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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday 29 April 2019

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Corporate Governance

Question

2.36 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government what steps they are taking to raise public confidence in, and support for, business and industry through better corporate governance.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, we have reformed our corporate governance framework to make businesses more open and accountable. A revised UK corporate governance code gives employees a stronger voice in the boardroom and new legislation requires companies to report on their executive pay ratios.

Lord Haskel (Lab): My Lords, we are all aware of the declining confidence in companies, particularly those delivering public goods and services, such as Carillion. Care homes are going bust and the probation service is in crisis at the moment. Led by Tomorrow's Company—I declare an interest—thought has been given as to how we might restore public confidence in the trustworthiness of such companies. The proposal is that the Government should support the use of a British standard for the corporate governance of companies delivering these goods and services, in the same way that British standards enable us to trust public transport and health services.

Noble Lords: Question.

Lord Haskel: I am confident that British standard 95009 will be published next month. My question to the Minister is this—

Noble Lords: Hooray!

Lord Haskel: Will the Government insist that companies delivering products and services to the public must satisfy this British standard, and that procurement bodies must also abide by it?

Lord Henley: My Lords, I agree with the noble Lord that public trust in companies and their governance is very important. I assure him that, according to the most recent survey, levels of public confidence are increasing rather than decreasing, as he put it. I am also aware of the work being done by the British Standards Institution in developing two new specifications on sustainable investment management and sustainable finance. It is premature to say whether the Government should expect suppliers to comply but we will obviously consider it carefully in due course.

Baroness O'Neill of Bengarve (CB): Does the Minister consider standards of trust an adequate metric for the trustworthiness of companies?

Lord Henley: My Lords, the noble Baroness asks a difficult philosophical question. It is important to try to maintain public trust. In my response to the noble Lord, Lord Haskel, I tried to make it clear that we have seen some increase in it, but we also think it important—hence the work of the FRC and others on the UK corporate governance code—to make sure that we have an appropriate code so that companies can operate in a proper manner.

Lord Fox (LD): My Lords, the Minister has talked about openness. I know that the CMA has reported back on the auditing business and I would not expect him to comment on the Government's response to that yet unless he wishes to do so. Does he agree that business reputation is not in the hands of the auditors? It is the responsibility of company owners, their boards and their managers. I am not sure where the noble Lord is getting his data on trust because there is a crisis of trust between society and big business. If he does not recognise that, he is missing something. What measures are the Government considering taking in order to hold company shareholders, boards and managers to their wider responsibilities to society?

Lord Henley: I agree with the noble Lord on the first part of his question, which is that this is a matter for companies, and it is right that they should get it right. On levels of trust, what I have been trying to make clear is that we have seen a growth in public trust in business. It is still too low, but the most recent 2019 Edelman global trust barometer shows a small increase, which is to be welcomed and something we would encourage. As the noble Lord says, it is too early for me to comment on the CMA.

Baroness Neville-Rolfe (Con): My Lords, I am glad to hear my noble friend's comments about trust, but could more be done to enforce the existing rules of corporate law? There is a problem in that the bad eggs give business a very bad name, so good enforcement early on of the right kind, led strongly by the FRC, can be extremely helpful. Does my noble friend agree?

Lord Henley: My Lords, I do agree with my noble friend. I think that she will agree that we have done a great deal on corporate governance ever since we published the Green Paper in 2016, and there is the work done by the FRC and others right up to publishing and bringing into operation the new code in January of this year.

Viscount Hanworth (Lab): My Lords, our failure in corporate governance has enabled the City of London to consign many of our utilities and industries to foreign ownership. Are the Government doing anything to staunch this haemorrhage?

Lord Henley: My Lords, I did not say that there has been a failure in corporate governance, rather that it is right that the Government should be doing what they have been doing; hence the work of the FRC on the corporate governance code and the work instituted by the Government when we published our Green Paper back in 2016, for example.

Viscount Hanworth: I wonder if the noble Lord could answer my question more directly.

Lord Henley: My Lords, I believe that I have answered his question.

Lord Stevenson of Balmacara (Lab): My Lords, surely the issue here is not philosophical but political. There is a huge gap in the Government's legislative programme at the moment and plenty of time to fill it. Since the Green Paper of 2016 the Government have been promising to do something about corporate governance but we have yet to see the detail. For example, when are we going to get the full result of the words spoken by the Prime Minister on the steps of Downing Street when she enthused about workers on boards? These things are important but they have never been acted on; it is about time that they were.

Lord Henley: My Lords, we have made clear our views about workers on boards. The FRC has also made clear in its revised code that it requires boards to have in place at least one director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director. We do not think it is right to go ahead with what the noble Lord is suggesting, and we have made that quite clear from the start. It is a matter for companies to decide what is appropriate.

Lord Cotter (LD): My Lords, does the Minister agree that management is the key issue when it comes to small businesses? I left school and went into a company that was run on the lines of "them and us" rather than the co-operative company it is now. It is owned by the employees. Good management is the key issue here.

Lord Henley: My Lords, I agree with the noble Lord that good management is obviously the issue. Whether good management should go down the route that he seems to be suggesting—I was not quite clear about employee share ownership—I do not know. However, it should be a matter for companies themselves to decide.

Brexit: Gibraltar

Question

2.44 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what representations they have received from the Chief Minister of Gibraltar regarding the United Kingdom's departure from the European Union.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): Ministers and officials from across government have worked closely with the Government of Gibraltar throughout the EU exit process to ensure that their priorities have been properly taken into account, including through the Joint Ministerial Council (Gibraltar EU Negotiations), which has met regularly since the referendum, most recently on 9 April.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, of course the Government of Gibraltar are co-operating with the UK Government on Brexit—they have to—but is the Minister not aware that the Chief Minister of Gibraltar has made it absolutely clear that his preferred option, and that of the people of Gibraltar, is to revoke the Article 50 withdrawal and stay in the European Union? Why are the Government ignoring the problem of the border between Gibraltar and the European Union?

Lord Callanan: The Chief Minister said that the withdrawal agreement works for Gibraltar and that people who care about Gibraltar should get behind the Prime Minister and support her in delivering this deal for the United Kingdom and Gibraltar. I am somewhat surprised to see the noble Lord raise the point about revocation, because I understand from the noble Lord, Lord Adonis, that it is now Labour's policy to support the result of the referendum.

Lord Chidgey (LD): My Lords, given that Spain publicly states that Gibraltar is her very first foreign policy commitment and interest, where does Gibraltar lie in the interests of the United Kingdom department for Brexit—particularly following the news today that the neo-Francoist far-right party Vox has won 23 seats in the Spanish congress and is in the position of kingmaker for a new Government?

Lord Callanan: We will have to wait and see the effect of the Spanish election, but we have a good working relationship with the Spanish Government. We have sat down and discussed all these issues openly and honestly and have had a good dialogue with them.

Lord Hannay of Chiswick (CB): My Lords, rather than quoting from a much earlier statement by the Chief Minister of Gibraltar, would the Minister recognise that he has now stated quite clearly—as the noble Lord, Lord Foulkes, said—that remaining in the European Union would be best for Gibraltar? Do the Government respect that view and, if so, what are they going to do about it?

Lord Callanan: I quoted accurately what the Chief Minister said. He has always been supportive of the withdrawal agreement. Clearly, Gibraltar voted by a large margin to remain, but it is also the view of the people of Gibraltar that they want to remain allied to the United Kingdom and to respect the result of the referendum.

Lord Collins of Highbury (Lab): My Lords, the Chief Minister has been absolutely precise that no deal is not an option for Gibraltar. He has made that clear, which is why he has backed revoking Article 50 if there is no deal. The reason for that is that Gibraltar cannot be sustained without a proper deal. What planning are the Government doing for Gibraltar in the event of no deal?

Lord Callanan: We are trying to prevent no deal by getting the withdrawal agreement passed. We are talking to the Labour Front Bench in the other place and we hope to get an agreement that will prove that it respects the result of the referendum.

Lord West of Spithead (Lab): My Lords, there has been a growth in the number of incidents of Spanish ships—whether naval, Guardia or whatever—infringing UK Gibraltar territorial seas. Can the Minister tell us how many there have been since January and what exact actions we have taken when the Spanish have done these things? They do not appear that robust.

Lord Callanan: It has not been my responsibility and I do not have an exact figure, but I would certainly be happy to write to the noble Lord about it. We raise each and every incursion with the Spanish authorities and protest about them.

Viscount Waverley (CB): My Lords, recognising that three borders are under negotiation, what can the Minister suggest? There is Gibraltar, Northern Ireland and Anguilla, whose issues are rarely brought to the attention of the Government.

Lord Callanan: All the overseas territories and British dependencies have been closely involved in the negotiations; we have regular meetings to consult them about the process of EU withdrawal.

Baroness Armstrong of Hill Top (Lab): My Lords, does the Minister recognise the great negotiating skills that the Chief Minister of Gibraltar, Fabian Picardo, has shown on basic agreements made by the Spanish Government about long-standing issues he hoped they could move forward with? The problem is that the British Government have let Gibraltar down phenomenally. I agree that he supported the withdrawal agreement, but the Chief Minister now says that really the only option for Gibraltar—an area of British territory that voted 94% to remain in the EU—is to restart this whole thing. Instead of playing party politics, will the Minister understand that this is a serious issue for everyone, in this country as well as in Gibraltar and the overseas territories? Will he recognise that he needs to take a more humble approach and that the Government need to show leadership in a way that has not happened to date?

Lord Callanan: I am very happy to agree with the first part of the noble Baroness's question, when she asked me to pay tribute to the work of the Chief Minister. I think he has done an excellent job, and we have worked closely with him in pursuing discussions with the Kingdom of Spain. In fact, with the full agreement of the Government of Gibraltar, we concluded a taxation treaty between ourselves and Spain only recently.

Lord Brooke of Alverthorpe (Lab): My Lords, given that the future of Gibraltar rests not on any decisions of the Labour Party but on decisions taken in the noble Lord's own party, what is the view of the ERG on Gibraltar and on Ireland? Will the Minister arrange for the leading members of the ERG to come here sometime and tell us how they are running the country?

Lord Callanan: I must apologise: I thought I was here to answer questions on behalf of Her Majesty's Government. If the noble Lord wishes to pose questions to the ERG, perhaps he would address them to it directly.

Africa: Population Growth

Question

2.51 pm

Asked by ***Lord Anderson of Swansea***

To ask Her Majesty's Government what assessment they have made of population growth in Africa; and whether their development policies aim to restrain such growth.

The Minister of State, Department for International Development (Baroness Sugg) (Con): My Lords, more than half of expected growth in global population between 2017 and 2050 is expected to occur in Africa. Rapid population growth could of course impact sustainable development. We are working with African Governments to unlock investment in education, empowerment and opportunities for employment to enable young people across Africa to fulfil their potential and build prosperous futures. This includes supporting the rights of women and girls to choose whether and when to have children.

Lord Anderson of Swansea (Lab): My Lords, first, I congratulate the noble Baroness on her new appointment. As an example, in 1950, the population of Nigeria was 38 million, and now it is over 190 million. UN estimates are that, by 2050, it will be 411 million and, by the end of the century, 794 million. Are these figures not alarming? Does she agree that, in respect of the dignity and freedom of women, the Government should do all they can in co-operation with African countries to further family spacing?

Baroness Sugg: I thank the noble Lord for his welcome. He is right to highlight that. Further, Niger has the highest fertility rate in the world. To harness the benefits of demographic transition, we need to invest majorly in quality education, as well as family planning and helping women to space their families properly. We think that sustainable progress on these issues must be African owned and led, and we are supporting our partners to plan for the population growth and to empower and invest in the region's young and growing populations through greater access to voluntary family planning, wider sexual and reproductive health and rights, education, gender equality and economic development to help stimulate job creation.

Lord St John of Bletso (CB): My Lords, is the Minister aware that 60% of the population of Africa are under the age of 25, and 65% live in rural areas? What are Her Majesty's Government doing to promote greater access to education, housing, healthcare and job opportunities in these rural areas?

Baroness Sugg: The noble Lord is right to highlight that over 60% of people on the African continent are under 25 and, as I said previously, we expect to see a great deal of population growth in the region. We are working hard to ensure that there is better access to healthcare. On education, in particular, between 2010 and 2015 we supported 11.4 million children and young people to gain a decent education, more than 5 million of whom were girls. We have a specific project—the Girls' Education Challenge—which currently supports

[Baroness Sugg]
marginalised girls to benefit from a quality education and to acquire know-how for work and life. This will give them a second chance to learn, and we are specifically targeting it on highly marginalised girls.

Lord Chidgey (LD): My Lords, according to the new UN hunger report, the rise in global hunger for the third year in a row is due to the impact of climate shocks, conflicts and economic breakdown. The worst forms of malnutrition are highest in Africa and when I last visited Malawi the irreversible stunting among young children was close to 40%. Will the Government heed the UN's warning that ending malnutrition requires immediate action to help vulnerable communities? Will they implement the recommendations of the UN's *2018 Global Nutrition Report*, building on the success of bringing stunting down from 36% per year on average in 2000 to just 22% last year?

Baroness Sugg: My Lords, I agree with the noble Lord that we must do what we can to prevent child stunting. We are investing significant amounts in global healthcare, focusing on delivering the sustainable development goals.

Baroness Jenkin of Kennington (Con): My Lords, during the Recess I travelled in north Africa and I took the opportunity to ask people I met about the size of their families. Those who had been brought up with six, seven or even eight siblings almost invariably had only two or three children of their own. Where people have access to contraception and information, this is increasingly the case across the developing world. Will my noble friend confirm that, following the leadership of the family planning conference in London a couple of years ago, the Government will continue to keep family planning at the heart of DfID's strategy and programmes?

Baroness Sugg: I am happy to confirm to my noble friend that we will of course keep fertility planning at the heart of our programmes. We are the world's second largest global bilateral donor on family planning and have given nearly 17 million women access to modern methods of family planning every year since 2015. We believe that women and girls have the fundamental right to make their own informed choices about sex and child bearing, and one of the projects in which we are investing more than £200 million is the women's integrated sexual health, WISH, which will increase access to life-saving voluntary contraception in 24 countries in Africa and three in Asia.

Lord Collins of Highbury (Lab): My Lords, I congratulate the noble Baroness on her appointment and welcome her to her new role. I too congratulate the Government on what they are doing in development support. She has made the case for development support in Africa. However, I am concerned that the amount of money we are spending on empowering women and developing family programmes is being countered by the huge amount of money flowing into Africa from overseas, particularly from evangelical churches which are preaching the complete opposite of what we are funding. Have the Government carried out an analysis of the impact of this work and the damage it does to the empowerment of women?

Baroness Sugg: I thank the noble Lord for his question. I have not seen any analysis on this issue. We are working closely with the continent of Africa to ensure that we are able to fund our projects correctly and influence them where we can. The Prime Minister visited Africa at the end of last year to set out a new partnership to ensure that we can maximise our influence there.

Baroness Tonge (Non-Afl): My Lords, further to the remarks of the noble Baroness, Lady Jenkin, on this Question, the Minister will know that, where countries provide voluntary family planning, the fertility rate is beginning to fall and that in many countries it has fallen a great deal. The problem remains however—I get reports from many countries, particularly in Africa—that women still cannot afford to buy family planning supplies because they are not freely available. Have the Department for International Development and the Government—who have done well on this issue and I congratulate them—any plans to make family planning free?

Baroness Sugg: I thank the noble Baroness for her question. When I was researching this issue, I read a previous comment from her about how, if we did not have access to our own family planning, few of us would have been where we are today. That hit home with me. She is right to point out that family planning has the benefit of reducing fertility levels, which can be transformational around population growth. We are working closely to ensure that women and girls across developing countries can access and use family planning without coercion or discrimination and with a full, free and informed choice.

Religious Schools: Admission Policies

Question

2.59 pm

Asked by ***Baroness Bakewell***

To ask Her Majesty's Government what assessment they have made of the impact of religious schools' admission policies on those schools.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, many schools with faith-based admissions have diverse intakes. Faith schools do not have significantly different populations of ethnic groups compared to non-faith schools. Admission authorities must ensure that their arrangements are clear, fair and objective and will not disadvantage unfairly a child from a particular social or racial group. Anyone who believes that a school's admission arrangements are unfair or unlawful may make an objection to the schools adjudicator.

Baroness Bakewell (Lab): I thank the Minister for that Answer. Fifty-two per cent of British adults identify themselves as having no religion, and 53% of rural primary schools are faith schools. Almost three in 10 families in England live in areas where most or all of the closest primary schools are faith schools. What have the Government to say about children effectively being forced into faith schools against their parents' wishes?

Lord Agnew of Oulton: To reassure the noble Baroness, the voluntary aided scheme is focused on providing the diverse range of places that parents want and is aimed at meeting demand for those places from within particular groups. Where parents are not offered a place at the schools they expressed a preference for, the local authority must offer them a place at another suitable school with places available. Just to reassure the House, in 2018 93% of parents got one of their first three choices of secondary school and 97% of parents for primary school.

Lord Deben (Con): My Lords, I have used faith schools and my children do so. Is it not true that faith schools are extremely popular and are very often overcrowded because people want their children to go to them? Faith schools are the product of the people who first started education in this country and we ought to be very proud of the Catholic and Anglican schools which serve us.

Lord Agnew of Oulton: My noble friend is quite right: the largest voluntary-aided schools are Catholic schools. There are some 850,000 pupils in those schools, and 33% of those pupils are from other faiths or none. They get higher results, on average, than the state system and they started free education in this country before the Government.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that while it is important to look at the interaction between people of different faiths in choosing the intake of faith schools, it is equally important to ensure that a broad curriculum of religion is taught so that people are taught about other religions in a respectful way and about how to respect those different faiths? The teaching should focus on underlying ethical imperatives common to all faiths.

Lord Agnew of Oulton: The noble Lord is quite right. With the help of all Members of this House, we got the relationships and sex education regulations through last week. They underpin the whole concept of preparing children for our very diverse society. To reassure noble Lords on the recent voluntary aided application system, we were very clear in the criteria that anyone applying for it had to address the needs of all pupils in that community, of all faiths and none. They have to prepare children for life in modern Britain and create inclusive environments. Nothing is more important, beyond a good education, than an integrated system.

Lord Storey (LD): My Lords, I am sure the Minister will agree that it is important that children and young people, whatever their faith and whether they have a faith or not, should have an opportunity to learn and socialise together rather than being separated because of their religion. My question is about admission arrangements. Maintained schools, academies and some faith schools have different admission criteria, and because of all these different arrangements it is often difficult for local authorities to find places for pupils, let alone for parents to navigate their way around. How can the Minister make it easier for parents to understand the admission arrangements within their area?

Lord Agnew of Oulton: My Lords, academies are required to put their admissions policy on their websites so that they are quite clear to parents who apply. As I mentioned in response to an earlier question, the vast majority of parents get a school in the top three of the ones they choose to apply to. I mentioned in my opening remarks that the schools adjudicator is there as the final resort for parents who are concerned about admission arrangements. It is very reassuring to know how few objections are raised. In 2015-16, there were 300; in 2016-17, 100; and in the last academic year, 129.

Lord Lea of Crondall (Lab): My Lords, my father was the headmaster of a Church of England junior and infant school for some years. There is a danger of a caricature emerging. Over the last two centuries many village schools were, in practice, schools for everybody but they were Church of England maintained schools—I am sure that the right reverend Prelates will know how that works. On the one hand we have to make sure that there is no question of religion being stuffed down people's throats, which I think is the implication of some of the questions, and, on the other hand, to recognise that we now have a very diverse society and ensure that the Church of England maintained schools, which are subject to local authority criteria, are not out of place in modern society.

Lord Agnew of Oulton: The noble Lord talks absolute sense.

Lord Polak (Con): My Lords, although purporting to promote tolerance, the humanist campaign is in fact aimed at limiting access for people of faith to state-funded education. Does the Minister agree that, rather than give credence to those who want to limit parental choice, we should protect our British values, promote tolerance and respect the rights of parents?

Lord Agnew of Oulton: My noble friend is completely correct. One of the most powerful things in our education system is diversity, and faith schools exist simply because there is huge demand for them. As I mentioned earlier, they have a higher level of oversubscription than most other school systems. They are required to teach a broad and balanced curriculum, and they are inspected by Ofsted on that basis.

Making Tax Digital for VAT (Economic Affairs Committee Report)

Motion to Take Note

3.07 pm

Moved by ***Lord Forsyth of Drumlean***

That this House takes note of the Report from the Economic Affairs Committee *Making Tax Digital for VAT: Treating Small Businesses Fairly* (3rd Report, HL Paper 229).

Lord Forsyth of Drumlean (Con): My Lords, I rise to introduce the Economic Affairs Finance Bill Sub-Committee's report on the powers of HMRC. Perhaps I will leave those who do not wish their tax affairs to be considered to leave the Chamber.

