to ensuring that it does not deepen and become more severe in later life, with great human as well as economic cost. At the moment, the mental health budget for children and young people does not reflect the burden that children and young people have, which is why the Prime Minister announced an extra £1.4 billion for children and young peoples' services, as well as £300 million on top of that to support the plans set out in the child mental health Green Paper.

Baroness Tyler of Enfield (LD): My Lords, the Minister has already referred to the mental health investment standard, but recent figures issued by the Royal College of Psychiatrists show that 15% of clinical commissioning groups are not following NHS England's instruction to increase the proportion of their spend on mental health. What practical steps are the Government taking to ensure that all CCGs meet this standard?

Lord O'Shaughnessy: The noble Baroness is quite right in her figures: it was 85% compliance in 2017-18—175 of the 207 trusts. It has to be 100%. It will be independently audited and reported against. Indeed, interventions will take place if that does not happen.

Brexit: Creative Sector

Question

3.14 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government what risks they have identified to the creative sector, especially to the intellectual property it generates, as a result of Brexit.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the UK has one of the best intellectual property regimes globally. The creative industries' concerns focus on copyright, where reciprocal protections are underpinned by international law, and unregistered designs, which the UK will continue protecting. Some EU-derived copyright provisions and the reciprocal EU-UK protection of unregistered designs will be a matter for our future relationship.

Baroness Neville-Rolfe (Con): My Lords, copyright is of fundamental importance to the creative sectors. They range from music to TV to art to the written word and, indeed, increasingly to traditional businesses, as the digital revolution gathers pace. It has been established, for example, by UK Music that around 17% of music is accessed illegally. At present, the EU provides important protections for copyright. As the UK leaves the EU, could the Minister reassure the House that this protection will be maintained and, if possible, enhanced, for example by online services taking a greater degree of responsibility for clamping down on copyright infringement?

Lord Henley: My Lords, my noble friend is right to highlight the importance of this sector, and I want to emphasise just how big the creative industries are as an exporting sector and in terms of what they produce in this country. I stress, as I did at the beginning, that much of our reciprocal copyright protection is underpinned by international law, but obviously there are parts that need protection that involve EU-UK law. That will obviously be a matter for our future relationship, and that is a matter for the ongoing negotiations taking place at the moment.

Lord Clement-Jones (LD): My Lords, has the Minister read the document from the Intellectual Property Office entitled *IP and Brexit: The Facts*? There are no facts in it. It says that the Government recognise the concerns of IP professionals, and recognise that owners of registered community design rights "want clarity". On trademarks, it says that the Government,
"is looking at various options",
and similarly on the exhaustion of rights. Is it not high time that the Government showed some leadership on IP matters and delivered some certainty to those who need it?

Lord Henley: My Lords, the noble Lord and I, and others in the House, debated this matter when the noble Lord had a Question on it, I think, back in March. As I said then and as I repeat now, this is obviously a matter for the ongoing negotiations. The noble Lord will have to wait for the White Paper, which will be coming out shortly. We can then deal with these matters in the negotiations, but as I made quite clear, much of our protection that is already there is underpinned by international law. As I also stressed, we have a pretty good intellectual property regime in this country as it is.

Lord Griffiths of Burry Port (Lab): My Lords, that was March and it is now June. Has the Minister really

nothing that he can say to suggest that there has been progress in the affairs to which he has just referred in that intervening period?

Lord Henley: My Lords, as I made clear, the negotiations continue. The noble Lord will have to be patient.

The Earl of Clancarty (CB): My Lords, the Minister should be aware, as the DCMS is, that the creative sector has a number of wide-ranging concerns over Brexit, not least those facing freelancers, who make up a significant proportion of the creative industries and IT. What assurances can the Government give to the self-employed, including those running businesses with clients in Europe? They have a real concern that that work will be lost due to reduced access and increased red tape if we do not remain in the single market.

Lord Henley: My Lords, I am not going to rehearse all the arguments that we might debate later or on other occasions about the single market or whatever. I have to make it clear to the noble Earl that the negotiations continue. As I said, we have a pretty good intellectual property regime, but there are areas where we need to get things right. We will pursue that in the negotiations.

Lord Foulkes of Cumnock (Lab): My Lords, is the Minister aware that, notwithstanding his replies and the squalid stitch-up taking place down the Corridor, we are on our way to disaster if we continue down the road to Brexit?

Lord Henley: My Lords, I am not going to waste my time answering the noble Lord's question.

Lord Naseby (Con): Is my noble friend aware that the forthcoming White Paper will be extraordinarily welcome not just to the creative sector but to small and medium-sized enterprises in particular? Against that background, will my noble friend double-check that that sector plays a role in the forthcoming White Paper?

Lord Henley: My Lords, I can give an assurance to my noble friend that the White Paper will be comprehensive in what it covers. I cannot offer a precise guarantee that I will be able to make sure that SMEs are covered, but I am pretty sure that they are there.

Lord Foster of Bath (LD): My Lords, the strength of our creative industries is illustrated by the fact that 1,400 television channels produced in this country are shown across many other European countries, using the country of origin principle to enable them to do so. A third of them are licensed by Ofcom. Is the Minister aware that a number of those channels have already chosen to move from this country and base themselves in other European countries? What are the Government doing to give them the confidence that there will a proper deal that enables them to stay in this country and help our creative industries?

Lord Henley: My Lords, in advance of the negotiations being completed, I obviously cannot give the guarantees that the noble Lord asks for, but he is right to stress the importance of the creative industries sector in this country and its sheer size. For that reason, it will go on being an attractive place for people to come, just as it has in the past.

Lord Cashman (Lab): My Lords, is the Minister aware of the wide and deep concern across the creative industries? This is not only about rights holders, and I say that as a rights holder. Companies—small, medium and large; orchestras also—fear for their future because of the wide talent pool that comes from across the 27 other countries? Is the Minister aware of those concerns and are the Government addressing them in their negotiations?

Lord Henley: My Lords, I thought that I made it very clear at the beginning that we are aware of the concerns of the whole of the creative industries. This goes across government. Obviously, we will take those concerns into account in all our negotiations on our future relationship with the EU when we leave, which we have said we are going to do.

National Health Service: Assaults on Staff

Question

3.22 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government how many attacks on NHS staff were reported in 2016-17 and 2015-16.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the Government are committed to taking action against those who abuse or attack NHS staff. In 2015-16, NHS organisations, which are responsible for protecting their staff, reported 70,555 physical assaults. Of those, 52,704 were due to patients' conditions or treatments they were receiving. Data has not been collected for 2016-17. We are reviewing with the NHS how in future information about assaults and abuse of NHS staff can help trusts promote best practice.

Lord Clark of Windermere (Lab): I thank the Minister for his Answer. Can I give him a little help with the updated figures? Has he seen the figures produced by the *Health Service Journal* and Unison which show a 10% increase in violence against NHS staff in the latest year? That is just unacceptable. Why did the Government in November 2017 abolish NHS Protect, which had the responsibility to protect NHS staff against violence? I know that it was replaced and that its staff, but not its functions, were transferred to the NHS Counter Fraud Authority, which focuses on fraud and protection of buildings. Will the Minister confirm that there is now no body responsible for the safety of NHS staff? I am drawn to the conclusion that this Government value property more than people.

Lord O'Shaughnessy: I have to take issue with the point the noble Lord makes. It is absolutely not the case that the Government value property more than staff. We all value the work that NHS staff do every day in very difficult conditions. That is one of the reasons that we announced our historic funding settlement at the beginning of this week. On the problem that the noble Lord raises, he is right to say that, looking back over NHS Protect's data, starting in 2008-09, there has been a steady rise in the number of assaults on and incidents of abuse of NHS staff. Clearly that is completely unacceptable. However, there is disagreement about the reasons for that, and it is worth dwelling on that. They include not just the greater volume of patients and better reporting, but the increase in mental illness and dementia, and more severe mental illness being dealt with in hospitals rather than police cells. I do not use that as an excuse, but merely to explain that there is some uncertainty about the reasons for it. It was under NHS Protect's aegis that this steady rise happened. It has fulfilled its function, which is to make sure that security management services are available to every NHS trust—but in the end it has to be down to every trust to take responsibility for the safety of its staff, and that is the system we are moving ahead with now.

Baroness Finlay of Llandaff (CB): My Lords, given that alcohol is involved in more than 60% of assaults in the acute sector, more than 30% of assaults in the mental health sector and more than 70% of assaults in the ambulance sector, will the Minister explain why the Government have abandoned progress with the sobriety scheme pilot, which showed a very high success rate in avoiding reoffending in alcohol-fuelled crime? It would provide a tool for non-custodial sentencing where people are known to have assaulted NHS staff under the influence of alcohol.

Lord O'Shaughnessy: I will look into the specific issue that the noble Baroness mentions. I do not have the details in front of me. I know that all local authorities provide free, taxpayer-funded rehabilitation services for those who are suffering from alcohol addiction. I should also point out that this Government have increased progressive taxation on stronger alcohol, such as white cider, specifically to try to change people's drinking habits and to reduce alcohol-related violence.

Lord Ribeiro (Con): Following the theme of alcohol, the Minister was kind enough to meet me and members of the Alcohol Health Alliance on 30 April. We stressed that accepting a minimum unit price, as in Scotland, would do much to remove alcohol—and, particularly, cheap alcohol—from vulnerable people, some of whom are responsible for the attacks to which we are referring. When will England accept a minimum unit price and implement it?

Lord O'Shaughnessy: I was delighted to meet my noble friend on this topic. I know he cares passionately about it. We have said—and I have said in this House before—that we are looking at the Scottish example with interest now that Scotland has gone ahead with it. There is a growing evidence base to demonstrate the benefits of minimum unit pricing, but we want to see what transpires in Scotland before making any decisions about whether to move ahead.

Baroness Jolly (LD): My Lords, in England around 200 attacks on NHS staff occur every day, and this is nothing short of scandalous. Next week we have the Second Reading of a Private Member's Bill, which has come from the other place, on assaulting emergency workers. Will the Minister confirm whether the Government are minded to support it—and, if not, what further action will be taken to protect health workers?

Lord O'Shaughnessy: I agree with the noble Baroness that it is scandalous and that we therefore want to support the Bill. I believe that it will have its Second Reading here on 29 June. I can confirm that the Government will be supporting the Bill.

Baroness Donaghy (Lab): I am grateful for that reply from the Minister. I have the privilege of taking the Bill through its Second Reading next week. It will create, for the first time, an aggravated offence for those who attack all emergency workers, including paramedics, nurses, doctors and all those associated with helping NHS staff in emergency work, such as St John Ambulance and other volunteers, if they are doing emergency work. So I am thankful that the Government have provided time, and I hope that we will be able to get the Bill through quickly by the summer.

Lord O'Shaughnessy: I salute the noble Baroness for taking it through its stages in the House of Lords. I reiterate our support for it—not just the principles behind it but the specific measures in it. Clearly it is unacceptable to assault the very people who devote their lives to serving.

Universal Credit: Rollout

Question

3.29 pm

Asked by ***Baroness Sherlock***

To ask Her Majesty's Government what plans they have for the continued rollout of Universal Credit following the report by the National Audit Office *Rolling out Universal Credit*.

Baroness Stedman-Scott (Con): My Lords, we will continue to deliver universal credit as planned, completing the national rollout for new claims by the end of 2018, and from 2019 we will start to move people from the old benefits system and tax credits to universal credit. We have taken a test-and-learn approach; we have learned a lot, and we will continue this. We have made changes—advance payments, direct payments to landlords, the two-week housing benefit run-on, removing waiting days, support for kinship carers and extending transitional protection—and I have no doubt that the list will get longer.

Baroness Sherlock (Lab): My Lords, Ministers claimed that universal credit would be fully in place by 2017, that it would be more efficient and better for claimants and that it would help more into work. A National Audit Office report says that only 10% of claimants are on universal credit and it will be 2023 before it is rolled out. Every claim costs £700 to process, and the NAO found no evidence that universal credit will be cheaper to run. It says that the DWP has no idea whether universal credit is reducing fraud and error, and that it found no evidence for the Minister's repeated claim that it will help an extra 200,000 into work. Meanwhile, 40% of claimants are in financial trouble and, on top of the planned delay in payment of five or six weeks, 10% of new claimants waited 11 weeks or more for full payment and 5% waited for five months. When universal credit hits an area, food bank use rises and rent arrears go up. My question is simple: the DWP keeps insisting that all is well but it is not, so will the Government now urgently review universal credit and stop pushing people into debt and hardship?

Baroness Stedman-Scott: My Lords, we are trying desperately to put a new system in place that will make work pay for people. There have been issues. The National Audit Office report—I have read it and I urge all noble Lords to do so—has serious concerns about the programme, I acknowledge that. However, we are serious about the way we are going to deal with those problems; we are committed to doing that and we are committed to making things better. We have a business plan for the rollout. In any good business you have a business plan with targets, you measure them, you review them and, when you do not hit them, you revise your plan. We will approach this in a business-like but compassionate way to make sure that we do all to serve people who are influenced by it.

Lord Kirkwood of Kirkhope (LD): My Lords, does the Minister agree that the NAO universal credit report will serve to heighten the fears of those means-tested legacy claimants who will be automatically transferred within a 12-month period on to universal credit? In the autumn, when the universal credit managed migration regulations are published, will she personally ensure that the transitional protection arrangements within those regulations are adequate for the purpose, will be automatically available to claimants and will serve in future to reduce further financial distress?

Baroness Stedman-Scott: My Lords, we do not want people to be distressed in any way.

Noble Lords: Oh!

Baroness Stedman-Scott:I know noble Lords do not like it but I can say to them that out there is a band of work coaches who are doing an amazing job. One of their jobs is to take people on a journey, help them, guide them and mitigate stress, and I have every confidence that they will be doing that. On the noble Lord's point about transitional protection, I will talk to officials to make sure that when I tell him yes, I am doing it with confidence.

Lord Fink (Con): My Lords, I had the pleasure of visiting the main south-inner-London jobcentre at Kennington Park this morning. The staff there could not have been more evangelical in their support for universal credit, and many of those who were handling legacy claims were only waiting for the time when those claims moved over to universal credit. They said that the new system had much more flexibility, that most of the cases and examples in the NAO report had already been addressed and that in fact it was already out of date because the new system was so flexible and adjustable. Can the Minister assure us that we will continue to roll out the programme, which has been so well valued by staff in the jobcentres?

Baroness Stedman-Scott: My response to my noble friend is: you bet we will. I called a district manager in Jobcentre Plus and asked her to tell me truthfully how things were going. She said, "It is going much better. It is agile, it is flexible and once we identify problems locally with individuals, we are solving them overnight". My noble friend should therefore take heart that this will continue and just get better.

Baroness Lister of Burtersett (Lab): My Lords, as the Minister said, the DWP makes much of its test-and-learn approach to UC rollout, yet, instead of trying to learn, its public response to the damning NAO report was utterly defensive—although I do welcome the more open response she has given today. What specific lessons for action will the department take from the report's findings, which were echoed at an APPGUC meeting that I attended just now by front-line welfare rights workers, who reported a catalogue of problems faced by the people they are trying to work with?

Baroness Stedman-Scott: I understand exactly the point that the noble Baroness makes. There are huge lessons to learn and lots of them. Support organisations and job coaches identified that people are being given the wrong information, and are struggling to meet the requirement to submit a claim because of language barriers and not having a bank account or identification. All I can say to the noble Baroness—I would not say it if I did not believe it—is that the work coaches are doing everything they can with people in local communities to overcome these issues. I can see that she is not quite on board with me yet—but she is smiling. I hope that if she asks this question in six months' time, we will have an even better response for her.

Brexit: European Union Police Databases and Extradition Arrangements

Private Notice Question

3.36 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government what assessment they have made of Michel Barnier's remarks at the European Union Agency for Fundamental Rights on 19 June, and in view of those remarks, how they intend to secure continued access to EU police databases and extradition arrangements.

Baroness Hayter of Kentish Town (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we note Mr Barnier's comments, but we must bear in mind that this negotiation is only just beginning. We want to ensure that citizens across Europe benefit from the strongest possible security relationship between the UK and the EU after our exit, and to avoid a security gap. Our objective in negotiations will be to secure this outcome. In our view, this can be most effectively delivered through a comprehensive new internal security treaty.

Baroness Hayter of Kentish Town: My Lords, this and other matters are serious. The Government's red lines, such as ruling out the Charter of Fundamental Rights and the CJEU, will, as Mr Barnier says, at the moment deny us access to EU databases and things such as the European arrest warrant, the security pact, which the Prime Minister has discussed, and recognition of court judgments. Given the serious nature of this and all the other issues of the negotiations, which have never been in front of this House, does the Minister agree that we should have a proper debate here on how the negotiations are going and the Government's objectives? The debate could be on the White Paper, if it arrives on time at the beginning of July. If it is further delayed, we should nevertheless have a debate here on this range of really important issues.

Baroness Williams of Trafford: My Lords, I have on many occasions had debates on certain elements of the issues that the noble Baroness raises. I commend your Lordships' House for the quality of our debates on such matters. I am sure that the usual channels will, as they are wont to do, make time for such a debate. The issues that she raises are political choices. None of them are insurmountable as a legal barrier. We are not in Schengen now. We operated the EAW without CJEU jurisdiction up to 2014. The charter creates no new rights. EU citizenship matters only for those with constitutional barriers and we are already close to a solution on that in the withdrawal agreement, but I fully support her request for a debate.

Lord Jay of Ewelme (CB): My Lords, Michel Barnier said in his speech:

"To negotiate an ambitious new relationship with the UK, which we all want, we need more realism on what is possible and what is not when a country is outside the EU's area of justice, freedom and security".

Would the noble Baroness agree that we need much more realism on both sides, on the British side and on the European Union side, if the negotiations, which matter so greatly to the security of all our people, are to succeed? I was also greatly alarmed to hear that these negotiations have "only just" begun.

Baroness Williams of Trafford: As I said to the noble Baroness, Lady Hayter, these are political choices that will be decided in the course of the negotiations. I think that both sides will be realistic in the final analysis and in what is ultimately agreed. I have full confidence in that.

Lord Paddick (LD): My Lords, the European arrest warrant, as Mr Barnier said yesterday, is based on trust underpinned by the European Charter of Fundamental Rights, the jurisdiction of the European Court of Justice and the concept of EU citizenship and free movement. As the Government have rejected all these foundations, how do they expect to retain access to the European arrest warrant after we have left the EU?

Baroness Williams of Trafford: As to the European arrest warrant and other matters, as I said to the other two noble Lords, these are political choices. What we have in the EAW and other matters, such as ECRIS and SIS II, is strong co-operation between us and our European Union partners. I know the noble Lord will agree with me when I say that the most important thing when we leave the European Union is that we have a safe Europe in which our citizens can live.

Lord King of Bridgwater (Con): My Lords, does my noble friend agree that, whatever Monsieur Barnier may say on this matter, the heads of security and intelligence in the other member countries of the European Union will make absolutely sure that we preserve our relationship? Am I right in saying that, at the moment, we extradite five times as many people to them at their request—criminals and people they wish to charge, including terrorists—as we request they extradite to us? The interests of security are quite clear, whatever Monsieur Barnier might say. He made a speech to the Agency for Fundamental Rights. The most fundamental fundamental right is the right to life, which is what the security agencies are there to protect.

Baroness Williams of Trafford: My noble friend makes that point very articulately, and he is absolutely right on extradition—I am sure that he is. It is in everybody's interest that we preserve that national security relationship. The UK has played its part in the huge move, in the past 12 months to two years, to help European countries when they have faced difficulties through terrorist attacks. Our police have been at the forefront of some of the aid that we have given to our European partners. It would be a detrimental move for there not to be co-operation between the UK and our European partners once we leave the European Union. Life, as my noble friend says, is the most important thing here.

Lord Anderson of Swansea (Lab): My Lords—

Lord Davies of Stamford (Lab): My Lords—

Lord Morris of Aberavon (Lab): My Lords—

Lord Taylor of Holbeach (Con): My Lords, the noble Lord, Lord Anderson, was first to rise in his place.

Lord Anderson of Swansea: My Lords, is not the key consideration in these negotiations that there is a mutuality of interest between ourselves and our EU partners in the field of security? Monsieur Barnier must surely recognise that we have very much to offer, as was shown recently by the remarks of the director of GCHQ.

Baroness Williams of Trafford: The noble Lord is absolutely right. We have a mutuality of interest, as my noble friend has just pointed out—and, as I have said, it would be inconceivable that some of the work that we have done in co-operation with our European partners, which has been of mutual multilateral interest throughout the EU 27, would be lost in our exit from the EU.

Baroness Ludford (LD): My Lords, it is absolutely true that it is in everybody's interest to have security co-operation. However, when the Minister says that it is just a question of political choices, that is complacent and, in the words of the noble Lord, Lord Jay, unrealistic. There are legal constraints governing that co-operation. If you are going to have mutual recognition of judicial decisions, you have to have a common legal framework and a common jurisdiction. Nothing else is going to pass the European Parliament, I can be absolutely certain.

Baroness Williams of Trafford: I am sure that what is at the forefront of the European Parliament at this point in time—and I am talking about the politicians, not the bureaucrats—is the sometimes fragile security situation that we have had in Europe over the last two years. I will come on to the legal point. None of the things that we have talked about today are insurmountable. I am not arguing against a legal framework, but none of the issues are insurmountable legally.

Lord Davies of Stamford: My Lords—

Lord Morris of Aberavon: My Lords—

Lord Blunkett (Lab): My Lords—

Lord Taylor of Holbeach: I am sure that the House would like to hear from the noble Lord, Lord Blunkett.

Lord Blunkett: My Lords, I was Home Secretary when we entered the European arrest warrant as part of the negotiation at the time. I reinforce the points made by the noble Lord, Lord King, and my noble friend Lord Anderson. But I make a little offer. It is entirely right that we have to persuade Michel Barnier and others that it is in everyone's mutual interest to retain our facility and access to the EAW, but in 2014 many of us had a real task in persuading the coalition Government, I think probably because of the Liberal Democrats, that remaining in or re-entering—because we had the opt-out—the EAW was essential. I offer my heartfelt skill in negotiating with Michel Barnier, as we had to do with the coalition Government.