[Lord Forsyth of Drumlean]

In this debate we are considering two reports from the committee: *The Powers of HMRC: Treating Taxpayers Fairly* and *Making Tax Digital for VAT: Treating Small Businesses Fairly*. These reports sprang from the sub-committee's inquiry into the 2018 draft finance Bill. As the House will know, the sub-committee exists to scrutinise the draft finance Bill for issues of tax administration and clarification or simplification, and not the rates or incidence of tax.

Last year's draft finance Bill did not contain many show-stopping measures, as Members might have noticed when the final Bill progressed through the House. We therefore decided to conduct thematic inquiries based on a few of its clauses, considering the cumulative effects of increased HMRC legislative powers over recent finance Bills and checking progress on the Making Tax Digital programme, which we considered in 2017. An example of the cumulative powers which perhaps went unnoticed in the Finance Bill was that anyone who has overseas investments can now have their tax affairs backdated for 12 years rather than four or six. That includes having an overseas property or perhaps having shares in a company listed on a US or other foreign exchange.

Before explaining our conclusions, I would like to thank the sub-committee members, who were recruited at short notice for a fast-paced inquiry. I also thank our excellent special advisers to the inquiry, Elspeth Orcharton and Robina Dyall, and the committee staff who produced the report: Sam Newhouse, Luke Hussey, Lucy Molloy and Lloyd Whittaker.

Making Tax Digital for VAT obliges all businesses with an income above £85,000 to submit their VAT returns through software that connects to HMRC's database. It came into force at the start of this month. It is the first part of the Government's Making Tax Digital programme, about which I will not go into detail other than to say that it aims to make tax digital. We first considered Making Tax Digital in 2017, when it was due to be implemented for income tax in April 2018. We found that HMRC had underestimated the cost to businesses and overestimated the benefits to the Exchequer, and that many businesses had no idea that they would soon be forced to change their whole accounting processes. The sub-committee recommended that all mandation of the programme be delayed until April 2020 at the earliest.

A year and a half later, when we started our 2018 inquiry, the deadline had been moved back to April 2019 and income tax had been removed from the scope of the first stage. We hoped that, by then, HMRC would have learned the lessons of our previous report, but we were disappointed. HMRC has again underestimated the cost to business. It says that, on average, there will be a one-off transition cost of £109 and an ongoing cost of £43 per year. But one practitioner told us that it could cost clients transitioning from paper records as much as £2,600. There seems to have been no effort to calculate a cost for the smallest businesses, which will need more agent support and may be more likely to use paper records. The definition of a small business used in HMRC's estimate includes any business with taxable turnover between £85,000 and £10 million. This takes in 96% of VAT-registered businesses.

HMRC has still not done enough to raise awareness. The Institute of Chartered Accountants in England and Wales found in a survey as recently as last summer that 42% of businesses which are now required to comply with Making Tax Digital for VAT were not aware of its existence. The Treasury announced triumphantly last month that, as of December, over 80% of businesses in scope had started to prepare; but the fact that nearly one in five had not started to prepare, just three months before the introduction of Making Tax Digital, should have been more worrying. In its own research, the *Daily Telegraph* reported on 30 March, in a survey of some 500 companies, that 23% of affected companies had not even heard of Making Tax Digital; an additional 28% had heard of it but did not know how it would affect their business.

It seems likely that these are the same small businesses that HMRC also forgot about in calculating the costs of its programme. Serious questions remain about the expected benefits of the wider Making Tax Digital programme. HMRC and the Treasury expect it to yield higher tax revenue as businesses make fewer errors filling in their tax returns. But this does not seem to account for the fact that mistakes can run in both directions: businesses could be paying too much as well as too little. There is no convincing explanation of how businesses are meant to cope in rural and other areas where broadband connections are insufficiently good for this purpose.

We recommended that Making Tax Digital for VAT be delayed for a further year to address these problems. Clearly, that ship has now sailed. In the Spring Statement, the Chancellor reiterated that there would be no further mandation until after 2020. Our report recommended that no further mandation takes place until April 2022, to allow the Government to properly analyse and learn lessons from the implementation of Making Tax Digital for VAT.

Delaying until 2022 would also allow a reassessment of the benefits of the programme and its costs to the smallest businesses. We also recommended that the Government publish a revised long-term strategy for Making Tax Digital, accounting for the recommendations in our reports and the experiences of the programme so far. I ask my noble friend Lord Young whether he can give any further updates on these recommendations when he responds to the debate on behalf of the Government.

Our inquiry also sought to ask whether, after a plethora of new HMRC powers to address tax evasion and avoidance in recent years, there remains a fair balance of power between HMRC and the taxpayer. We concluded that HMRC's powers have outpaced taxpayer safeguards and tipped the scales in HMRC's direction. Before I begin, I must emphasise that the sub-committee wholly supports efforts to tackle tax evasion and avoidance but those efforts should enhance, not diminish, fairness in the tax system.

We found that several powers had been introduced with insufficient safeguards attached for taxpayers, particularly those on lower incomes or without agent representation. For example, accelerated payment notices require taxpayers to pay up front an amount of tax that HMRC thinks the taxpayer has avoided, before any dispute about whether the taxpayer is actually

liable to pay tax to HMRC is settled by the courts; follower notices require taxpayers to pay tax that HMRC says the taxpayer has avoided by using a scheme that HMRC thinks is similar to one that has been challenged successfully in the courts. Taxpayers cannot appeal these notices, only the underlying tax liability. Taxpayers who continue to appeal a tax liability after receiving a follower notice and lose can face penalties of up to 50% of the tax liability added to their final bill. Both notices prioritise the fast recovery of tax revenue over fairness for taxpayers and, in my view, are attacks on access to justice. The sub-committee was very grateful to the noble and learned Lord, Lord Judge, who was able to advise the sub-committee on its draft conclusions. He criticised these powers for making HMRC judge in its own cause and fettering access to justice. I look forward to his contribution later in this debate.

To consider the overall balance of HMRC's powers and taxpayer safeguards, we recommended a new collaborative review of powers between government and the tax profession, repeating an exercise so successfully conducted between 2005 and 2012 when Customs and Excise merged with the Inland Revenue. The Government noted this recommendation in their response, and I hope my noble friend can offer more clarity in his response to this debate on whether the Government will consider a new powers review.

In addition to legislative imbalance, we heard evidence of an aggressive and uncompromising culture of enforcement at HMRC. For example, witnesses told us that HMRC had presented voluntary requests for information as statutory requirements, made inappropriately harsh decisions on penalties, and alleged more serious conduct against taxpayers in order to access longer times for assessing tax. There is a sense, one witness told us, that HMRC is aiming to collect the maximum amount of tax rather than the right amount of tax. It may be that HMRC's declining resources have made it impossible for it to satisfy demands to recoup higher amounts of tax revenue and treat taxpayers fairly. This is one area of government expenditure where increased expenditure actually produces increased revenue.

We recommended that consideration be given to the role of HMRC's adjudicator, who currently considers taxpayers' complaints about HMRC. She should, for example, proactively investigate the conduct of HMRC investigators in the manner of an inspectorate, or simply expand the types of taxpayers' complaints that she can hear and strengthen her power to settle them. We also recommended a review of the case for an independent body to scrutinise the operations of HMRC.

The loan charge was the most distressing part of our committee's evidence-taking. The new HMRC anti-avoidance measures, which came into force on 5 April 2019, introduced the measure known colloquially as the loan charge. This is an example of both the phenomena I have mentioned: disproportionate powers and an overtly aggressive culture. We received, and continue to receive, a huge amount of evidence on the impact this is having on individuals, which is often very difficult to read. There are already reports in the media of at least six suicides as a result of the implementation of the loan charge.

The loan charge seeks to tackle a tax avoidance scheme called disguised remuneration in which individuals, usually contractors, are paid in loans rather than income, to avoid income tax and national insurance contributions, on the understanding that those loans would never need to be repaid. The loan charge will classify any outstanding loans from these schemes, from 6 April 1999, as taxable under income tax. For those who have been using these schemes for many years, this requires them to pay many years of income tax in one go in one tax year.

In going back to 1999, the loan charge is retrospective. There is a long-established principle in the tax system that taxpayers are entitled to certainty in their tax affairs. As such, HMRC cannot go back further than six years, except in cases of fraud, but this charge goes back 20 years. HMRC says this is because the loans received in 1999 are still outstanding. The tax therefore applies to the present loan balance, not the past loan income. However, the problem with disguised remuneration schemes is that these are not really loans; they are income under another name. HMRC's treatment of the loans as income in the loan charge is evidence that it agrees. We therefore recommended that the charge be disapplied to any disguised remuneration which occurred in years which would otherwise have been closed to HMRC inquiry.

Retrospection notwithstanding, we support HMRC in its attempts to address present and future disguised remuneration—it is clearly tax avoidance. However, we have pleaded with it, with limited success, to consider the different types of individuals embroiled in these schemes. Unlike some tax avoidance schemes, this affected middle- to lower-income individuals, rather than high-income individuals with easy access to professional advice. They believed the promoters of these schemes—often their employers—when they told them that the schemes were legitimate and approved by QCs and even by HMRC itself. They were perhaps naive, but they were not malicious.

One witness told us about a social worker affected by the charge. Before I continue, I note that we cannot independently verify the facts of this case, but it is illustrative of many examples received. The social worker was made redundant by her local council, which then offered to re-employ her as a contractor, as long as she used a particular scheme. Unknown to her, this was a disguised remuneration scheme. She was made aware of this fact only when she was presented with a bill by HMRC many years later. Some might say she should have investigated further, but as the witness said, she is a social worker, not a tax expert. The loan charge unfairly assigns the same culpability to lower-income individuals without easy access to professional tax advice as to better-advised individuals who should have known better. What is surprising about all this is that many of the schemes were promoted by employers with deep pockets, but we have found no evidence that HMRC is showing the same enthusiasm in pursuing either the employers or the promoters of the schemes.

I will finish by reflecting on the Treasury's engagement with our inquiry. We invited the Financial Secretary to the Treasury, Mel Stride, to give evidence. At first, he said he was busy with the Budget, so we delayed our

[Lord Forsyth of Drumlean]
inquiry to accommodate him. He declined to attend on two occasions and he has since declined two further invitations to attend the Economic Affairs Committee itself. As rationale, the Treasury asserts a convention we do not recognise, claiming that the fact that no Treasury Minister has attended a sub-committee before represents a precedent. The Financial Secretary repeated this argument in the *Financial Times* on 31 March.

This is a matter of coincidence, not convention. No such agreement was in place when the sub-committee was created in 2003. In the past its inquiries have often been technical, uncontroversial and answerable entirely by HMRC officials, but the gravity of the evidence we received in this inquiry required a ministerial response. When HMRC and Treasury officials gave evidence, they could not answer several of our questions—quite understandably, because they were matters for Ministers. Furthermore, two of these invitations were from the Economic Affairs Committee, which has a long history of hearing from Treasury Ministers. The Chancellor gives evidence every year, and the Chief Secretary to the Treasury is likely to give evidence to us just next month. The Governor of the Bank of England attends every year.

In future years, when the finance sub-committee considers issues it believes merit a ministerial response, it will continue to invite Ministers from the Treasury. I hope that we will be able to co-operate more constructively for the good of this House and the Government. I would be glad of any reassurance to that effect from my noble friend Lord Young when he responds on the Treasury's behalf. I beg to move.

3.25 pm

Baroness Burt of Solihull (LD): My Lords, I thank the noble Lord, Lord Forsyth, for the tremendous work he and his colleagues on the sub-committee have done in producing these two reports. I am glad we are giving this discussion the time and space it deserves today and not trying to rush it through, as had been intended when it was to have been a precursor to weighty and important debates on Brexit.

Although I speak on small businesses for my party, I am no expert on tax—as will soon become painfully apparent. But even I could understand the sensible conclusions that the Making Tax Digital report draws, and I hope that the Government will listen to the words of the noble Lord, Lord Forsyth. I will leave it to my noble friend Lady Kramer to tread the fine line between the concepts of deliberate and contrived tax avoidance and uninformed or naive decisions—and, very importantly, the loan charge.

I hope we all agree that everyone in this country should pay their fair share of tax, so I will address my remarks to the first report, *Making Tax Digital for VAT*. Although I do not know a whole lot about business tax, either, I know about the challenges that small businesses face in ensuring that they fulfil HMRC tax requirements, having had my own small businesses in the past. I totally empathise with the hard-pressed entrepreneur, who has to multitask many of the roles in an organisation themselves, often including completing tax returns. Implementation of Making Tax Digital takes time, which cannot then be devoted to running and developing the business. It also takes money. The Federation of Small Businesses, to which I am indebted for its input, found that, excluding the opportunity costs I have just mentioned, putting MTD-compliant software in place this year will cost a small firm an average of £564—not £109 as HMRC estimated. The bigger the firm, the greater the cost.

MTD has the potential to improve the experience of tax compliance for small businesses, as well as facilitating the provision of business support, access to finance and tax credits. However, introducing it with the deadline of 1 April, which has already gone, is disastrous because small businesses are simply not ready. So I welcome the Economic Affairs Committee report. Its recommendations seem highly sensible. The first is deferring the mandatory introduction of Making Tax Digital for VAT by at least a year, while encouraging businesses to join voluntarily. This would have enabled HMRC to ensure a smooth transition, as well as helping business. Given the state of readiness of small business to achieve compliance, I am sorry that the Government have not seen fit to accept this recommendation.

The second recommendation was staging the transition to ensure that small businesses and HMRC are ready. I welcome the Government rowing back somewhat on their original intentions by requiring compulsory implementation only on VAT, and for companies above the VAT threshold. I also welcome the acceptance that sanctions will not be levied where companies can show that they have been doing their best to comply. The third recommendation was waiting until at least April 2022 to implement the next stage. This will allow time for lessons to be learned, and seems to have been accepted.

The Government may be rubbing their metaphorical hands in anticipation of increased tax revenue, but only one in 10 small firms responding to the FSB believes that MTD will have a positive impact on tax reporting and financial management processes, with more than a third believing that it will have a negative effect. However, I believe that, despite these considerations, the key problem is that small businesses are just not ready for this. Many small firms are still heavily reliant on offline accountancy methods and are not confident in their digital skills. Many live in areas without access to reliable broadband speeds. How does the Minister expect small businesses to overcome this problem, which is of the Government's making because they have insufficiently improved the digital infrastructure? Nearly a third of small businesses use paper receipts and bank statements to keep track of their finances, and 37% use paper invoices. I can envisage the chaos that may at this moment be ensuing, as paper-based small businesses attempt compliance.

The fourth recommendation is to publish a plan for the long-term development of MTD, getting business to see the benefits rather than seeing it as just tax compliance. I totally accept that productivity, efficiency and modernisation are great benefits, and I am sure that many small businesses already realise this—but these are not the companies that I worry about. These incentives, and the long-term plan to promote them, should have been sold to them before, to persuade reluctant bosses to adopt the measures with a vestige of enthusiasm and not bury their heads in the sand, as they are now. Have the Government put the cart before the horse somewhat?

The FSB is calling for a full review of the rollout, and a guarantee that it will not be forced on those below the VAT threshold until at least the end of this Parliament—although they may need to be careful what they wish for. That date may not be too far in the future.

3.32 pm

Lord Tugendhat (Con): My Lords, it is a matter of great regret to me that, because Brexit is such a dominant issue in our politics, I often find myself in opposition to my noble friend Lord Forsyth. It is therefore a great pleasure to be able to say how much I admire the way he has chaired the Economic Affairs Committee and its sub-committee. The fruit of his chairmanship has been shown in the considerable media attention that our reports receive. They receive it not only because a certain amount of effort is put into obtaining that coverage but because they deal authoritatively with matters of topical and widespread concern, and in a detailed fashion that demands answers. The Government—HMRC, on this occasion—have largely responded in the same spirit. I do not by any means accept all the points made by HMRC and shall come to those in a few moments, but the quality of the response has been rather good.

That leads me to make a general remark. In inquiries and debates of this kind, we inevitably focus on issues of concern and matters that have gone wrong; that is what we are for. But, having been paying taxes of one sort or another for the last 60 years now, on the whole I have found the Inland Revenue—latterly HMRC—quite reasonable to deal with. My affairs have certainly been simple compared with those of many businesses, including many small businesses, but in my relationship with it over many years I have not found HMRC difficult to deal with. I have found it reasonably sensible and understanding of problems that have arisen. It is invidious to compare one public-facing government department with another, because their functions are very different, but if one compares HMRC's record with that of the various departments which at different times have had responsibility for social security, HMRC emerges rather well from any such comparison—perhaps particularly so at the moment.

My noble friend Lord Forsyth went through the recommendations and details of the two reports and there is no point in members of the committee following each of the points that he made, so I shall confine myself to very few. I agree with his strictures about the pace at which Making Tax Digital is being introduced and I feel that this is an example of the problems that arise when those who work for very large organisations, with a wealth of specialist expertise, have difficulty in understanding the way in which those who have small businesses and do not have very much expertise at their disposal actually live.

Many years ago now, I was chairman of the Civil Aviation Authority, which is a very fine body. We dealt a great deal with small airlines, as well as with large ones. I remember being struck by how difficult some of the officials at the CAA found it to put themselves in the position of people running small businesses and understanding the pressures on them. In the case of Making Tax Digital, we have another example of that. Having said that, however, the Government have a responsibility to encourage the digitalisation of the economy. The process of introducing taxes is one way they may do that, so I recognise that fact.

So far as the other proposals are concerned, on treating taxpayers fairly I applaud the Government's acceptance of our view that HMRC should do more to publicise action against promoters of tax avoidance schemes. These schemes are of course promoted to boost the profits of the advisers, sometimes to the very great disadvantage of the clients of those firms, who get into trouble later. The important thing here is to change the risk-to-reward ratio to make it clear to the promoters that they are running great reputational risks by plugging schemes at the outer limits of what is permissible, or go beyond what is permissible.

By contrast, I greatly regret the Government's rejection of our proposal that naming and shaming should be restricted to those who have actually broken the law, as distinct from those engaged in legal activities of which HMRC disapproves. I realise that that naming and shaming is not done casually, and that various steps must be gone through before HMRC goes public in these matters. But the practice of naming and shaming people who have not done something that is, or has been demonstrated to be, illegal seems contrary to the basic principle of natural justice. It is also in line with the deeply objectionable current practice of using innuendo and denigration to generate accusations and change behaviour. This is not something a government department should participate in. It is dangerously close to the way the police and others have behaved in the case of sexual allegations, the most extreme example of which is that of Wiltshire Police and Ted Heath.

I also regret the out-of-hand rejection of the proposal to give the First-tier Tribunal the power to conduct judicial review. I accept that, as HMRC says in its response, the Ministry of Justice and the judiciary would need to be involved in reviewing the need and mechanism for such a change, but the terms in which the rejection are couched show no recognition of the reasons for the recommendation. They are to try to even out the balance between the small taxpayer on one hand and the large government department on the other. It would have been helpful if rather more detail or meat could have been given in explaining why this is such a bad idea.

In general, we must recognise that we are dealing with a government department that has a good record. We are putting forward proposals to improve it and to try to ensure that those who work for large government departments, with all the expertise at their disposal, show a greater understanding of the position of small businesses and individuals who lack those advantages.

3.42 pm

Baroness Noakes (Con): My Lords, it is a pleasure to take part in this debate. It allows me to place on record my admiration for my noble friend Lord Forsyth's insightful chairmanship of the Finance Bill Sub-Committee, in which I had the honour to take part. I fully support what my noble friend said on the engagement of Treasury Ministers in the sub-committee. It is little short of disgraceful for Ministers to obstruct this House from holding the Executive to account. It is also extremely

[Baroness Noakes]

discourteous. I hope that my noble friend the Minister will take back to the Treasury our extreme displeasure at the stance taken, in this instance, by the Financial Secretary.

Our two reports deal with different things, but they have a unifying theme of fairness—whether the HMRC's powers treat taxpayers fairly and whether the plans to make tax digital for VAT are fair on small businesses. Noble Lords may note that our reports are careful to refer to "taxpayers". We do not use the language of "customer", which is used throughout the Government's responses and has been used by HMRC and its predecessor bodies since the early 1990s, when it became fashionable for government departments to talk about their interactions with citizens using the language of customer service. I have never been convinced that "customer" language sits comfortably with organisations that have to enforce the law. Being a customer implies a consensual relationship; HMRC's so-called customers have no choice whatever. The police and the courts do not talk about customers. HMRC's top objective is, according to its plan, to maximise revenues due and bear down on avoidance and evasion. This is not appropriately described in customer language.

I turn to fairness. There are two aspects to fairness: substantive fairness and procedural fairness. Procedural fairness is at the heart of much that is in our reports. That is what our call for more safeguards and access to justice for taxpayers, as set out in our HMRC powers review, was about. Sadly but predictably, the Government have largely rejected our recommendations. Similarly with our report on Making Tax Digital, we called for concerns about the readiness of smaller businesses to be reflected in further time before implementation and for HMRC to do more to make it easier for small businesses. That, too, was rejected by the Government. Procedural fairness should be a hallmark of our tax system, but it is not clear that the Government share this ideal.