Baroness Williams of Trafford: I finish by thanking the noble Lord for his point.

Arrangement of Business

Announcement

3.47 pm

Lord Taylor of Holbeach (Con): My Lords, this may be a convenient moment for me to say a word about today's business. As noble Lords will be aware, the House of Commons is, as I speak, considering the vote on amendments to the European Union (Withdrawal) Bill. I am not in a position to say what the outcome is, but subsequent to the outcome of that Division we intend to consider any amendments from the other place later today. We expect to receive any amendments from the Commons at around or shortly after 4.30 pm.

When any amendments we receive are published, the Public Bill Office will be open for any Motions to be tabled in response to the Commons amendments for a period of 90 minutes after the Bill is received. The precise timings will be communicated on the annunciator. Within an hour of the end of the tabling period, the Public Bill Office will produce a Marshalled List of any Motions. There will be a further window of about 30 to 45 minutes before the House sits to ensure that noble Lords are able to consider those Motions.

To save noble Lords performing some agile mental arithmetic, it may be simpler for me to say that I do not expect us to begin further proceedings on the Bill before 7.30 pm. In the event that the rest of our business concludes before that, we will adjourn during pleasure until that time. I hope that noble Lords will consider that a satisfactory update without the final clincher.

Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL]

Second Reading

3.49 pm

Moved by ***Lord Keen of Elie***

That the Bill be now read a second time.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Bill is a vital first step in delivering legislation to underpin our ambitious and far-reaching programme to create a modern, world-class courts and justice system that is swift and straightforward and that works for everyone. Our programme of reform will also foster innovation and cement our reputation for global legal excellence.

In our manifesto, and in last year's Queen's Speech, the Government committed to modernising our courts and tribunals so they are fit for the 21st century. The way justice is administered and delivered in our courts and tribunals cannot stand still while the world changes around them. The justice system must embrace new technologies and seize the opportunities of the digital revolution. It must work for, and fit in with, the way people live their lives today. But modernisation must also ensure that the judiciary and staff who work in our courts and tribunals are empowered to deliver smooth and efficient justice. We have a world-class

[LORD KEEN OF ELIE]
judiciary, and through the Bill we want to enable it to continue to deploy its time and expertise where and when it is most needed.

The Bill will assist in a number of different ways. It will allow suitably qualified and experienced staff to be authorised to handle uncontroversial, straightforward matters under judicial supervision. This will free up judges' time to focus on more complex matters and will improve the efficiency and effectiveness of the courts and tribunal system. The independent procedure rule committees will determine which functions staff may exercise in each jurisdiction. These judicially led committees are the right bodies to take these decisions, and this will ensure that the powers are properly scrutinised by judges, practitioners and other interested parties.

The Bill will make it possible for staff to carry out judicial functions in the Crown Court, where the activities of court officers are currently restricted to "formal and administrative matters" only. The Crown Court judiciary currently spends far too much time on routine tasks which could be delegated, such as changes to the starting time of a hearing, or changing the pretrial preparation hearing date, even if the parties are all in agreement about these matters. The Bill also removes the post of justices' clerk, to enable the creation of a more flexible, cross-jurisdictional leadership role for authorised staff.

All this is subject to a robust framework of authorisation that affords the court and tribunal staff who exercise these functions the right protections and safeguards. Most significantly, the Bill makes such staff independent of the Lord Chancellor but accountable to the judiciary. Courts and tribunal staff will be able to exercise judicial functions only once authorised to do so by the Lord Chief Justice or his nominee, or the Senior President of Tribunals or his delegate. The judiciary will grant such authorisation only when satisfied that the relevant staff have the necessary competence and experience to exercise these functions. The Bill also applies to authorised staff the same protections that currently apply to justices' clerks and assistants to justices' clerks carrying out judicial functions in the magistrates' and family courts. This includes protecting them from costs in legal proceedings and indemnification in respect of anything they do, or do not do, when exercising judicial functions in good faith.

Alongside these changes, the Bill includes measures to ensure that the system of judicial deployment is as flexible as possible. It will give the Lord Chief Justice and the Senior President of Tribunals greater flexibility to make the best use of our judges' experience, expertise and time. The judicial measures in the Bill include enabling recorders to sit in the Upper Tribunal and senior employment judges to sit as judges in the First-tier Tribunal and Upper Tribunal. This will broaden the pool of expertise that the tribunals can draw from to help them meet business needs. They also include extending the range of High Court judges to act as arbitrators. This will help meet the growth in demand in recent years for arbitration—for example, to resolve cases in the Chancery Division of the High Court. They will also remove the restriction on a judge being the president of more than one chamber of the First-tier Tribunal or Upper Tribunal. This will give the Senior President of Tribunals greater flexibility to manage the leadership of the tribunals without having to recruit and appoint a new chamber president immediately that there is a vacancy. Taken together, these measures will enable the judiciary to respond to the changing demands of the case loads of different jurisdictions and will make the best use of the existing cohort of judges to benefit all users of our courts and tribunals.

We are delivering the court reform programme in partnership with the senior judiciary. I am pleased that the Lord Chief Justice and the Senior President of Tribunals have welcomed the Bill, commenting that its introduction is,

"a positive first step in legislation to deliver reform".

Most of the measures have already been before Parliament as part of the Prisons and Courts Bill, which fell when the general election was called. The Courts and Tribunals (Judiciary and Functions of Staff) Bill is very much a first step, and we will bring forward further courts legislation as soon as parliamentary time allows.

We have not stood still waiting for this Bill; we have been pressing on with reform in areas where primary legislation is not required and we are making significant progress in enabling access to justice through online and digital means. In May, we rolled out nationally an online divorce service, allowing couples to apply for uncontested divorce digitally for the first time. People can also now make pleas online for low-level offences, such as traffic offences, and they can respond to jury summonses, track social security appeals, and issue and respond to civil money claims, all online. Over 16,000 people have already engaged with these pilots and are getting straightforward, digital access to the courts for the first time. The Bill supports that wider reform by making sure that we make best use of our judiciary and courts staff as we develop these new approaches to delivering justice.

The Bill, and our wider package of reforms, will ensure that our courts and tribunals system is fit for the 21st century and the digital age. It will help to ensure that both the judges and staff of our courts and tribunals are able to respond to the changing demands of a reformed system and, ultimately, to deliver better services for court users. The Bill marks an important first step in delivering a reformed courts and tribunals system and I commend it to the House. I beg to move.

3.57 pm

Baroness Chakrabarti (Lab): My Lords, like many in your Lordships' House, I have spent much of my life critiquing, seeking to improve and sometimes downright opposing legislation that I have seen as flamboyantly intrusive and therefore unjust. Clearly, this Bill is not in that category. However, legislation can also be deficient for what it does not contain, as that might lead to injustice as well.

As the noble and learned Lord said, the Government's Queen's Speech promised a programme of reforms that would transform the way in which the UK justice system operates. He referred to that reform as "ambitious". Unlike last year's Prisons and Courts Bill, which dealt

head-on with those proposed reforms, this Bill is, by contrast, perhaps the beginning of a legislative drip feed.

Today of all days, we are conscious of the challenges and complexities of minority government. Clearly, one approach is the very skilful drafting of the scope of this Bill, with its very tight Long Title, perhaps to avoid controversy, amendment and so on. However, another approach in challenging times of minority government might be to be a little more ambitious and out in the open, and to pursue that ambition by consent. My hope would be that, during the passage and conduct of the Bill, the Government might consider moving from the more cautious to the more open approach to debating these matters—these ambitions—and subjecting them to appropriate parliamentary scrutiny. As the Minister just said, the reform programme is moving ahead in any event, in the absence of primary legislation, and one might query the appropriateness of that.

The reform programme cost of £1.2 billion to the taxpayer seeks to "modernise" the courts service by transferring more court hearings online or operating them through remote video links. Digital hearings will have implications worth considering for the principles of open justice and for public confidence in the justice system. The Equality and Human Rights Commission has raised concerns about the potentially detrimental impact on people with certain challenges and protected characteristics, who are more likely to be excluded by digital processes. My noble friend Lord Beecham will deal with this in more detail a little later.

There has been no real parliamentary scrutiny of this programme—this expensive modernising series of measures—or of the associated court closures and staff cuts, even by the Justice Committee. Since 2010 the Government have closed literally hundreds of courts and cut thousands of vital staff, with the Ministry of Justice launching a new consultation on further court closures in January. Opposition research suggests that 80% of the courts sold so far have raised on average little more than the average UK house price. This raises concerns over long-term damage to access to justice for civil litigants and indeed victims of crime.

Reductions in the number of local courts pile further pressure on those remaining courts, which are already creaking under the weight of budget and staff cuts over many years. So we on this side of your Lordships' House ask and implore the Government not to proceed with any further court closures until legislation for this ambitious digitisation of courts programme is published and reforms can be subjected to full parliamentary and public scrutiny.

In May, the National Audit Office released a report on the Government's ambitious reforms and it is pretty damning. Again, my noble friend Lord Beecham will consider this in more detail later. We already have precedent, however, of reforms to the justice system conducted without sufficient research and consultation. That precedent—not a great one—is LASPO.

LASPO has been an unmitigated disaster, widely criticised by expert stakeholders including the Bar Council, the Justice Committee and the Law Society. The Public Accounts Committee made it clear that in bringing forward that legislation the Ministry of Justice had,

"not properly assessed the full impact of the reforms".

That impact has proved devastating for some of the most vulnerable people in our society, who as a result of those cuts have been shut out altogether from the legal aid system that we were once so proud of in this country.

The year before the relevant provisions of LASPO came into force, legal aid was granted in 925,000 cases. According to Amnesty, the year after it came into force assistance was given in fewer than 500,000 cases—a drop of 46% in legal assistance. This is not just a comparator. Drastic cuts to legal aid will and do have a direct relationship to pressures on judges and those who work in the court system when ill-advised and unassisted members of public turn up to seek justice.

Clause 3, as we have heard from the Minister, delegates judicial functions to authorised staff. This seemingly sensible and uncontroversial provision must be understood in the broader context of the wider reform agenda and the austerity measures behind it, because the savings generated through proposed reforms will arise only through the reduction of the court estate and through savings on judicial salaries. Further proposals include the relocation of many case management functions—listing, scheduling and so on—which currently take place within court buildings with the benefit of on-site judicial supervision. The implication is that these decisions will move to new off-site service centres—which I think we have all experienced with varying degrees of satisfaction in relation to other services. Given their off-site nature, the implication that these service centres will be supervised by authorised staff, not judges, is worrying. To have authorised staff who are not subject to the training, experience, ethos and oaths that a professional judge is, and who are performing judicial functions but employed directly by HMCTS, raises questions worth considering of accountability and independence. Concerns that they would be subject to administrative pressures, such as meeting targets, are also worth thinking about.

The devil will, therefore, be in the detail of how these provisions might operate. Without limits on who can be authorised and what powers can be given to authorised persons, this delegation has the potential, as currently drafted, to change the essential nature of our justice system. Transparent and public scrutiny by parliamentarians with a democratic mandate is necessary. While acknowledging the great work over many years and the existing remit of the procedure rule committee, I really would query whether delegation of judicial functions can be thought of as a simple procedural matter for a rules committee as opposed to something worthy of secondary legislation in both Houses of Parliament. If one accepts the case for the limited delegation of some of the most straightforward decisions to authorised staff, it is then potentially objectionable that these relatively low-paid staff—quite possibly paid less than lawyers in other government departments and who have already been hit by the public sector pay caps—are being used to save money, if they are not to be offered proper remuneration for this new, more challenging and increased workload.

[Baroness Chakrabarti]

On this side of your Lordships' House, we will be seeking to probe the Government during the passage of this Bill and to push for a number of safeguards in the Bill, the first of which is limits to the delegation of these judicial powers to non-judicial personnel. The MoJ's own factsheet on delegation to staff says that delegated decisions are unlikely to involve contested matters; why should that not appear in the Bill itself? Most case management decisions are vital judicial functions and, therefore, should not necessarily be delegated. Decisions that impact on the fairness of the process itself are, and must remain, the remit of judges and involve carefully weighing submissions by parties. In addition to concerns around transparency, there is a danger that efficiencies gained by delegating case management decisions will be lost if the court has to reconsider many of these decisions at a later stage in the process. There ought, again, to be minimum qualifications for these authorised staff in the Bill. The Law Society has suggested, for example, that no one with less than three years post-qualification legal practice—that is, a barrister or solicitor—should be delegated any judicial function under this Bill. That is a suggestion worth considering. Three years of post-qualification practice is not a high bar when you consider who may or may not take on a pupil or a trainee solicitor, for example, for supervision.

As your Lordships will have read, other interested parties have called for a statutory right of reconsideration allowing any party to a decision by an authorised person to have that decision reconsidered by a judge, as recommended by Lord Justice Briggs in his 2016 report. That statutory right would further assist in assuring compliance with Article 6 of the Convention on Human Rights, which requires decisions by an independent and impartial person.

Further, the Bar Council has called for key questions to be asked by your Lordships' House on the nature and extent of the suggested powers of authorised staff. First, will the staff members have the power to determine the outcome of any matter which is contested by the parties? Secondly, if so, what rights of reconsideration would there be and to whom, and will this be consistent across all jurisdictions? Thirdly, will there be a right of reconsideration, not just a review or appeal? Fourthly, will staff be legally trained and, if so, to what level of qualification? Fifthly, in order to achieve the savings required, what is the number of judicial posts that the Government would expect to lose; and what number of additional authorised staff will the Government need to recruit? Sixthly, what are the limits to the functions that case officers should perform, and should not these be in the Bill to allow them to be subject to proper scrutiny?

Other provisions about the flexible deployment of judges are clearly of far less concern in this Bill but, none the less, the further and increased deployment of temporary judges to any court or tribunal on which a deputy judge of the High Court is able to sit is still worth thinking about. Given the planned savings on judicial salaries, we have to ask whether these provisions are a short cut to make up for a shortfall in the recruitment of permanent judges. Any move towards increasing reliance in the system on temporary judges—who will most likely seek a permanent appointment in the longer term—would be of concern because of independence, which is less likely when someone is a temporary judge. The Government must provide greater evidence of the need for such reliance on temporary judges and explain the proportionality of such measures.

A further omission from the Bill—a point well made by Women's Aid—is the provisions prohibiting the cross-examination of victims of domestic violence which we all looked forward to in the abortive Bill of last year. We should be concerned that those provisions are not in this Bill and ask for further assurances on them.

This is a wafer-thin Bill which, on its face, is apparently uncontroversial. However, as the Minister said, it is the beginning of the fulfilment of a further ambitious programme. The Government appear to be testing the waters for more controversial court reforms and it is vital that we understand the limited provisions in the Bill in the context of that broader agenda of reforms and devastating cuts. Nor should we be completely persuaded that the Bill in itself does not have the potential, as currently drafted and unamended, to profoundly impact upon our justice system as we have all understood and loved it. Without further careful scrutiny and additional safeguards, this governmental drip-feed approach has the potential to erode some of our most fundamental institutions.

4.15 pm

Lord Beith (LD): My Lords, when the Bill was published, I described it as,

"a little mouse of a Bill".—[*Official Report*, 6/6/18; col. 1306.]

I did so because it has been shorn of most of the provisions the Government had intended to include in legislation and is drafted in such a way as to try to discourage the addition of any of those provisions by way of amendments. That has to be set against the context of the Government's very ambitious claims about what they were going to do to assist the justice system. In 2017, the government website stated that the then Prisons and Courts Bill would,

"transform the lives of offenders and put victims at the heart of the justice system, helping to create a safer and better society".

But even if we look just at the briefing for the Queen's Speech for this Parliament about the Government's legislative intentions, it was a Bill that would,

"end the cross-examination of domestic violence victims",

by those accused of perpetrating the violence. It was a Bill which would allow for fixed penalties for minor guilty pleas; it would allow fixed terms for some judicial leadership positions on the basis that some might be attracted to those posts if they could serve a shorter term in them; and it was in the context of the Government talking about wide reforms of procedure and practice, many of which required legislation, including avoiding the waste of time and money in unnecessary and entirely formal hearings.

When the Lord Chief Justice—the noble and learned Lord, Lord Burnett of Maldon—appeared before the Constitution Committee of your Lordships' House on 25 April 2018, he said:

"At the heart of what is in contemplation is a change in procedures and practices, some of which will require enabling legislation, followed by rules and practice directions. Of course, the latter will be under judicial control. The question whether all

but the most basic procedural hearings will be by telephone or videolink will, in the end, be for the judge to decide, having received representations if necessary.

We hope the legislation that fell at the last election will be back before Parliament fairly soon. Without it, some of the courts and tribunals, or at least some of what we do, will remain trapped in the mid-20th century. At a more prosaic level, modernisation will simply align the courts and tribunals with ways of operating which the outside world, and even Government, have long ago adopted".

That phraseology was echoed in the opening remarks of the noble and learned Lord, Lord Keen, but does not seem to be greatly furthered by this Bill. What we have here, apart from a few changes of title for one or two judges and justices' clerks, are some necessary and helpful provisions about the deployment of both judges and staff. Obviously they will have to be looked at in detail. Similarly, some of the issues raised by the noble Baroness will need to be looked at carefully. However, I think that there is generally a fair wind behind the belief that judges' time and that of staff in the court system can be better used. It is these useful provisions which justify spending a little time on the Bill.

However, there are many other major issues around our courts. Not all of them can be dealt with through legislation, but many require legislative backing. If you talk to members of the judiciary, they will pretty soon mention the condition of the court estate, the working conditions of court staff and the impact all that has on recruitment. The recruitment problem in the senior judiciary is something that the Government will have to consider, and along with that go the issues around the retirement age. More widely, the growing pay gap between criminal practice and commercial practice makes it almost impossible to recruit young people to the criminal Bar for the future. The *Times* recently reported that 15 City law firms, all American-owned, offer newly qualified solicitors more than £100,000 a year. Against that background, it will be extraordinarily difficult to recruit the young people needed for the future of our courts both in advocacy and on the Bench. The development of problem-solving courts may need some more legislative encouragement.

I turn to a fundamental point which the Prisons and Courts Bill could have been used to improve: the fact that the courts can sentence only according to what is available. Prison is deemed always to be available, but non-custodial sentences are dependent on local services—whether they are in place at all, what their quality is, and what combination of services is required for a really serious non-custodial sentence. All those issues are uncertain. Moreover, commissioning is hopelessly divided. Prisons are commissioned nationally while these other services are commissioned largely on a local basis, so there is a mismatch that gives the courts fewer options for dealing with the offenders before them.

Some of these issues can be dealt with without legislation but some cannot. I hear Ministers such as the noble and learned Lord talk about bringing forward more legislation when parliamentary time allows. I look forward to the period that we are entering in Parliament, with 1,000 statutory instruments and four major Bills to do with exiting the European Union—I wonder how that phrase can be uttered seriously—supposedly coming our way. I believe that a further draft Bill is sitting somewhere in the Ministry of Justice, ready to be brought forward, but I do not see when the parliamentary time will come. It makes me wonder what has happened to the significance of the Ministry of Justice in the pecking order of the Government's legislative programme. We have a two-year parliamentary Session, half of which we have used up. In that Session, the Ministry of Justice could not have a relatively uncontroversial Bill, which could have done considerable good; it had to be content with a totally shorn and reduced Bill and the vague hope of further measures when parliamentary time allows.

I will make one last point on the problem of parliamentary time. We know that it is a problem, although it does not seem so when you look at the agenda for these current weeks, dealing with the EU Bill; the pressures have not been so great but they will be pretty great in the year ahead. One thing that does not take up much parliamentary time is legislation by consolidation Bills. Law Commission Bills do not take up as much time as legislation that effects change in the law. The courts could be greatly assisted if the Government made more of the now rather neglected procedures of consolidation Bills; they would be greatly assisted if the current work being done on the consolidation of sentencing were achieved and brought forward by the Government in the more limited procedures that can be used when the law is simply being consolidated, not changed. The Government should look at that further and discuss giving it higher priority with the Law Commission. That can be done, at least, to assist the courts, even when parliamentary time is tightly rationed.

4.22 pm

Lord Mackay of Clashfern (Con): My Lords, I will immediately take up the point made by the noble Lord, Lord Beith, about consolidation. It is a rather important function of Parliament, but it is not a particularly attractive one. I served on the Consolidation Committee for some time. I remember that it is a committee of both Houses. We had the greatest difficulty in securing a quorum for the committee to proceed—and not because of the absence of Members of the House of Lords.

When I first looked at the Bill, what astonished me was that court staff were going to be authorised to advise judges on the law. I thought that that was rather strange. I thought that judges were supposed to know the law before they got to that position. Of course, when you look at it more carefully, the judges are judges of the family court and justices of the peace. There will be professional judges in the family court from time to time, as well as judges who are there effectively as magistrates. As I understand it—and certainly for all the time that I have known anything about it—justices' clerks have always been responsible for giving legal advice to magistrates in magistrates' courts. That was dispensed with only when the court had a stipendiary magistrate because he, being stipendiary, was thought to know the law and therefore not to require the advice of the justices' clerk.

It is a sad day for me to see the justices' clerk's title being set aside in a schedule to a Bill in Parliament. The office of justices' clerk is very old and very distinctive,

[Lord Mackay of Clashfern]
but it will be replaced. Let me find the passage. Paragraph 7(a) of the Schedule says that,

"for 'justices' clerk' substitute 'designated officer for the court'".

Apart from anything else, it seems a little longer, so it will take longer to type—but it is anything but a distinguished-looking title.

Seeing my noble friend Lord Baker of Dorking not far away reminds me of a fact about justices' clerks that I learned long ago. It was the habit of the Lord Chancellor to attend the annual meeting of the justices' clerks of England and Wales. To one of these I went and I was told by the president of the Justices' Clerks' Society, who had recently been at an international conference of their brethren, that he had been told by the people there that they were astonished that a court official as important as a justices' clerk should be responsible to a Minister who was also responsible for prisons. Of course, in those days the justices' clerks were the responsibility of the Home Office, and the Home Secretary certainly had the undoubted privilege of being the Minister for Prisons.