We also cover substantive fairness, in particular in relation to the loan charge legislation, which my noble friend Lord Forsyth explained. Substantive fairness is about how particular taxpayers or groups of taxpayers are treated in practice. The loan charge is a way of tackling tax avoidance and I certainly acknowledge that the Government are right to target that, including disguised remuneration schemes. What is much harder to accept is how the Government have tackled it. They have used retroactive legislation, taxing up to 20 years of income as if it were received in one lump sum on 5 April this year and with scant regard for the impact on individual taxpayers. The loan charge can catch taxpayers in a wide variety of circumstances. As we have heard, many were on low incomes and were put into umbrella schemes which they almost certainly did not fully understand. They just wanted to earn an income to support their families—an aspiration that our party normally applauds. Others were more aware that they were involved in a tax scheme, made appropriate disclosures in their tax returns and took comfort from the lack of challenge from HMRC over the years.

It was strongly represented to the committee that many individuals had no idea that further tax could be due. They spent the money that they received. They were not holding in reserve sums just in case a bill for 10 or 20 years of tax turned up; they believed that they did not need to. They are now overwhelmed by the debts that they are told they owe. It might well have been fair for HMRC to target the promoters of the schemes who profited from these unfortunate taxpayers, but many are out of reach and overseas. HMRC has instead targeted the little people.

I first raised whether this was fair for taxpayers last November, when we debated the Budget. I specifically asked my noble friend Lord Bates, who was then the Minister before he went walkabout, to go back to the Treasury after the debate and determine for himself whether it was fair. My noble friend duly wrote to me after the debate. The only time that fairness was mentioned in my noble friend's two-page letter was when he said that,

"the Government believes it is unfair to the ordinary taxpayer to let anybody continue to benefit from contrived tax avoidance of this sort".

A question whether something is fair was answered by saying what is unfair. This is a common HMRC and government tactic. In the Government's March report to the other place on the loan charge, they avoided saying what was fair for some taxpayers by inverting the argument into what might be unfair for the totality of other taxpayers. That misses the point that fairness has a dimension which is taxpayer-centric.

The Government's view seems to be that individual taxpayers can have no excuses for getting involved in schemes which avoid tax. My noble friend Lord Bates's letter to me stated:

"It is an individual taxpayer's responsibility to ensure the accuracy of their tax return and to understand the consequences of their decisions".

That sounds like a simple proposition, but it is not realistic. There have been many studies of financial literacy in the UK, and all of them point to shocking levels of lack of financial knowledge. Over one-third cannot work out the impact of inflation; 16% do not know what the balance is on their bank statement; 40% cannot apply a discount to a price. Let us not kid ourselves about the competence of taxpayers.

I will bring this back to whether taxpayers are customers. Regulators are increasingly concerned about how businesses treat vulnerable customers. The Financial Conduct Authority claims that nearly half of the population is vulnerable in one or more ways at any one time. The FCA places responsibility on financial institutions to ensure that vulnerable customers are identified and then dealt with in a way which reflects the vulnerability. The onus is not on the customer to be able to make the right decisions. In their March loan charge report, the Government said:

"The government and HMRC takes the wellbeing of customers extremely seriously … HMRC's teams are trained to identify and help vulnerable customers and, where appropriate, refer them to organisations such as Samaritans and Mind".

Let that sink in. The Government's solution is to refer people to the Samaritans. I am clear that if a bank said that that was its policy towards vulnerable customers, the FCA's response would be immediate enforcement action.

The Government's approach is particularly shocking against the background of a number of reported suicides, as referred to by my noble friend Lord Forsyth. These are people who are said to have been unable to cope with the consequences of the loan charge legislation. HMRC has referred itself to the Independent Office for Police Conduct in respect of one such case, which is a start, but neither the Government nor HMRC are facing up to the fact that the basic policy is not fair to some taxpayers and no amount of procedure such as helplines or extended payment terms will counter the harm that is being done.

I have spent a long time on the loan charge because I feel strongly that its lack of fairness is a blot on our tax system, but I also want to say a few words about Making Tax Digital. We all know that the future is digital and that digitisation has benefits for businesses and for government, but it is wrong for the Government to mandate digital solutions until it is clear that the vast majority of taxpayers can comply with ease and with minimal additional cost. That clarity simply does not exist, for all of the reasons that we set out in our report. We found that:

"HMRC is alone in its confidence that all one million businesses will be ready for Making Tax Digital for VAT in April 2019".

I looked at last month's edition of *Economia*—I do not expect noble Lords to know what *Economia* is, as it is the house magazine of the Institute of Chartered Accountants, of which I am a member. The latest survey it reported by the tax faculty of the institute found that only 28% of chartered accountants—this is only last month—believe that SMEs have a good awareness of Making Tax Digital and that only 22% think that they are well prepared. That is far too many businesses to put at risk. The top two concerns were the cost and administrative burden of implementation, followed by a lack of guidance from HMRC. This exactly mirrors the evidence that the sub-committee received. The next concern, at nearly 20%, was fear of software and technological change. Our evidence was that small and simple businesses did not need digital records for their own purposes. They are being forced on them by a dogmatic approach in the Treasury and HMRC. So far, Making Tax Digital has benefited only the software industry and professional accountants. We will find out over the next few months how much harm it does to the small businesses on which our economy depends.

I look forward to my noble friend's reply to this debate. I hope that he does not merely repeat the Treasury's refusal to face the difficult issues in our reports.

3.54 pm

Viscount Trenchard (Con): My Lords, it is very good that we have an opportunity today to debate the two excellent reports produced by the Economic Affairs Committee under the chairmanship of my noble friend Lord Forsyth of Drumlean. I congratulate my noble friend on the sub-committee's reports and on securing this debate today.

Your Lordships' House is rightly well regarded in its role as champion of the ordinary person against the powerful. In matters concerning tax, against the background of changes that have increased the powers of HMRC, it is most important that it continues to hold the Government to account in discharging that role.

There used to be a clear difference between tax evasion and tax avoidance. Tax evasion was illegal, and accountants and other professional advisers would give clear advice if their clients were considering evading tax properly due. On the other hand, to avoid paying tax which the law did not require a taxpayer to pay was a perfectly legitimate and, indeed, responsible way to conduct a business. Indeed, the manager of a business who unnecessarily paid more tax than he was legally liable to pay could be accused of wrongfully disadvantaging the owners of the business.

Will the Minister ask HMRC to look again at its definitions of tax avoidance? Its definition of tax evasion is clear enough, but HMRC states that the hitherto acceptable behaviour of tax avoidance,

"involves bending the rules of the tax system to gain a tax advantage that Parliament never intended".

It adds that tax avoidance,

"involves operating within the letter, but not the spirit, of the law".

Who is HMRC to opine on exactly what Parliament intended? How does it know? Does it not have a conflict of interest? If a taxpayer operates within the letter of the law, it is very hard to condemn his behaviour. If HMRC considers that Parliament intended that such behaviour should not be permitted, the Government should ask Parliament to change the law. There should not be any room for the subjective judgment of HMRC on the supposed failure to comply with the spirit of the law on the part of a taxpayer.

Concerning the proposed new powers for HMRC, it is surprising that the Government have proposed to treble the time limit for assessing income tax and capital gains tax from four years to 12 years. Victoria Todd of the Low Incomes Tax Reform Group is right in saying that the current timescales—four years normally and six years where a taxpayer has failed to take reasonable care—are reasonable. Where there is deliberate non-compliant behaviour amounting to fraud, there is already a 20-year limit. For inheritance tax, the limit is four years.

It is clear that significant extensions of the time limits, as proposed, will be very bad for the ordinary, honest taxpayer, for several reasons. First, the present limits make it incumbent on HMRC to look into all disputed cases relatively quickly. This means that taxpayers can more reasonably be expected to remember, or at least to discover, the facts relating to any tax-related queries.

Secondly, if HMRC does not have to raise any queries with taxpayers for 12 years, it will significantly reduce the incentive for HMRC staff to do so. HMRC's staff resources and systems mean that it is better able to discover facts in an efficient and timely manner several years down the road than the average small business owner or individual taxpayer. Therefore, the balance of power is stacked in HMRC's favour in the case of an inquiry into a tax event that took place 10 years ago more than in an inquiry into one that happened two years ago.

Thirdly, the case for longer time limits for offshore matters, compared with onshore matters, is becoming weaker rather than stronger. The adoption of the common reporting standard by more than 100 countries has led to the current situation where HMRC is receiving an

[Viscount Trenchard]
unprecedented amount of information from many overseas tax authorities, as Keith Gordon of Temple Tax Chambers informed the committee. The Government's response to the committee's recommendation that they should start a fresh dialogue with representatives of tax professionals is disappointing. HMRC has dialogue with such representatives, of course, but it does not need to listen to their concerns. Regrettably, it seems not to have done so in this instance. I would like the Minister to explain the rationale for the removal of the safeguard provided by the tax tribunal's oversight of HMRC's attempts to obtain information from third parties, especially when the Government have not yet completed their consideration of the responses to their public consultation on this subject last year.

The committee considers the loan charge and disguised remuneration schemes, such as those involving the use of employee benefit trusts, an example of unacceptable tax avoidance. I would prefer them to be considered tax evasion because of the difficulty in drawing a line between acceptable and unacceptable tax avoidance. A loan that is not intended to be paid back and where the recipient of the loan is told that he or she will never have to do so, is, quite simply, not a loan at all. Furthermore, I do not think that all individuals using these schemes must accept any significant degree of culpability for placing an unfair burden on other taxpayers. Whether the employee was a care worker or an investment banker, the responsibility for a part of their remuneration to be made through such a scheme rested entirely with the employer; in most cases, the employee had absolutely no influence over this matter. It is especially regrettable that the Government rejected the committee's recommendation to exempt from the loan charge those loans made in years when taxpayers disclosed their participation in these schemes to HMRC or which would otherwise have been closed. I look forward to the Minister's comment on that point.

The committee rightly focused on HMRC's changing culture. In common with my noble friend Lady Noakes, I agree with the committee's policy to refer to individuals as "taxpayers", not "customers". HMRC's recent decision to start referring to taxpayers as customers is very irritating—even more so than the fact that the London Underground and train operating companies no longer refer to "passengers". I find HMRC referring to a taxpayer as a customer condescending. The taxpayer does not have a choice between offering his custom to HMRC or not. The Government's partial acceptance of the committee's recommendations in this area seems a bit reluctant and grudging, although it is encouraging that they accept the need to balance clamping down on tax avoidance and evasion with taxpayer protections.

Turning briefly to the committee's report, *Making Tax Digital for VAT*, I agree entirely with the committee's recommendation that the date for introducing a mandatory digital VAT system for small businesses should have been deferred for at least one year. It is correct that most small businesses are not prepared for it, and that many are still unaware of it or of how to respond. Many firms of accountants only contacted their clients about the changing requirements immediately before, or even after, 1 April.

It is true that HMRC invited small businesses to participate in webinars held in February, but many recipients of this invitation may not have understood the urgency or even how to participate in a webinar. The Institute of Chartered Accountants in England and Wales and the Chartered Institute of Taxation are among those industry bodies that have supported the committee's recommendation that the mandatory date for digital VAT be deferred by at least one year. Many small businesses thought that VAT was already digital because for some time they have had to file it online anyway. It is disappointing that the Government have not accepted this recommendation although they have agreed not to pursue filing or recordkeeping penalties where businesses are "doing their best" to comply with the law. But, again, do we really believe that HMRC is in a position objectively to decide which businesses are doing their best and which are not?

It is to be welcomed that the Government have undertaken not to introduce the compulsory digitalisation of other taxes until HMRC has had time to assess the evidence from the income tax pilots and from VAT. However, can the Minister explain why the Government have rejected the recommendation to make no other taxes subject to compulsory digitalisation until 2020 at the earliest? Surely it is not realistic to continue to maintain that compulsory digitalisation will have been sufficiently tested and shown to work as early as next year; it will not even be enforced until September of this year, which means for the quarter ending 31 December. It is also disappointing that the Government have rejected the committee's sensible recommendation to update the impact assessment to reflect the evidence gathered in recent months. Will the Minister consider carefully whether it is wise to adopt such a cavalier approach to this question?

Again, I congratulate the committee on two excellent reports and I look forward to the contributions of other noble Lords and the Minister's winding-up speech.

4.07 pm

Lord Kerr of Kinlochard (CB): My Lords, I gravely miss the noble Lord, Lord Bates, but I understand why someone might want to walk a very long way to avoid having to answer this debate. It is a pleasure to see the noble Lord, Lord Young of Cookham, in his place. I first bumped into the noble Lord 58 years ago in Oxford High Street—or rather, he bumped into me. He was on a bicycle, an enormously tall one, and he was of course moving very fast. I could have been seriously injured but I was not, and he was so nice about it that I think I ended up apologising to him.

I remind him of this incident particularly because, as I am sure many noble Lords will remember, of the way the noble Lord answered questions a couple of years ago at the Dispatch Box. He dutifully read out an appalling piece of unimaginative boilerplate defending an indefensibly insensitive misuse of Executive power, but I cannot remember what it was about. When the House objected and protested, was the noble Lord taken aback? Not at all. He said that he had been reflecting over the weekend on how, if he was still a constituency MP, he would have advised a constituent complaining about being subjected to the treatment he had just described. He concluded that there was a way

around the bureaucratic intransigence exposed by the question. He then spelt out for us the way around that he would have advised his constituent to take. The officials in the Box could hardly complain because his first answer was the one that they had drafted for him. His second answer was his own: sympathetic and human. It is that side of him that I wish to appeal to today. He will by now have guessed that I want to talk about the loan charge.

I was not a member of the Finance Bill sub-committee but I am a member of the Select Committee, so I am one of those who have received numerous distressing and disturbing letters from the public about the way in which HMRC is handling some of these historical cases. Clearly, the few cases summarised in appendix 5 of the report are merely the tip of a considerable iceberg. In evidence, HMRC suggested that about 50,000 cases were being pursued. I have been shocked by the Government's casual and peremptory dismissal in their response of some of the points made in the report. I do not believe that the noble Lord, Lord Young of Cookham, would have approved such a response, and I will put three questions to him.

Question one concerns retrospection and how to define it. Paragraph 76 of the report states:

"The loan charge is … retrospective in its effect".

Some of the cases described in the appendix concern taxes now deemed due in respect of earnings in 2004-07, 2005-07, 2005-10 and 2010-14. As I understand it, in none of these cases was there any warning or challenge while the individuals in question were using the scheme in question. Years later, they face demands and talk of debt collectors and county court summonses.

I see in today's *Financial Times* the rather disturbing news that HMRC spent £26 million last year on private debt collectors, up from £6 million in 2014. In this context, I find that a rather sinister number. The committee thought this was unfair and recommended against retrospective action in respect of years past where taxpayers had all along disclosed their participation in a scheme now found to have created a loan charge. Page 4 of the government response rejects this and maintains that the charge is "not retrospective" because:

"It does not change the tax position of any previous year".

Surely that is, at best, disingenuous and casuistic. It is true only in the sense that the catastrophic cumulative charge resulting from retrospection accrues and must be paid 100% in the current year—but it has accrued because of actions in previous tax years, those that would otherwise have been said to be closed. Would the Minister have approved the definition of retrospection on page 4 of the government response? My strong hunch is that he would not. If he would not, will he ask his Treasury colleague, the Financial Secretary Mr Stride, to reconsider it?

My second question concerns the committee's recommendation in paragraph 80 that,

"HMRC urgently reviews all loan charge cases where the only remaining consideration is the individual's ability to pay".

The government response, on page 5 this time, rejects this too, chillingly adding that HMRC considers bankrupting individuals only as a "last resort". That is reassuring. I read in the response that only since 2009 have the promoters of the relevant schemes—some of which had been running for 10 years by then—been obliged to inform users of their schemes that HMRC approval is not certain. Only in November 2017—18 years in—did HMRC start writing systematically to the 50,000 individuals who might be affected by the loan charge. I understand the reason for that—the legal position will have become clear only when the Supreme Court reached its judgment in 2017—but surely HMRC should all along have been warning those who were signalling on their tax returns that they were using such schemes that HMRC clearance was not certain and that there was a legal uncertainty here.

I worry that we seem to be pursuing those least able to pay. As the noble Baroness, Lady Noakes, said, they are the little people—and it is a great and rare pleasure to be able to say I agree with everything the noble Baroness said. The Minister will recall Leona Helmsley, the New York hotelier who famously said, "We don't pay taxes; taxes are for the little people". It earned her the title, Queen of Mean—somehow, I do not see the noble Lord, Lord Young of Cookham, as the King of Mean. We are not talking about Amazon, Starbucks, Google or Facebook, or about rich people with tax advisers. We are talking about people like the social worker whose case the noble Lord, Lord Forsyth of Drumlean, mentioned.

We know that the Minister is humane. We know he went to a decent university. We know he will be familiar with act 4, scene 1 in the "Merchant of Venice". My question is this. Does he agree that it is right to show "no mercy" to individuals like the social worker mentioned by the noble Lord, Lord Forsyth? Does he not agree with the noble Lord, Lord Robathan, the noble Baroness, Lady Noakes, and me that some blame must be ascribed to the Inland Revenue and HMRC for lying low and saying nothing for so long, not putting people on notice? Is the Minister with Portia or with Shylock?

My third question concerns the relationship between this Parliament and the Executive. The Minister responsible for HMRC is the Financial Secretary to the Treasury. In my Treasury days, he was a feisty, powerfully brilliant young individual who had absolutely no truck with Civil Service boilerplates and people like me, and who enjoyed nothing better than a good argument with a parliamentary committee. He is now the noble Lord, Lord Lawson of Blaby. Does the Minister believe that the current Financial Secretary, Mr Stride, is right to refuse to meet the Select Committee? Does he think that the then Nigel Lawson would have done so? Would he have done so?

I recall from my Treasury days the sensible rule that Ministers do not have access to any individual's tax affairs. But I also recall that, when there is prima facie evidence that a class of taxpayers—maybe in this case 50,000 strong—is being unfairly treated and seriously disadvantaged, with very serious consequences in some cases, the responsible Minister surely needs to put that right or take responsibility for it. Hiding behind officials just will not do.

I look forward to the Minister's answers to my three questions—and I hope they are indeed his answers.

4.18 pm

Lord Judge (CB): My Lords, I must declare an interest: for a time in the late 1970s, I was standing counsel to the Inland Revenue on my old circuit. I am

[LORD JUDGE]

sorry that I am going to be critical of those who once fed me. I declare a second interest, which we all have: I believe that tax liabilities should be paid. That is not merely a moral view. Every time somebody fails to pay his or her tax, the rest of us who do pay our tax have to pay more. Therefore, I have an interest in this discussion beyond merely having been counsel to the Inland Revenue.

I want to, if I may, grapple with some very simple propositions. The liability to pay tax depends on legislation. Hurrah! I am right. Unless legislation provides liability to pay tax, there is no liability to pay it. Hurrah! That is self-evident. Tax legislation has become intensely complicated. Indeed, it is not unfair to say that tax legislation over the past 10 to 15 years has made understanding tax liabilities virtually impossible. The legislation is virtually unintelligible—no hurrah for that. Sometimes no one—not Her Majesty's Revenue and Customs, not the taxpayer, not good sensible accountants and not even wise judges—can be too certain about what the legislation actually provides.

We have to grasp those simple issues when considering this debate for this reason: where the law is uncertain, one or other side—it may be HMRC, it may be the taxpayer—is entitled to go to a court and to ask the court to glean what the legislation means and whether it establishes a tax liability. Of course, if it does, it must be paid; but if it does not, surely not. The principles are simple provided we remember one long and well-established rule at common law, easily forgotten: we have the right to unimpeded access to a court. It is one of the essential principles on which the rule of law is founded. Note that I emphasise "unimpeded". This is not the time or the place to point that what has been done in the past few years to the provision of legal aid has damaged that principle. However, just because it has been damaged once we do not want to go on to damage it further.

I am speaking today in relation to *The Powers of HMRC* because it has identified a number of incursions into the right of unimpeded access. I strongly support the recommendation in paragraph 134,

"that all powers granted to HMRC since the conclusion of the Powers Review in 2012 should be evaluated and those evaluations published. All future powers should be evaluated after five years".

I find the Government's response to this paper alarmingly negative. The fact that the Minister has treated the committee with what I regard—I am being less courteous than the noble Lord, Lord Kerr—as a contemptuous disregard for serious issues has encouraged me to speak on my own behalf.

I wish to take one aspect of these various matters: the general anti-abuse rule. What does that define? Using that language presupposes that a scheme intended to reduce tax liability by reliance on litigation constitutes an abuse. The description "abuse" assumes that the scheme is unlawful or that, if not unlawful, it should be treated as though it is even if it is not. Since when has it constituted an abuse for a citizen, rich or poor, to seek to rely on law laid down annually by Parliament? It is a strange concept.