That encouraged me to think that it was time for a change, so we had an arrangement under which the justices' clerks' policy department moved from the Home Office to the Lord Chancellor's Department. I regret to say that that very important judicial development has now been reversed, in that the justices' clerks, with all the other court staff, are in the political area of the Ministry of Justice, which has, as one of its most important functions, looking after prisons. So the whole improvement has been reversed, which is what you may call progress. So far as I am concerned, I think it rather unfortunate that there needs to be change of this title—but perhaps more enlightened people can advise me whether there is any option.

Another provision in the Bill changes the names of some officers. One that I would like to suggest, which my noble and learned friend knows all about, is the district judge (magistrates' court). That title was suggested instead of "stipendiary magistrate" because it was thought that reference to remuneration was not quite the right thing for somebody of that order. Therefore, this is what has happened. So far as I am concerned, after a good deal of time during which this has been running, it would be quite a good idea to forget the bracketed "magistrates' court". In the Bill we are talking about judges getting legal advice who are in fact lay people, whereas the district judge sitting in a magistrates' court is quite a distinct officer, so the necessity for the rather long title has now been removed.

One other point I will mention is not in the Bill, but the Bill changes the names of judicial officers and some of the masters now have a different title. I was in Edinburgh last Thursday when the President of the Supreme Court gave a lecture. One of the important functions of the Supreme Court is that it is the Supreme Court for the whole of the United Kingdom. Apparently when it was created—I learned this on Thursday—the staff of the Lord Chancellor's Department wrote to the Scottish authorities to say that the Supreme Courts of Scotland were now required to change their name to something else. Not entirely to my surprise, they got a letter back to say that they were proposing to do no such thing and there are Supreme Courts in Scotland still.

However, the great jurisdiction of England and Wales has no Supreme Court; it is the Senior Courts. I do not know whether there is a junior court—I do not think expressly so; no doubt the magistrates' courts and possibly the family court are part of that section. Surely it is time to recognise that the Supreme Court of the United Kingdom is not a court of England and Wales. Therefore, there is no reason why we should not have the old names—the High Court and the Court of Appeal, as they were for a long time before the Supreme Court. I think that this suggestion probably comes within the Long Title of the Bill, but I would be glad to know whether it can be contemplated before I put down an amendment for that purpose.

4.30 pm

Lord Thomas of Cwmgiedd (CB): Perhaps I may turn to the last point made by the noble and learned Lord about the titles of the courts of England and Wales. If it is within the scope of the Bill, there may be some advantage in that. Beyond that, I do not wish to say anything about titles, as it has generally been my experience that once you start the debate on judicial titles it can take a whole afternoon to resolve them, and I know that your Lordships have a huge number of other things that may or may not happen later this evening.

I want to say a little bit about the Bill. When I was Lord Chief Justice, I firmly supported the original comprehensive Bill that covered everything. Some of the matters which the noble Baroness, Lady Chakrabarti, has referred to on a wider scale—issues of legal aid and the like—I am currently looking at as they affect Wales as chairman of the commission appointed by the Government in Wales to examine the justice system there, but I do not want today to go outside the scope of this Bill and its title.

I warmly welcome the Bill, as I warmly welcomed the many other clauses in the other Bill that was lost in 2017. It is essential to modernise the court system. It is very important that, wherever possible, savings can be made to make sure that every bit of the system is proportionate and affordable. The Bill reckons to save some £6 million. Bearing in mind the huge analysis to which all these figures have been subjected by accountants, consultants and Her Majesty's Treasury, I suspect that this is a realistic figure. That is not an insubstantial sum in the light of the current expenditure on justice. Therefore, although a lot could be said about other aspects of the justice system and about adding more things that need to be done, I hope that your Lordships' House will be able to pass this Bill as rapidly as possible.

Having abjured saying anything about titles, perhaps I may deal with just two provisions of the Bill. The first concerns flexible deployment. This is a very important step to be taken. During the past 15 to 20 years, the procedures of the courts and tribunals have come much closer together. It seems inevitable that one needs to deploy the judiciary flexibly. For example, I would hope that, where you have overlapping jurisdictions

such as occurs in relation to property and housing, one could use this Bill to go some way along the lines of a single court that deals with property. Those provisions are unarguably needed.

I can see that great concern might be expressed about the authorisation provisions, but it is important to stress the degree of control inherent in the Bill by the use of the rule committee. I was a member of and chaired, de jure and sometimes de facto, the Criminal Procedure Rule Committee, which I can assure you is a highly representative body with many representatives of the legal profession. Certainly, the committee will always try to reach a view by consensus—when I was a member of it for more than six years there never was a division; we always managed to agree.

It was suggested in the course of today's speeches that we may want to put restrictions on delegations. For example, would we impose a restriction such as, "If the matter is opposed, it cannot be dealt with through delegation"? A simple example shows how careful one has to be. If, for example, someone wants an extension of 14 days and someone else says, "No, you can only have seven", that is an opposed proceeding. Do we really want to put restrictions into this Bill? Experience has shown that detailed restrictions on procedure are a very real fetter on the administration of justice. For example, some of the impediments to improving the way in which witnesses can give evidence over a videolink have been caused by the detailed procedural provisions of some of the legislation of the late 1990s and early 2000s. When the Bill comes to Committee, I sincerely hope that serious consideration will be given to fettering the discretion in requiring matters to come to this House, or to impeding the ability of the Criminal Procedure Rules Committee to modernise, particularly as digitisation, artificial intelligence and smart codes for procedural regimes will be characteristics of the justice system within the next few years.

I therefore hope that the Bill can be subject to realistic scrutiny. This is a small part of what is essential. It is important to remind the House that there is no plan B for the modernisation of the system. If modernisation does not go through, the only prospect for our court system is significant decline. I therefore hope that the Bill will be given detailed scrutiny in Committee and that people will try to resist the temptation to hang too many other things within the scope of the Bill on it. I am anxious for the Government to realise they can put this through so they can get the other ones through and we can have a modernised justice system as soon as conceivably possible, because that is what we have to do to restore justice to the people at an affordable cost.

4.37 pm

Lord Hodgson of Astley Abbotts (Con): My Lords, I am most grateful to my noble and learned friend on the Front Bench for his introduction of the Bill, which I support, and in particular for his explanatory letter of 23 May, which laid out the background to it. As he knows only too well, I am not a lawyer, and speaking immediately behind a past Lord Chancellor and a past Lord Chief Justice on a technical Bill means that one needs to proceed with a certain degree of care.

More years ago than I care to remember, I attended a business school in the United States. The university used to arrange for distinguished visitors to come to lecture us. One such lecturer was a man called Peter Bauer who delivered a spellbinding piece of oratory. Peter Bauer's name may not be familiar to all noble Lords. He was Jewish and was born in Hungary in 1915. He came to this country in the 1930s and taught for the rest of his life at Cambridge and the London School of Economics, and later became a Member of your Lordships' House as Baron Bauer, of Market Ward in the City of Cambridge. His primary achievement was to revolutionise the way that foreign aid was distributed. He demonstrated how government-to-government aid, if it was not largely absorbed in corruption, often went on prestige projects such as national airlines or building dams, which did little for the average person in the country. He argued that it was more effective to give aid at a lower level, and the modern NGO structure is essentially a product of his thinking. In that spellbinding lecture, he pointed out that for such developments to take place successfully a degree of stability was needed, stability provided particularly by the rule of law and specifically by a respect for property rights. That is the relevance to our discussion today. His vision further required not just an effective legal system but, equally importantly, one that was understandable and accessible for the man in the street. He said that, without this, the critical ingredient of public trust and confidence would be missing. As he put it that afternoon all those years ago, "The law is too important to be left to lawyers alone".

In my time in public life, one of my interests has therefore been to try to ensure that the law is kept up to date and is seen to be relevant by our fellow citizens. That lies behind my interest in the Bill today. As I say, it seems unobjectionable; nevertheless, I would like to raise a few points with my noble and learned friend. First, in his letter of 23 May, he wrote that one of the purposes of the Bill was to,

"make it easier for people to resolve disputes and secure justice".

Amen to that, we all say, but—to touch on the point made by the noble Baroness, Lady Chakrabarti, in her opening remarks—to achieve that objective we need judges. To me as a lay man reading the newspapers, there appears to be a critical shortage of applicants for judicial posts. The reasons as I read them are pretty wide: they range from the financial, particularly the provision of pensions, to the physical state of our courts and indeed to the growing pressure being exerted on judges by social media. It will take time to resolve these challenges and some may not be resolvable at all. What could be done in the short term? One way would be to raise the retirement age. The compulsory retirement age of 70 makes appointments post 65 unlikely to be attractive either to the applicant or to the judicial system from the point of view of use of resources. With people living longer and healthier lives, many argue that ageism is a prejudice that we have yet to tackle successfully and properly. Why not kill two birds with one stone and increase the compulsory retirement age for judges to 75?

My second point concerns the point raised by the noble Lord, Lord Beith, about Law Commission Bills. In my view the Law Commission does incredibly valuable

[Lord Hodgson of Astley Abbotts]
work updating the law in an entirely apolitical way, but too much of that work is shunted into a siding and left to rust. Surely we should be able to find sufficient parliamentary time for a couple of Law Commission Bills, given their uncontroversial nature, as he pointed out. Two in particular that stand shovel-ready, to use the modern parlance, are of special importance. One is on election law. What could be of greater importance than maintaining public trust and confidence in our electoral system? It is worth underlining that point with a short quote from the briefing by the Law Commission at the time of the launch of its recommendations:

"It is widely acknowledged by those involved in administering the electoral process that this body of laws has grown so large, fragmented, complex and outdated that it is no longer fit for purpose".

Those are serious allegations that the Government should address by bringing forward this Bill. The other Bill concerns technical issues in charity law, in which I declare an interest because some of the recommendations arose from a report that I wrote for the Government as long ago as 2012 but which nevertheless the sector badly needs and would welcome. There have been endless—and I mean endless—promises about the intention to bring forward one or more Law Commission Bills. Perhaps my noble and learned friend can give me another endless promise when he winds up today.

The penultimate point is developments in the working practices of the tribunal system and some of the challenges that it now faces. For example, the Charity Tribunal, which arose from the Charities Act 2006, was designed to provide a quick, effective, user-friendly and economically attractive way for charities, many of which are quite small, as well as their regulator, the Charity Commission, to resolve differences.

I am not sure that our hopes during the passage of the Bill—cross-party hopes, I hasten to add—have been entirely fulfilled. Too many cases seem to have devolved to the familiar and expensive heavy artillery exchanges which take place in the courts. I do not suggest that individuals should be inhibited from employing legal representation, but the original vision was that the tribunal would provide surroundings—an atmosphere, if you like—in which interested parties could speak for themselves. This appears to be a diminishing hope. I fear that such developments are paralleled in other parts of the tribunal system. If you accept Peter Bauer's contention that the law should be accessible and comprehensible, such developments are surely unwelcome.

Finally, I have a specific, technical point. The Charity Commission is the statutory regulator for the charity sector. It has a huge and important task, given that there are 160,000 regulated charities and probably as many again unregulated ones. Yet if the commission wishes to seek clarity on a point of law by taking a case to the Charity Tribunal—it might wish to do so to get general clarity for a number of charities which might otherwise have to pursue their own case—it has no power to do so, but can do so only with the permission of and through the Attorney-General. For the regulator of a sector, that cannot be a sensible state of affairs.

Worse than that, the Attorney-General can be exceptionally slow in responding to such requests. For example, in September 2016, the commission requested the Attorney-General to refer the issue of the Royal Albert Hall Corporation—a long-running charity saga—to the Charity Tribunal. On 4 January 2018—four months later—my noble and learned friend replied to a Parliamentary Question of mine, stating:

"The Attorney-General requested further information … He has now received that further information and expects to make a decision early in the year".

Frankly, that is not good enough. This cumbersome and protracted procedure places the regulator of this important sector of our national life in an impossible position. We should surely move to a position where the Charity Commission is free to refer cases to the tribunal off its own back but must inform the Attorney-General that it is doing so.

The Bill has my support but, as other noble Lords have pointed out, we need to ensure that it represents more than just moving the furniture around if we are to keep pace with Peter Bauer's belief in the importance of transparency and relevance in our judicial system.

4.47 pm

Lord Flight (Con): My Lords, the Bill seeks to make reforms to the rules regarding the deployment of judges and to provide for the undertaking of some judicial functions by HM Courts and Tribunals Service professional staff. It contains three substantive clauses and one schedule. Clause 1 changes existing legislation to remove restrictions on how judges can be deployed, Clause 2 makes minor changes to the law concerning some judicial titles, and Clause 3 and the Schedule provide for court and tribunal staff to carry out some judicial functions and provide legal advice to judges. They would establish a unified system for the judicial oversight of staff carrying out those tasks across the various jurisdictions.

The changes are part of an ongoing programme of reform of the Courts and Tribunals Service and comprise some of the provisions previously in the Prisons and Courts Bill, which was dropped due to the calling of the 2017 election. But the Bill does not make much progress towards the logical solution of what is needed: establishing a dedicated housing court. The Bill has been criticised in Parliament and the press for including only some of the proposed reforms, and especially for failing to advance the use of online technology. In a recent report on the private rental sector, the Housing, Communities and Local Government Select Committee agreed that,

"A specialist housing court would provide a more accessible route to redress for tenants",

and urged the Government to issue "more detailed proposals" as soon as possible.

I had intended to table an amendment to give the Lord Chancellor the necessary powers to bring a single unified housing court into being, but apparently this has been ruled outside the scope of what is a two-topic Bill, although I would have thought it was the logical conclusion of those two topics. Anyway, it was intended to deal with business that relates to residential tenancies, which are currently split among

the county courts, the First-tier Tribunal Property Chamber, the First-tier Tribunal General Regulatory Chamber, the Upper Tribunal and the magistrates' courts. The intent was to make such a court modern in outlook, using online processes as far as possible and sitting flexibly according to needs.

In a speech in May, Sir Geoffrey Vos, Chancellor of the High Court, outlined the problem of there being multiple bodies that can be approached when things go wrong between landlord and tenant:

"Property legislation in recent years has bifurcated the responsibility for determining specific property disputes in numerous areas between the courts and the tribunals, such that in a significant number of cases, the parties have no choice but to engage in both types of proceeding. This increases the costs, causes additional delay, and in some cases, stress and frustration associated with an illogical judicial process. … But the great prize nonetheless remains an absence of duplication – in the modern jargon – a one-stop shop. For my part, I think a rationalisation of how we resolve disputes is overdue".

The Residential Landlords Association has found that there are over 140 Acts of Parliament containing more than 400 regulations affecting the private rental sector. A landlord or tenant can go to one of two tribunals, the county courts, the High Court or the magistrates' court to uphold their rights, depending on what their specific complaint is. In some cases, there is a need to go to more than one of these bodies. The Government propose, moreover, to increase the complexity with a further body, a new PRS housing ombudsman. It takes an average of 22 weeks to regain possession of property where a tenant is not paying their rent or is committing anti-social behaviour. I understand that average figure is from housing association and individual situations.

When Sajid Javid was CLG Secretary, in his speech to the Conservative Party conference last October, he pledged to look at establishing a new housing court as called for by the Residential Landlords Association,

"so that we can get faster, more effective justice".

Since then, there has been little discernible action.

The Residential Landlords Association believes that the most efficient way of developing plans for the new court would be to build on the work of the existing First-tier Tribunal Property Chamber. The advantages of this would include: capitalising on the large number of cases decided on paper by the tribunal, making the process easier to access; using the mediation and enhanced alternative dispute resolution procedures the tribunal operates; enabling the use of the tribunal's in-house surveyors and inspectors and thereby saving costs; and being able to integrate with and take full advantage of the new online court, so the majority of records could be dealt with online. The more informal operation of the tribunal should make it less daunting for tenants and landlords. The tribunal currently holds hearings in local public buildings, making it physically easier to access. The tribunal tends not to award legal costs where there would be advantages if the current cost-limited model were retained.

I had hoped the amendment, which I am not able to table, would be a useful probing amendment to explore how and in what timeframe the Government plan to progress with establishing a dedicated housing court, which is much needed.

4.54 pm

The Earl of Listowel (CB): My Lords, I begin by following the noble Lord, Lord Flight, in his encouragement to the Government to move forward in these specialist courts, and declare my interest as a landlord. We have in England, according to the statistics from last March, over 120,000 children living in bed-and-breakfast and temporary accommodation. The private rented sector can make an important contribution to dealing with that problem, if we can make it as attractive as possible—and these courts would make the private rented sector more attractive.

I thank the Minister for speaking to the Cross-Bench group and answering questions on the Bill and introducing it today. I particularly welcome it after listening to what my noble and learned friend Lord Thomas said about the potential savings from the Bill. Money is very short and we need to spend it where it can make most difference. I welcome particularly that aspect of the Bill, although there needs to be care where the savings are made. I welcome what the noble Baroness, Lady Chakrabarti, has said on ensuring that there is a high level of qualification requirement for people overseeing the new arrangements.

I declare my interest as a trustee of the Michael Sieff Foundation, a child welfare charity that has been working for the last four years to seek to support the implementation of my noble friend Lord Carlile's inquiry into youth justice. I am also vice-chair of the All-Party Parliamentary Group for Looked After Children and Care Leavers and treasurer of the All-Party Parliamentary Group for Children. I have been in those roles for 15 years, so I am particularly interested in the matters relating to family courts and youth courts.

I welcome the first clause in this Bill as it at least opens the possibility of ensuring that we get exactly the right judges into the family courts. The judges in the family courts have a very complex and difficult task; they need to be hugely empathetic and, to use that term, emotionally intelligent. It is a very specific requirement, so if this Bill allows an opportunity to encourage and find more appropriate judges in those courts, it would be most welcome. I look forward to probing that in Committee and outwith the Chamber.

Sir James Munby, the president of the Family Division, was speaking recently, and gave examples of families going to the private courts arguing about the length of their child's hair and asking a judge to sort that out, or asking what time exactly on an afternoon they can be dealt with. They can also come in with concerns about domestic violence, and the judge has to decide whether it is in the child's best interests to have a relationship with both parents or whether the risk of domestic violence is significant and it cannot be permitted. It is a hugely challenging role.

The noble Lord, Lord Beith, raised the issue of problem-solving courts. My noble friend Lord Carlile highlighted the need to develop those in his report about four years ago. We have moved forward on that very slowly; I believe that progress is imminent, and I would be grateful if the Minister could confirm that and assure us that the Government have very strong support for these courts. I believe that the Ministry of

[The Earl of Listowel]
Justice innovation arm is taking that forward, but assurance from the Minister would be very welcome.

I was very sad to hear that the Family Drug and Alcohol Court implementation unit is to close in September. I learned this just this week from Sir James Munby—and I am sorry not to have given the Minister notice that I wished to raise it as a concern today. I am very concerned; I visited it several times and have seen parents being given certificates enabling them to retain their child, who otherwise might be taken into care. This wonderful court, introduced by the district judge Nicholas Crichton, allows judicial continuity over 12 months with a family. It allows the use of a multi-disciplinary team, including social workers and clinical psychologists, to work with these families. It is tremendously effective in preventing children being taken into local authority care. To go back to concerns raised by my noble and learned friend Lord Thomas, it may not save the courts or the MoJ huge amounts of money, but it saves local authorities huge amounts of money and saves society a great deal of money in the longer term.

I will read briefly from an article by Sir James Munby on the closure of FDAC, which is to be published shortly:

"In the same week as we saw the launch of the Care Crisis Review, undertaken by the Family Rights Group with the support of the Nuffield Foundation, came the news that the Family Drug and Alcohol Court (FDAC) National Unit has had to withdraw its application for funding to the Life Chances Fund because of lack of support from local authorities",

on which it now depends. The Government have historically funded its work, which has been most welcome. They have recently stopped doing so, which is why it needs local authority funding. In addition, he says, came the news that,

"the National Unit would be closing in September because of the lack of continuing funding from central govermment. This is grim news, not least at a time when, as both I and my designated successor made clear at the launch, the care system is in crisis".

That refers to the system of child protection for children in foster care. Sir James continues:

"FDAC is the most researched of the recent innovations in family justice. Rigorous, high quality academic evaluation … has proved, conclusively, that FDAC works … Similarly rigorous independent evaluation proves that FDAC saves the local authorities who participate significant sums of money: £2.30 for every £1 spent. FDAC is one of the most important developments in family justice in the last 40 years".

So, in parenthesis, in a Bill that is looking at modernising the justice system, we should certainly be discussing this, if not in the Chamber, then outside it. To continue:

"The continued expansion of FDAC is critically dependent upon the work of the National Unit, whose invaluable work, as midwife and then as health visitor, is so important in the planning, implementation and nurturing of each new FDAC. FDAC improves the life chances of some of the most vulnerable and marginalised parents and children in our society: it increases the sum of human happiness and decreases the sum of human misery—and it saves the system money".

I wish to detain the House for as little time as possible this afternoon. However, can the Minister say what assistance he might give me in seeking to ensure that no stone is left unturned in trying to avoid this closure? I would also appreciate advice from your Lordships on what might be done to prevent it. If any noble Lords are concerned about this, I would be grateful to hear what support they can give in raising this matter with the Government.

I look forward to taking part in Committee and to scrutinising this important legislation. I also look forward to the Minister's response.

5.02 pm

Baroness Newlove (Con): My Lords, this has been a wonderful debate. As someone who used to work in the courts, I have learned quite a lot about the history of titles in the courts, and so on. The speech given by my wonderful noble and learned friend Lord Mackay was delightful—and of course I have had the pleasure of working alongside the noble and learned Lord, Lord Thomas, on victims' issues.