If where the legislation is uncertain, a case is litigated, the court may decide that the scheme is lawful and, if it does, no penalty can be imposed on the taxpayer for going to court. It would be an extraordinary proposition if it could. However, what that successful taxpayer risked in going to court was not only the costs of losing the litigation, which is fair enough, but the imposition of a huge financial penalty—not tax, not back tax, not unpaid tax, not interest on tax, but just a straight penalty.

That is precisely what is meant by the Government's response on page 9 that this regime—I paraphrase—provides the taxpayer with an opportunity to settle the dispute without the application of penalties. That is a subtle threat, seemingly bedecked, as an inducement that, "It will be in your interests to do as we tell you".

As the noble Lord, Lord Tugendhat, mentioned, all this applies equally to the provision for extending powers of naming and shaming. That is fair enough if you have done something shameful, unlawful or wrong, but unless you have, why should you be shamed?

HMRC may be a unique institution in our country but, unique as it is, it is not infallible. It is not always right. However, if HMRC tells you that if you challenge its analysis of a problem and you lose, and it can cost you, as your accountants will advise you, a huge penalty, what is your reaction likely to be? It turns HMRC into judge and jury in its own cause. You can describe it in a lot of different ways, but what I am driving at is that the threat—the risk—would undoubtedly deter you from going to court, from seeking the opinion and judgment of the court. That is its purpose and it is rather alarming. That is interference with access to justice. Can we imagine our reaction if any other government department or Minister tried to obtain the power to impose a financial penalty on anyone who had the temerity to take it or him or her to court? We would be horrified.

I understand—I know perfectly well as a matter of history—how many powers HMRC has been given over many years, but that does not justify any further extensions. I quite understand the need to address protracted delays in dealing with avoidance cases. I understand that the court processes can be misused. They are, sometimes. I understand that on occasions the system is simply being played with a totally unmeritorious misuse of the court processes to delay settlement of a clear tax liability. I understand all that. I was prosecuting counsel for the Inland Revenue for long enough to know that it happens, but provisions in the court processes themselves would address those problems and do so in a way that does not offend the principle of access to justice. For example, there could be a leave requirement. If a taxpayer wishes to take proceedings and the Revenue says it is hopeless, he would need leave.

There could be a conditional leave requirement, for example, "Okay, you can come to court if you like, but bring the tax and the costs into court. If you win you'll get them back". Further, and perhaps more importantly, if a court concluded that the scheme was without merit, was unarguable and was, indeed, no more than an abuse of the court, why on earth should the court not be given the power to declare that it is so? Then you can be named and shamed. There is a judgment that you have been abusing the court process.

There is a further power that could be considered: in such a case, if the court had come to such a conclusion, it would be open to the court to impose a penalty for such misconduct by the taxpayer, not only on the taxpayer but on the taxpayer's advisers and on those who promoted what the court had found to be an abusive scheme. Such a declaration, such a power and such processes would obviously be matters for parliamentary counsel. I venture to suggest that this would provide a surer foundation, consistent with the rule of law and unimpeded access to justice, for the imposition of a penalty through a judicial process rather than through an administrative decision by a department that resented or objected to the citizen going to court. We really need an evaluative review of the wide accretion of powers to HMRC. I repeat that I strongly support the recommendation in paragraph 134.

4.29 pm

Baroness Kramer (LD): My Lords, what a brilliant debate. I almost hesitate to speak for fear of diluting what has really been extraordinary. When a unanimous voice comes with passion from so many Benches, I am sure that the Minister will take on board and take back to HMRC and the Government that this is not a party-political issue or an attempt by one faction to embarrass the Government or make life difficult for HMRC; it reflects a genuine, sincere and deep concern among people who have looked at the powers and the way in which HMRC is implementing programmes and feel that there is a real risk that it is undermining its own reputation, as well as the respect that the collection of tax has within the United Kingdom. That respect is critical if taxpayers are genuinely to believe that, when they are asked to pay, it is on a fair basis and they will get appropriate and fair treatment.

I was privileged to be a member of the finance sub-committee and I thank the noble Lord, Lord Forsyth, for his extraordinary and skilled chairmanship. I know that he does that every time, but it is not an easy thing to do and I hope that he will not mind if we all take this opportunity to thank him for exercising that skill and leadership.

I am also a member of the All-Party Parliamentary Loan Charge Group, which started taking evidence essentially as the sub-committee's process came to a close. I will try to use some of the information that I have received from participating in those hearings, some of which is quite shocking.

I shall turn briefly to the report on Making Tax Digital. I suspect that everybody would agree that making tax digital over time is entirely appropriate and that it is reasonable to start with VAT. It is a programme that must be implemented well and effectively—but that is not the experience that the sub-committee heard about when it took evidence. My noble friend referred to the fact that nearly 20% of small businesses impacted by this requirement have absolutely no idea, and many more have not been able to access relevant software.

Regarding the cost, I would far rather go with the estimates from the Federation of Small Businesses than with the, frankly, rather silly numbers that we heard from HMRC, which seem to suggest that it is completely out of touch with the real world of software costs in the marketplace. I point out that HMRC has allowed a delay for what it considers to be large and complex organisations—big businesses with a swathe of staff and several departments to take them through this process—while small firms are being told that they now have to report their tax through this new digital process. We understand that there will be some sort of leeway for those who attempt but fail—but, frankly, given HMRC's lack of ability to relate to or communicate with small businesses, I am not sure that many have a great deal of faith in it.

Communication with that particular group is unbelievably weak. There really is no excuse, because HMRC knows every small business that is liable to pay VAT, so, if it chose, it could communicate with them directly. The answer that we frequently get is that information was put on the website on the "Spotlight" page, as I think it is called. That is considered to be communication, but it makes absolutely no sense. We heard from many people who were represented by accountants and specialists. My great fear—and, I think, that of the committee—is for the many people who do not have that representation and who are completely in the dark. As I said, this ought to be a good programme. It should be on a voluntary basis and have all the time that it needs, but poor implementation undermines what could be a long-term programme of significance.

However, I want to focus much more on the tax powers report. I agree with all those who have raised the extraordinary issue of the denial of rights to appeal accelerated payments notices and follower notices to tax tribunals, and who totally object to the disproportionate penalties for appealing follower notices and GAAR decisions. Justice is fundamental, and I wish that HMRC would understand that and take it on board. I cannot understand the argument for extending the time limit for assessing offshore tax to 12 years. Who in their right mind keeps records for 12 years, particularly on a small property or a few shares? This is nonsensical. HMRC is merely making up for the fact that it has been lax in pursuing cases where it believes that there is something to investigate. It should not be throwing the burden of its own incompetence, I might say, on to the taxpayer.

But I want to talk mostly about the loan charge. I agree with all those who have said that it is the little people who get no understanding from HMRC. In a sense, HMRC has not recognised that this is the pool of people it is dealing with when it comes to the loan charge. Many of the people who ended up becoming self-employed did so because of outsourcing. The majority worked once for local or central government, or for bodies such as the BBC, or even for HMRC. They did not seek to become self-employed. They were told that the only way to do this particular line of work was to become self-employed. Indeed, they were told, "If you want to be recruited, this is the agency we are using. Go to them, they will provide you with the advice and mechanisms to allow you to become self-employed and continue with your job". This goes all the way from social workers to IT contractors.

HMRC denies engagement in this process but is totally culpable. On the All-Party Parliamentary Group we heard from people who were consultants to HMRC and are now being faced with a loan charge. This is

[Baroness Kramer]
perhaps a very good example, because the individual from whom we got the most detail was told that, to work as a contractor for HMRC, they would have to go to a particular recruitment agency—which had been retained, and was presumably being supervised, by HMRC—that would provide them with various options to enable them to structure themselves as self-employed.

Lord Forsyth of Drumlean: I am most grateful to the noble Baroness, and very interested in what she says. As she may recall, we did ask officials at HMRC whether any people involved with it had been involved in a loan charge. At first, the question was not answered. Then, on the second or third occasion, we were told that it was not aware of any evidence of this. So it might be useful to make that information available to HMRC so that we are not misled in the future.

Baroness Kramer: I think that the individual has made HMRC aware and happens to have an email trail, which makes the process rather easier to understand. On many of these occasions, people were not told, "You are going into a loan scheme", or that they were going into some form of disguised remuneration. They were told that there were two or three ways in which they could structure themselves as self-employed. The word "loan" was rarely used. They were told that the advantage of scheme X—it always had a fancy name—was that the administration of it was quite simple. For many people, it was not financially particularly advantageous, because they paid a huge fee for the administration of the scheme: 18% was the standard charge. When that is added to the tax they were paying, they were not taking home more, and they had every reason to think that they were working in an approved situation.

Some people perhaps knew that one scheme was more advantageous in tax terms than another—not everybody is in the same position—but virtually everyone we talked to said that if they had had any clue that HMRC was troubled by this, they would of course have stepped away. When they did find this out, many did step away but were then put into another scheme with similar characteristics. So we have a population here who did not understand what they were getting into. They did not intend this—and intent is significant and important when you go after people for what effectively are their life savings.

HMRC says that it understands about vulnerable customers, but there is plenty of evidence that people have now sold businesses, sold their homes or gone bankrupt. Families have split up because, I am afraid, money can become very significant in shattering a family structure, particularly when someone has to dissolve their whole pension pot to meet a very large bill that comes in over one year. Being told that it could be spread over three years is pretty meaningless because the number is so fantastically large. Many people on the receiving end of a loan charge are no longer employed and have no way to pay.

I was horrified that some of the 70 individuals who submitted evidence to the APPG—I am not sure how many—have actually been called by HMRC, with messages left on their answerphone that have been picked up by business partners and family members who had no idea that there was an issue. We need an answer about that from HMRC. I was even more shocked that on 24 April, giving evidence to the Treasury Select Committee, the Chancellor claimed that the secretariat to the APPG was partly staffed by people who were promoters of loan charge schemes, which was absolutely not true. I hope that that has been retracted by this point in time.

When I pulled these notes together—the situation now may be slightly different—only a single promoter of a loan charge scheme, Hyrax, had been successfully prosecuted, but on the grounds that it breached DOTAS rules, not because it sold the schemes to people. Indeed, it has been allowed to keep its 18% fees that were charged to users. Hyrax's penalty appears to be a requirement that it discloses the users' names to HMRC so that they can be pursued. On the six other promoters that HMRC has been investigating, we hear that charges will not be pursued because they did not breach DOTAS; only the users of the schemes will be pursued. As far as I know, no one has yet gone and asked the employers—which ultimately would of course include HMRC, a beneficiary of this move to outsourcing and to self-employment under tax-advantage pricing—and nor do I believe that they have yet gone to local government, to central government departments or to the various public bodies.

Surely this is a real abuse. I understand that HMRC is under extraordinary pressure, but I believe that at the decision-making level people are completely detached from those on whom they have an impact. They have very little sense of the world of contracting and self-employment, very little understanding of how people made those decisions and what their capacities and capabilities were, and very little understanding of the impact of their decisions. With a body that is responsible for implementation, it is key that that changes.

I totally support the various recommendations in these two incredibly powerful and important reports, but I hope that, in addition, the Government will now consider not just a report but a proper review of the loan charge and a minimum delay of six months in implementing. I know that it is officially implemented, but that can always be delayed. On Making Tax Digital, surely we could now initiate a delay for small businesses, look again and make sure that it is implemented properly and effectively. It could be a superb programme and it should not be undermined.

4.43 pm

Lord Davies of Oldham (Lab): My Lords, I welcome the noble Lord, Lord Young. He has a somewhat challenging baptism in replying to this first debate in his new position. We all know his competence and that he always wins considerable support from the House for how he presents his arguments. However, I can scarcely recall another debate in which every contributor has identified issues that the Government have palpably failed to respond to. Nor are these minor pettifogging details; they are fundamental questions about how a government department should operate, and how a response to a committee report should be presented. The noble Lord has a great challenge before him.

I do not need to stress again the points made in this debate because we all have, strongly at the front of our minds, key issues on which we expect the Minister to make a response. The only figure I would like to bring to your Lordships' attention—I do not know whether the Minister will bring this in as part of his defence—is that HMRC has 15,000 fewer civil servants than in 2010. Of course, we can all see ways in which government departments can work more efficiently and we all know the advantages of new technologies and so on, but a large part of that loss of people was a straight reflection of a determination to create a smaller state, with lower costs for the Government. These circumstances are part of the price that we are paying.

If there is one thing which stands out in this whole sorry saga, it is that HMRC persisted with conduct which was already causing enormous consternation not to people who were adept at tax evasion or those who employed professionals to look after their tax affairs, but to ordinary citizens applying for jobs. The report makes that clear. Their employers, or the agents working for those employers, took them on board and indicated a loan would be advantageous form of payment for their employment. That is why we have so many people who deserve the sympathy of every one of us in this House and all of us concerned with government. Ordinary people now find themselves facing charges which are not the kind of thing that might be easily disposed of by the better-off in society, but multiples of their actual earning power each year; these are now demanded as owed tax. This is a parlous position. What has been identified in this debate is just how dismissive the Government have been thus far on the issue.

Lord Forsyth of Drumlean: Of course, the noble Lord is quite right about the substantial cuts in the resources available to HMRC. That has undoubtedly been a factor in its ability to deal with inquiries and to deal with people sensitively. However, it is not to blame for implementing the loan charge, which was passed by Parliament—by the House of Commons. Dealing with this requires a change in the law. Do the Opposition support that?

Lord Davies of Oldham: The answer is categorically yes. In fact, I was going to develop that argument briefly but I do not need to now: in his opening speech, the noble Lord made the main charge against the Government and their response to the report thus far quite clear. I utterly endorse that position. I am very grateful for the speech he made today and the way in which he obviously led the committee to produce these high-quality reports.

One of the things which stands out in the reports is that the Government found a whole series of the recommendations quite unacceptable. Of the recommendations in the digital taxation for VAT report, eight were accepted, seven were accepted in part and only six were rejected outright. However, the majority of the recommendations in the other report were rejected. The Government ought to have a pretty strong case when responding on this matter to a significant body such as a House of Lords committee led by the noble Lord, Lord Forsyth, but it seems fairly obvious that the Minister has somehow been shielded behind the perspective that only the House of Commons has any authority with regard to the economy. We all know the law—we all know why the House of Commons produces its Finance Act and we in the House of Lords defer to it as presented—but that is a little different from a committee examining the conduct of a government department. From what I can see, on the whole, Ministers have not been prepared to attend the committee and have been rather dismissive of many of its hugely significant recommendations.

Expressions have been made during the debate with which I have the greatest sympathy. I am not talking about the speeches from the noble Lord, Lord Kerr, and the noble and learned Lord, Lord Judge, who were both quite definitive in what they had to say—I of course agreed with the judgments they reached—but there were other comments that strengthened my support for the committee. The noble Lord, Lord Tugendhat, indicated the difference between how this part of taxation is dealt with and how welfare support is often dealt with. This is a tragedy that has gone on for a number of years, but so has welfare legislation and the great problems with universal credit, in which people who are devoid of resources are being asked to wait for weeks to get the money to which they are entitled. I was very grateful to him for bringing our attention to that.

The noble Baroness, Lady Noakes, criticised the use of the word "customer". I too found it difficult when the railway companies started to refer to us as customers—they were not very confident that we would become "passengers" and go anywhere, but we were "customers" because we had paid for the ticket. There is a lot that we ought to seek to correct, through gentle persuasion, about the terms in which big organisations and businesses address us.

Two issues about the Government's estimation come out strongly in the report. We can see that the Revenue and the Government are motivated by the fact that there could be considerable increases in resources through Making Tax Digital. The Opposition understand the argument for Making Tax Digital and endorse it, but it has to be introduced and developed in a better way, as the reports have identified. Those in this unfortunate position with the loan charge have earned salaries and tax is payable on them. There obviously has to be care about how people are challenged to make these payments, because many have limited resources, but there is no doubt that HMRC's objective was to ensure that tax was legitimately paid on payments allocated to workers. The 2017 court case made this absolutely clear. Therefore we are not in any way, shape or form castigating HMRC for pursuing the issue in principle; we are concerned about the practice.

It has been quite clear from this debate that the committee has identified the department's position with great force and accuracy. We expect Ministers to take note. We all have faith. I greatly regret the loss of the noble Lord, Lord Bates, the immediate predecessor to the noble Lord, Lord Young. Although I clashed with the noble Lord, Lord Bates, on very many occasions, I never had the slightest doubt about his genuine attempt to present his case accurately, effectively and with the greatest concern for the rights of the House. I am not so sure that Financial Secretaries in the other

[Lord Davies of Oldham]
place have shown much respect for this body, but I am sure that the noble Lord, Lord Young, will seek to answer the very real questions asked in this debate, and treat the committee and its excellent reports with the respect due to it.

4.55 pm

Lord Young of Cookham (Con): My Lords, I thank my noble friend Lord Forsyth for introducing this debate, and for agreeing to reschedule it from its previous slot, which would have been at a less civilised hour. I also thank the Economic Affairs Committee, for its two detailed reports, and all noble Lords who have taken part in this exceptionally well-informed debate.

I have read both the reports and the Government's response with particular interest, as a former Financial Secretary to the Treasury with responsibility for HMRC 25 years ago—some 15 years after the noble Lord, Lord Lawson, who was referred to in our debate. Although we have debated these two reports together, they are very different. The one on powers is wide ranging, hard hitting and contains some radical proposals—particularly those which we have just heard from the noble and learned Lord, Lord Judge. The one on making tax digital is more narrowly focused, more consensual and concerned with the pace of travel—as mentioned by my noble friend, Lord Tugendhat—rather than its direction. The current Financial Secretary carefully considered both documents and gave a detailed written response. Although he did not agree with all the recommendations, he was happy to accept the majority of them, in whole or in part. We are still reflecting on the report.

I take very seriously the comments made by my right honourable friend, and the comments made by my noble friends Lady Noakes and Lord Forsyth, the noble Lord, Lord Kerr, and others, about his reluctance—his refusal—to give evidence before the committee. My understanding is that the sub-committee's inquiry was focused on the Finance Bill, which is properly the preserve of the other place, and as such, no Treasury Minister has given evidence to the sub-committee in the nearly 20 years of its existence. However, I take on board the comments and undertake to convey them to my right honourable friend, to see whether, were a further invitation to be extended to him by the committee, he might reflect again on his decision not to appear.

Before addressing the issues raised in the debate, I join others, particularly the noble Lord, Lord Davies, in paying tribute to my colleague and noble friend Lord Bates, who earlier this month stood down from his position as a DfID Minister and Treasury spokesman. No one regrets his resignation more than I do, as part of his ministerial burden falls on my shoulders. He was an exceptional, dedicated and popular Minister, covering government business on a wide range of topics, from overseas aid to the Trade Bill, from financial services onshoring to the performance of our economy—to name but a few. For each, he brought intellectual clarity and a strong defence of the Government's record, but also a listening ear. We all wish him well as he walks from Belfast to Brussels raising funds for a cause he is passionate about.

I apologise—58 years too late—for running into the noble Lord, Lord Kerr, on my bicycle in Oxford. Had I known that in 2019 he would make a trenchant attack on a government policy I was obliged to defend, I would have navigated with much more diligence. I thought I was in enough trouble when he sat down—but then the noble and learned Lord, Lord Judge, got up.

I turn to the question of HMRC's powers, which dominated our debate. I am conscious that I will not answer all the questions raised but I will write to rectify that omission. The British people expect HMRC to take decisive action to tackle tax avoidance and evasion, and Parliament has voted to grant the department a variety of powers which allow it to carry out this essential function. It is of course also essential that there are safeguards in place for taxpayers, but the purpose of the powers is to allow HMRC to collect the tax that we need to fund vital public services, a point made by the noble and learned Lord, Lord Judge.

I note what the report says in paragraph 58 about scrutiny of the loan charge but, as someone who has taken a Finance Bill through the other place and sat in Committee on the Finance Bill in opposition, it is my experience that Members in the other place are extremely wary about giving HMRC new powers over their constituents. This legislation was taken through the parliamentary process, with scrutiny in the House of Commons, following a public consultation on the policy and on the draft legislation. As my noble friend knows, we have also set out in a report published last month the rationale for, and impact of, the charge on disguised remuneration loans.

Lord Forsyth of Drumlean: On the subject of the scrutiny in Committee on the Finance Bill in the other place, I think I am right in saying that there was a speech from a Minister, a speech from the Opposition and two other speeches. None of the issues about retrospection et cetera was raised. I think there has also been an Early Day Motion signed by many Members and several debates, including one in Westminster Hall, none of which has altered the Government's response in any way.

Lord Young of Cookham: I am sure that if my noble friend and I had been on the Finance Bill at the time, we might have raised some of the issues that he has now raised. I make the point again that the legislation went through all its stages in the other place after its publication in draft.

I was grateful for what my noble friend Lord Tugendhat said about HMRC in some generous words, which I know will be well received by the hard-working public servants in that department. I believe all Governments, and both Houses, are committed to striking the right balance between helping the compliant majority to fulfil their obligations, and providing appropriate support to customers who need extra assistance to get things right, while taking robust action against those who seek to avoid paying their fair share of taxes. For this reason, the Government welcomed the committee's detailed contribution to this important debate.

I say to my noble friend and to others who have taken part in this debate that my comments will reflect the Government's response to the reports, including

the updated response which we published in March. I will share with the Chancellor and other Ministers in the Treasury the tone of the debate and the deep concern expressed by Members on all sides about some of the actions that have been taken. Again, without any commitment, I will see whether within the confines, which I hope the House understands, there is any flexibility available to reflect the anxieties that so many Lords referred to.

Several noble Lords spoke more specifically about the charge on disguised remuneration loans. My noble friend Lady Noakes made this the focal point of her speech. As acknowledged by the report:

"Disguised remuneration schemes are an example of unacceptable tax avoidance that HMRC is right to pursue. All individuals using these schemes must accept some degree of culpability for placing an unfair burden on other taxpayers".

It is the Government's view, supported by a unanimous Supreme Court ruling, that these schemes are not and have never been effective, and that tax was always due. It is unfair to the vast majority of ordinary taxpayers who pay all their taxes to let anyone benefit from contrived tax avoidance of this sort. I am sorry to disappoint the noble Lord, Lord Kerr—

Baroness Kramer: The Minister is doing his best and because he referred to the Supreme Court, he will be aware that that ruling focused on the culpability of employers. There was no expectation in any of those Supreme Court discussions that action would be taken against the ordinary user. That has been a source of a great deal of the fury around this issue.

Lord Young of Cookham: With respect to the noble Baroness, the unanimous decision of the Supreme Court was that the tax was due and is payable by the employee and not the employer. I will come on to the employer in a moment. I was about to disappoint the noble Lord, Lord Kerr, on one of the questions he put to me. But if it was always the case that the tax was due, as I have just said, the loan charge is not retrospective, as he implied. I am not sure that he meant to imply this, but it does not have to be paid in the current tax year. It becomes liable, but I hope that people will engage with HMRC and agree terms that may cover a longer period.

Lord Forsyth of Drumlean: I apologise for interrupting my noble friend again, but there are two points here. The court proceeding he referred to was the Rangers case, which said that liability was with the employer. The point that my noble friend Lord Kerr was making was that this is treated as an emolument in one year, which means that the incidence of tax is higher because goes over the top rate. That is the point.

Lord Young of Cookham: My understanding is that the tax now due accrued over a period of time, and was payable in the year in which it was accrued. That has been consolidated and crystallised into the loan charge. If I am wrong, I will write to my noble friend.

The Government are committed to tackling the promotion of tax avoidance and that is why HMRC has been investigating more than 100 promoters and others involved in marketing tax avoidance, including many who sold disguised remuneration arrangements. HMRC recently won a legal case, mentioned by the noble Baroness, Lady Kramer, over a contractor loan avoidance scheme promoter, Hyrax Resourcing Ltd. This will help collect over £40 million in unpaid taxes.

The charge on disguised remuneration loans has been criticised by those who say that it ought to be the employer who has to pay the tax that is outstanding. I agree, so let me be clear that HMRC will seek to collect the loan charge from employers in the first instance, and will pursue individuals for the tax due only where it cannot reasonably do so from the employer; for example, if the employer is no longer in existence or is offshore. In those cases, HMRC seeks to collect the tax liability from the individual who benefited from the tax avoidance.

Baroness Kramer: Since most of the employers in these cases were local government, they would pay any bill that HMRC thought was appropriate. Central government departments would also pay. Collecting from HMRC itself ought to be quite simple, and there are various public bodies, such as the BBC. Is the Minister now giving a reassurance to all those who have received a loan charge demand but were working for those public entities that they, at least, will not be pursued, because their employer will be paying?

Lord Young of Cookham: The safest thing I can do is repeat what I just said: HMRC will seek to collect the loan charge from employers in the first instance, and will pursue individuals for the tax due only where it cannot reasonably do so from the employer; for example, if the employer is no longer in existence or is offshore. The BBC is still there and is not offshore, as are the other employers mentioned by the noble Baroness, so HMRC will indeed seek reimbursement from them first, before it seeks to collect the liability from the individual. By the end of 2018, about 85% of the yield in advance of the charge was from settlements with employers. Since the 2016 Budget announcement, around 6,000 have agreed settlement, raising £1 billion for the Exchequer. These numbers will continue to increase as more settlements are agreed.

The Government recognise the impact of this legislation on the individuals affected and the importance of them receiving appropriate support. Some individuals are facing large tax bills, often as a result of using these schemes over a number of years or receiving large sums through the schemes. That is why the best thing for anyone concerned about paying what they owe is to get in touch with HMRC, which is expanding its specialist service for customers with additional needs to help them meet their obligations. HMRC has a good track record of supporting customers to pay their tax debts and has made it clear that it will not force anyone to sell their main home to pay their disguised remuneration debts. It does not want to make anyone bankrupt; insolvency is considered only as a last resort and few cases ever reach that stage. HMRC is determined to work with individuals to reach manageable, sustainable payment plans wherever possible.

My noble friend Lord Forsyth spoke about suicides and my noble friend Lady Noakes about the Samaritans. HMRC has been informed that a customer who had

[LORD YOUNG OF COOKHAM]
used DR schemes has taken their own life. Out of respect, and given HMRC's duty of taxpayer confidentiality, the Government are not in position to comment further, but we continue to improve support to vulnerable customers and will extend HMRC's valued needs enhanced support service to customers undergoing compliance checks. HMRC works alongside the voluntary and community sector to improve its support and to ensure that vulnerable customers receive adequate support beyond getting their tax affairs right.

Baroness Kramer: I do not want to keep stressing the issue of suicides, but in the one case that I am personally aware of is the Minister aware that HMRC is now pursuing the heirs for the loan charge?

Lord Young of Cookham: I was not aware. Of course, I understand the sensitivities of the issue and will raise the matter with HMRC.

HMRC has introduced simplified payment arrangements for those who approached it to settle by 5 April this year so that individuals will not have to pay the loan charge. Regardless of whether the individual decided to settle their taxes or whether the loan charge applies, for those who need more time to pay there is no maximum period for payment.

Resources for HMRC were raised during the debate. The Government have always provided HMRC with the resources that it needs. At the 2015 spending review, they invested £1.3 billion to transform HMRC to make it quicker and easier to deal with. In addition, since 2010, the Government have invested £2 billion in HMRC to tackle avoidance and evasion.

My noble friend Lord Forsyth raised the right of appeal on accelerated payment notices and follower notices. As my noble friend knows, the rules do not affect a taxpayer's right to appeal against an HMRC decision or assessment concerning their tax liability. If the taxpayer successfully appeals the actual liability, the follower notice penalties will no longer be due. Again, Parliament granted HMRC these powers to discourage tax avoidance.

My noble friend also asked about retrospection. I think that I have dealt with that, if not wholly to his satisfaction. It is a new charge on DR loan balances outstanding on 5 April. It does not change the tax position of any previous year or the outcome of any open compliance checks.

My noble friend asked what the position was on the powers review. We agree that HMRC has to balance tax collection with important taxpayer safeguards. The powers review was a major project coming alongside the merger of HMRC and Customs and Excise. There has not been a similar fundamental change to justify another such review, but I say in response to my noble friend that we keep the tax system under review and will consider options for reviewing and updating the tax administration framework to ensure that it is effective in modern tax administration.

A number of noble Lords spoke about low-paid employees and social workers being affected by the loan charge. HMRC's analysis shows that around 3% of those individuals who used a disguised remuneration loan scheme worked in medical services and teaching.

My noble friend Lord Tugendhat raised the issue of naming. Again, Parliament has legislated to allow taxpayers to be named in limited circumstances. These are prescribed explicitly in legislation. HMRC places importance on taxpayer confidentiality, and no one can be named simply for disagreeing with it. I hope that HMRC never engages in what my noble friend called "innuendo".

In view of the number of interventions, I may claim a bit of injury time on the question about HMRC inaction on loan charges. The Government's view, as I think I have already said, is that these schemes never worked. Compliance activity has been taken ever since the schemes were first used, including the use of thousands of inquiries into scheme users, successful litigation and agreement of settlements. The loan charge was introduced to draw a line under all outstanding DR loans, but HMRC has always warned against the use of DR schemes, with the first spotlight being published in 2009. Many scheme users did not disclose details of their scheme use, or disclosed partial information which did not enable compliance—this is in response to an issue raised by the noble and learned Lord, Lord Judge. Where DOTAS numbers were provided, HMRC routinely opened inquiries, and it will look carefully at cases where individuals provided evidence that they fully and properly disclosed their use of a DOTAS at the time and where HMRC closed an inquiry with that evidence. However, it does not believe that there are many cases where that has happened.

I am conscious that I have not said anything about *Making Tax Digital*, so I will say a few final words about that report. We want every individual and business to develop the skills and confidence to seize the opportunities of digital technology. In a world where businesses are already banking, paying bills and shopping online, it is important that the tax system keeps pace. Making Tax Digital gives UK businesses more control over their finances and allows them to manage their tax more easily so that they can focus on what they do best—innovating, expanding and creating jobs. The Enterprise Research Centre found in 2018 that web-based accounting software delivered productivity increases for micro-businesses of 11.8%. One should set that against the costs mentioned by my noble friend Lord Forsyth and the noble Baroness, Lady Burt.

I was asked what the position was on small businesses unable to go digital because of the absence of broadband. Businesses that are unable to go digital will not be forced so to do. If it is not reasonably practical for a business to join MTD for reasons of age, disability or remoteness of location—which can affect broadband connection—it may qualify for an exemption.

I am deeply conscious that I have not done justice to the many serious questions that have been raised, and I am already over my time. In conclusion, I thank noble Lords for their contributions to this stimulating debate—

Lord Kerr of Kinlochard: I am quite sure that the House will be very willing to extend considerable injury time to the Minister if he would be prepared to tell us not just what the boilerplate says but what he actually thinks.

Lord Young of Cookham: At the risk of getting myself into further trouble, I said fairly early on in my remarks that I took very seriously the tone of the debate and the criticism of the implementation of the loan charge scheme. I said that within the constraints—I hope noble Lords understand that there is now legislation in place—I would see whether there is any flexibility which might address the very real concerns raised by noble Lords. That goes way beyond my negotiating position; it is without commitment to what anyone in the Treasury may do. I take this debate seriously; the points that have been made and the cases that have been raised were moving. The report has made some very strong points, and I propose to raise with the Chancellor and ministerial colleagues the nature and tone of this debate, and see—within the constraints that I am sure all noble Lords understand—whether we can go some way to meeting the issues that have been raised. I hope I have reassured your Lordships that we will continue to give careful consideration to these very important matters.

5.18 pm

Lord Forsyth of Drumlean: My Lords, those last few remarks from my noble friend are extremely reassuring. My noble friend Lord Bates gave him a bit of a hospital pass; had the debate not been deferred, it would have been answered by him. In fact, his formal response is an example of why the committee felt that we needed to look rather more strategically and fundamentally at the basis on which HMRC is held to account. That is not to say that the committee was entirely critical of HMRC. Some of the criticism arises from legislation which has been passed by Parliament. If my noble friend had come at the invitation of the committee and had listened to our points, I think we would have made considerably more progress.

We have had a fantastic debate, with a brilliant speech by my noble friend Lady Noakes not just on the nomenclature of customers but on the real issues here, which are illustrated by some of the problems. My noble friend Lord Tugendhat rightly pointed to the difficulties which HMRC has.

One gets the impression that Mr Osborne said to HMRC: "I need the money. Get it in", but, at the same time, "Cut the numbers". Therefore, perhaps some corners have been cut, to disadvantage. My noble friend Lord Trenchard pointed out the basic and fundamental conflict of interest in HMRC, which brings me to the issues pointed out in a very telling speech by the noble and learned Lord, Lord Judge. Honestly, in this House, if he says it is wrong, it usually is. I am grateful that my noble friend has decided to discuss this with the Chancellor.

I think we will lose the noble Lord, Lord Kerr, from our committee because of the turnover rule. He made a fantastic contribution and asked the three questions which I hope my noble friend will be putting to the Chancellor. I also thank the noble Baroness, Lady Kramer, who has updated us on the work being done by the All-Party Group on the Loan Charge. What has happened is very worrying. The path to hell is paved with good intentions. I have no doubt that the loan charge legislation was implemented with good intentions, but it has proved to be a path to hell for far too many people, not least those working in the public sector.

The noble Baroness, Lady Kramer, mentioned the BBC. I have read in a newspaper—we did not receive any evidence—that it appears that it will pick up the tab for all its employees. One way or another, it seems that this requires further work.

The noble Lord, Lord Davies, was right to highlight the pressures on the Inland Revenue, and I was very grateful for his commitment that the Opposition would change the legislation if they got the chance—which may very well encourage colleagues to bring forward amendments at a later date in the other place.

Most of all, I am grateful to my noble friend for the way in which he has answered what has been a powerful debate and undertaken to take it back to discuss it with colleagues. One thing that we have changed on the Economic Affairs Committee is that when we produce reports, we do not just move on to the next issue but come back to them to review what progress has been made. I am sure that there will be further work on the loan charge. We look forward to seeing the Government's response. I am most grateful.

Motion agreed.

Treating Taxpayers Fairly (Economic Affairs Committee Report)

Motion to Take Note

5.23 pm

Moved by ***Lord Forsyth of Drumlean***

That this House takes note of the Report from the Economic Affairs Committee *The Powers of HMRC: Treating Taxpayers Fairly* (4th Report, HL Paper 242).

Motion agreed.

Brexit: EU Students' Tuition Fees

Statement

5.23 pm

Viscount Younger of Leckie (Con): My Lords, with the leave of the House, I will now repeat a Statement made in the other place by my honourable friend Chris Skidmore, Minister of State for Universities, Science, Research and Innovation, in response to an Urgent Question.

"Mr Speaker, the Government have repeatedly made clear that we absolutely value international exchange and collaboration in education and training as part of our vision for a global Britain. We believe that the UK and European countries should continue to give young people and students the chance to benefit from each other's world leading universities post exit.

Over the weekend, the media reported on a leaked Cabinet document discussing government policy regarding EU student access to finance products for the 2020-21 academic year and beyond. At this time, I wish to tell the House that no decision has been made on continued access to student finance for EU students. Discussions at Cabinet level are ongoing and should remain confidential. I will make no comment on this apparent leak, which is deeply regrettable.

[Viscount Younger of Leckie]

Students from the EU make a vital contribution to the university sector. It is testament to the quality and reputation of our higher education system that so many students from abroad choose to come and study here. As I stated earlier, the numbers are up 3.8% for EU students since 2017 and up 4.9% for non-EU students since July 2017. In July 2018, we announced that students from the European Union starting courses in England in the 2019-20 academic year will continue to be eligible for home fees status, which means that they will be charged the same tuition fees as UK students and have access to tuition fee loans for the duration of their studies. Applications for students studying in academic year 2020-21 open in September 2019. The Government will provide sufficient notice for prospective EU students and the wider higher education sector on fee arrangements ahead of this 2020-21 academic year and for subsequent years, which, as I just stated, will also reflect our future relationship with the European Union and the negotiations on this going forward".

5.26 pm

Lord Bassam of Brighton (Lab): My Lords, what a miserably thin Statement on such a major subject. It is essential that there is no further delay in the UK Government confirming the fee status for EU students starting courses at English universities in autumn 2020. The recruitment cycle for that academic year is already well under way. Although the Minister said that sufficient notice will be given to students, universities will need at least 18 months' notice of any change to manage changes in numbers.

With 135,000 EU students in a marketised university sector, any drop-off in numbers caused by inflated tuition fees will have a significant material and financial impact on university finances and their ability to plan for and sustain courses. Does the Minister share my concern that continuing uncertainty will restrict student choice and the ability of English universities to recruit the best students from the EU, as well as have a knock-on impact on the gem that is research in our universities—research ably supported by income brought in from abroad and improved by the quality of EU graduates coming to our universities?

This delay is hurting our universities now and will continue to do so. We cannot permit this to go on unchallenged. Any delay in the certainty of what will happen in 2020 will damage our reputation internationally.

Viscount Younger of Leckie: I am pleased that the noble Lord said toward the end of his remarks that the UK university sector is very successful. I want to say just that: its successes are highly regarded around the world, and that explains why more students than ever are coming to UK universities and wanting to study in Britain.

On the noble Lord's main point, there is no delay. Looking back to last year, for the year 2019-20 the announcement that we made was in July 2018. As I said in my Statement, between now and September 2019 we will make it clear what the plans will be for the year 2020-21.

Lord Storey (LD): My Lords, the Minister said that no decision has been made yet. I suppose that this was a leak, but it gives us an opportunity to consider the Government's thinking on this particular matter. Have they considered the impact of their proposals on the number of students applying to English universities, given that we already know that Cardiff, Reading, Gloucester and Birkbeck have announced redundancies this year? Is now a good time to gamble with our universities' financial sustainability? How can the Minister convince the House and the public that pulling up the drawbridge against EU students will not backfire spectacularly?

Viscount Younger of Leckie: I should say first that the leak is very regrettable, and I do not want to say anything more about that. It is very important that we make the point that the UK remains open to overseas students to study here, including those from the EU. The UK Government value international exchange and collaboration in education and training as part of their vision for a global Britain, so I go back to the point that, while the leak is very regrettable, it does not reflect what the thinking is.

Lord Cormack (Con): My Lords, will my noble friend talk with his colleagues in government so that an unequivocal Statement can be made very soon? Would he also suggest to the Prime Minister that the appointment of a plumber to the Cabinet is overdue?

Viscount Younger of Leckie: I take note of what my noble friend has said and the way that he has put it. I will certainly pass it back. As I have said, this leak is particularly regrettable, and I do not want to say any more about it.

Baroness Amos (Lab): My Lords, I declare an interest as the director of SOAS University of London. I take note of the noble Viscount's comments about the success of the UK higher education sector. Having travelled extensively in my job and having talked to alumni and prospective students, I can tell him that that success is now in spite of government policy rather than because of it. There is a big difference between rhetoric about global Britain and the actuality on the ground. Brexit and what is happening with visas and other areas of government policy are deeply damaging to the reputation of UK universities. Decisions need to be taken now in respect of tuition fees for EU students. I therefore press the Minister by asking when we can expect an announcement to be made.

Viscount Younger of Leckie: I should say first to the noble Baroness that she is right to the extent that Brexit has caused uncertainties and continues to do so. If only we had managed to get the deal across the line, those uncertainties would be a lot less, but that is not the case. Perhaps I may reassure her again that it is absolutely vital that we are able to continue to market the highly valuable university sector in the UK, and we shall certainly continue to do so. On her remarks about the so-called delay, I would like to make the point again that we will be making an announcement to state what the fees will be for the following year. As I have said, last year it was made in July. I am not saying that it will be in July 2019, but it will be made at some point between now and September 2019.

Lord Lilley (Con): My Lords, I am sure that my noble friend will agree that it is a wonderful thing—educationally, socially and culturally—that 135,000 students from Europe are at our universities, along with a further 8,000 students from the rest of the world. But is it not different economically, in that students from the rest of the world pay full tuition fees and subsidise British students, whereas students from Europe receive tuition grants, only a small proportion of which are ever repaid, and are therefore subsidised by the British taxpayer? Can he explain what possible reasons, once we have left the EU, there should be for us charging people from poor countries to come to our universities but offering loans that are likely never to be repaid if they come from rich countries in Europe?

Viscount Younger of Leckie: I do not want to be drawn into answering the specific question asked by my noble friend, but perhaps I may say that, in 2017-18, 55,700 EU-domiciled students were given loans by the Student Loans Company; 88% of them were for full-time undergraduates. These students accounted for 5% of all students receiving loans in 2017-18. Obviously, looking to the future with the uncertainties, we are not there yet. I very much take note of what my noble friend has said.

Baroness Smith of Newnham (LD): My Lords, the Minister suggested earlier that if the withdrawal agreement had gone through we would not have this uncertainty, but that was only going to take us to the end of 2020. Do the Government have a long-term vision for higher education? Do they have a vision for the role of European and international students? Further, as the noble Baroness, Lady Amos, said, do they understand that we are now in a situation where international students are coming to this country in spite of the Government's policy, not because of it? I declare an interest as I am employed by Cambridge University.

Viscount Younger of Leckie: The noble Baroness will know perfectly well that we do indeed have a strategy for the case where there is a deal and that there is also a strategy for no deal. There has been a lot of no-deal planning. She will also know that we published fairly recently the *International Education Strategy*.