As a former committal court assistant I was saddened to see that that role is now given and gone, as they say, because of money and wasting court time, but I was proud to sit alongside justices' clerks, which we are discussing in the Bill alongside other titles that are going. That role in courts is important, and it was very important to me when I sat alongside them when we were dealing with the Libyan bombers, who were very active in Manchester many years ago. That shows how important roles within our court system are very important to the people who use them. So I find this to be a small Bill which deals with a lot of functions that have carried on for many years and done a commendable job as they do this.

That brings me to why I want to speak here today. I commend the Bill, and there is little in it I can disagree with. It takes a pragmatic approach on how best to use the resource and expertise within our courts and will, I hope, give both court staff and our judiciary more fulfilling working days. However, I cannot help but feel that it has missed an opportunity to protect some of the most vulnerable in our society. So, standing here, it pains me that we are going for a quick win rather than concentrating parliamentary time on legislation that will have the most impact on the lives of users of our judicial system.

Speaking on behalf of victims in my role as Victims' Commissioner, and as a person who has gone through a 10-week court trial for my late husband's murder, what victims tell me they want—and, I believe, should have—is access to a fair judicial system that treats victims with care and respect. As originally drafted, it appeared that the Prisons and Courts Bill went some way towards achieving this. Indeed, as was mentioned, it was a starting point in ensuring that victims' voices were listened to.

The area that particularly concerns me—it was mentioned by the noble Baroness, Lady Chakrabarti—is the continuation of cross-examination of domestic abuse victims by perpetrators in our family courts. Over the last few months, I have been around the country speaking to many victims of this horrendous crime. Hearing their stories has left me shocked, as has the way that the courts have treated these vulnerable victims. Time is now of the essence. It is within our gift to transform these people's experiences now, if only we can implement the legislation. How can it be right

that a victim can give evidence behind a screen in our criminal courts and yet, sadly, when they appear in our family courts, despite a restraining order being in place, cross-examination can be carried out by the individual who has made the lives of that victim and their children pure hell?

I thank Women's Aid for its briefing on some very important points. Its recent study carried out alongside Queen Mary University shows that nearly a quarter of domestic abuse victims are still being allowed to be cross-examined by the perpetrator in our family courts, and 61% are offered special measures. The original Bill put a precise prohibition on that practice.

My noble and learned friend the Minister says that the Government are still committed to a ban, but the parliamentary timetable is so frustratingly and agonisingly tight that I fear for many victims, especially where tactics such as gaslighting are used. Victims will continue to suffer a continuation of their abuse in our family courts because abusive partners are allowed to continue their controlling and coercive behaviour in plain sight, not only towards the victims but towards the children. I may add that victims feel, and say to me, that it appears when judges and Cafcass officers conclude with their directions.

How can we expect a victim in such a traumatic environment to give the best evidence and argue for the best scenario for their children—one that keeps them safe—when the person they are standing up against is the person they are most afraid of in the world? So I join Women's Aid in calling for a bar on the ability of perpetrators to cross-examine their victim to be enacted by the quickest available legislative vehicle. I challenge my noble and learned friend by asking: is this Bill not the very vehicle he has been waiting for? I also call on the Government to introduce a victim's advocate scheme in our courts, so that all victims of crime are truly supported through the judicial maze.

We do not have the luxury of waiting for this to be brought forward in the domestic abuse Bill. That Bill will not reach this place for some six to nine months at least. How many victims will be allowed to be questioned about their sex life by their abusive partners in that time, and how many will be manipulated into agreeing contact arrangements that put their children at high risk? I am not prepared to let this moment pass without making sure that those victims' voices are heard.

Victims must be able to access a system that helps them move towards a safer future for their family—not one that adds to the abuse and the anxiety of the situation they found themselves in in the first place. There are people in refuges who had businesses but are now scraping around for funding, while the perpetrators are able to start a new relationship and a new family and are smiling all the way. If we are talking about a digital platform and a common place, surely common sense must be put in our legislation.

5.09 pm

Lord Marks of Henley-on-Thames (LD): My Lords, when my noble friend Lord Beith asked a Question on 6 June about the proposed modernisation of the courts, he described the Bill—and he repeated this today—as,

"a little mouse of a Bill".

The Minister then contradicted him in response, saying that,

"this is a mouse that roared".—[*Official Report*, 6/6/18; cols. 1305-06.]

I think there is consensus around the House today that, as it stands, the Bill is more of legislative squeak than anything approaching a roar. The Bill we all wanted to have would have covered the whole gamut of court modernisation and I fully endorse what the noble and learned Lord, Lord Thomas, said: the central point is that the alternative to comprehensive modernisation is significant decline.

I found Joshua Rozenberg's description of the Bill in the *Law Society Gazette* as,

"a little too late and quite a lot too little",

pretty accurate. In opening, the noble and learned Lord described the Bill as a positive first step in reforming the court system. Mr Rozenberg, however, criticised it as drip-feeding—a term also used by the noble Baroness, Lady Chakrabarti. The problem with drip-feeding is that you cannot see the entire flow, and the Bill gives little indication of the Government's direction of travel.

There has been little substantive criticism today of the specific provisions that have found their way into the Bill. I shall, however, make a couple of points on those provisions. First, Clause 1 allows for the more flexible deployment of judges, which is generally sensible and to be welcomed, as the noble and learned Lord, Lord Thomas, explained. I would, however, caution against rowing back from our developing reliance on judges' specialist expertise in centres across England and Wales, which has been uniformly beneficial. This was a theme pursued by the noble Lord, Lord Flight. It has been particularly true of specialist family judges, as forcefully argued by the noble Earl, Lord Listowel. It has been true also of mercantile judges, since last year called Circuit Commercial Court judges, which has ensured a spread of circuit judges with specialist commercial expertise in court centres across the country. It has been true also of judges of the Technology and Construction Court—the TCC—who handle difficult and lengthy cases in construction, engineering and IT disputes economically and efficiently in regional centres as well as in London. I also welcome the recently announced development of one overarching umbrella for specialist business and property courts across the country.

While there has been considerable cross-ticketing of judges, as it is inelegantly known, whereby judges from one specialism are deployed in a similar field, it is important that flexible deployment develops alongside and in sympathy with the continuing specialisation of judges where it is needed. I never again wish to argue a long and complicated matrimonial finance case, as I did some years ago, in front of a deputy High Court judge who was highly distinguished in his field as tax counsel but had entirely the wrong end of the stick—and, frankly, not a clue—about his task in a matrimonial context.

Secondly, I accept that, as proposed by Clause 3, suitably qualified staff should be able to make not only administrative decisions but some of the less significant case management judicial decisions. I agree that it is not a definitive criterion that such a decision should be unopposed. If that is to be the case, however, we need robust safeguards to ensure that decisions

[Lord Marks of Henley-on-Thames]
that should be taken by judges are indeed taken by judges and not delegated to too low a level. We must also guarantee that staff making judicial decisions are adequately qualified.

I am also concerned about the prospect of under-qualified court officers giving advice to judges in the family court—they are often lay magistrates, as the noble and learned Lord, Lord Mackay, pointed out—or the magistrates' courts. I note that the Schedule will provide that qualifications will be determined by regulations to be made by the Lord Chancellor with the agreement of the Lord Chief Justice. It is vital that such regulations establish clearly that those advising magistrates and judges are completely qualified to do so.

We have heard in this debate much more about what the Bill does not do but should do than about what it in fact does. So, turning to what is not in the Bill, I note that the Long Title is relatively wide:

"To make provision about the judiciary and the functions of the staff of courts and tribunals".

It is certainly wide enough, I suggest, to accommodate the campaign of the noble and learned Lord, Lord Mackay, to give England and Wales back its supreme court, but not—sadly, I think—wide enough to comprise the campaign by Women's Aid to prevent victims of domestic abuse being cross-examined by the perpetrators of that abuse. Having listened to the speech of the noble Baroness, Lady Newlove, many of us would no doubt hope that the Government and the noble and learned Lord might see their way to extending the Long Title to encompass provision in that regard. Noble Lords may wish to explore the process of modernisation with inventive amendments within the Long Title, as it exists, in that context.

I suggest that there are three significant areas for improvement. The first area is judicial diversity. Since the report of the noble Baroness, Lady Neuberger, in 2010, we have made some considerable progress, particularly with the work done by the judicial diversity task force. However, we have a very long way to go. I would like to see this Bill require more action on judicial diversity, more women judges, more judges with BAME heritage and backgrounds and a more socially diverse bench generally, to make our court system look and in fact be more attuned to and more in touch with our society. We could start with taking on the recommendations of the organisation Justice in its excellent paper, *Increasing Judicial Diversity*. I am not sure that accepting the suggestion of the noble Lord, Lord Hodgson, that we increase the retirement age of judges, would help. Flexible, family-friendly hours and more job sharing for judges, on the other hand, almost certainly would.

The second area is accessibility. I suggested on 6 June that we need court staff, in person and over the phone, court documents and online resources all to be committed to helping court users, particularly litigants in person, to navigate their way through the litigation process. This would mean court officers changing their traditional position that they are not there to give advice. The noble and learned Lord, Lord Keen, gave me a very encouraging reply. He said that,

"there is no reason why reallocated court staff will not be in a position to provide advice".

But he then added the words,

"as they have in the past".—[*Official Report*, 6/6/17; col. 1307.]

I think that the added words were overoptimistic. Those of us who regularly attend court tend not to appreciate quite how daunting an experience going to court is for members of the public. Traditionally, court staff have taken the view that their job is to be detached, impartial and objective, giving the advice that is needed on procedure but leaving it to litigants to get advice from their solicitors and other advisers. However, more litigants in person and less legal aid make it essential that court staff are trained to give real assistance to all concerned, including advice not only on procedures but on completing documents and the evidence that people will need to prove a case. The noble Baroness, Lady Newlove, with her call for help for victims, adds to the point. That does not mean that court staff have to act as lawyers for individual parties, and they should not. But they should act as firm friends in court for those without lawyers—litigants in the civil courts and defendants in the criminal courts. That should be true whether the contact is face-to-face, over the phone, by email or through the court's online resources.

Thirdly and finally, we must make progress with the development of a fully online system, to enable cases that can be dealt with online to be processed efficiently and quickly through digital technology, with users feeling informed and not at sea. I accept that there has been considerable progress in pilot projects in this area, as the noble and learned Lord mentioned in opening. Online divorce; applications for probate, on which I should add that we never want to see the reintroduction of the ridiculous proposal for hyperinflated probate fees; online pleas in minor criminal cases; and huge numbers of debt recovery cases—these are all areas where the court could be made user-friendly and efficient with digital technology.

I look forward to working with the noble and learned Lord and others, in the likely absence of parliamentary time for other justice Bills, to inject a little more ambition into this Bill. If we can give the mouse if not a full-throated roar then at least a bit of an increase in volume, that will be all to the good.

5.20 pm

Lord Beecham (Lab): My Lords, I refer to my interests as an unpaid consultant of my former firm of solicitors and as the father of a practising barrister who specialises in employment and housing law and who would, I think, be very interested in the suggestion by the noble Lord, Lord Flight, of a housing court—a suggestion with which, with my other hat on, as a local councillor with concerns about these matters, I would also concur.

The National Audit Office report *Early Progress in Transforming Courts and Tribunals*, published six weeks ago, begins with a set of key facts, identifying the Government's expectation of savings of £265 million a year from 2023-24 onwards, with a staff reduction of 5,000—one third of the current staffing—and 2.4 million fewer cases held in physical courtrooms. The NAO describes the change as,

"a very significant challenge",

with changes,

"far broader than those in comparable programmes in other countries".

The timetable has been extended from four years to six, interestingly without changing the budget, and this is still shorter than the smaller programmes of this kind in other countries.

Moreover, the Infrastructure and Projects Authority concluded in its latest assurance review that successful delivery of the programme is in doubt. It avers that less progress overall has been made, such that a spending gap of between £61 million and £177 million has appeared, depending on whether the Treasury will allow earlier underspending to be carried forward, while costs have increased and planned benefits reduced. The NAO points out that Her Majesty's Courts and Tribunals Service still needs to develop how the services will work and that,

"stakeholders do not fully understand how the reformed services will work in detail".

It concludes that a lack of clarity has contributed to delays and programme failings.

The NAO adds:

"Failure to sustain commitment from all delivery organisations will significantly reduce the likelihood of success and the benefits achieved … Delivering change on this scale at pace means that HMCTS risks making decisions before it understands the system-wide consequences".

To cap it all, it asserts:

"The benefits claimed so far by HMCTS exceed expectations but risk putting pressure on its ability to maintain services".

It concludes that, while it has improved,

"its governance and programme management … there is a long way to go",

and warns of major risks in a number of areas.

This damning critique may resonate with Members who recall the fanfare with which the coalition Government launched the disaster entitled universal credit—or discredit, as I and many others afflicted by the problems are apt to describe it. But the National Audit Office does more than list these problems. It states:

"The scale of the challenge is increasing and the programme is under significant pressure to meet what is still a demanding timetable".

It makes four critical recommendations, to which I invite the Minister to respond. It says HMCTS should allow enough time to engage with affected parties within the justice system, to consult widely and respond to the results, to provide more detail of how the system will work and to carry the staff along with it. It says HMCTS should resist pressure to claim savings until planned changes are fully embedded. It says HMCTS should provide greater transparency on objectives and progress. Finally, it says HMCTS should work with the department and the Treasury to address the system-wide consequences of planned changes. In more general terms, the NAO suggests that there should be greater transparency on the Government's objectives and progress, and clarity on how plans are adapted in response to risks.

We are, after all, dealing with a system through which 4 million cases pass yearly: 1.7 million criminal court matters, 1.9 million civil cases and 250,000 family court cases. Thanks to the massive cuts in legal aid and advice, which have led in some areas of law and in different parts of the country to the creation, in effect, of a desert of professional legal support, too many people have to struggle unaided with their legal problems or are driven to rely on claims management companies, the nefarious activities of which featured in our recent discussions on the Civil Liability Bill.

Inevitably, these changes in both the criminal and civil areas are impacting on the supply of qualified professionals, as well as the number of litigants acting in person, causing considerable delays in the court process. But we also have to consider other difficulties which are increasingly confronting people with legal problems. The court closure programme may be saving money for the Ministry of Justice, but it is increasingly impacting on court users in terms of cost and lengthy travelling times—an issue raised by the Law Society, which points to the impact on vulnerable court users in particular. More than 200 courts have been closed since 2011. Yet the MoJ has made the curious decision to close Cambridge magistrates' court, which already has videolink technology. It seems a rather strange choice for closure.

No doubt the Government's response will be to talk up the impact of increasing the use of digital technology in the conduct of legal processes—very much part of their reform programme—but I suspect I am not alone among Members of your Lordships' House in struggling with this new and constantly developing world and being ever grateful for what used to be PICT and is now PDS, the Parliamentary Digital Service, rescuing me from time to time. I find myself in the position exemplified by Groucho Marx, who once declared:

"A child of five would understand this. Send someone to fetch a child of five".

Even children of that age could probably match my performance—and, I suspect, others'—and therefore, almost certainly, that of many of those who will be having to rely on that approach as people involved in the justice system. I fear that, as we have learned from the introduction of universal credit and the dreadful record of the Home Office, the digital world is not one within which everybody is comfortably able to manage.

The Equality and Human Rights Commission draws attention to both pros and cons of the modernisation programme. It welcomes the opportunity to improve accessibility for some disabled people by providing alternatives to attending court in person; I would add some family cases, where one party, perhaps the wife or mother, cannot be face-to-face with an abusive partner—the sort of area that the noble Baroness was concerned about. But it has concerns that,

"people with certain protected characteristics are excluded by digital processes, and that video-link hearings and online courts negatively affect access to justice and fair trial rights. There are also implications for principles of open justice and for public confidence in the justice system".

One wonders, too, how far these developments will take us. Will we see the development of a "Justice Alexa", initially providing advice but ultimately deciding cases? The Law Society has expressed concerns that new technology has not been fully tested and evaluated, while court closures proceed in any event. It urges that before embarking on a significant court closure programme and much-increased reliance on new technology and online courts, there should be a full evaluation of these developments. Will the Government

[LORD BEECHAM]
agree, and with what sort of timescale in mind? In any event, what is the Government's estimate of the cost of the new technology on which £100 million has already been spent, or of the likely receipts from the sale of court buildings? As we have heard, 80% of those that have been sold only realised sums equivalent to average house prices—hardly a financial bonanza likely to contribute significantly to the programme.

We are at one with the Government in their intention to modernise the court system, with the important caveat that the objective must be to facilitate access to justice—including the areas raised by the noble Baroness, Lady Newlove, about victims of domestic violence—not merely to engender visible financial savings at the possible expense of those who really need the protection of the law.

5.30 pm

Lord Keen of Elie: My Lords, it is perhaps too late to bring our court system into the 20th century but this is the opportunity to take it into the 21st century. This may be a small step, but a small step on a long journey, when properly directed, will take us closer to our goal, and that is the intention of this legislation. To that extent it has been welcomed around the House. Let me address some of the points raised by noble Lords in the course of this helpful discussion.

First, we have seen the development of digital access, by way of pilots and its wider use, in conjunction with the issue of redundancy within physical court buildings. That means that there has to be a balance between the development of that digital provision and the closure of courts, as anticipated by the noble Lord, Lord Beecham. That will continue. However, it has to be a balancing act—we appreciate that—and judgments will have to be made. We should not allow one aspect of digitisation to run ahead of the necessary demands for physical court buildings, and we have that in mind.

The noble Baroness, Lady Chakrabarti, spoke of the need for legislation so that we could review what was happening with the digitisation process. However, with respect, the purpose of primary legislation is to implement law, not to review that which we can already do. Of course, there are means and methods by which we can keep in mind and review the progress of the changes that we are taking forward.

The noble Baroness also referred to Clause 3 of the Bill and the delegation of official functions. There are two aspects to this: the delegation of judicial functions and the provision for legal advice. The two are distinct and have to be understood as being so. One should not confuse the two or push them together.

On the question of legal advice, justices' clerks and assistant justices' clerks are highly qualified individuals who, for a long time, have been in a position of tendering legal advice within the magistrates' courts and the family courts. That, essentially, will continue; there will be no fundamental changes. It is hoped that these senior and well-qualified individuals will be able to deploy their talents beyond the magistrates' courts if necessary. That is one aspect of flexibility that is being considered. However, when determining their qualification and function in the provision of legal advice, it is intended that these provisions will be specified by the Lord Chancellor in regulations in order that we can maintain the present system with one or two developments to it.

The staff who will be authorised to carry out certain judicial functions—the "box work" of district and circuit judges—will be determined by the independent jurisdictional rule committees, which are the appropriate bodies to take these decisions and ensure that the powers are properly scrutinised by judges, practitioners and other interested parties. It will be part of the role of the rule committees in determining the functions to consider whether staff should be required to have particular experience or qualifications. That is the level at which this should be done.

The noble Baroness, Lady Chakrabarti, also referred to the use of temporary judges. We consider that there are appropriate safeguards in place with regard to the deployment of temporary judges. We have to remember that there are some highly experienced members of the legal profession who would prefer to maintain their position as temporary judges rather than go forward to a permanent appointment because of the flexibility it provides for them. That is an extremely useful resource and not one that we would wish to imperil.

The noble Lord, Lord Beith, reminded us that there were provisions in the Prisons and Courts Bill that went well beyond the provisions in this Bill. I fully accept that, and in particular the issue—also raised by my noble friend Lady Newlove, who is the Victims' Commissioner—of the cross-examination of victims of domestic violence. It does not fall within the purview of this Bill but we have it at the forefront of our minds and are determined to take it forward. It is an issue of parliamentary time.

The noble Lord also referred to the use of consolidation Bills. My noble and learned friend Lord Mackay of Clashfern alluded to the difficulties that sometimes arise in ensuring that the Joint Committee on Consolidation Bills is quorate. That is not because of the availability of Members of this House but possibly because of the non-availability of Members of the other House, given that it is a Joint Committee. We see the usefulness of consolidation as a way forward with regard to sentencing. I am aware of the work that the Law Commission has been and is still doing on this matter, but it will be necessary for some primary legislation to be brought forward in order, as it were, to establish a pathway for such consolidation provisions. We are conscious of that and again, we have it in mind. It is to be hoped that we will see some further developments in this area. Reference was also made to the utility of the Law Commission procedure for its own Bills, and again we are conscious of that when parliamentary time is limited.

My noble and learned friend Lord Mackay of Clashfern also alluded to the fact that while Scotland very sensibly managed to retain a Supreme Court, England and Wales rather lost their way in that regard. I am not privy to how it came about, but they agreed to cease to be a supreme court and became a senior court instead. It may be that there is room to revisit that issue at some point, but whether in the context of this Bill or otherwise is a different matter.

The noble and learned Lord, Lord Thomas of Cwmgiedd, welcomed the Bill and I thank him for that. He referred to the importance of flexibility in the deployment of judicial availability, and the point made by the noble Lord, Lord Marks of Henley-on-Thames, is one I agree with entirely. While clearly wanting to have flexibility in the deployment of our judicial asset, we do not want to lose the benefit of the specialist expertise that has been built up in areas such as family law, mercantile law, and the example he gave us of the Technology and Construction Court. We and the Lord Chief Justice will be conscious of that when taking forward the powers here with regard to cross-ticketing, as I believe it is sometimes called.

My noble friend Lord Hodgson of Astley Abbotts raised the question of the judicial retirement age. What I would say at this stage is that we are awaiting the report of the Senior Salaries Review Body, which I think is due in the late autumn, with regard to judicial salaries and pension conditions. I am aware that there have been issues with the judicial pension situation in particular. Once we have the report, it may be possible to look again at the judicial retirement age. My understanding is that at present, the average judicial retirement age is 67 or 68, so it is not a case of the judiciary actually going as far as the existing ceiling. There may be other explanations for that, including the desire of some in judicial office to contemplate an alternative career structure when they cannot proceed beyond 70 on the judicial Bench. It is clear that that requires further consideration.

My noble friend Lord Flight raised the issue of a dedicated housing court. I am aware of the discussions that have taken place on this. Sir Geoffrey Vos recently alluded to the fact that property disputes can take place anywhere between the county court, the First-tier Tribunal Property Chamber, and the High Court. We intend to consult later in the year, I hope, on the provision of a housing court so that this issue can be addressed.