Baroness Blackstone (Ind Lab): My Lords, will the Minister tell the House what calculations the Government have made in considering this policy? Have they looked at the differential effect on different universities of removing home status tuition fees for European students? Many universities do not have many EU students; others have a large number. What steps will the Government take to support universities that have large numbers and are likely to lose them and hence find themselves in some difficulty? Secondly, will he say what the effect may be on British students wishing to study in European Union countries, who may well be charged very high fees in return?

Viscount Younger of Leckie: On the second question, we are not there yet in understanding the status of the UK students; we want to be sure there are proper reciprocal arrangements in place. The noble Baroness will know that there are twice as many students coming in from the EU as UK students going to the EU.

Lord Lansley (Con): My Lords, my noble friend has made clear, even if he has not said so, that the Government intend to implement the withdrawal agreement. In doing so, clearly we would extend the availability of domestic fee status to EU students in 2020. Should we be unable to do so, can my noble friend tell the House whether the Government have taken the powers—I do not recall them doing so—or intend to take the powers to enter into bilateral agreements with other EU countries for a reciprocal arrangement of the kind that replicates the current system?

Viscount Younger of Leckie: My noble friend makes an important point about what the future holds. My understanding is that, looking ahead, yes, we would be in discussions with the individual 27 countries.

Victims of Crime: Mobile Phone Data

Statement

5.36 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat a response to an Urgent Question given by my right honourable friend the Minister for Policing and the Fire Service in the other place:

"There is widespread recognition that disclosure in criminal cases must be improved. Disclosure of evidence is crucial for ensuring the public's confidence in the police and in our criminal justice system.

It is important to note that police forces have been using forms to request victims' consent to review mobile phones in investigations—including sexual assault cases—for some time. What is new is the new national form that was introduced today, which attempts to distil current best practice to replace the individual versions of the 43 forces, ensuring that there is consistency and clarity for complainants. That is the intention of the police.

In considering seeking such consent, the police must consider what is a reasonable line of inquiry and their approach must avoid unnecessary intrusion into a complainant's personal life.

In July 2018 the Director of Public Prosecutions issued advice on investigating communications evidence, making it clear that examination of mobile telephones of complainants is not something that should be pursued as a matter of course and, where it is pursued, the level of extraction should be proportionate.

This Government have made protecting women and girls from violence and supporting victims and survivors of sexual violence a key priority, and it is encouraging that more victims than ever before have the confidence to come forward.

It is surely critical that victims are not deterred from seeking justice by a perception about how their personal information is handled. They can and should expect nothing less than that it will be dealt with in a way that is consistent with both their right to privacy and the interests of justice.

This is clearly a complex area. While disclosure is an important component of the criminal justice system to ensure a fair trial, the police have acknowledged that the use of personal data in criminal investigations

[Baroness Williams of Trafford]
is a source of anxiety, and will continue to work with victim groups and the Information Commissioner's Office to ensure that their approach to this issue offers the necessary—if difficult—balance between the requirement for reasonable lines of inquiry and the victim's right to privacy.

I can assure the House that the Government will continue to work with partners in the criminal justice system to deliver the recommendations in the Attorney-General's review, designed to improve the efficiency and effectiveness of disclosure".

5.40 pm

Baroness Chakrabarti (Lab): My Lords, I am incredibly grateful to the Minister for repeating that Statement. However, I hope she will appreciate that widespread concern about reporting using this new form forces me to press her a little further on the detailed commitment from the Government. The anxiety is not with consent being sought in a targeted manner in particular cases where the electronic interaction between a complainant and a suspect is relevant to an investigation. As reported by a number of victims—the noble Baroness, Lady Newlove, is in her place, and no doubt we will hear from her in a moment to bear this out—the concern is that this practice is too routine and the trawling of data too blanket. If I am right about that, and if those concerns are borne out, that would put the authorities and the Government in breach of complainants' fundamental rights under Articles 3, 6 and 8 of the European Convention. This is why I press the Minister.

Forms are no substitute for resources: that is, better trained police officers and more of them; victim support; and qualified lawyers to handle disclosure in the criminal justice system. I hope the Government are listening, and that the Minister might agree.

Baroness Williams of Trafford: Where I do agree with the noble Baroness is that the victims should be at the heart of all that we do, and there should be consistency across the piece when using the forms to apply for consent to gather evidence. I think she would agree that 43 different forms across different forces probably is not as acceptable as one standardised form to ask for consent to gather evidence. I know she will agree that it is of absolute importance that personal information of complainants who report sexual offences is, as I said in the Statement, treated in a way that is both consistent with their right to privacy and in the interests of justice. That is what we seek for victims: that justice be served.

As for trawling through phones—to use her term—the CPS access guidance is clear that requests for access to information held by third parties on digital devices must be a reasonable line of inquiry, justified by the circumstances of the individual case. It should not be undertaken routinely in every case, and should not be used as a matter of course.

The noble Baroness asked specifically about funding for both victims and the police. In 2018-19, the MoJ is providing £12.5 million of funding specifically for services for victims and survivors of sexual violence, and £4.7 million to PCCs to deliver local support services for victims of CSA across England and Wales.

Lord Paddick (LD): My Lords, while we accept that this is a complex issue, the facts are undeniable. It is estimated that only one in five rapes is reported to the police, with fewer than two in every 100 cases reported to the police resulting in a prosecution, let alone a conviction. This development is not going to help. While there may be an argument in some cases where consent is at issue—as the noble Baroness, Lady Chakrabarti, said—there can be no justification for a blanket requirement. What consultation has taken place with women's groups, such as the End Violence Against Women Coalition, about the potential impact such a requirement will have on the willingness of rape victims to come forward or to continue with a prosecution once the rape is reported to police?

Baroness Williams of Trafford: The noble Lord strikes the balance of where we should be—in other words, encouraging women to come forward and, when they do, feeling that their case will be dealt with properly through the criminal justice system. I hope I can comfort him by saying that it is not a blanket requirement. On consultation, the groups that were invited to comment on the form included Rape Crisis, the End Violence Against Women Coalition, the Survivors Trust and Galop, as were Dame Vera Baird and the ICO. The ICO has an ongoing investigation into how this data is used and the CPS has committed to reviewing the forms and the process in the light of that.

Baroness Newlove (Con): My Lords, I have had quite a busy day on this subject and I have a busy day tomorrow on anti-social behaviour. I have argued that, when making such huge decisions, fairness requires that the victims must be offered free access to independent legal advice. Where there are disputes between prosecutors and victims about what should be disclosed, the final decision should be taken by a judge and not by front-line police officers or prosecutors.

In the work that I do as Victims' Commissioner I would like to count on one hand how many prosecutors actually engage with victims, an issue I used to work on with the previous Director of Public Prosecutions. This feels very much a process for the police and the criminal justice legal system; it is not for victims. Under the process it creates, where victims are scared they will not come forward.

It used to be called the Stafford statement but this is a new form and it is nine pages long. When you ask someone to sign this statement, no matter at what stage of the process, they will be traumatised and going through the harassment of trying to do the right thing for justice. It is not right to ask someone to sign this document without them having legal representation, especially when it says in bold print:

"If data obtained from your device has been or will be shown to the suspect/defendant, either as evidence or as disclosed unused material then we will inform you of this".

As it is, communication to victims is appalling—we do not even get victims' personal statements produced—and I would like the Government to work harder, especially as the office of the Victims' Commissioner had no idea what this form looked like or contained. I was told by a journalist from the *Telegraph*. If we do not realise what the Victims' Commissioner can do to

support victims, what does that say about the process to make the victims we expect to come forward feel safe?

Baroness Williams of Trafford: I pay tribute to the noble Baroness and all that she does for victims. I concur with her that at the point victims are asked to sign a form they may be in a highly traumatised state. This process is nothing new—it has not just happened today—but the standardised form is new. However, I take on board the fact that victims and potential victims are in a vulnerable state when they are asked to sign the form. There is nothing to preclude a victim having a legal representative with them at the time they are asked to do this. However, I take the noble Baroness's views on board and, as I have said, the CPS has undertaken to review the form.

Lord Hogan-Howe (CB): My Lords, I am concerned about these proposals for two reasons. First, the major cause of some of the problems is demand. We have had far more reporting of sexual offences over the past few years, there is a greater availability of devices for recording digital data and there is far more social networking. There is a huge amount of information to trawl through and, as the noble Baroness, Lady Chakrabarti, said, it is no good giving even more access to this type of material if the police do not have the skills and resources to act on it. It would have been a good idea to talk about that alongside this proposal. Although resources have been going to the police, they have not been in this particular area.

More fundamentally, I am less relaxed than some noble Lords who have spoken about whether it is okay to trawl, as that is how it will be seen, through someone's material. It will be seen as an intrusion into the privacy of the victim, even though I am sure it is not intended in that way. We have got to the stage where a person is now entitled to withdraw consent at the point of the sexual offence. It does not matter about sexual history or what happens after the event. Many of the offences where disclosure has been an issue have been about things and communications which have been shared after the event. I wonder, as a point of principle, why it is relevant to search someone's communications before or after. Surely it is the event and the consent. We are in danger of moving away from that fundamental principle, which has been fought for an awful lot over the past 20 years, and this seems to be a backwards step.

Lord Morris of Aberavon (Lab): My Lords—

Baroness Williams of Trafford: I know the noble and learned Lord is desperate to get in, but I shall answer the question asked by the noble Lord, Lord Hogan-Howe, first. I totally take his point about demand and the different ways of communicating and therefore the new demands on the police, the training what they have on to do and the resources that they need to do it.

I have talked about the money given to PCCs and the announcement of the quite significant increase in funding to the police going forward. The noble Lord made an important point about withdrawing consent and how we have become so much more attuned to what consent means, but I take his point that the police need to have the resources in place to deal with this as well as training.

Northern Ireland Update

Statement

5.51 pm

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Secretary of State for Northern Ireland in the other place. The Statement is as follows:

"Mr Speaker, with permission I wish to make a Statement about the political process in Northern Ireland. Last week I came to this House and delivered a Statement in the aftermath of the sickening attack that led to the death of Lyra McKee. The day after, both the Prime Minister and I attended her funeral at St Anne's Cathedral in Belfast along with political leaders from across Northern Ireland and Ireland.

It was, as many right honourable and honourable Members will be aware, an incredibly emotional and touching event where I heard moving and powerful testimonies from Lyra's family and members of the community. That was a day to grieve and a day to reflect on a brilliant young life that was cut down by terrorism. All of us heard a clear message that day from inside the cathedral from the powerful testimony of Father Magill, from the streets of Creggan and Londonderry and from Northern Ireland's political leaders: no more—no more violence, no more division and no more delay. Northern Ireland's political leaders must come together now and work together to stand firm against those who oppose peace and the political process and work to build a genuinely shared future for all the people of Northern Ireland.

Lyra symbolised the new Northern Ireland and her tragic death cannot be in vain. All of us must take inspiration from what Lyra achieved in her life and work even harder to make Northern Ireland a brighter, more peaceful and prosperous place for everyone. As Secretary of State, I have always made clear that my absolute priority is to see the restoration of all the political institutions established by the Belfast agreement. The Belfast agreement has formed the bedrock of peace and progress here since it was reached just over 21 years ago. It must be upheld and it must be defended from those who would seek to undermine it. Northern Ireland needs its political leaders to stand together and work with each other now more than ever. That is why in Belfast last Friday I called for formal political talks to restore the Executive commencing on 7 May. Those talks will involve the UK Government, the five Northern Ireland political parties which are eligible to form an Executive and the Irish Government for matters on which they have responsibilities. They will be conducted in full accordance with the Belfast agreement and the well-established three-stranded approach to which this Government remain committed. There will also be a meeting of the British-Irish Intergovernmental Conference on 8 May.

[LORD DUNCAN OF SPRINGBANK]

There is much to do and many challenges ahead. It is incumbent on all of us to do all that we can to make these talks a success. Northern Ireland needs its Government back up and delivering for the people of Northern Ireland. From now until the start of talks, my team and I will be working with the parties on an intensive period of preparation for those talks.

Both the UK and Irish Governments have been clear that we will do everything in our power to make these talks a success, but we cannot do it alone. No Government can impose an agreement from the outside. We need Northern Ireland's political leadership to do everything they can to ensure that we emerge with an agreement to restore the Executive and build a better future for the people of Northern Ireland. We have a narrow window in which genuine progress can be made and we must act now.

I hope that all Members of this House will appreciate that, to give these talks the best chance of success, there is a responsibility on all of us to give the parties some time and some space to talk. While I will of course seek to keep the House updated, I will not provide a running commentary on negotiations. However, I will be doing everything I can to give these talks the best possible chance of success. I know that all of us in this House and in the other place want to see these talks succeed.

This week has been a difficult time for us all. The murder of Lyra McKee was an attack not just on Lyra or our police service; it was an attack on us all. Since that sickening attack in Derry, Northern Ireland's political leaders have shown great leadership in standing up together to reject violence, but now it is time for us to go further. The best possible way of showing those who oppose peace and democracy that their efforts are futile is for all the political institutions of the Belfast agreement to be fully restored and functioning, as was intended by those who reached that historic agreement 21 years ago. The stability and safety provided by the agreement has allowed Northern Ireland to thrive. Northern Ireland is now a leading destination for inward investment, unemployment is at a record low and employment at an all-time high.

Northern Ireland needs a devolved Government to allow for local decision-making, to continue to strengthen the economy and to build a united and prosperous community. I will do all I can to make that happen. I commend this Statement to the House".

5.56 pm

Lord Murphy of Torfaen (Lab): My Lords, political vacuums in Northern Ireland are often filled with violence, and the wicked murderers of Lyra McKee used the absence of the political institutions in Northern Ireland to maintain that the Good Friday agreement was dead—that it had failed. However, the death of a courageous young journalist and the admonition in the cathedral of Father Magill have rightly reminded politicians that progress now has to be made.

Therefore, on these Benches we welcome the Minister's Statement and we wish the two Governments—who are, after all, the guarantors of the Good Friday agreement—and all the political parties in Northern Ireland well. However, there has to be a fresh commitment and a fresh determination, and different ways of negotiating and talking. I believe that there has to be an independent chair of the proceedings, and all-party round-table meetings involving not one or two parties but all the parties engaged with the Assembly, and there must be, when the time comes, proper ministerial involvement by the Prime Minister and the Taoiseach. None of those things has happened over the last months but now they must.

There must be no more part-time negotiations, no more telephone calls, no more complacency and no more throwing your hands in the air and saying, "Oh well, the parties won't agree". I assure your Lordships that those of us who were there 21 years ago—there are a number in this Chamber—did not agree originally, but they did in the end. Therefore, for the sake of generations of young people in Northern Ireland to come, they have to agree again, and I hope that the Minister will take these points back to the Secretary of State. Despite what the Minister said about there being no running commentary on the negotiations, it is very important that Parliament is frequently kept up to date on them as they take place.

Lord Bruce of Bennachie (LD): My Lords, I too thank the Minister for repeating the Statement, which is extremely welcome. The fact that the Irish and British Governments have taken the initiative to move these talks forward is of course welcome, although way overdue and sadly driven by the tragic and disgraceful murder of a young journalist. There is no doubt that Father Martin Magill struck a chord when he asked why it had taken so long, and such an action, to bring this about. To what extent does the Minister feel that there is a public expectation among the people of Northern Ireland that their politicians now accept the responsibility, which they have abdicated for the last two years or more, to move these talks forward in a different, more constructive spirit?

The Alliance Party came forward just over a year ago with a number of proposals that are worth repeating because they seem relevant to the context. The first, alongside that of the noble Lord, Lord Murphy, is the request that an independent facilitator or mediator—call it what we will—be appointed. Secondly, nothing should be ruled out; everything is on the table. There are issues, such as equal marriage and other social issues, which can be determined either at Westminster or in a devolved Assembly. There is the issue of the petition of concern, and the need to have in the background, perhaps, the reactivation the Assembly committees so that people can be engaged with each other day to day. These are not preconditions; there must be no preconditions. They are just issues that must be allowed to be discussed and explored.

In these circumstances, I ask the Minister whether the Government, while not wanting to put any restrictions on a new initiative, recognise that we have a limited time to reach a conclusion. We cannot wait until the dog days of summer before we reach that conclusion, and we should not allow the European elections or anything else to delay it. The sooner these talks start, and the more active they are, the better. I agree that a running commentary is not required, but good progress and an engagement with the people of Northern Ireland

—as well as the politicians, so that they can be part of the dynamic—may put on the pressure that delivers a result, rather than another round of talks around the same subjects with the same negative result. Let us hope that this time there can be a positive outcome.

Lord Maginnis of Drumglass (Ind UU): My Lords—

Lord Duncan of Springbank: My Lords, I am sorry, but I say to the noble Lord, Lord Maginnis, that his time will come.

I thank both speakers on the Opposition Benches for their confirmation and commitment. This is an opportunity. Out of darkness, let there be some light. It is important that we embrace that flickering flame to ensure that we can restore an Executive. There is no doubt, as is often said, that nature abhors a vacuum; so does peace. We saw last week—indeed, over many weeks—how, in the absence of functioning public servants in Northern Ireland, terrorists, gangsters and others who have no interest in peace or the well-being of the communities of Northern Ireland have far too often held sway on some of the streets.

In response to certain questions, the noble Lord, Lord Murphy, is of course right; we need to think in a fresh way. There is no point pretending that the methods that we have deployed thus far have been adequate to deliver that which must be delivered. We must think, and behave, afresh to achieve that. I have said in the past that nothing can be ruled out. I include in that the idea of a facilitator or mediator, which needs to be actively considered; I have no doubt whatever of that.

I am also very conscious that the Prime Minister and the Taoiseach must be part of this process. I do not believe there ever was telephone diplomacy in this, but I recognise that we now need the visible commitment of all who need to be active in these talks, as they begin to generate what I hope will be the momentum that takes them in the right direction.

I am very much aware that nothing can be off the table. There are a number of elements to the impasse which have bedevilled the various opportunities to bring about a functioning Assembly and a restored Executive. Each element will need to be considered carefully during the talks, and they must include all participants; there can be nobody left on the sidelines. All must now be active in this process.

The noble Lord, Lord Bruce, asked whether there was now a public expectation. It would be fair to say, for any of those here assembled who have spent time in Northern Ireland, that there has been a weariness with politicians of all parties—a certain fear that politicians were simply no longer able to deliver. There is now a public expectation, and rightly so. They have gone too long without a functioning Executive. I do not doubt that the people of Northern Ireland would like to move quickly beyond the constitutional considerations on to the bread-and-butter issues of health, welfare, education, roads, farming and everything else that needs to be addressed by a functioning Executive, drawn from an Assembly that represents the people of Northern Ireland who are affected by the very issues that we are discussing. I hope this talks process leads to the restoration of an Executive, and I hope it does so quickly.

6.05 pm

Lord Eames (CB): My Lords, coming from Northern Ireland and speaking from my experience over the years of being heavily involved in attempts to bring peace and to support the political efforts based on the Good Friday agreement, I welcome much of what the Minister has said to the House. The dramatic reaction to the funeral service in St Anne's Cathedral needs no enlargement from me, but I say to the Minister that, having presided over the years at numerous funerals of the victims of violence and being in contact with the families of those who have been murdered, I was not at all surprised at the reaction.

However, allied to that must be a new urgency from Her Majesty's Government in recognising that there is a cynicism abroad in the Northern Ireland community at the failure of organised politics to bring about a solution to these problems, and that, unless that cynicism is addressed in a realistic way in these talks, we are doomed to further failure. So can we be assured that the Secretary of State for Northern Ireland will be aware of all the facets of what she is undertaking, and that the full force of the British and Irish Governments in emphasising those particular shortcomings of the past will be fully realised for the long-suffering people of Northern Ireland?

Lord Duncan of Springbank: My Lords, the noble and right reverend Lord, Lord Eames, reminds us again that there have been far too many funerals in Northern Ireland, and that the passing of Lyra McKee represents but the latest in a tragic list of those who have lost their lives on the island of Ireland. I can give the noble and right reverend Lord the assurance that the two Governments will be active in their pursuit of an agreed settlement that restores an Assembly and a functioning Executive.

Let Lyra McKee not have died in vain. Let this moment be grasped by all the political parties. Whatever differences, obstacles and challenges there may be, they can and must be overcome. I can of course give the full assurance that the Secretary of State for Northern Ireland will in every way seek to move this matter forward. We now need to restore a functioning Executive. That would be a fitting but all too tragic tribute to the passing of that young journalist.

Lord Maginnis of Drumglass: My Lords, I am grateful to the Minister for bringing the Statement to this House but I have absolutely no faith in the ability of our present Secretary of State for Northern Ireland to bring into effect those things that, despite the clichés in her Statement, she appears to promise. Like others, I was deeply saddened by the murder of Lyra McKee, but it is not new for those of us who have lived a lifetime in Northern Ireland. I have had fellow schoolmasters and my own pupils from my school murdered by the IRA.