The noble Earl, Lord Listowel, referred to the Family Drug and Alcohol Court. I do not have up-to-date details on what is happening with the funding for that but I undertake to write to him in due course. I will place a copy of the letter in the Library.

On the points made by the noble Lord, Lord Beecham, particularly that we should engage and consult widely before taking further steps, the danger is that that will engender further delay in the implementation of a courts modernisation process, which should not be unduly delayed if possible. We consider that there is general consensus about the need to move towards a more effective, modern and efficient courts system, involving the digitisation of the courts process but remembering the risk that some people may somehow be excluded from access to justice unless their needs and requirements are catered for. We are conscious of that.

With that, I hope that noble Lords will accept that, as I said, this is a small step but a step in the right direction that takes us closer to our goal. I therefore ask the House to give the Bill a Second Reading.

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

Gosport Independent Panel: Publication of Report

Statement

5.41 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, with the permission of the House, I will repeat the Statement made earlier today in the other place by my right honourable friend the Secretary of State for Health and Social Care about the Gosport Independent Panel. The Statement is as follows:

"Mr Speaker, this morning, the Gosport Independent Panel published its report on what happened at Gosport Memorial Hospital between 1987 and 2001. Its findings can be described only as truly shocking. The panel found that, over the period, the lives of over 450 patients were shortened by clinically inappropriate use of opioid analgesics, with an additional 200 lives likely to be have been shortened if missing medical records are taken into account. The first concerns were raised by brave nurse whistleblowers in 1991, but then systematically ignored. Families first raised concerns in 1998, and they too were ignored. In short, there was a catalogue of failings by the local NHS, Hampshire Constabulary, the GMC, the NMC, the coroners and, as steward of the system, the Department of Health.

Nothing I say today will lessen the anguish and pain of families who have campaigned for 20 years for justice after the loss of a loved one, but I can at least on behalf of the Government and the NHS apologise for what happened and what they have been through. Had the establishment listened when junior NHS staff spoke out, or had the establishment listened when ordinary families raised concerns instead of treating them as 'troublemakers', many of those deaths would not have happened.

I also want to pay tribute to those families for their courage and determination to find the truth. As Bishop James Jones, who led the panel, says in his introduction,

'what has to be recognised by those who head up our public institutions is how difficult it is for ordinary people to challenge the closing of ranks of those who hold power…it is a lonely place seeking answers that others wish you were not asking'.

I also thank Bishop Jones and his panel for their extremely thorough and often harrowing work. I particularly want to thank the right honourable Member for North Norfolk, who as my Minister of State in 2013 came to me and asked me to overturn the official advice he had received that there should not be an independent panel. I accepted his advice and can say today that without his campaigning in and out of office, justice would have been denied to hundreds of families.

In order to maintain trust with the families, the panel followed a 'families first' approach in its work, which meant that the families were shown the report before it was presented to Parliament. I too saw it for the first time only this morning, so today is an initial response and the Government will bring forward a more considered response in the autumn. That response will need to consider the answers to some very important questions. Why was the Baker report,

[Lord O'Shaughnessy]

completed in 2003, only able to be published 10 years later? The clear advice was given that it could not be published during police investigations and while inquests were being concluded, but can it be right for our system to have to wait 10 years before learning critically important lessons which could save the lives of other patients?

Likewise, why did the GMC and NMC, the regulators with responsibility for keeping the public safe from rogue practice, again take so long? The doctor principally involved was found guilty of serious professional misconduct in 2010, but why was there a 10-year delay before her actions were considered by a fitness-to-practise panel? While the incident seemed to involve one doctor in particular, why was the practice not stopped by supervising consultants or nurses, who would have known from their professional training that these doses were wrong?

Why did Hampshire Constabulary conduct investigations that the report says were,

'limited in their depth and … range of … offences pursued',

and why did the CPS not consider corporate liability and health and safety offences? Why did the coroner and assistant deputy coroner take nearly two years to proceed with inquests after the CPS had decided not to prosecute? Finally, more broadly, was there an institutional desire to blame the issues on one rogue doctor rather than examine systemic failings that prevented issues being picked up and dealt with quickly, driven, as this report suggests it may have been, by a desire to protect organisational reputations?

I want to reassure the public that important changes have taken place since these events which would make the catalogue of failures listed in the report less likely. These include the work of the CQC as an independent inspectorate with a strong focus on patient safety, the introduction of the duty of candour, the learning from deaths programme and the establishment of medical examiners across NHS hospitals from next April. But today's report shows that we still need to ask ourselves searching questions as to whether we have got everything right, and we will do this as thoroughly and quickly as possible when we come back to the House with our full response.

Families will also want to know what happens next. I hope that they and honourable Members will understand the need to avoid making any statement that could prejudice the pursuit of justice. The police, working with the CPS and clinicians as necessary, will now carefully examine the new material in the report before determining their next steps, in particular whether criminal charges should now be brought. In my own mind I am clear that any further action by the relevant criminal justice and health authorities must be thorough, transparent and independent of any organisation that may have an institutional vested interest in the outcome. For that reason, Hampshire Constabulary will want to consider carefully whether further police investigations should be undertaken by another police force.

My department will provide support for families from today, as the panel's work is now concluded, and I intend to meet as many of the families as I can before we give our detailed response in the autumn. I am also delighted that Bishop James Jones has agreed to continue to provide a link to the families and lead a meeting with them in October, to allow them to understand progress on the agenda and any further processes that follow the report. I also commend the role played by the current Member for Gosport, who campaigned tirelessly for an independent inquiry and is unable to be here today because she is with affected families in Portsmouth.

For others who are reading about what happened and who have concerns that it may have affected their loved ones, we have put in place a helpline. The number is available on the Gosport Independent Panel website and the DHSC website. We are putting in place counselling provision for those affected by these tragic events and those who would find it helpful.

Let me finish by quoting again from Bishop Jones's foreword to the report. He talks about the sense of betrayal felt by families because:

'Handing over a loved one to a hospital, to doctors and nurses, is an act of trust and you take for granted they will always do that which is best',

for them. Today's report will shake that trust, but we should not allow it to cast a shadow over the remarkable dedication of the vast majority of people working incredibly hard on the NHS front line. Working with those professionals, the Government will leave no stone unturned to restore that trust. I commend this Statement to the House".

5.49 pm

Baroness Wheeler (Lab): My Lords, I thank the noble Lord for reading out the Statement. I was able to hear only a little of the media coverage in anticipation of the report this morning, but I heard one of the relatives speaking about what she had been through over the past 20 years. It was heartrending. Our thoughts, sympathies and condolences go out to the families of those 450 patients whose lives were shortened and who have campaigned for so many years to find out what happened.

We also pay tribute to the relatives for their determination, tenacity and persistence, and to the parliamentarians and others who have played their part in helping to get the panel established or supporting the relatives who have lost loved ones. I include in this the organisation, Action against Medical Accidents, which helped the families to get inquests and to press for a full inquiry, as it has done on so many of these very difficult, awful occasions.

I finally place on record our thanks to all who served on the inquiry panel and offer particular thanks for the extraordinary dedication and calm, compassionate, relentless and determined leadership yet again of the former Bishop of Liverpool, James Jones, in uncovering injustice and revealing the truth about a shameful episode in our nation's recent history. In its own words, the panel finally,

"listened and heard the families' concerns".

The four key conclusions of the panel were that there was disregard for human life and a culture of shortening lives of a large number of patients; that there was an institutional regime of prescribing and administering "dangerous doses" of a hazardous combination of medication not clinically indicated or justified; that relatives were constantly let down by

those in authority in the hospital when they complained; and that senior management, Hampshire Constabulary, local politicians, the coroners system, the Crown Prosecution Service, the GMC and NMC all failed to act in ways that would have better protected patients and relatives.

As the panel comments, patients' and relatives' interests were,

"subordinated to the reputation of the hospital and the professions involved … a large number of patients and their relatives understood that their admission to the hospital was for either rehabilitation or respite … they were, in effect, put on a terminal care pathway".

The report is a substantial, 400-page document published only this morning and it will take some time for us all fully to absorb each detail. I welcome the Government's commitment to coming back to the House with a full response as quickly as possible. I also welcome the setting up of a hotline and making available counselling provision to those affected and who have lost loved ones, as well as the Secretary of State's commitment to meeting the families, with Bishop James continuing to act as a link.

Perhaps I may raise five key issues at this stage. First, can any further action be taken in respect of the 200 additional patients whose clinical notes or medical records were missing and who the panel considered to have been affected in a way similar to that of the 450 patients given opiates without appropriate clinical direction or as a result of the prescribing and administering opioids that became the norm at the hospital?

Secondly, on GMC and NMC failures in this matter, does the Minister accept that this underlines the urgent need for legislation to streamline their professional regulatory procedures and responses? In this instance, despite GMC disciplinary action against the doctor involved resulting in her being found guilty of serious professional misconduct, it did not have the authority to overturn the decision of its disciplinary panel not to strike the doctor off the register. I understand that a White Paper on regulatory matters issued by the GMC this week emphasises that, as matters stand, the GMC is operating under a legislative framework that is 35 years old and simply not fit for purpose. A Bill has been sought by this and the other professional bodies and promised by the Government, but we still have had no sight of it. Is it not now vital that such legislation is forthcoming?

Thirdly, on the key question of patient safety, in light of this inquiry, what changes have been made, or will be made, to the oversight of how medicines, particularly opiates, are dispensed in our hospitals? Is the Minister satisfied that oversight of medicines in the NHS is now tight enough to prevent incidents like this happening again? What are the wider lessons for patient safety and the need to build the safety culture in the NHS, and is additional legislation required to keep patients safe? Do the Government now regret the abolition of the patient safety agency? Do they consider that a new independent body is urgently required to pick up and take forward the PSA remit, and will the Minister promise to review this issue? Is there a need for the scope of the draft patient safety investigations Bill to be widened to reflect the learning from these tragic events?

Fourthly, there is the issue of how a proper inquiry in such appalling situations is actually started when there are ongoing police investigations and coroners' inquests to be held. Delay is built into the system from the outset. It is a key issue that we need to find a way through.

Finally, we have all welcomed the learning from deaths programme set up to build organisational learning on the sorts of failures that we are discussing today. How will the programme assist in helping learn the lessons in this report?

We will rightly acknowledge 70 years of the NHS and the great efforts of our NHS workers every day. On this occasion, however, the system has let so many down and we must all ask why.

Baroness Jolly (LD): My Lords, I shall crave the indulgence of the House for a moment while I read out the first two points in the summary and conclusions of the report:

"In waiting patiently for the Panel's Report, the families of those who died at Gosport War Memorial Hospital … will be asking: 'Have you listened and heard our concerns, and has the validity of those concerns been demonstrated?' … It is over 27 years since nurses at the hospital first voiced their concerns. It is at least 20 years since the families sought answers through proper investigation. In that time, the families have pleaded that 'the truth must now come out'. They have witnessed from the outside many investigative processes. Some they have come to regard as 'farce' or 'cover-up'. Sometimes they have discovered that experts who had found reason for concern had been ignored or disparaged. Sometimes long-awaited reports were not published".

I commend my right honourable friend Norman Lamb for having a quiet word with the Secretary of State to ensure that this was moved forward.

This report makes for shocking reading. It hangs on a confusion of responsibilities between two organisations, the NHS and the police force, and there is a multitude of questions to be answered. I shall put only two questions to the Minister and hinge them on two points in the report. The first is paragraph 12.62. Health bodies felt prevented from taking action because police investigations were under way. The report points out:

"All concerned assumed not only that the police investigations took priority, but that they prevented any other investigations from proceeding".

There is clearly a need to clarify lines of responsibility between the police and the NHS regulatory bodies when there are allegations of wrongdoing and systematic failings of this kind so that organisations simply do not pass the buck. Can the Minister assure me that this work will start?

Secondly, how will the Government take forward the call for action in paragraph 12.60? I welcome the Minister's commitment to an independent inquiry in future in such circumstances to be carried out by the police force, but the report states that,

"the evidence … suggests that, faced with concerns amounting to allegations of unlawful killing in a hospital setting, there are clear difficulties for police investigation. It is not clear to the Panel how the police can best take forward such investigations, and how they are to know whose advice to seek from within the health service without compromising their enquiries. This is … significant if the problem concerns the practice on a ward where more than one member of a clinical team is involved. It is a need that calls for action across different authorities, rather than a matter for the police service in isolation".

[Baroness Jolly]
We cannot guarantee that something similar to this could not happen elsewhere—please God that it does not—but what action will be taken to ensure that there is not such a muddle and confusion in a resolution? What processes are either in place or being put in place within NHS settings and with police forces to make sure that this does not happen again?

Lord O'Shaughnessy: I thank the noble Baronesses, Lady Wheeler and Lady Jolly, for their very perceptive questions—as ever. First, I extend my personal sympathies to the families and join my right honourable friend in expressing our apologies on behalf of the Government and the NHS for what has happened to them and their relatives. Like the noble Baronesses have done, I pay tribute to those families and all the others who have fought so tirelessly in seeking justice. As has been acknowledged, we owe a huge debt of gratitude to Bishop Jones and his panel.

The story told in this report is of a litany of failure across many institutions, which often had very closed cultures. Unfortunately, those piled on to one another across many different agencies of government, which is what created that highly unacceptable cover-up for so long. It is about getting to the bottom of that culture. Let us face it: unfortunately these circumstances are not unique. We come across this in different parts of our society all the time, and we need to get to the heart of that closed culture to lead to a culture of accountability and transparency.

The noble Baroness, Lady Wheeler, asked some specific questions, including about the 200 additional patients without notes. Clearly, further investigation is warranted because we need to substantiate that claim. It is obviously one of the work streams that will be going forward. She asked about streamlining professional regulation, given the obvious inadequacies of the GMC and NMC regulators during this process. As my right honourable friend the Secretary of State said, every part of government needs to look to itself with great honesty about what we need to do to put in place the right environment to prevent this happening again. I think we all agree on the need to move forward to streamline professional regulation. It is not something we have yet been able to do, but the tragic news we have been discussing today gives that fresh impetus. It is clearly something we will be looking at.

Patient safety is a great passion of the Secretary of State. There were changes in the oversight of medicines, particularly opioids, after the Shipman inquiry. The noble Baroness raised some good questions about whether there is a need for an independent body, or whether in the Health Safety Investigation Branch we have that body but its remit needs to be reconsidered as part of the Bill going through. I am sure that we will be doing that.

The noble Baronesses, Lady Wheeler and Lady Jolly, asked about the issues around inquiries. One of the things that has been exposed here is that there were overlapping inquiries that were impeding each other or preventing one another moving forward. Making sure that there is a clear process for how that ought to take place when someone—a family member, a staff member, the police—has raised a concern is something we have to get to the bottom of because that bureaucratic muddle was clearly at the heart of the delay and, because of the delay, more people died unnecessarily. It is not just a case of clearing things up and making them neater; it has a massive impact on harm.

The learning from deaths programme is a big step forward. It has been taken into many bits of the health service already. It is now moving into the primary care area. Trusts are already obliged to publish deaths that ought to be in the scope of mortality reviews. From next April, all non-coronial deaths will be subject to investigation by medical examiners. That is yet another part of the patient safety environment that we need to put together.

Going beyond that, there are clearly some very challenging questions that the criminal justice authorities, coroners, the Home Office, the Department of Health and Social Care and all parts of government need to ask themselves to see whether they are really doing everything they need to do to provide a safety net to make sure that when things go wrong we find out about them quickly, we stop them and we learn from them. In the next few months, as we move towards publishing a plan for what we should do next, it is imperative that all Members of this House and the other place, who have great contributions to make in this area, feel free to engage with this process and make their recommendations to it, so that when we report we have done as thorough and comprehensive a job as we possibly can so that we can prevent these tragedies happening again in future.

6.03 pm

Lord Carlile of Berriew (CB): Does the Minister agree that it is particularly shocking that those who did not cover up—the brave staff who expressed concerns about what was happening—were ignored for so long? Does he agree that the culture of closing ranks among some medical staff should be regarded in itself as serious professional misconduct by doctors and others? Does he also agree that there should be training in the whole of the NHS which makes it easier for staff to identify the excessive use of opiates and to have action taken upon it?

Lord O'Shaughnessy: The noble Lord makes two excellent suggestions. His suggestion about whether cover-ups should count as serious professional misconduct will be something the regulators will want to consider, as is better training on the use and prescription of opioids. We have made some progress in recent years. The freedom to speak up guardians are in place, and we talked about the learning from deaths programme. There is also the duty of candour. They are clearly steps forward but the panel has exposed that we are still not there yet. The suggestions the noble Lord makes are good and serious and we will want to consider them.

Lord Hunt of Kings Heath (Lab): My Lords, I had ministerial responsibility for this area in 2002 and the beginning of 2003, which is reported in the report. First, I associate myself with the Minister's remarks, his commendation of Bishop James and his panel and the apology that has been given. Reading this report, the question I think about is whether, if those

circumstances arose now, the response would be very much different. I am not at all sure it would. First, the report shows the reluctance at local level to have what it saw as interference from the centre in causing inquiries to take place. Secondly, while the police investigations were going on the other inquiries felt they could do nothing, as the noble Baroness, Lady Jolly, said. Thirdly, once the police investigation had been completed and the decision that no prosecutions would take place had been taken, there was an agonised debate within the coronial system about whether inquests would be appropriate. The real issue seemed to be resources. The local coroner's office did not feel that it had the resources to conduct the inquests and if it did so it would undermine the rest of its important work. In the work now being undertaken, will a real effort be made to grip the issue of the deadening impact of police investigations in stopping us learning lessons immediately? Is the Minister confident that the changes in the coronial system will prevent the kind of unseemly debate that prevented inquests taking place for some time occurring in future?

Lord O'Shaughnessy: I thank the noble Lord for associating himself with that apology. He asked the right question. It was very well put. If the circumstances arose now, would the response be different? I think there is reason to believe it would be, for the reason I have set out—the improvements that successive Governments have made on patient safety—but we should not be complacent. We cannot assume that those things are enough. I hope they are an improvement. We believe they are an improvement, but we need to ask ourselves that very difficult question about whether they would be enough. That is what we will be doing through this process.

Resources are one of the issues. We need to make sure not only that there is clarity about the circumstances under which the different bodies can carry out inquiries without impinging upon inquiries by other bodies, but that they feel that they are capable of doing so. That is one of the things we are going to need to investigate.

The Lord Bishop of Lincoln: My Lords, I declare an interest as my wife is a lead clinician in the office of the Parliamentary and Health Service Ombudsman. My friend the right reverend Prelate the Bishop of Portsmouth cannot be in his place today as he is in his cathedral church with the families of those whose loved ones were patients at Gosport War Memorial Hospital, as they properly received the report prior to it being laid before Parliament. On his behalf, and sharing his profound concern and with some anger as a vicar and archdeacon in that area at that time, I politely remind the Minister of the evidence of disregard for human life, a culture of deliberately shortening life, and a regime of systematic overuse of opioids and of the way in which those raising concerns were treated as troublemakers. The Statement repeated by the Minister raises many questions. My questions and the questions of the right reverend Prelate the Bishop of Portsmouth are simple pastoral questions: how will the Government now guarantee the families the support they deserve? How and when will the Government act on the wider issues the report raises?

Lord O'Shaughnessy: I thank the right reverend Prelate for his comments and for conveying those of his colleague, the right reverend Prelate the Bishop of Portsmouth. It is absolutely right that he is where he is today, ministering to that group of deeply affected people.

The facts as he set them out, and as are set out in the Statement, are truly shocking: hundreds of lives prematurely shortened because of these practices; institutional behaviour led by an individual but with others being complicit in it; cover-ups; whistleblowers being discouraged; and so on. It is hard to imagine a worse scenario. What the panel and Bishop James Jones have exposed through working so closely with families is the extent of the behaviour and the poor practice that went on.

The question now is, quite rightly, what we should do about it, and the right reverend Prelate quite rightly takes the pastoral position. There is counselling on offer and a helpline for those who think that their families may have been affected—there may be yet more people who come forward. There is also a commitment from the Secretary of State, and indeed all Ministers, to meet families to provide them with the support and information that they may need. There is an intention to meet those families at an event convened by Bishop Jones in October, and the panel secretariat is setting up specific conversations between the advisory clinicians on the board and individual families. One of the needs for counselling, sadly, will be after those conversations, when the truth about specific cases comes out—which is why it is about providing counselling not just today but on an ongoing basis. I can give the right reverend Prelate a commitment from the department that we will provide that for as long as necessary.

Baroness Masham of Ilton (CB): My Lords, this tragedy has similarity to Shipman and Stafford Hospital. Does the Minister agree that there should be a far better and quick complaints procedure? This has been needed for years. Nurses should feel free and safe to bring up matters of worry concerning their seniors and colleagues, and relatives should have help to complain and be listened to.

Lord O'Shaughnessy: I completely agree with the noble Baroness. Clearly, improvements have been made—freedom to speak up guardians came out of the Francis review into the Mid Staffs tragedy—but I reiterate the point that I made earlier: we cannot be complacent and just assume that what exists now is up to the task, as the noble Lord, Lord Hunt, said, of guaranteeing that this will not happen again. Looking at complaints procedures, protections for whistleblowing and so on will be part of the investigations that we make.

Baroness Meacher (CB): My Lords, the events at the Gosport War Memorial Hospital all those years ago are indeed shocking, but will the Minister consider that they are perhaps a symptom of the fact that we do not have an assumption in end-of-life care that patients' wishes must be respected? One aspect of this, perhaps slightly removed from Gosport but nevertheless relevant, is that, if people are terminally ill and enduring unbearable

[Baroness Meacher]
suffering but are mentally competent, they have no way of ensuring that they, the patients, can take control and decide when they have suffered enough. In this culture of paternalism—and this really does apply to Gosport—doctors take matters into their own hands and, in a situation such as that in Gosport, paternalistic decision-making by doctors can become extremely dangerous. Does the Minister agree that we need to bring to an end paternalistic decision-making by doctors without reference to patients' wishes, particularly in end-of-life care?