The Secretary of State has made a vague promise without appearing to understand the difficulties that she faces in restoring a form of government to Northern Ireland. I have made it very clear that to a large extent I have given up hope; I believe that first and foremost we should have direct rule so that we could have, say,

[Lord Maginnis of Drumglass]
six to nine months' stability out of which we could try to evolve a system whereby we could implement the things that we promised in the Belfast agreement in 1998.

The major problem—I hope the Minister will take on board this point—is that we have allowed outside interference, and not just from the Taoiseach, who suddenly arrived on the scene and promised problems of violence that we would have on the border, whatever happened with Brexit. Today, we have had the leader of Fianna Fáil, who would advocate—

Noble Lords: Order!

Viscount Younger of Leckie (Con): I rise quickly to say that I think the House would appreciate a question from the noble Lord.

Lord Maginnis of Drumglass: I apologise but, after all these years, noble Lords will understand my deep concern. When will the Secretary of State have the courage to consult those of us who were involved in the 1998 Belfast agreement? We are boycotted, are we not? What improvement can we have on that scenario?

Lord Duncan of Springbank: My Lords, I understand the passion that the noble Lord, Lord Maginnis, brings to this issue. I understand very well the challenges he must have experienced as a schoolmaster, seeing his pupils lost in such a tragic cause. The Secretary of State has sought to reach out to Members of your Lordships' House on a number of occasions and will continue to do so. It is important that the experience which rests in these hallowed Chambers is not dismissed lightly; there is a wealth of knowledge that can be brought into the discussions. I will strongly encourage my right honourable friend the Secretary of State for Northern Ireland to draw on the wealth of knowledge that noble Lords represent.

Baroness Armstrong of Hill Top (Lab): My Lords, does the Minister appreciate just how much ordinary civil society is suffering because there is no Executive in Northern Ireland? An example of that is the charity that Lyra McKee was involved with, which I think is called Headliners. It works in troubled areas, particularly in this country, and in Northern Ireland, with young people across the divide. It works with them on journalism skills in every sense—not necessarily to make them journalists but to build their confidence through telling stories about their communities, their lives and so on. Lyra McKee was involved with it from the age of 13 onwards and became a trustee. That charity faces closure in Northern Ireland because of funding and because there is no Executive to take decisions. The decision is outside the competence of officials. That is one civil society organisation, and because the Executive have not worked for so long, lots of other organisations face real challenges. It is that sort of vacuum, as well as the political vacuum, that is really bringing trouble to folk who just want to get on with a decent, ordinary life. That is the real challenge for the Government.

Lord Duncan of Springbank: The noble Baroness draws attention to a sad state of affairs in Northern Ireland—namely, that the everyday business of government has almost fallen by the wayside, in so far as we have reached the point, so many years now after the collapse of the previous Executive, that we cannot with confidence or certainty maintain that which has gone before. That includes funding across a whole range of charitable operations and funding aspects of education, welfare and beyond. There is a whole range of aspects, which is why the importance of restoring an Executive has always been critical. The United Kingdom Government remain committed to good governance in Northern Ireland, but that is not enough. This is an opportunity to bring together the parties in Northern Ireland to restore a sustainable, functioning Executive to address the very issues that the noble Baroness raises. The people of Northern Ireland deserve a lot better than they have had.

Lord Cormack (Con): My Lords, I suggest to my noble friend, if we are really going to sustain the momentum that has been created, that when these talks begin they do so not in rooms but that the Assembly that has been elected is summoned to Stormont and that not only the Secretary of State but the Prime Minister and the Taoiseach are there to speak to the Members of the Assembly to stress their total commitment and dedication to the restoration of devolved government, and to challenge the Members of the Assembly to respond positively to it.

Lord Duncan of Springbank: My noble friend Lord Cormack was short, sharp and very much to the point. We need to ensure that this is not a process that remains solely behind closed doors. It must involve all the Members of the Assembly, who bring their knowledge to the process. There can be nobody left behind. I include in that civil society and local government. Each must now play their part in this process to make sure that we deliver a sustainable Executive that can hit the ground running and restore the confidence of the people of Northern Ireland in politicians full stop.

Lord Empey (UUP): My Lords, naturally I welcome any process and I have complained bitterly that there has not been one, but, in a bizarre twist, four of the party leaders at Stormont, including the leaders of the SDLP and the Alliance Party, are standing as candidates in the European elections in parallel with this process. I thought that we had dealt with double jobbing, but it would appear that we have not.

The Statement referred to the Belfast agreement. People are saying how wonderful it is and how much it needs be defended, but what is not recognised is that the Belfast agreement we are talking about is not the one that we negotiated and which got 71.2% of the people to support it. It was severely damaged in 2006. When the legislation went through this House, the Liberal Democrats and the Conservatives, who were on the opposition Benches at that time, fiercely opposed it because they realised that the core of it—the partnership model at the centre—was hollowed out to facilitate the two parties that did not negotiate the agreement. That means we should go back to

factory settings and deal with the agreement we made. Last year, the Secretary of State said to the House of Commons:

"Clearly, the changes made to the Belfast agreement in the 2007 St Andrews agreement have made the situation we have found ourselves in for the past 19 months more likely".—[*Official Report*, Commons, 6/9/18; col. 354.]

Does the Minister agree?

Lord Duncan of Springbank: My Lords, there is no question that the Belfast agreement remains the cornerstone of our approach. There is also no doubt that it has undergone evolution. In this process of talks, nothing can be taken off the table. All aspects must be available for consideration. Whether that ultimately results in a restoration of factory settings I suspect time will tell, but it will be important to ensure that we have the key aspect out of these talks: a sustainable Executive that can deliver and not be brought down by either noises off or any one political party.

I am also aware that the European elections, with which the noble Lord began his question and which we perhaps had not anticipated, are seemingly fast approaching. The landscape in Northern Ireland between now and the end of the year has a number of serious obstacles that we must navigate around. This is but one of them. I recognise that there will be challenges as the political parties seek to operate normal politics while involved in the extraordinary politics required to deliver an Executive.

Lord Campbell-Savours (Lab): My Lords, the noble Lord, Lord Cormack, made a specific recommendation with regard to the location of the talks and the conditions under which they would take place. Can the Minister take away his proposition and seriously consider it?

Lord Duncan of Springbank: Yes, I am very happy to do that.

Lord Lexden (Con): My noble friend made reference to the end of the year for the completion of discussions. Did we not have a deadline at the end of August? Secondly, time and again my noble friend has been asked about an independent facilitator—by the noble Lord, Lord Murphy, and others—and time and again he has said "It will be considered". When? How? By whom?

Lord Duncan of Springbank: The noble Lord is right to remind us that we are operating within what is the second window of the Executive formation extension period, which ends in August. Depending on circumstances, that may need to be revisited. I do not think a deadline at that point should in any way be a curtailment if progress is being made; that would be foolhardy.

The final points raised, about an independent facilitator, are being actively considered. They will need to be actively considered by all participants, because there is a range of views on this. Much as I would like to agree with noble Lords here that it is a unanimously popular and supported aspect, it is not. There are political parties which do not share that view, and so we need to ensure that all are brought on board, that all recognise the value and worth of such an individual, and that the individual is able to function—if indeed there is an agreement to move forward in that direction. I believe that Senator George Mitchell delivered a great deal to the previous discussions, and I recognise the value of such an individual in any future discussions.

Lord Dubs (Lab): My Lords, the noble Lord, Lord Cormack, may have made this point on an earlier occasion. Is there any reason why the committees of the Assembly could not be brought together, so that at least there is a voice for politicians—or for local people, through those politicians—to let their views be heard? Would that not be salutary?

Lord Duncan of Springbank: The noble Lord, Lord Dubs, raises an important point, which is to ensure that there are voices from across the political spectrum. Whether the forums themselves are those committee structures—or indeed other structures—remains to be determined by those participants, but at heart I agree completely with what he is saying. There needs to be that representative element across the political spectrum and across the themes which need to be discussed. There can be particular themes discussed in closed rooms where only certain people are privy to the discussion. There also needs to be openness and transparency, and the political strata in Northern Ireland at all levels—from local government, right the way through—need to be involved in this difficult process.

Lord Empey: I am sorry for coming back again to the Minister, but he did say that everything is on the table. Just be very careful. Everything is not on the table. If we start opening up the whole constitutional question, I do not know where we will be. Do not forget that we had a referendum on that. People have been telling us that, because 52% of the people voted a certain way in a referendum, it has to be implemented. We had 71.2% vote for that referendum in 1998, and they were not consulted—and nor were the people who negotiated that agreement consulted—when it was changed behind our backs. Be careful about the language, because if we open up the whole constitutional Pandora's box, I do not know where we will end up.

Lord Duncan of Springbank: The noble Lord makes an important point about everything being on the table. I think we can probably agree that there is a table, and that table must represent the three-stranded approach. We need to recognise the importance of the achievements of the Belfast agreement in bringing together the structures whereby we can move these matters forward, but it is also important to recognise that at heart we need to deliver a sustainable Executive which can deliver—that must be the outcome all aspire toward. I hope that using that three-stranded approach, and the various strands which must be woven into those three strands later, will help us move towards that outcome.

Police and Crime Commissioners

Question for Short Debate

6.24 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government whether they plan to establish a review of the role and responsibilities of Police and Crime Commissioners.

Lord Lexden (Con): My Lords, first, I thank those noble Lords who have made time to speak in this debate, which was arranged at rather short notice. I think we have all made clear our deep interest in the issues before us this evening on previous occasions, no one more so than the noble Lord, Lord Bach, who is involved so conspicuously in them as a serving police and crime commissioner.

It is surely right that we should return to the issues to assess the current state of affairs at a time of rising crime, particularly violent crime, and falling detection rates. Public anxiety is mounting, intensified by the horror of rampant knife crime, which requires a more determined response at the highest political levels than it has so far received. In these circumstances, all elements of our police service need to be in a position to carry out their duties as effectively as possible, equipped by the Government with sufficient resources to meet public expectations. Confidence that the Government are fulfilling their financial obligations to the police and crime commissioners satisfactorily is not at the moment widespread.

The Motion which is the subject of this debate calls on the Government to establish a review of the role and responsibilities of our country's police and crime commissioners, who have now been in existence for seven years and face elections for the third time next year. Such a proposal has been made before in this House. It was put forward during a previous debate on these matters last June by the noble Lord, Lord Rosser, who it is so good to see in his place on the Opposition Front Bench today. No reply to his proposal was forthcoming from the Government; today we will get an answer, although not necessarily a satisfactory one. The Home Office so often gives the impression that it believes that the commissioners should be left entirely to their own devices—a wholly mistaken view.

What would be the purpose of a review? I suggest that it should make clear to the country, at this time of grave anxiety, the undoubted success that many commissioners have achieved during the short period of their existence. It should also address the problems and difficulties which have emerged, wholly unsurprisingly, as a new set of arrangements for directing the work of our country's police forces has been put to the test. In examining the problems and difficulties, a review would be much assisted by the authoritative surveys of them conducted by three important bodies: the National Police Chiefs' Council, the Home Affairs Select Committee of the House of Commons and the Committee on Standards in Public Life, during the period when it was chaired by the noble Lord, Lord Bew. All three have published invaluable reports in the last four years, thanks to which a review could be carried out without much need for fresh research.

A review should have one further purpose: it should make recommendations designed to prevent any recurrence of the kind of scandal that arose from the disgraceful manner in which allegations of child sex abuse against Sir Edward Heath were investigated in Wiltshire between 2015 and 2017, under our new arrangements for directing and overseeing police operations. The scandal illustrates the ease with which a Government can evade their responsibility to institute an independent inquiry, through which injustice would be redressed, after a misconducted police operation has been completed and the PCC fails to establish one. Indeed, this Government have shown an extraordinary determination to go on shirking their responsibility, even in the face of unanimous calls from across this House that they should do their duty. They readily admit that they possess the power to set up an inquiry to enable justice to be done to a deceased statesman. They have damaged public confidence in the system as a whole through their evasion of their duty. They will never hear the last of it in this House.

The Government protest lamely that the introduction of local accountability means that there is no role for them to play, but Mr Angus Macpherson, the Wiltshire commissioner in question, cannot be compelled by local pressure to mend his ways and set up an inquiry. He is retiring at the next PCC elections. It is true that he did not reappoint his pugnacious and utterly irresponsible chief constable, Mike Veale, with whom much of the blame for the disastrous Operation Conifer lies. But that man promptly got himself translated to Cleveland, without being asked a single question about the outcry he had caused in Wiltshire. How foolish his new commissioner looked when, within a few months, personal misconduct led to Veale's enforced resignation.

Much continues to be expected of the new system because much was promised at its inception. Police and crime commissioners, 40 in number, were created to help make policing in Britain more successful than ever before. The Conservative Party committed itself to establishing them, following a full policy review after its defeat at the 2005 election. The party's manifesto for the 2010 election stated:

> "People want to know that the police are listening to them … We will replace the existing, invisible and unaccountable police authorities and make the police accountable to a directly-elected individual who will set policing priorities for local communities".

Many believe that police authorities had served their communities better than the bold reforming Tories of 2010 allowed. The calibre of many of the commissioners who took office after the first elections in 2012 attracted severe criticism, not least from senior police officers. The criticism diminished sharply after the second PCC elections in 2016. It is clear that, in several parts of the country, the commissioners now in office have developed successful strategies to cut crime, and shown much imagination in promoting new approaches to policing and increasing the safety of their communities. It is widely held that, if resources were not so straitened, success would be even more marked. An essential task now is to encourage other commissioners to attain the standard of the most successful. Governments normally love disseminating best practice; what is stopping the Home Office doing so in this vital area?

The promise in 2010 of effective local accountability is far from being realised. It will occur only when commissioners have become well known throughout their areas. According to independently produced figures, 56% of people are aware of the existence of commissioners, which means that nearly half the population have never heard of them. How many know what commissioners do and how voters, about three-quarters of whom have yet to cast a vote in their

elections, should get in touch with them? The House of Commons committee provided some clear advice on this in 2016, when it said that,

"the value in PCCs making themselves available to meet the public in person cannot be over-emphasised".

It added that commissioners should put,

"the highest priority on engaging with their electorates".

How extraordinary that such advice should even be needed.

Little has been heard about the work of the police and crime panels, a central element of the new system that is supposed to hold the commissioners to account between elections. How many people even know of their existence and what they do? There are a number of basic things that, after seven years, some commissioners still need to learn. They include making proper efforts to ensure that the best people become chief constables.

The noble Lord, Lord Blair of Boughton, wanted to highlight this issue in the debate, but cannot be here. He has authorised me to say this: PCCs have had, as an unintended consequence of their creation, an absolutely chilling effect on the number of candidates applying for top jobs. Twenty years ago, long lists had to be reduced to short lists, but now just two or three candidates apply, because they know that the sitting PCC is likely to appoint the sitting deputy constable. This has just happened in a large force, in which the newly promoted deputy has served for 32 years. Is such a chief constable likely to be a source of fresh ideas or possess the capacity to stand up to the PCC where necessary?

I have touched on just some of the many reasons why this country has yet to give its full confidence to our police and crime commissioners. So far, the Home Office has given these issues scant attention. It should now address them seriously. The best way of doing so would be through a short, sharp review.

6.33 pm

Lord Wasserman (Con): My Lords, I congratulate my noble friend Lord Lexden on securing this debate on police and crime commissioners, a subject with which I have been directly concerned for longer than I care to remember and about which, as many noble Lords know, I have remained passionately supportive despite the rough ride they have had in the media and, from time to time, even in your Lordships' House. As my noble friend has just said, the next set of national PCC elections is due to take place in May 2020. This, therefore, is probably as good a time as any to review the performance of PCCs and to consider any ideas for making them even more effective in keeping their communities safe.

Before we think about changing the way in which PCCs operate, it is worth reminding ourselves why PCCs were introduced in the first place. Before PCCs, local policing—that is, policing aimed at keeping local communities safe by preventing crime and anti-social behaviour—was seen as one of the principal responsibilities of the Secretary of State for the Home Department. The policies and procedures for local policing were therefore set largely by Home Office officials, including myself in the 1980s and 1990s, collaborating with ACPO—the Association of Chief Police Officers—and, to a lesser extent, the Association of Police Authorities. This was seen as the most effective way of providing local policing, because policing was seen not as a local service to be overseen by local people but as a national service to be provided to local people by professionals; that is, by police officers and Home Office bureaucrats under direction from London.

The extent to which local policing was seen as a national responsibility to be managed from London was brought home to me most forcefully in 2010 when ACPO published a response to the new Home Secretary's proposals for PCCs. In that document, it argued that local PCCs were inappropriate because local policing was,

"a national service locally delivered".

In other words, chief constables collectively regarded policing as a national organisation like Boots delivering local service through local branches managed centrally from corporate headquarters. The idea of PCCs was to turn this arrangement on its head.

The Act made local policing—that is, keeping local communities safe—the direct responsibility of local people. It empowered them to exercise this responsibility by enabling them to elect a local police and crime commissioner, whom they held accountable through the ballot box for keeping them safe. It became the responsibility of this directly elected PCC to maintain an efficient and effective police force and to hold accountable the local professional head of this force, the chief constable, for meeting the policing needs of the community as identified by the PCC.

I will expand for a moment on the concept of holding the chief constable to account. There is much talk about PCCs holding their chief constable to account. It is interpreted as meaning that the PCC has to act as a sort of auditor, ensuring that the force provides good value for money. Of course value for money is important, but the essential idea underlying PCCs was not to improve value for money but to improve the links between a local community and the police force by holding the chief constable to account for meeting the policing needs of the community, as identified by the PCC. This was a radical idea and it was often lost in discussions about PCCs.

Briefly, the demands on local policing are more or less infinite. They extend from preventing murders to reducing graffiti, from dealing with domestic abuse to ensuring that traffic moves smoothly. At the same time, the resources available to forces to meet these needs are severely limited. The key issue therefore is who decides on the allocation of the scarce policing resources between the more or less infinite number of competing policing needs.

As I have said, in the days before PCCs, these decisions were taken primarily by professionals in London—Home Office officials and chief constables, neither of whom had any real skin in the game because they were unlikely to be members of the communities directly affected. Under PCCs, it is the members of local communities who call the tune. They determine community safety priorities or policing needs and, through their PCCs, it is they who hold their local forces accountable for meeting these needs.

[Lord Wasserman]

I have made much of this point because I feel that it is not fully appreciated by those who comment on the work of PCCs and who are full of ideas for how to make them more effective. I fear that some of these suggestions, however, run the risk of throwing the baby out with the bathwater and taking us back to central control of local policing.

I have no doubt that there are many ways of modifying the powers and responsibilities of PCCs to make them more responsive to their local communities and more effective in keeping these communities safe. I have made many such suggestions, both in your Lordships' House through the Select Committee and elsewhere. For example, on the question of responsiveness I recommended the introduction of a power of recall for PCCs. This would give local communities the opportunity to change their PCC if enough local electors felt that this would make things better in one way or another. But recall is an expensive and disruptive procedure, and must be handled very carefully.

I also believe that the present electoral arrangements for PCCs would benefit from review. If the aim of electoral arrangements is to maximise the percentage of the electorate who vote for their local PCCs, might there not at least be a case for using the familiar first past the post system for PCC elections, rather than the present supplementary vote, which many people found confusing in the last two PCC elections and which led to hundreds of thousands of spoilt ballots in the 2016 election?

As for increasing the effectiveness of PCCs in keeping their communities safe, I have always believed strongly in extending the influence of PCCs beyond policing to other parts of the criminal justice system such as the courts and probation service, and even to health, housing and the local environment, each of which plays a key role in preventing crime and anti-social behaviour.

There is also an urgent need to review the relationship between PCCs and the rest of the policing landscape, including the inspectorate, the College of Policing, the National Crime Agency, the Independent Office for Police Conduct, the National Police Chiefs' Council and the Association of Police and Crime Commissioners itself. Each has its own mission statement and governance arrangements, and each is understandably trying to extend its influence, reputation and power. Only the Home Secretary can bring these organisations together in one room to decide that they are all moving in the same direction in the most effective way.

Finally, there is an urgent need to review the availability of scientific and technological support services for local forces—particularly ICT services, which have been significantly affected by the abolition of the National Policing Improvement Agency, which occurred when PCCs were introduced. The Home Office, having abandoned the business of providing this service, set up the new Police ICT Company, owned by PCCs collectively, to fill the gap. The Police ICT Company has welcomed this challenge and is up for it, but it needs the political support of the Home Secretary and additional national resources if it is to succeed in meeting its very ambitious and critical mission.

All our institutions can do with a review from time to time. PCCs are probably due for some sort of review about now. My plea is that such a review must be wide ranging and look at the environment within which PCCs operate, rather than simply at the work of PCCs themselves. Most importantly, such a review must not forget the fundamental premise of PCCs: namely, that local policing, if it is to be effective, must meet local needs. This in turn means that PCCs must be responsible primarily to local people through the ballot box.