Lord O'Shaughnessy: Giving patients and of course their families much more control over the circumstances in which their lives end is clearly the right thing to do. Some very good practice has been going on—for example, Coordinate My Care across London makes sure that somewhere between 70% and 80% of people who would prefer to die at home are able to do so, as opposed to in hospital. However, it is important to emphasise that in this case by and large we are not talking about palliative care; only a small number of the people concerned whose lives were shortened were in a position where they were, in an objective sense, near end of life. Many were in after a fall, a hip replacement or something else from which they could easily have recovered and lived for many more years. That is the tragic fact. So, while I agree with the noble Baroness, it is important that we do not view the tragedy just in those terms; unfortunately, it is much broader.

The Lord Bishop of Coventry: My Lords, like others, I was very moved by Bishop James Jones's foreword and the way that, as the noble Baroness, Lady Jolly, put it, the panel thought to listen to and heed the concerns of those who have been aggrieved. I have been impressed by the methodology, I suppose, of the independent panel and the way it has done exactly as the Minister says: seek to work closely with the families and, so far as I understand, build its terms of reference from the particular concerns of the families, the aggrieved and the victims—the sort of questions they are wanting to ask. Have the Government made any assessment of whether independent panels are more effective than judge-led inquiries at not only excavating the truth in historic cases but, in so doing, thereby attending to the trauma of the bereaved?

Lord O'Shaughnessy: The right reverend Prelate makes a very incisive point about not only the personal qualities of Bishop James Jones in chairing this panel, with the great compassion, understanding and patience that he has displayed, as indeed has the panel, but about the methodology, as the right reverend Prelate put it, which has been non-confrontational, independent and family-focused. Unfortunately, we grapple with these problems across government from time to time, and this methodology gives us a new way of doing things. It will not be appropriate in every circumstance—something smaller or swifter might be required; equally, it might be something that requires a judicial element—but it gives us a different way of doing things that provides a very sympathetic and compassionate way of listening to families and a way to get closer to the truth.

Branded Health Service Medicines (Costs) Regulations 2018

Motion to Regret

6.16 pm

Moved by ***Lord Hunt of Kings Heath***

That this House regrets that the Branded Health Service Medicines (Costs) Regulations 2018 do not propose any action to be taken in respect of the high cost charged by Concordia and other companies for the drug Liothyronine for the treatment of hypothyroidism, thereby depriving patients of the use of that essential drug, and further do not put an end to the practice of a growing number of Clinical Commissioning Groups refusing to follow the latest guidance from NHS England on making that drug available to NHS patients via referral to thyroid specialists (SI 2018/345).

Lord Hunt of Kings Heath (Lab): My Lords, ensuring that patients get quick access to the most effective drugs ought to be one of the essential aims of any Government in relation to the NHS, yet we know that NHS patients are at a serious disadvantage when compared to patients in, as an immediate example, Germany and France. This of course was a major subject in our debate on the Health Service Medical Supplies (Costs) Bill, from which these regulations emanate. While the eventual Act came about because of concern about certain companies abusing their position in relation to the prices of drugs, we also kept our focus on the overriding need to ensure that patients had access to effective medicines. This becomes ever more important at a time when clinical commissioning groups are being seen to ration services more and more widely. I want to bring to the House's attention a clear example of clinical commissioning groups ignoring guidelines in relation to this area—an extremely common condition—with many patients suffering as a result.

The regulations before us permit the Secretary of State to control the costs of branded health service medicines for companies that do not belong to the voluntary 2014 Pharmaceutical Price Regulation Scheme, belovedly known as PPRS. The regulations set out details of the new scheme. They do not identify specific companies or branded medicines. No doubt the Minister will point out that they apply only to branded medicines, while the medicine that I am dealing with tonight is a generic medicine. It is a device to enable us to debate this important point. However, the fact that the Government brought the legislation to Parliament and are bringing the regulations here shows that they understand that there was a need to deal with abuse in the case of branded medicines. One of the questions I want to put the Minister is: what about generic medicines? How do we ensure effective early action when it becomes likely, or obvious in fact, that some companies are taking the NHS for a ride?

Liothyronine—or T3, as I will call it, because it is a lot easier to pronounce—is the subject of my Motion. As many as one in 20 people in the UK is affected by thyroid disease. The symptoms of an underactive thyroid, which is the most common condition, are serious and

require daily medication. Most patients resolve their symptoms with the standard medication, levothyroxine, otherwise known as T4, but there is a subgroup of patients for whom T3 can be an effective option.

T3 was de-branded in 2007, at which point its cost started to increase. Normally, after de-branding, the cost comes down. By July 2017, the cost had increased by a massive 6,000%. The price per pack had risen from £4.46 to a massive £258 in 10 years. Whereas prices on continental Europe range from 2p to 26p, the NHS pays more than £9 per tablet—this is a tablet that needs to be taken daily.

Concordia was the only manufacturer with UK marketing authorisation until very recently. Throughout the price increases, I understand that there was no intervention by the Department of Health until it referred the matter to the Competition and Markets Authority in 2016. In November 2017, the authority provisionally found that Concordia had abused its dominant position to overcharge the NHS by millions for this essential thyroid drug.

A final decision is still awaited. My understanding—I should be grateful if the Minister could confirm this—is that no intervention will be taken by the Department of Health until the final decision is made. Pace our previous debate about why Governments sometimes hold up making decisions while inquiries are ongoing, that reflects some of the problems in Gosport, which we are now seeing in a totally different area.

The trouble with the delay is that patients are suffering. Because of the high cost, in 2017 NHS England ran a consultation under the title *Items which should not Routinely be Prescribed in Primary Care: A Consultation on Guidance for CCGs*. T3 was included in the list to be considered as an effective product subject to "excessive price inflation". The issue was not the effectiveness of the drug; it was the fact that it was costing so much money.

There was a lot of consultation, including submissions by the British Thyroid Association and Thyroid UK that T3 should continue to be prescribed in primary care. However, NHS England's recommendation was:

> "The Joint Clinical Working Group therefore recommended the prescribing of liothyronine for any new patient should be initiated by a consultant endocrinologist in the NHS, and that de-prescribing in 'all' patients"—

in other words, patients who were already on T3—should not automatically occur,

> "as there are recognised exceptions. The recommendation would therefore be changed to advise prescribers to de-prescribe in all appropriate patients".

So the consultation led to a change in the guidance.

But you have to read the guidance very carefully to understand what it is saying, and it is clear that, to put it at its kindest, clinical commissioning groups have perhaps misunderstood what the guidance stated. That has led to many of them informing clinicians in both primary and secondary care to withdraw T3 from all patients, some of whom have been prescribed it for years, and not allowing them to initiate a prescription, or to offer to refer it to an endocrinologist, as the latest guidance states that they should.

This is causing many patients a great deal of distress. It is making them ill again and impacting on their social and mental welfare. As the Thyroid Trust has pointed out, that is compounded because many GPs are not following treatment guidelines to fine-tune the dose of the standard medication for these conditions or to refer patients to see a specialist if well-being cannot be restored in primary care.

Where T4 is not working, it is important that T3, in combination or in its own, can be prescribed. Some patients are appealing against the decision of their CCGs, but this is daunting for an individual patient to do. I have had one description today, who said: "Applying for T3 is like wading through treacle with your legs tied together". What is particularly difficult for them is that the criteria for being an appropriate patient have not been listed. If you are appealing against a decision by a CCG, what chance do you have?

We know that at a meeting with NHS England fairly recently, it was admitted to patient groups—Thyroid UK and the Improve Thyroid Treatment Campaign—that what happened was not its intention; its intention was to reduce regional prescribing variations. Both organisations have asked for further guidance for CCGs whereby CCGs understand what they should be doing.

In a debate in the other place and in the noble Lord's Answer to me, Ministers have said that the South Regional Medicines Optimisation Committee has been considering the issue further and that it will issue a statement in due course. Has this august body issued such a statement? You can find this organisation on the web. It is not very transparent. At its January meeting, the matter was discussed and the minutes of that meeting are on the web. The papers have not been made available. There was a further meeting in May when this matter was on the agenda, but the minutes have not been made available, so the latest we have is what happened in January.

The list of members who attended the January meeting is there, and it is noticeable that 21 professionals attended the meeting with one lay member. Yet the terms of reference of these committees is to look at the outcome of medications for the benefit of patients. It is clear to me that it is a rationing body. Let me take one example. We already have guidance, but the committee was most taken by the fact that a sub-part of the south- west had produced its own guidance. Why is a subgroup of the NHS producing its own guidance when guidance is nationally based?

Patients are left in a hopeless position. It is clear that T3 should be initiated by an endocrinologist, but not what happens afterwards. That is being left for CCGs to work out for themselves, often to the detriment of the patient. Some endocrinologists are saying that they cannot prescribe because the CCG has said no. Some are prescribing, but patients have to visit them for their prescriptions thereafter. Some are trying unsuccessfully to pass care on to GPs, but GPs are saying that they cannot take over care without CCG permission. It is a Catch-22 position.

Some clinicians are helping patients by giving them private prescriptions, but these are expensive. The Brighton and Sussex University Hospitals NHS Trust is informing patients that their only option is to obtain the drug privately. For an NHS body to advise patients as such goes against the whole ethos of the NHS. I must say that I am very surprised at the trust doing so.

[Lord Hunt of Kings Heath]

I received details yesterday through Thyroid UK of a patient who is looking for a price to purchase T3 privately. She contacted Pharmacy2U and asked for a price for 56 T3 tablets. From four suppliers, only one could supply and that price was £774. That was for 56 tablets, one a day.

6.30 pm

I want to echo what Dr Anthony Toft said via the Thyroid Trust:

"The primary fault for the current situation lies with Government and by proxy, NHS management, in failing to deal with",

the escalating crisis. It is wrong, because what has happened is that the Government and NHS England have failed to deal with this abuse of price, and have put this drug on an exclusion list that was meant for dealing with less effective medicines. Patients are the sufferers.

I am using this debate to ask the Minister to take immediate action to deal with those wholly unjustified drug price increases to ensure that patients do not suffer from the outrageous prices that are being charged and, for once, to tell CCGs that, when guidance has been issued after a comprehensive consultation process, that guidance is to be followed. I beg to move.

Lord Borwick (Con): My Lords, I declare an interest in this debate, as I am a patron of both the British Thyroid Foundation and the Thyroid Trust. I have heard it said that, somewhere in the Lords, there is always an expert on any subject raised; all I can claim is personal experience. I have suffered from Graves' disease, which results in an overactive thyroid gland. Once it has had one episode, the thyroid can have an increased incidence of repeated episodes, and I had three in increasing frequency. The cure used often in the UK is to surgically remove the thyroid completely. Suddenly, the patient moves from too much hormone to none at all.

The thyroid, which is a small butterfly-shaped gland in the front of the neck, produces two hormones—levothyroxine and liothyronine—known as T4 and T3. As the noble Lord says, it is much easier to use those words. As T4 is a base stage, T4 makes T3 and the vast majority of patients, perhaps 80% and including me, can convert T4, the inactive hormone, into T3, the active one. Some cannot do so or can only do so inefficiently. The level of research is so low that, alas, we do not know for sure why this is. It may well be a faulty gene.

The trouble with thyroid patients is that their experience of the disease is so varied and the effect on their bodies is sometimes so profound, that they can be "hard to treat". This is a marvellous medical euphemism that carries a wide range of patients with it, from ones who feel well when they are actually quite close to death, like me, to those whose low thyroid level makes them apathetic, befuddled and exhausted. The latter are the most frequently occurring cases. The majority of them are female and they are often overweight, finding that diets tend not to work for them, however hard they try to lose weight. As the thyroid affects the speed of every single cell in the body, including the brain, a nasty aspect of the disease is known as "brain fog". That is the inability to think anything through at all, let alone explain what is wrong with you. That aspect, coupled with hormone tests that can declare that everything is within normal limits when they are still wrong, makes some patients particularly "hard to treat".

With a high level of thyroid activity, life may feel quite pleasant. Even Brexit seems to be simple. A high thyroid level has something in common with being mildly overserved, even tipsy, and yet I know someone who sadly died of this disease and, for a few, the symptoms can be dramatically unpleasant, even as severe as psychosis. With a low level of thyroid, everything can be too complex, too difficult, too depressing or gloriously clear but wrong. Endocrinologists are doctors with immense patience. Overall, any imbalance in thyroid hormones, which can occur rapidly or very slowly, from high to low or low to none, can trigger brain fog and a range of other debilitating and diverse symptoms.

This liothyronine problem affects a group of patients who may appear to have the right level of T4, but who cannot make sufficient quantities of T3 from it. T3 was made by a single supplier for a time, Concordia, a company that I have met and been impressed by. It deals with a wide variety of generic drugs to be supplied to the Department of Health. These drugs are subject to several layers of regulation, including on price and quality. Most important is consistency, as the thyroid patient is peculiarly sensitive to inconsistency. Consistency depends in part on modern methods of manufacture, and the problem that Concordia faced, it tells me, was a need to update the manufacturing equipment with a large capital investment for a small number of patients.

To put the problems into context, the Department of Health buys a vast number of generic drugs. Millions of different patients need thousands of different drugs, and it is amazing how few problems occur. This is because of the great work done by the unsung heroes of the department's regulatory agencies. All this takes place without much political input, and probably is the better for that, but a price that goes up so much raises an eyebrow or two, particularly compared to a price that is so much lower abroad. Even if the price increases had been agreed with the department, as Concordia informs me they were, the solution is likely to involve negotiation between the manufacturer and the department. Competition is likely to play a part here, and I gather that there are now three manufacturers in the market to provide T3 for UK use and prices are falling.

The bottom line is that, where there is a portfolio of generic drugs, used by different patients for different syndromes, the marginal price of any one drug in any one quantity is somewhat arbitrary. Should it be a loss leader or priced as the star of the portfolio? It is clear to me that the pricing, like thyroid disease, only becomes noticeable when it varies quickly or goes out of control. What caused a problem was misinterpretation of health department advice into suddenly not prescribing T3 to patients who had been happily taking it for years. I am not sure that a referral to the Competition and Markets Authority did anything other than raise the stakes, when negotiation is surely the best way to deal with the problem.

While liothyronine is available at a lower cost from European suppliers, there have been calls for the NHS to source directly from overseas. This initially may seem appropriate, given that patients are currently being told to purchase directly from these overseas suppliers themselves, with a private prescription from their NHS GPs, who tell them that their practice or CCG will not pay.

The Thyroid Trust has given permission to me to share the alarming case of Maureen Elliott in South Thanet. Maureen was well for 10 years on liothyronine and agreed to stop taking it when her doctor flagged up the high cost to the NHS. Subsequently becoming very unwell without it, she was referred to an NHS endocrinologist, who confirmed that she should have it, yet the instruction she was given was to buy it herself from abroad. With prices from different suppliers varying wildly, from more than £600 to £50 a packet, and inconsistent quality, she has found the whole experience extremely stressful as well as expensive. Why should she and others have to do this as individuals, when the Department of Health could be doing it, presumably with the capacity to drive a better bargain?

However, if the quality control requirements of the UK's Medicines and Healthcare products Regulatory Agency have triggered prices here to be higher than elsewhere, is the liothyronine from manufacturers that do not hold a UK marketing authorisation of questionable quality? Given the negative effect on patients such as Maureen, perhaps the Minister can help to stress to doctors that T3 has not been banned, that he agrees that some patients need it, that although it is expensive it is valuable to certain patients and that doctors should not restrict access for existing patients prior to clinical assessment by a specialist.

Lord Turnberg (Lab): I want to restrict my observations to the case of the treatment of hypothyroidism, and elaborate just a little on the wise words of my noble friend Lord Hunt of Kings Heath.

We have here an unhappy coincidence of bureaucratic errors on the one hand and what can be described only as corporate greed on the other. The end result is that patients with hypothyroidism are suffering. I suppose that I should just say a little about this condition, in which these patients fail to produce enough of their own thyroid hormone, for one reason or another. Although I am no longer on the medical register, I do not feel too constrained: it causes a range of unpleasant symptoms and can be life threatening. It causes symptoms, some of which may sound familiar to your Lordships, including extreme tiredness and a general slowing down, which makes you gain weight, thickens your skin and makes you lose hair. It comes on insidiously, so that it can sometimes be difficult to diagnose. It is worth noting, as I think my noble friend said, that up to 5% of the population, or one in 20, are said to suffer from hypothyroidism—and, worst of all, it can cause heart attacks, if not treated.

Yet treatment is very easy indeed—just one tablet a day of the hormone thyroxine gets rid of all the symptoms and can make people normal again, which works for the vast majority. But here is the rub: a few patients do not feel better, and they need to take the more active metabolite of thyroxine, liothyronine, or T3, to make them well. There is some controversy over why some patients need that more expensive treatment. Do they have a problem with converting thyroxine to the active principle or not? That has not been resolved scientifically, but there is little doubt that, clinically, some patients get better only on the active metabolite, T3. That being so, clinicians should be able to prescribe it. Certainly, that is the case in many countries around the world.

Prescribing T3 here in the UK was never a problem until 2007, when the Canadian manufacturer, Concordia, got hold of it and was given the sole contract by the NHS to produce it. It was then that, as a monopoly supplier, it put the price up several-thousandfold, as we have heard, so that now the price has risen to over £900 for 100 tablets. Then, of course, NHS England found it increasingly unaffordable. So instead of trying to find cheaper suppliers, it put in draconian conditions on doctors under which it may be prescribed. On top of that, those conditions are so ambiguous that CCGs, GPs and consultants are fearful of prescribing it, so they have stopped. As we have heard, patients who have been on it for years now cannot get it and suffer the consequences. So what do the patients do? They go online and buy it privately in Europe for around €30, instead of £900 for 100 pills.

I have three questions for the Minister. Will the Government try to move the Competition and Markets Authority along after its preliminary hearing that the manufacturers should repay the several million pounds that they owe to the NHS? Will they consider purchasing the medicine from an alternative supplier, possibly elsewhere in Europe, for a fraction of the cost? Will he press NHS England to produce some straightforward, unambiguous guidance for patients and doctors about how it can and should be prescribed? I would be happy to help, if he would like that.

Lord Lucas (Con): My Lords, I ask my noble friend to turn his intelligence and attention to how the NHS can get best value in the purchase of out-of-patent medicines, branded and generic. I have had the pleasure of reading the 2014 pharmaceutical price regulation scheme. If any noble Lord is in need of tickling his belly button with his jaw, I suggest that he does the same. It is the most astonishing system, guaranteed to produce lush profits for manufacturers, giving the NHS almost no purchase whatever on the price being charged. It is done in the name of promoting innovation and promoting the UK industry, but there does not seem to be the level of intelligence—meaning not mental intelligence but investigation and the understanding—that would be necessary to make sure that that was the case.

6.45 pm

There is a great deal to be gained for the NHS by challenging this. As it comes up for review at the end of this year, it is a very good time to try to bring some commercial sense into it. The noble Lord, Lord Hunt of Kings Heath, has illustrated very well one particular compound that is causing problems. My noble friend will know that I am interested in apomorphine, which is presently used for treating Parkinson's disease, a very simple chemistry devised in the 19th century by boiling morphine with concentrated acid. It does not

[LORD LUCAS]
actually have any morphine-like properties. You can buy it easily on the wholesale market at one-1,000th of the cost charged to the NHS for apomorphine in pill form. There must be some added value between a half-kilo bottle of apomorphine and a succession of pills—but a thousand times?

Again, there is one supplier. It is not a big market, worth a few tens of millions a year, and someone else does not come in because there is the barrier of the regulatory agency. If you came in, all that would happen is that the existing supplier would drop prices ahead of you, and your costs in getting your authorisation and setting your marketing system up would never be recovered. Although it is nominally open to challenge, actually it does not work that way. You just get one company holding that monopoly year after year and being able to make huge profits out of a steady market. It is not generating a market or innovating in any significant way; it is just a market that exists because this is a current pattern of treatment that has been demonstrated to work by physicians in that area.

I have some suggestions to my noble friend. Why not look at a much more comprehensive system of tendering? Imagine that the NHS was to say that it knew roughly how much apomorphine it was going to use in five years and that it would let a contract for five years' supply, including the cost of getting permission from the medicine regulatory agency, and see who would bid it a price. It is inconceivable that you would not end up with the NHS buying five years' supply for the cost of six months' supply previously. The risks to the NHS compared with the current system must be really small.

Alternatively, why do not we create some centre of excellence in fine organic chemistry—say, in Huddersfield University, or somewhere like that? My work shadowers are from there this week, so I am biased in their favour. We could get them to act almost as a state generic medicines manufacturer, and be responsible for the supply of these relatively simple medicines, such as apomorphine. I imagine that T3 is pretty easy to make by those stages, too. It would bring real benefit in terms of intellectual knowledge and the ability of our manufacturing sector to the UK. There are other ways in which to do these things, it appears to me. I am sure that my noble friend can think of some. Possibly just thinking of some and being really serious about pursuing them will be enough to bring the current manufacturers to the table.

Whatever we do, we cannot continue with the current system. The NHS is paying tens of billions of pounds a year for these medicines, and it is paying far too much—and it is time that that ended.

Baroness Jolly (LD): My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for bringing this slightly interesting regret Motion.

It is clear that the issue at stake is the appropriate treatment of hypothyroidism. We have to trust clinicians to prescribe based on what they consider is best for their patients, as the noble Lord, Lord Turnberg, said. I have done an awful lot of reading about this over the last few days, and, although it depends on which article you read, it seems that a significant number of women have this condition: one figure I was given was 10%. In fact, for the last 25 years I have been diagnosed as hypothyroid. I take T4— levothyroxine—which is cheap as chips and costs the NHS about £1.30 every month. But of course, not everybody responds to that, and the alternative is the very much more expensive T3. Some 10% to 20% of patients diagnosed with hypothyroidism come into this category. It is therefore important that the patient receives the right drug. We have heard completely unacceptable tales of patients, as a result of decisions made by clinical commissioning groups, surfing the internet to see what they can get. I did exactly the same last night—having a look to see what I could get—and, again, the T3 was ridiculously expensive, whereas T4 was hardly worth buying online as you could get it very much more cheaply.

What is to be done about this? I was going to explain what it is like when you develop hypothyroidism, before you are diagnosed, and so I thank the noble Lord, Lord Borwick, because his description was lovely: "pathetic, befuddled and exhausted". I went to see a doctor because my brain was in a fog. I explained it to him and he said, "What do you expect? You work full time and you have two toddlers". So I was sent away. Curiously enough, at a family event—a lot of my family are doctors or nurses—my mother-in-law asked me, "How long have you had a thyroid problem?" and I said, "I didn't know I had a thyroid problem". I went to see my GP, who said, "No, you haven't got a thyroid problem at all. Who said you had one? Gosh—what does a paediatrician know about it?" Eventually, I had to leave my practice and go to another one to get a diagnosis. I am sure that that is not normal, but it was quite an interesting experience for me. Since then, I have been as fit as a flea. The medication works like a magic charm; very quickly you feel normal and well again. So I cannot overstate to Members of your Lordships' House how important that prescription was.

I emphasise to the Minister what other noble Lords have said today. We must use the purchasing power of the NHS to drive down the costs of T3 in order to make the argument go away. That might be done by effective negotiation, as the noble Lord, Lord Lucas, said, or in another way, but it is completely scandalous that patients have to buy their own drugs online, and CCGs should therefore review or rework their guidelines as a matter of urgency. Drug companies must not hold the NHS to ransom over the cost of medication that will make patients feel absolutely well again.

On the issue of the costs of medication, one of the non-medical side-effects of having a diagnosis of hypothyroidism was that any other drug I had became free. It is on a list of conditions which, if you have them, mean that any other medication you need becomes free. At that time I was in my early 30s and working. It was very nice to have free prescriptions; I tried to pay for them but they would not let me. However, it means that for the NHS, an awful lot of money is spent inappropriately. Can the Minister give an indication of whether the department has any indication of how much this costs the NHS? I am happy for the NHS to pay for my levothyroxine, but it should not have paid for all other medication I was in receipt of—although,

now that I am old, it comes free anyway. How sustainable is this in the current climate, and when was the principle last reviewed?

My takeaway issue for all this is that, whatever happens, we should ensure that the cost of T3 is driven down. However, I would also like the Minister to take this other issue away and—not as a matter of huge urgency—come back to me with some answers.

Baroness Wheeler (Lab): My Lords, I thank my noble friend for tabling this Motion and for his excellent speech setting out the concerns we all share about NHS patients getting access to the drugs they need and how a number of CCGs are in effect placing a ban on expensive branded medicines—in this case ignoring NHS England's advice concerning T3 in the treatment of hypothyroidism. I look forward to the Minister's response to the key questions put forward by noble Lords on this issue.

The Motion has the full support from these Benches. I also commend the work of the British Thyroid Association and Thyroid UK in highlighting this issue, and the very helpful information on their websites, as well as the expert explanation from my noble friend Lord Turnberg on hypothyroidism. The websites include case studies of patient voices which clearly show the impact and suffering of patients who are either denied T3 or who are taken off it because of a decision made by their CCG. It is especially upsetting when patients who have successfully taken the drug for a number of years suddenly have to go back on to a drug, mainly T4, which they already know does not provide them with the treatment they need or will make them ill again. The case studies refer to both the T4 drug and the natural desiccated thyroid—NDT—drug, which I understand is the treatment given before T4 came on to the market but which is not now available in the NHS as it has to go through the Food and Drug Administration process, and it is not known when the branded NDT products will be licensed.

My noble friend and other speakers described their concerns over current CCG decisions that go against NICE guidelines and the advice of NHS England, and the increasing rationing of key services, so I will not repeat them and will await the Minister's response. The NHS England recommendation and guidance on T3 needs to be clear and unambiguous. I hope that the Minister will acknowledge the confusion and concerns, and will ensure that NHS England informs CCGs that they must both comply with their guidance and amend it to end the scope for CCG misinterpretation. I hope that he will also acknowledge that access to T3 on the NHS is a matter of urgency for many patients and that he will give serious consideration to the call from Thyroid UK and ITT for the procurement of T3 from outside the UK for NHS prescriptions until its UK cost comes down.

On the regulations, I note paragraph 4.7 of the Explanatory Memorandum, which deals with provisions of the Health Service Medical Supplies (Costs) Act 2017 that have been included. This includes the promise of the annual review of the operation and objectives of the statutory scheme which is to be published and put before Parliament. Can the Minister tell the House what the current thinking is in terms of the review process and timing, and say when he would expect the first review to be completed?

The impact assessment also states that the implementation of these regulations will generate a saving of £33 million to the NHS between April 2018 and March 2019. The Department of Health and Social Care says that this will enable the provision of additional treatments and services estimated to provide NHS patients with an additional 2,213 quality-adjusted life years, valued at £133 million. Can the Minister explain to the House exactly how the Government have calculated the savings, and can he give more details of how this money is to be spent in the NHS?

The Explanatory Memorandum also says that the regulations set out other instances when the Secretary of State can give a direction specifying the maximum price of drugs—for example, when there are supply issues with respect to a particular branded health service medicine and the Secretary of State is satisfied that a new temporary minimum price needs to be provided to help resolve the supply issue. Can the Minister explain to the House how the Secretary of State is to decide on the temporary minimum price?

Finally, in respect of the provisions in the regulations for manufacturers and suppliers to pay 7.8% of their net sales income to the Government, the impact assessment provides for those in the PPRS with annual NHS sales above £5 million to make percentage payments based on the difference between allowed percentage and actual percentage growth in NHS expenditure on branded medicines. Can the Minister provide more clarity on how this 7.8% figure has been reached?

7 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, I begin by thanking the noble Lord, Lord Hunt of Kings Heath, for tabling the Motion on this topic, and I thank all noble Lords who have contributed for their, as ever, wise and incisive interventions.

As we have discussed this evening, there are two separate but intertwined issues here. The first is the appropriate treatment and associated clinical guidance from NHS England to CCGs about the use of the two drugs under discussion in the treatment of hypothyroidism. The second is the powers we have and the actions we take in clamping down on unjustified high prices in generics. I will deal with them in that order, as well as answering other questions that noble Lords have posed.

As we have heard in very evocative descriptions from my noble friend Lord Borwick and the noble Baroness, Lady Jolly, hypothyroidism can be a very debilitating condition in some perhaps slightly unexpected ways, but it can affect every area of someone's life. One of the principles on which the NHS is founded is that, if someone has a clinical need for a medicine, it is right, provided that it can be done cost-effectively, that they get the most appropriate medicine for their condition.

The drug levothyroxine, T4, is beneficial for the majority of patients with hypothyroidism, as we have heard, but it does not treat the condition in all patients. For some, the alternative drug, liothyronine, commonly known as T3, which is the subject of this evening's debate, is a treatment which better alleviates their

[LORD O'SHAUGHNESSY]
symptoms. NHS England has set out that liothyronine should be prescribed for patients only where levothyroxine does not alleviate symptoms. Following its recent consultations, NHS England guidance states that, where clinically appropriate, liothyronine can be prescribed but its use should be initiated by a consultant endocrinologist in the NHS.

My noble friend Lord Borwick shared the case of Maureen Elliott, and I would be very grateful to him if he could give me details of her case. The care and medicines that have been provided to her do not appear to be in line with NHS England's guidelines, and that obviously raises some very serious concerns. As I have said, patients for whom liothyronine is deemed clinically appropriate should receive it on the NHS and should not be asked to purchase it abroad. I ask my noble friend and indeed all noble Lords who have contributed to this debate to share details of the case. Tonight, I will commit to pursuing further with NHS England ways in which they can clarify to CCGs the guidelines setting out the circumstances under which liothyronine should be prescribed, including looking at whether greater clarity on the criteria for appropriate patient usage is merited. I will also inform the House—through a letter to the noble Lord, Lord Hunt, a copy of which I will place in the Library—about the progress that we are making on the regional medicines optimisation committee.

I want to touch on one other area that my noble friend Lord Borwick described, and that is the poor understanding of that group of the population who are not able to turn T4 into T3. He mentioned that there might be a genetic factor and I would be interested in pursuing that further. Clearly, some very interesting work on rare diseases is going on in the NHS at the moment through the 100,000 Genomes Project. This might be a qualifying illness where the conversion does not take place naturally, and that might be something that we can pursue. I will take that up with him separately.

As the noble Lord, Lord Hunt, freely admitted, the Motion expresses regret that the Branded Health Service Medicines (Costs) Regulations 2018 do not propose any action in respect of the high cost charged for liothyronine. However, he also knows that this relates to the new statutory scheme to regulate the cost of branded medicines, so that is not the vehicle by which we would act in generics. Nevertheless, it provides a good opportunity to discuss the actions that we are taking, not just in regard to this medicine but more broadly, to clamp down on excessive prices for generic medicines.

For unbranded generic medicines, the Government do not set selling prices. Instead, we rely on competition between suppliers to keep prices down. Several noble Lords expressed concern about the prices that we pay for medicines, but I should stress that the available evidence demonstrates that in general our system works well. Recent studies by the OECD and *Milbank Quarterly* have shown that the UK has among the very lowest prices for generic medicines as a group in the developed world. However, there are occasions when there are only one or two suppliers, so there is no effective competition.

As several noble Lords set out, for a long time Concordia was the sole supplier of liothyronine. That is why the department took action in the summer of 2016, asking the Competition and Markets Authority to investigate this product. The CMA has very extensive powers to investigate companies suspected of abusing a dominant position in the market, and my department has been supporting the CMA in its investigation. As a result of this investigation, the CMA provisionally found that the manufacturer abused its dominant position and overcharged the NHS by millions of pounds for liothyronine tablets. The CMA also found that, although the price of liothyronine went up by almost 6,000%, production costs remained broadly stable.

I should stress that the findings are provisional at this stage. There has been no definitive decision that there has been a breach of competition law. The CMA is carefully considering representations from the company before deciding whether the law has been broken. In response to the question from the noble Lord, Lord Turnberg, I hope that the CMA's decision will be issued this year. If it finds that the company has infringed competition law, it can issue it with a penalty of up to 10% of the company's global turnover and direct it to lower the price. Noble Lords should be assured that on top of any CMA penalty, where companies have breached competition law we will also seek damages and invest that money back into the NHS.

In addition to the CMA's investigatory work, the department, since last year, now has stronger powers to set the prices of generic medicines following the Health Service Medical Supplies (Costs) Act 2017, which we discussed at about this time last year. We can now also set the prices of generic medicines from companies that are members of the voluntary PPRS. Concordia is in the PPRS, so it is important to say in response to the question posed by the noble Lord, Lord Hunt, and my noble friend Lord Borwick that before the 2017 Act we would not have been able to act on the price, even if we had wanted to, without referring it to the CMA.

The department has also taken new powers to require pharmaceutical companies to disclose information about the sales values and costs of medicines in order to support the department's powers to set selling prices. These are set out in the Health Service Products (Provision and Disclosure of Information) Regulations 2018, which come into force on 1 July.

Several noble Lords asked why we are not setting a selling price for liothyronine. I also note that my noble friend Lord Borwick said that Concordia had told him that the department had agreed the price of liothyronine. However, following investigations in the department, I can confirm that that is not the case.

On the face of it, I understand the attractiveness of price setting in this case but at this point in time, when the CMA is carrying out an investigation—and notwithstanding the discussion we had earlier—it is the right approach for that to continue, while also taking steps to make sure that appropriate prescribing behaviour goes on within the NHS. Therefore, in this case I believe it is appropriate to separate the two issues. I have confidence in the CMA's work on this case and I want it to conclude its investigation and come to the judgment that it sees fit.

However, this is not the only tool in our box. We are actively monitoring the price increases of other generic medicines and, where they are not already under investigation by the CMA—and once our information requirements are in place—we will open discussions with some companies shortly, although noble Lords will appreciate that it would be wrong to disclose which companies or which drugs are involved at this stage. Where we believe that a lower price is justified, we may consider imposing a price if the company is not willing to lower it voluntarily. I can confirm to the House that we have the powers to do so and are prepared to act if necessary.

However, we need to act carefully. Typically, where there is little or no competition for an off-patent or generic medicine, this is because, as has been stated, it is a relatively low-volume product. As a result, manufacturers do not benefit from economies of scale and, if they think the price is too low, they may withdraw their product from the market. This would mean that patients would not have access to their medicines at all, which could obviously have detrimental impacts. We have seen that happen in other European countries.

However, in the case of liothyronine, I am pleased to tell the House that there are now multiple marketing authorisations in the UK for the drug. Increased competition traditionally leads to more resilient supply chains and lower prices. We will be watching carefully to see whether that happens in this case and are prepared to act if it does not.

In response to a specific question from my noble friend Lord Borwick about whether regulatory requirements from the MHRA were the cause of the price increase, I know that Concordia suggested this and we have discussed it with the MHRA. However, it is unlikely that that could have led to a price increase of 6,000%. Liothyronine is an old product and when Concordia applied for a marketing authorisation, it was only right that the MHRA required compliance with the minimum standard. But as I said, I do not believe that is a justification for that scale of increase.

My noble friend also talked about imports from other countries. Medicines licensed in the UK and other member states can be parallel imported as long as the imported product has no therapeutic difference from the UK product. As has been stated in this case, small differences in the formulation can significantly change the therapeutic effect on the patient. That is not to say that imported products are unsafe, but if a patient changes to a different source of the product their symptoms may not be controlled to the same extent, which only emphasises how important it is to get the right medication for the right patients through the NHS.

My noble friend Lord Lucas made some observations about the current operation of the PPRS. It undoubtedly has some flaws, which we will attempt to rectify as we negotiate a new one. In 2016-17, the PPRS paid £1.7 billion back to the NHS from drugs companies. I should also point out that it does not apply to unbranded generics, of which liothyronine is one, but it obviously applies to the vast bulk of medicines bought by the NHS. He suggested tendering for generics, which the Commercial Medicines Unit and NHS England are starting to do. It is also one of the options under consideration for getting the prices of specials down, which, again, was something we made progress on in discussions on the Bill last year.

My noble friend made an interesting and radical proposal for a state generics manufacturer. Intermountain Healthcare, which serves the Mormon community in Utah, is setting up a not-for-profit generics manufacturer. I have asked the department to get in touch with it, to understand the work it is doing. It might be possible through a university but I am not sure that state aid rules would allow us to set up a state-owned generics manufacturer. Once we have left the European Union, however, perhaps that could be one of the Brexit dividends.

The noble Baroness, Lady Jolly, asked specifically about the cost of other free medicines. Prescription entitlements were last reviewed under the last Labour Government, who looked at the cost of making all drugs free, which would be about £500 million. As the noble Baroness knows, when the coalition Government came in we decided that that would not be the right use of money and there is no intention to review that at this point. I am sorry to disappoint the noble Baroness.

The noble Baroness asked specific questions about the regulations themselves, which I think was the first time they were discussed this evening. I am grateful to her for that. I will need to write to her on some of the specifics but the review will be completed on 1 April 2019, so I can provide her with that reassurance. We have calculated the QALY benefits of specifying prices in the usual way and I am happy to write to the noble Baroness on the technical aspects of that.

She also asked about deciding on temporary pricing. As I have hinted, this is something we are starting to test. We are taking on these powers and we need to move cautiously. Ideally, we do not want to exercise them at all but if we do, we will do so in consultation with industry bodies.

I hope I have answered noble Lords' questions. I thank the noble Lord, Lord Hunt, for using the regulations to highlight the challenges we face in prescribing the right medicines for hypothyroidism and in making sure that we have the right powers to ensure that the NHS is not being ripped off by unscrupulous providers of any kind of medicine. In the commitments I have given to pursue this issue, I hope I have satisfied the noble Lord, Lord Hunt, and other noble Lords of the seriousness with which we take this issue. On that basis, I hope he feels able to withdraw his Motion tonight.

7.15 pm

Lord Hunt of Kings Heath: My Lords, I am very grateful to the Minister and to other noble Lords who have taken part in this interesting debate. The noble Lord, Lord Borwick, really put his finger on it when he said that the key point is the misinterpretation of guidance. As my noble friend Lord Turnberg said, essentially, the system has gone the wrong way about this. Instead of trying to deal with the prices, guidance has been produced that is pretty restrictive and then CCGs have reinterpreted the guidance to make it even more restrictive. As the noble Baroness, Lady Jolly, said, the problem is that if you cannot drive down the cost of T3, the emphasis is almost bound to be on clinical restrictions, which are hard to start with and are then misinterpreted.

[LORD HUNT OF KINGS HEATH]

On the point raised by my noble friend Lady Wheeler, who asked a number of questions about the regulations before us, I just say to the Minister that I hope that the review, to be published in April 2019, could be shared with noble Lords in one way or another, because I think that there will be general interest in it. I am grateful to the Minister, because he said that the Government are committed to pursuing further with NHS England the way that the guidance has been interpreted. He has also promised me a progress report on the delightful workings of the south regional medicines optimisation committee, which I am sure all noble Lords will be very anxious to see. He has also invited us to send to him details of cases where there is clear evidence that the guidance is not being pursued. We will pursue that; it is all very helpful.

On the issue of pricing and competition, I very much take the Minister's point about the unbranded generic market generally working well; I agree with him. Clearly there is an issue when it is not working well. One question I will put is whether the department should have intervened earlier; I think it might have done. Hopefully, in the future, it will be able to do so. On PPRS, the noble Lord, Lord Lucas, made a very interesting intervention—but, from my point of view, the PPRS agreement was a good one, as it basically stabilised the costs of branded drugs to the NHS because of the rebate scheme, which meant that, if the costs went above a certain limited level, the extra cost was paid back into the NHS. The problem is that it was not paid back to the NHS—it was paid to the Treasury, because it discounted in advance the likely rebate. The tragedy—and why this is very important in terms of future negotiations on PPRS—is that, if that rebate money had then been routed towards investing in new medicines, we would have had a win-win situation where, essentially, the pharmaceutical industry would have paid for its investment in new medicines. The noble Lord will know that one of the issues facing the branded pharma industry is that the NHS is a lousy customer when it comes to the uptake of new medicines. This is a separate issue, but one that is really important for the future.

Overall, I am very grateful to noble Lords who have taken part in this excellent debate. Considerable progress has been made and the commitments given by the Minister are very welcome indeed. I beg leave to withdraw the Motion.

Motion withdrawn.

7.19 pm

Sitting suspended.

European Union (Withdrawal) Bill

Commons Amendments

7.30 pm

Motion

Moved by ***Baroness Evans of Bowes Park***

That the Commons amendments be now considered forthwith.

Lord Adonis (Lab): My Lords, on behalf of the serried ranks behind me I enter a note of dissent and say how surprised I am that the Bill is returned to us this evening before your Lordships have even had a chance to read the *Hansard* account of what was said in the House of Commons just three hours ago, still less to consider it. Our Printed Paper Office in mid-afternoon did not even have a copy of David Davis's critical Written Ministerial Statement published at 1pm. I had to tell the Printed Paper Office that I thought it existed and the Printed Paper Office had to tell me to go to the Vote Office in the House of Commons to get a copy because none was available in your Lordships' House.

Throughout the passage of the Bill I have made an issue of these important procedural points, at the cost of making myself less than wildly popular with the Whips, because, as is becoming increasingly clear, what is happening on the Bill is a dry run for the decisions that Parliament will take on the EU withdrawal treaty—or the lack of a withdrawal treaty—in the months to come. Those decisions are probably the most important that we will take in our time as Members of this House and this Parliament and I therefore wish to put on record what I think many Back-Bench Members of your Lordships' House believe, which is, first, that it should ultimately be for the House and not for the Whips, still less for the Government, to decide when and for how long we debate these vital matters of state, and secondly, that we should not bow to the instructions of the Government Chief Whip when the noble Lord, Lord Taylor, is behaving unreasonably.

Noble Lords: Oh!

Lord Adonis: It is not reasonable for us to consider the Commons Reasons before we have even had a chance properly to read and consider what the House of Commons said.

Motion agreed.

Motion A

Moved by ***Baroness Evans of Bowes Park***

That this House do agree with the Commons in their amendments 19R to 19T.

COMMONS AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 19 but propose Amendments 19A and 19B in lieu

19A Page 8, line 43, at end insert the following new Clause—

"Parliamentary approval of the outcome of negotiations with the EU

(1) The withdrawal agreement may be ratified only if—

(a) a Minister of the Crown has laid before each House of Parliament—

(i) a statement that political agreement has been reached,

(ii) a copy of the negotiated withdrawal agreement, and

(iii) a copy of the framework for the future relationship,

(b) the negotiated withdrawal agreement and the framework for the future relationship have been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown,

(c) a motion for the House of Lords to take note of the negotiated withdrawal agreement and the framework for the future relationship has been tabled in the House of Lords by a Minister of the Crown and—

(i) the House of Lords has debated the motion, or

(ii) the House of Lords has not concluded a debate on the 17 motion before the end of the period of five sitting days 18 beginning with the first sitting day after the day on which the House of Commons passes the resolution mentioned in paragraph (b), and

(d) an Act of Parliament has been passed which contains provision for the implementation of the withdrawal agreement.

(2) So far as practicable, a Minister of the Crown must make arrangements for the motion mentioned in subsection (1)(b) to be debated and voted on by the House of Commons before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the EU in accordance with Article 50(2) of the Treaty on European Union.

(3) Subsection (4) applies if the House of Commons decides not to pass the resolution mentioned in subsection (1)(b).

30 (4) A Minister of the Crown must, within the period of 28 days beginning with the day on which the House of Commons decides not to pass the resolution, make a statement setting out how Her Majesty's Government proposes to proceed in relation to negotiations for the United Kingdom's withdrawal from the EU under Article 50(2) of the Treaty on European Union.

(5) A statement under subsection (4) must be made in writing and be

37 published in such manner as the Minister making it considers appropriate.

(6) This section does not affect the operation of Part 2 of the Constitutional Reform and Governance Act 2010 (ratification of treaties) in relation to the

40 withdrawal agreement.

41 (7) In this section—

42 "framework for the future relationship" means the document or documents identified, by the statement that political agreement has been reached, as reflecting the agreement in principle on the substance of the framework for the future relationship between the EU and the United Kingdom after withdrawal;

46 "negotiated withdrawal agreement" means the draft of the withdrawal agreement identified by the statement that political agreement has been reached; "ratified", in relation to the withdrawal agreement, has the same meaning as it does for the purposes of Part 2 of the Constitutional Reform and Governance Act 2010 in relation to a treaty (see section 25 of that Act);

54 "sitting day" means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day);

56 "statement that political agreement has been reached" means a statement made in writing by a Minister of the Crown which—

(a) states that, in the Minister's opinion, an agreement in principle has been reached in negotiations under Article 50(2) of the Treaty on European Union on the substance of—

(i) the arrangements for the United Kingdom's withdrawal from the EU, and

(ii) the framework for the future relationship between the EU and the United Kingdom after withdrawal,

(b) identifies a draft of the withdrawal agreement which, in the Minister's opinion, reflects the agreement in principle so far as relating to the arrangements for withdrawal, and

(c) identifies one or more documents which, in the Minister's opinion, reflect the agreement in principle so far as relating to the framework."

19B: Page 15, line 12, at end insert—

"( ) section (Parliamentary approval of the outcome of negotiations with the EU),"

LORDS NON-INSISTENCE, AGREEMENT AND AMENDMENTS

The Lords do not insist on their Amendment 19 and do agree with the Commons in their Amendments 19A and 19B in lieu and do propose Amendments 19C to 19E, 19G to 19L and 19P as amendments to Commons Amendment 19A—

19C Line 17, after "five" insert "Lords"

19D: Line 18, after "first" insert "Lords"

19E: Line 30, leave out "28" and insert "21"

19G: Line 40, at end insert—

"(6A) In subsection (1) "framework for the future relationship" means the document or documents identified, by the statement that political agreement has been reached, as reflecting the agreement in principle on the substance of the framework for the future relationship between the EU and the United Kingdom after withdrawal."

19H: Line 41, at end insert—

""Commons sitting day" means a day on which the House of Commons is sitting (and a day is only a day on which the House of Commons is sitting if the House begins to sit on that day);"

19J: Line 42, leave out from beginning of line 42 to end of line 46

19K: Line 46, at end insert—

""Lords sitting day" means a day on which the House of Lords is sitting (and a day is only a day on which the House of Lords is sitting if the House begins to sit on that day);"

19L: Line 54, leave out from beginning of line 54 to end of line 56

19P: Line 37, at end insert—

"(5A) A Minister of the Crown must make arrangements for—

3 (a) a motion for the House of Commons to approve the statement mentioned in subsection (4), to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the statement is made, and

(b) a motion for the House of Lords to take note of the statement to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the statement is made.

(5B) Subsection (5C) applies if the Prime Minister makes a statement before the end of 21 January 2019 that no agreement in principle can be reached in negotiations under Article 50(2) of the Treaty on European Union on the substance of—

(a) the arrangements for the United Kingdom's withdrawal from the EU, and

(b) the framework for the future relationship between the EU and the United Kingdom after withdrawal.

(5C) A Minister of the Crown must, within the period of 14 days beginning with the day on which the statement mentioned in subsection (5B) is made—

(a) make a statement setting out how Her Majesty's Government proposes to proceed, and

(b) make arrangements for—

24 (i) a motion for the House of Commons to approve the statement mentioned in paragraph (a), to be moved in that House by a Minister of the Crown within the period of seven Commons sitting days beginning with the day on which the statement mentioned in paragraph (a) is made, and

(ii) a motion for the House of Lords to take note of the statement mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of seven Lords sitting days beginning with the day on which the statement mentioned in paragraph (a) is made.

(5D) A statement under subsection (5B) or (5C)(a) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(5E) Subsection (5F) applies if, at the end of 21 January 2019, there is no agreement in principle in negotiations under Article 50(2) of the Treaty on European Union on the substance of—

(a) the arrangements for the United Kingdom's withdrawal from the EU, and

(b) the framework for the future relationship between the EU and the United Kingdom after withdrawal.

(5F) A Minister of the Crown must, within the period of five days beginning with the end of 21 January 2019—

(a) make a statement setting out how Her Majesty's Government proposes to proceed, and

(b) make arrangements for—

50 (i) a motion for the House of Commons to approve the statement mentioned in paragraph (a), to be moved in that House by a Minister of the Crown within the period of five Commons sitting days beginning with the end of 21 January 2019, and

(ii) a motion for the House of Lords to take note of the statement mentioned in paragraph (a) to be moved in that House by a Minister of the Crown within the period of five Lords sitting days beginning with the end of 21 January 2019.

(5G) A statement under subsection (5F)(a) must be made in writing and be published in such manner as the Minister making it considers appropriate.

(5H) For the purposes of this section—

(a) a statement made under subsection (4), (5C)(a) or (5F)(a) may be combined with a statement made under another of those provisions,

(b) a motion falling within subsection (5A)(a), (5C)(b)(i) or (5F)(b)(i) may be combined into a single motion with another motion falling within another of those provisions, and

(c) a motion falling within subsection (5A)(b), (5C)(b)(ii) or (5F)(b)(ii) may be combined into a single motion with another motion falling within another of those provisions."

COMMONS AGREEMENT AND AMENDMENTS TO AMENDMENT

The Commons agree with the Lords in their Amendments 19C to 19E, 19G to 19L and 19P and propose the following amendments to Lords Amendment 19P—

19R: Line 3, leave out from "motion" to second "the" and insert "in neutral terms, to the effect that the House of Commons has considered the matter of"

19S: Line 24, leave out from "motion" to second "the" and insert "in neutral terms, to the effect that the House of Commons has considered the matter of"

19T: Line 50, leave out from "motion" to second "the" and insert "in neutral terms, to the effect that the House of Commons has considered the matter of"

Baroness Evans of Bowes Park: My Lords, on Monday evening this House voted to send Amendment 19P back to the other place because, as noble Lords supporting it made clear during the debate, they wanted to guarantee that the other place had the chance to consider that amendment. The other place has now had that chance and has voted to reject Amendment 19P, by a majority of 16, and to offer in its place the Government's amendment. As noble Lords will be aware, this issue is the only outstanding point of difference on the Bill after many months of intensive scrutiny by both Houses. We and the House of Commons have debated this issue on multiple occasions. Where we stand today demonstrates the movement that has happened as a result.

As I outlined to the House on Monday, the amendment before us again today provides that, if Parliament rejects the final deal we make with the EU, the Government must bring forward not just a Statement but also a Motion. This will guarantee an opportunity for both Houses to express their views on the Government's proposed next steps. The amendment also covers three sets of circumstances in which that opportunity would arise: should Parliament reject the Government's deal with the EU, should no agreement be reached, or should no deal be agreed by 21 January 2019. As my right honourable friend the Secretary of State said earlier today, the amendment sets out in law a formal structure for Parliament to express its views in each of three possible scenarios set out. Importantly, the amendment also passes the Government's three tests: it does not undermine the negotiations; it does not change the constitutional role of Parliament and Government in negotiating international treaties; and it respects the result of the referendum.

Respectfully, I submit that your Lordships' House has done its job. We asked the House of Commons to consider this issue again. They have done that. They have rejected our suggestion and supported the Government's amendment. I believe that our role is now to accept their view as expressed in the vote only a few hours ago. I hope that noble Lords, whatever their personal views on the issue at hand, will agree. In conclusion, I think we should reflect for a moment, as a House, on the milestone that the passage of the Bill will represent. This House and the other place have spent 11 months considering the Bill line by line. It is better for that work. The Bill's passage will mean that the UK has the tools it needs to preserve the statute book after exit day, but it is not the end of the process of legislating for Brexit: this House will continue to play a critical role in the months and years ahead and I, for my part, know that it will be more than up to performing this task and complementing the work of the other place. I beg to move.

Baroness Hayter of Kentish Town (Lab): My Lords, the House of Commons has done what we had hoped: they have considered and debated our meaningful vote amendment. They have not done what some of us hoped and agreed with it, but I think we should celebrate how far we have come on this issue since the Bill arrived in this House. At that stage, there was absolutely nothing in the Bill about a vote, meaningful or otherwise, on the withdrawal deal and there was no mention of no deal. All the Prime Minister had said was that there would be a vote in both Houses on a deal. There was no commitment to that in law and the result of such a vote would have had no legislative consequence. The vote would have simply been on a Motion, which could be ignored—I will not go into whether it would have been amendable. Any such vote in this Chamber would have been particularly meaningless, as either we would have felt obliged to vote the same way as the Commons, whatever our view, or we would have voted differently and then been ignored, both of those, of course, being meaningless for this House, because as my noble friend Lord Grocott rightly feared, if there were two votes, one in each House, it would raise the question of the primacy of the House of Commons.

So that was all we had: the promise of a Motion but untied to any legislation. What we now have in the Bill is that the withdrawal agreement, including the framework

for the future relationship, can be ratified only if it has been approved by the Commons and debated here. That is a legislative requirement akin to the Article 50 requirement for a vote in the European Parliament. That is a major concession. It would not have been there without the hard work of the noble Viscount, Lord Hailsham, without your Lordships' commitment to ensuring that this matter was in the Bill, and without us sending the amendment back on Monday.

However, I have a query about what would happen if there was no deal, as to my mind the rather extraordinary last-minute Written Ministerial Statement, as a result of which Dominic Grieve seems to have felt that he could support the Government this afternoon, does not really clarify things. I am not sure what it means. Will the Motion be amendable? Liam Fox is already out and about, briefing that actually there is no change as a result of that. To me, it reads that it still leaves it to the Speaker to decide whether or not it is sufficiently neutral to be amendable. So it is not actually an undertaking that such a Motion will be amendable. Perhaps the Leader could shed a bit of light on the significance of what made such a difference to the right honourable Dominic Grieve.

In the meantime, with the catalogue of changes to the Bill outlined by my noble friend Lady Smith on Monday and the insertion of parliamentary approval of the withdrawal deal agreed today, I hope even the Government will recognise the vital role played by your Lordships' House, and that our detractors, particularly in parts of the press, will realise that it is our role to ask the Government, and the Commons, to think again. We have done that, and to quite a large extent we have been heard.

Lord Newby (LD): My Lords, it seems rather hard to believe but this really will be the last time we debate the withdrawal Bill in your Lordships' House.

As we did on Monday, we are focusing on only one issue—indeed, the significance of just two words in relation to a Motion that the Government would bring forward in the event of reaching no agreement with the EU on Brexit terms. The two words are "neutral terms"—a phrase, incidentally, which most of us have never heard before. The argument which won the day in the Lords was that "neutral terms" would preclude the Commons having the opportunity to express a view on the merits of the Government reaching no deal in the Brexit negotiations and on what should be done next. The Government argued that their formulation was necessary to preserve the constitutional role of Parliament and that the Grieve amendment would mandate the Government in completely unacceptable ways and they would not countenance it. Your Lordships' House took a different view and that is why we are still here today.

Between the Bill leaving your Lordships' House on Monday evening and this afternoon, the Government have clearly thought deeply about this matter and realised that their understanding of parliamentary procedure on Monday was flawed. They produced the Written Ministerial Statement—which, unless I missed it, the Leader did not refer to at all, yet that has been the crucial thing in the debates today—which, in lay man's terms, says that it will be up to the Speaker to decide whether or not any government Motion in the event of no deal would be amendable, and that, in any event, there is nothing to stop the Commons debating any Motion that they want to on this issue, and that time would be found for them to do it.

There is now a battle of spin as to whether this represents a significant climbdown by the Government or whether winning the vote represents a victory. I wish that the right honourable Member for Beaconsfield had supported his own amendment this afternoon. But if I am disappointed, neither the Government nor Parliament can take any satisfaction from what has happened today. This week's events demonstrate the contempt in which the Government hold Parliament. First, they try to muzzle it by putting "neutral terms" into the Bill. Then, fearing defeat, they publish a Written Ministerial Statement just minutes before the debate in the Commons which rips up their earlier justification for using the "neutral terms" ploy. At every turn they have demonstrated their only consistent characteristic: the determination to survive to another day. If there were a World Cup in kicking the can down the road, the Government would win it hands-down. But the can cannot be kicked down the road for ever.

7.45 pm

The Government are going into next week's European Council still with no policy, vision or credibility. Brexit ranks way down the list of the EU's priorities, while inevitably remaining the consuming, paralysing preoccupation here. As the withdrawal Bill goes on to the statute book, the Government cannot answer any of the key questions which Brexit poses. For that they bear a heavy responsibility, and for that, in time, they will be harshly judged.

The House knows that we on these Benches believe that Brexit will make us poorer, less tolerant, less secure and less influential. We believe it would be an act of national self-harm. As noble Lords know, we have fought with every breath to amend the withdrawal Bill but in reality we are still in the early skirmishes of the overall Brexit battle. I am sure that the Leader and her team will be hugely relieved tonight to have survived this far. They may deserve their rest tomorrow but they are going to need it, because we will not rest until we have stopped Brexit.

Lord Cormack (Con): My Lords—

Noble Lords: No! Sit down!

Lord Cormack: I thought it was the hallmark of your Lordships' House that we listen to each other's arguments. All I want to say is that I much prefer the analysis of the noble Baroness, Lady Hayter, to that of the noble Lord, Lord Newby. I believe that your Lordships' House has in fact improved the Bill very significantly and I think we should take quiet pride in that. I believe we were entirely right to pass that amendment on Monday and to send it back to the other place. I said then and I repeat now: the ultimate power lies with the elected House. We are right to accept what it has decided today, without Division, but I think it would be to the advantage of us all if there was a little more mutual tolerance of differing views in your Lordships' Chamber.

Lord Adonis: My Lords, I second what the noble Lord, Lord Cormack, has said. I do not think the mood of the House has been at its best this evening.

After the courageous speech of the noble Viscount, Lord Hailsham, on Monday, many of us were extremely disappointed that the other House did not assert the democratic power of Parliament and support the amendment of the noble Viscount and Mr Dominic Grieve. I watched the proceedings of the House of Commons from the Gallery, sitting next to the noble Duke, the Duke of Wellington, and the only comment I will make on that is if I go into battle in future, I would rather do that behind the noble Duke, the Duke of Wellington, than the Duke of York.

The position as it now stands is both highly confused and highly unsatisfactory. The text of the Bill says that in the extreme crisis of a proposed no-deal Brexit, all that the House of Commons will be allowed to do is to debate a take-note Motion. I was watching the House of Commons debate from the Gallery—we still do not have the *Hansard* account of it—and the most telling contribution was from Mr Hilary Benn, who put it like this: if future generations ask us what we did, all we can say is, "I took note". As he also said, in this extremity, the job of Parliament,

"is not to take note; it is to take charge".

When people say that Parliament should not give instructions and cannot negotiate, which has been the mantra of the Prime Minister in recent days, that misses the point that Parliament rightly gives instructions to the Executive all the time. That is why they are called the Executive: their job is to execute the will of Parliament.

The Commons even issues instructions on matters of peace and war—and rightly so, because we are a parliamentary democracy. When in 2013 the House of Commons declined to support David Cameron's recommendation for the bombing of Syria, after the vote the then Prime Minister said:

"I believe in respecting the will of the House of Commons. It is very clear that the House does not want to see British military action. I get that and the Government will act accordingly".

In the case of a no-deal Brexit, it is absolutely within the power and duty of the House of Commons, as the sovereign power in this democracy, similarly to tell the Government that this is not acceptable and that an alternative course should be followed. The Government then have a democratic responsibility to act accordingly.

This brings us to the curious Written Ministerial Statement from the Secretary of State for Exiting the EU, which was tabled at 1 pm today. It says:

"It will be for the Speaker to determine whether a Motion when it is introduced by the Government under the European Union (Withdrawal) Bill is or is not in fact cast in neutral terms".

As that is precisely what the Standing Orders of the House of Commons say in any event, that is saying nothing at all—and, crucially, those Standing Orders specifically say that Motions in neutral terms are unamendable, which is the precise point at issue.

There is then this sentence:

"The Government recognises that it is open for Ministers and members of the House of Commons to table motions on and debate matters of concern and that, as is the convention, parliamentary time will be provided for this".

Lord True (Con): My Lords—

Lord Adonis: I am not giving way. The noble Lord spoke at huge length on Monday and I am taking my opportunity to speak.

To my great surprise, this satisfied Mr Grieve. All I can say, having, like other noble Lords, spent more than 100 hours in this House on the European Union (Withdrawal) Bill, is that I simply do not trust the Government to uphold these constitutional conventions. The noble Lord, Lord Callanan, David Davis and Jacob Rees-Mogg are not interested in parliamentary conventions; they are ruthlessly determined on a hard Brexit. It is not only them; the Prime Minister now routinely ignores resolutions of the House of Commons —because she so often loses them—and has propounded a remarkable new constitutional doctrine that the Government regard themselves as bound only by statutes, not by other resolutions of the House of Commons.

It was precisely because of this dangerous new doctrine of government sovereignty trumping parliamentary sovereignty—

Lord True: My Lords—

Lord Adonis: My Lords, I have made it very clear that I am not giving way to the noble Lord.

It is precisely because of this dangerous new doctrine of government sovereignty trumping parliamentary sovereignty that those of us standing up for parliamentary democracy sought to enshrine these key procedural issues in the Bill. It is a sad day for Parliament that we did not succeed and that we may now be dependent on the Government to observe conventions that they have so far been unwilling to preserve.

I will make one final point on the position of this House. We have been remarkably assiduous on this Bill. I think it is true to say that we have spent longer debating it than any other Bill in our entire 800-year history—and, tellingly, we spent about 50% longer debating it than did the House of Commons. As a long-serving Member of your Lordships' House, perhaps I may be allowed to say that our besetting weakness in this House is self-congratulation. It is not helped by the fact—I learned this trick as a Minister—that making a great show of congratulating the House on the brilliance of its revision is a seduction technique to minimise the extent of that revision.

In defence of the noble Lord, Lord Callanan, he has not gone in for much seduction, but there has been far too much self-congratulation on the other Benches of this House in the face of the reality of the situation that we face. The reality, as I see it, is this. We are presently on course for a hard Brexit and there is still no provision in statute to prevent such an outcome. On the contrary, the Government, with wafer-thin majorities—but none the less sufficient majorities—in the House of Commons have fought off all attempts at setting new national policy on a sensible and credible course. The truth is that for those of us in both Houses of Parliament who favour a sensible Brexit, and a people's vote to allow the people to stop Brexit—

Lord Grocott (Lab): Will my noble friend give way?

Lord Adonis: My Lords, I am drawing my remarks to a close. My noble friend can speak in a minute.

The truth is that those of us who favour a sensible Brexit or a people's vote to allow the people to stop Brexit have suffered an unmitigated defeat on this Bill. Victories are not made up of accumulated defeats. We need to start winning soon or the country will lose very badly when the British people are forced into a hard Brexit that will make everyone poorer in only nine months' time.

Lord True: My Lords, when the noble Lord declined to give way either to me or to his noble friend Lord Grocott, one of his explanations was that on Monday I spoke for too long when I troubled your Lordships with a brief intervention. I invite the historians of our debate to examine how long and how often the noble Lord, Lord Adonis, has spoken in comparison with some of the rest of us.

I have listened to the comminations of the noble Lord, Lord Newby, my noble friend Lord Cormack and at length of the noble Lord, Lord Adonis. I note the empty Benches of the Labour Party opposite. The party which fills those Benches tried to stop this Bill and then sends its people home when it thinks it has no chance of bringing the Government down—

Baroness Hayter of Kentish Town: We have never tried to stop this Bill.

Lord True: I am old enough to know that you should judge people by their actions, and I have been watching them over the past few weeks.

I do not often say this, but I have a great deal of respect for the Liberal Democrats who are absolutely consistent in their view, and the noble Lord, Lord Newby, has honourably declared it. Others waver. I respect the noble Lord, Lord Adonis, for his view, but the minority in this House who actually reflect the majority opinion in this country do not need moral lectures and I believe that we should now proceed to vote. If the noble Lord, Lord Adonis, or the noble Lord, Lord Newby, feel as strongly as they have told this House and the country about this matter, let them now divide the House and thus show where their opinions stand.

Baroness Evans of Bowes Park: My Lords, as I hope I draw this debate to a close, I would like to take this opportunity to express my gratitude to all noble Lords who have engaged constructively with the Government throughout our consideration of this Bill. I am sure that noble Lords on all Benches will join me in paying tribute to the staff of the House who have worked tirelessly and professionally to support that consideration.

I would also like to pay tribute to the work of my Front Bench colleagues and those of the Opposition and Liberal Democrat parties who have worked on this Bill. Their stamina alone, as has been seen on the Back Benches across the House, has been incredibly impressive, as has the quality of debate and scrutiny that they have engaged in.

Finally, I am sure that all noble Lords will join me in thanking the members of the Bill team for their hard work. I hope that at some point they will be able to look back over the past 11 months with some kind of pleasure, but I expect that that may take quite a while. On behalf of the House, we are extremely grateful to them.

Despite the comments of the noble Lord, Lord Adonis, I think that the scrutiny of your Lordships' House has seen improvements made to this Bill. More than 230 amendments have been made by both Houses, and while there are a number of issues on which the Government did not agree, I am pleased that we have been able to find solutions and compromises to most of the concerns raised.

The subject before us today—the way in which Parliament can have a meaningful say about our exit from the EU—is a vitally important matter. We have debated it at length, and as the noble Baroness, Lady Hayter, said, the proposition in the Bill is very different as a result of that debate. But the elected Chamber has now made its decision, a decision that your Lordships said on Monday that they wanted to give it the opportunity to take. The elected Chamber has decided how it wishes to proceed: with considering the Motions offered by the Government's amendment. I now ask this House to respect that decision. I beg to move.

Motion A agreed.

House adjourned at 7.59 pm.

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