6.43 pm

Lord Cormack (Con): My Lords, I am in rather a strange position, as I follow my noble friend, whom I consider the godfather of this system, and I will be followed by my friend the noble Lord, Lord Bach, who I am sure is conducting his duties in a most exemplary manner.

However, I would not have started from here. Well over a decade ago and some years before I came to your Lordships' House, I spoke out in another place against the idea. I did so for two principal reasons. First, it is inimical to the British system to concentrate too much power in the hands of one man or woman. That is why, when we had a referendum on whether we should have a Mayor of London, I voted enthusiastically against the proposition. Nothing has happened during the tenure of three Mayors of London to change my mind. I do not like the concentration of power in the hands of a party politician when it comes to the police service, in which the whole community must have trust and confidence.

We are grateful to my noble friend Lord Lexden for using this opportunity to rehearse once again the deplorable events in Wiltshire: the traducing of the reputation of a considerable Prime Minister by a chief constable and the utter powerlessness, it would seem, of the police and crime commissioner to call the chief constable to account or even to agree to a proper review. I have always deplored the Government's weak response to constant calls from noble Lords, including me, to do something about it. I hope that the new Minister, whom I this evening welcome to her duties and who will respond to the debate, will be able to be a little more forthcoming, and will at least say to the Home Secretary, "You have the power to review. Use it, even now, in the case of Sir Edward Heath. It is not too late".

The proposition before your Lordships' House tonight is that there should be a review of the role of police and crime commissioners. I have two suggestions for your Lordships; one for the short term, and one for the long. In the short term, the Home Secretary should appoint a senior judge—perhaps a retired Lord Chief Justice, who might be assisted by two former inspectors of constabulary, although personally I should be perfectly happy to settle for a former Lord Chief Justice—to review exactly how the police and crime commissioner system is working and how it should work in future. I accept that it is here to stay in the short term, although I regret that.

One thing that needs to be looked at, because it causes me concern, is who should be eligible to stand for office. I think that former police officers should not. Several have been elected as police and crime

commissioners. I do not impugn the integrity or sincerity of anyone, but it must be an extremely awkward position for a chief constable, the chief operating officer, to be subject to the whims of someone who never attained that office but held a more lowly office in a police force somewhere. The whole eligibility criteria need looking at. I hope that will be done as a matter of some urgency. We have the elections next year, and I should like a report to the Home Secretary from a judicial figure or a panel in good time for recommendations to be implemented before the next elections.

However, I would go further, because that is the short term. In the long term, we need a royal commission on the whole role of the police in this country. I am glad to see a former Commissioner of the Metropolitan Police, the noble Lord, Lord Hogan-Howe, indicating some measure of assent—if I have got him wrong, I shall gladly give way. Such issues as how national the police force should be, how local it should be, what its role is in this era of advanced social media and what should be permissible as evidence—we heard a Statement earlier about the new suggested rules for alleged victims of rape—and the whole position of the police force as we approach the second half of the 21st century should be looked at by a royal commission. I earnestly urge my noble friend, who is of course not in a position to give anything approaching a definitive answer, to commit herself to passing this suggestion on to the Home Secretary. The short-term and long-term reviews of the role of commissioners should be considered at the highest level.

We do not want no progress. Even the noble Lord, Lord Wasserman, indicated in his honest speech that he believes that not all is necessarily for the best in the best of all possible worlds. His idea has been run with and implemented but not to his entire satisfaction. There is room for improvement. I now await with great interest the speech of the noble Lord, Lord Bach, to see how much room for improvement he feels there is. I say yes to review and yes to review in the short term, but the long term is even more important. We never again want to see the sort of scenes we saw outside the gate of Arundells in Salisbury, when a chief constable took leave of his senses and a police and crime commissioner did not feel able to review what had happened.

6.51 pm

Lord Bach (Lab): My Lords, no pressure then. I declare my interests as the elected police and crime commissioner for Leicester, Leicestershire and Rutland and a national board member of the Independent Custody Visiting Association, known as ICVA. I congratulate the noble Lord, Lord Lexden, on securing the debate and thank him for his elegant and forceful speech.

The subtext of this debate and others like it is a determined and strong campaign by noble Lords and those outside this House to clear Sir Edward Heath's name from the unfounded allegations made against him. As it happens, I agree. The present limbo is deeply unsatisfactory and grossly unfair to Sir Edward's memory. Much criticism has been levelled at my colleague, the police and crime commissioner for Wiltshire, and his refusal to set up an inquiry has been widely attacked. However, in my view, he is in danger of being made the scapegoat of this affair. Let me make it absolutely clear: he is not a particular friend of mine and, although it is entirely irrelevant, we are not of the same political persuasion. From my knowledge, which is admittedly limited compared with that of many in this House, I am afraid to say that the real villain of the piece is, not for the first time, the Home Office and the Government behind it. The urgent, and so far powerfully put, argument that the Home Office should establish the inquiry seems both cogent and practical, at least to me. However, in a short letter of response to the noble Lord, Lord Lexden, dated 10 October 2018, the proposition is rejected out of hand. I hope that we may hear something different tonight.

However, if the call for a review of police and crime commissioners and the principles behind them is based on one police and crime commissioner's refusal to set up an inquiry—I know that of course it is not the only reason, far from it—and they are to be judged on this one issue, even if the police and crime commissioner was in the wrong, although I do not admit that, it would be unfair because it would be like judging a whole Government on the behaviour of one Minister.

Police and crime commissioners have many roles, and while far from a perfect answer to the vital issue raised in particular by the noble Lord, Lord Wasserman, many years ago, of making the police accountable to the public they actually serve, perhaps it will not surprise the House to learn that it seems to me that some progress has been made and continues to be made. Police and crime commissioners are, I believe, much closer to those who rely on the police and who largely pay for them than the old police authorities ever were. If that is true, it has to be borne very much in mind if it comes to reform.

It is worth noble Lords bearing in mind that from their very inception, police and crime commissioners have worked under two rather large disadvantages. The first is the point about the democratic deficit. Turnout has been much too low in both of the elections held so far. I am afraid that some of the blame for that, particularly in the first election in 2012, has to be put on the Government. That vote took place, ridiculously if I may say so, in November of that year, which is hardly the best month to introduce a new election of this kind. As I remember it, the Government deliberately refused any expenditure to assist in that first election for a massively unknown role. It is hardly a surprise that the turnout was absurdly low. The turnout was higher in 2016, but again the Government refused to provide for the normal sort of publicity that might be expected for a scheme in its infancy.

Much of our time as police and crime commissioners —I think that whoever was standing in my place would say the same—is spent letting people know that we exist and what we actually try to do. When they learn about it, I have to tell the House that sometimes they are quite impressed. The second burden we face is the very large cuts that have been made to policing over the past nine years or so. It means that too much of our time has to be spent dealing with reductions in the number of police officers and staff at a time of new crimes emerging as well as a growing population.

[LORD BACH]
This exists right up to the present time; it has not gone away. Moreover, I would ask the House to be pretty sceptical about Home Office claims that huge sums have been given to police and crime commissioners this year so that the problem somehow no longer exists and never did. By failing to do their duty and increasing the central grant and by leaving it to police and crime commissioners to raise money from council tax, the Government, while I am sure they did not mean to, have ensured a deep unfairness in the system between police forces that will take years to overcome.

In spite of these frankly unnecessary burdens, on the whole, police and crime commissioners have succeeded in changing policing for the better. Let me mention one or two aspects. One is the important strategic role for police and crime commissioners, best evidenced by the statutory police and crime plan that every PCC has to produce. That strategic role for a police force should be and in many cases is now much clearer than it was before. The holding to account role is now more accepted by chief officer teams than it ever used to be, and that too is important. It ensures that the public has a voice—some voice—where before there was little or no voice heard at all. Of course, there is a really interesting but worrying grey area around operational activity; I think it was deliberately intended by the authors of the Act. I would very much like to hear about that from the noble Lord, Lord Wasserman, at some stage in future. Most chief constables and PCCs, who are mainly sensible people, work it out in different ways for their own areas.

One real concern—the noble Lord, Lord Cormack, mentioned it a couple of minutes ago—can be put to bed, certainly for the time being: party politics, which would damage the crucial independence of the British police service. There was a worry that it would somehow become a major part and really damage the system; that does not seem to have happened at all. Indeed, it is a foolish police and crime commissioner, of whatever political persuasion or none, who parades their political principles. It would be noticed very quickly and, quite rightly, roundly condemned. It does not happen.

Police and crime commissioners run victims' services and the independent custody visitor services. As crime commissioners—we sometimes forget that role—they play an important part, with partners, in trying to prevent crime. We all do this in our different ways, and there have been some outstanding successes; we may perhaps hear of some of them later on. Projects are now in place doing great things that would never even have been dreamed of before police and crime commissioners existed.

It is only a few years since there have been police and crime commissioners; it is the very early years. It may not be the final solution to the important problem in a democracy of how the police and public interact, but it is here to stay for a while and we should make the very best of it. I am slightly sceptical whether this is the time for a full review, but in a democracy there can never be harm in looking at projects such as this. I hope that that will happen in a sensible way. I am proud to be a police and crime commissioner and to be working with some outstanding police and crime commissioner colleagues.

7.02 pm

Lord Wigley (PC): My Lords, I am delighted to follow the noble Lord, Lord Bach. The House will have noted his wise words, I am sure. I also thank the noble Lord, Lord Lexden, for securing this debate, and welcome the opportunity to discuss the role of police and crime commissioners.

I come to this debate as a heretic. At the time this system was established, my party Plaid Cymru did not support the concept, as we were fearful of politicising the police. Consequently, in the first round of elections we did not put forward candidates for the four commissioners in Wales. However, we are a pragmatic party and, having seen how the system settled down, we accepted that it is here to stay and that we should play a full role in the electoral process. As a consequence, in the second round of elections we fielded four candidates, and two of them—Arfon Jones in North Wales and Dafydd Llywelyn in Dyfed-Powys—were not only elected but have blossomed and, according to evidence from across the political spectrum in their areas, are doing an outstanding job.

Their success may partly be on account of their previous experience; I perhaps take issue a little with the noble Lord, Lord Cormack, on this. Arfon Jones was for many years operational inspector for the North Wales Police and Dafydd Llywelyn worked for a substantial period as the force's principal intelligence analyst, before becoming a criminology lecturer in the law department at Aberystwyth. Such experience has been a vital part of the success of both these commissioners. There is no doubt that the police and crime commissioners are actively involved in work across policing and beyond, or that our communities have benefited immensely from their creation. Wales, particularly rural Wales, is a country in which the concept of community really does matter. It is because both Arfon Jones and Dafydd Llywelyn are very much rooted in their communities that they have been so successful. Perhaps I might highlight a couple of aspects of this success.

In North Wales our commissioner took a lead on the issue of modern slavery—a very pertinent issue in, for example, the port of Holyhead. North Wales Police was the first force in Wales to establish a modern slavery unit, and the first police force in Wales and England to appoint a dedicated victim support officer for victims and survivors of this horrendous crime. Arfon Jones has also played a leading role in challenging our communities to think radically about the ongoing problem of drugs and its links with criminality.

In Dyfed-Powys, thanks largely to the lead given by the commissioner, the police force of that area is at the head of the national picture when it comes to tackling fraud and supporting vulnerable people. This work by the Dyfed-Powys Police has been recognised on a UK level as best practice, particularly with the funding of a designated fraud safeguarding officer by the office of the PCC—an asset that not all forces have in place. His office has also just launched new community funding grants for schemes that will have a positive impact on community safety—something of increasing importance.

It is more than evident that PCCs in all areas have worked hard to improve their communities but it may now be timely to review the role of the PCC to ensure

that the system remains fit for purpose. Since the creation of the system of PCCs, we have seen the Home Office and the Ministry of Justice passing more and more responsibilities over to them—as of course they should—but regrettably without adequate funding to carry out all those new functions. What we have seen over recent years, in Wales and elsewhere, is an abdication by this Government of their duty to adequately fund the police service. Instead, Westminster and Whitehall have relied on PCCs raising the local tax precept, with 63% of the increase in funding for local police work coming from an increase in such taxation. This is a regressive form of taxation, hitting especially hard those who are on low incomes but not quite in receipt of welfare support. Consequently, PCCs are given the stark choice between increasing the precept and cutting services, neither of which they would need to do if the Home Office addressed the issues with a comprehensive and equitable funding formula.

Rural Welsh forces are particularly handicapped by the gearing ratio: the proportion of total funding that comes from the police grant and local taxation. Welsh forces have an approximately even split between central and local government funding, with local taxpayers in rural Wales contributing considerably more to policing than local taxpayers in urban police force areas. For example, Northumbria Police receives 81% of its funding from central government, while North Wales Police receives only 47.5% from that same source. It is, in my view, essential that when the role of the PCC is reviewed, which I believe it should be, any such review should include the impact of the funding formula on police forces and the need to ensure that more money is made available as more responsibilities are passed on.

The underfunding of police forces in general is the subject of a Private Member's Bill which I have still loitering in the queue for consideration. I do not suppose it will see much light of day at this stage in the Parliament, but the issue needs to be pressed. However, proper funding should not have to depend on such Back-Bench initiatives. This Government must set up a properly funded system of police and crime commissioners. It behoves the Government to make available the necessary resources in a fair and equitable manner, to enable both the commissioners and the police forces to undertake effectively their very heavy responsibilities.

7.08 pm

Lord Campbell-Savours (Lab): My Lords, the initiative of the noble Lord, Lord Lexden, gives us the opportunity to again express our concerns at the handling of sexual offences and the role of police and crime commissioners. In my view, far too often the guilty go free, the innocent go to prison and reputations are trashed, as in the Heath case. This is all a reflection of a crisis in the criminal justice system, with the screening out of offences by police forces due to resource limitations. That brings me to the concerns of the commissioner for Wiltshire, whose mistake was to have to put Wiltshire's funding problems before justice for the falsely accused Heath.

The problem with many of these cases is that they are characterised by, first, the consideration of the availability of compensation under the criminal injuries compensation scheme; and, secondly, the criminal background of many complainants, who see an opportunity to milk the system. There can be no better indicator of this than the Janner case, where any list of complainants is riddled with the names of convicted criminals. I hope that IICSA keeps that in mind as it proceeds with its inquiries.

I turn to this debate. It would be helpful if Britain's police and crime commissioners were collectively to organise a study on the handling of sexual offences by the various police authorities. I hope they are following some of the more important work being done by IICSA. Concerns over the issues now run deep, so much so that an organisation called FAIR—the Falsely Accused Individuals for Reform—has recently been established to campaign on the issue of anonymity in the handling of sexual offences. Our main supporters include Daniel Janner QC, the son of the late Greville Janner, Sir Cliff Richard, a legend in the world of music, Stephen Fry, the entertainer, Ros Burnett, a leading academic, Paul Gambaccini, the broadcaster, and Harvey Proctor, a former Member of Parliament. At the beginning of July, we intend to launch a national petition and call for a debate in the Commons. This is a struggle that we have to win.

7.11 pm

Lord Hogan-Howe (CB): My Lords, I fundamentally support the proposal for a review of police and crime commissioners but I would argue that it does not go far enough and would end where the noble Lord, Lord Cormack, started.

The fundamental question is whether the police and crime commissioners were worth the political capital expended upon them. There are some good examples. I am sure that the noble Lord, Lord Bach, is one of them but others have also achieved things. Frankly, the same could be said of police authorities. I do not agree with the analysis of the noble Lord, Lord Bach, that police authorities were not engaged in the public. Often there were more of them, for a start—there were at least 70 members. In the Metropolitan Police there were 23, from memory, and in London they had a chance to engage with more people because there were more of them. They did not cover everyone, of course, but they certainly had a significant opportunity to represent different parts of a great metropolis.

The commissioners have not used the two great powers that they have had well. First, in human resources, they had the power to select chief constables. As the noble Lord, Lord Blair, has said, sadly, because potential candidates believe that the outcome of the selection process is already decided, they have not applied. The referral to two or three applicants is well short because in many large forces of significant power they have had one applicant, the sitting deputy. That is not a healthy position if the reason I have offered is why that has occurred. The second power they had was to use the budget wisely. For example, they could have devoted more than two-thirds of the budget to community policing, but it has never shifted over the past several years. The budget has remained exactly the same and the priorities remain the same. That is not an interference in operational policing but that type of power has not been well used.

[LORD HOGAN-HOWE]

The removal of chief constables has not been well handled either. There have been at least five cases where employment tribunals have concluded that the process followed and the evidence offered by PCCs has been so flawed that the individuals have been reinstated. That is not a healthy position.

The selection by PCCs of their own advisers has at times been rather opaque, to say the best, because they have not followed normal public procedures for the selection of such people. That gives rise to the fear that they have been appointed for their political interests and purely political purposes rather than for their skills. That is not a healthy position either.

I agree with the noble Lord, Lord Cormack, that we need to look at the selection criteria, particularly the one that he mentioned around police officers. First, there should at least be a time bar of a certain length. In South Yorkshire, the chief constable applied to be a party's candidate for PCC and would have overseen his own legacy, which is entirely wrong. That is one example, but there are many more.

Secondly, there used to be a convention, if not a rule, that officers could not become a chief constable in a force if they had not had two years in another force at the rank of chief officer. That was a healthy thing. It put in separation and removed too much home-grown affiliation to local political people or whatever. That type of rule should be looked at very seriously.

My final point—I am speaking in the gap so I have only one minute—is that the proposal in the debate is not radical enough. I support the noble Lord, Lord Cormack. It is time that policing had a review. I walked in one day with the Lord Speaker, the noble Lord, Lord Fowler, who reminded me that we had our last review in the 1960s. He named the person who created it. We now observe the 1974 local government boundaries. Criminals do not. We spend £1 billion on police IT in 46 packets. This is not a credible way to deliver a public service that demands to be of high quality rather than anything else. I take the advice that I have been offered. I support the point of the review.

7.15 pm

Lord Paddick (LD): My Lords, I thank the noble Lord, Lord Lexden, for this debate and I pay tribute to the noble Lord, Lord Bach—there are always exceptions to the rule. As the noble Lord, Lord Lexden, said, there are other examples of police and crime commissioners doing very good work, but that is not to say that alternatives might not be more successful.

The Liberal Democrats are in favour of greater police accountability but, equally, we believe in holding the Home Office and police and crime commissioners to account for their part in providing a policing service. We have seen recent, justified criticism of the Home Office's failure to provide leadership in a policing context. For example, as the noble Lord, Lord Lexden, said, in response to the knife crime epidemic the Government's *Serious Violence Strategy* is a strategy only in Mintzberg's post-event rationalisation sense of the word. It is simply a narrative of all the many, various, piecemeal, unco-ordinated efforts of various agencies and pockets of government funding with no clear direction from the Home Office.

We have seen justified criticism of the Home Office over central government funding for the police service, as a couple of noble Lords have mentioned. This is not just about cuts approaching 25% in real terms but about the shifting of responsibility towards local taxation, resulting in those areas most in need of policing services being worst hit by such a shift in responsibility.

We have seen justified criticism of a lack of Home Office involvement in the development and selection of the most senior police officers, as the noble Lord, Lord Hogan-Howe, just mentioned. Gone is the previous requirement that no chief constable can be appointed without experience as an assistant chief constable or deputy in another force area. Gone is the Home Office assessment of candidates' suitability and the grading of candidates for promotion. Instead, chief constables can appoint their own senior officers and police and crime commissioners select their own chief constables. As the noble Lord said, they are almost always the incumbent deputy. Competition for chief officer posts in forces has all but evaporated against the belief that the incumbent will always be selected, having developed a relationship with his or her police and crime commissioner.

As the noble Lords, Lord Lexden, Lord Bach and Lord Campbell-Savours, mentioned, we saw in the Wiltshire constabulary's investigation of Sir Edward Heath the failure of the police and crime commissioner to launch an investigation into his own chief constable, and then the Home Office failing to hold either the chief constable or the police and crime commissioner to account.

Under the old tripartite system of Home Office, police authority and chief constable, the Home Secretary could and did override the police authority. As police and crime commissioners are allegedly "democratically elected", they can be held to account only every four years by the electorate. I say "allegedly" for a number of reasons. In places such as Wiltshire there is an in-built Conservative Party majority. An Electoral Commission report in 2016 found that 72% of the electorate knew not very much or nothing at all about police and crime commissioners. With PCC elections costing £75 million a go, plus one by-election so far, and on the last count a 27% turnout, with voters clearly voting along party lines in most places, in what way is this democratic? Even the candidates were overwhelmingly critical of the Government's arrangements for communicating the views of candidates to voters, with 96% of police and crime commissioners who responded to the Electoral Commission survey saying that they were dissatisfied.

I disagree with the noble Lord, Lord Wasserman, in his portrayal of the police service before police and crime commissioners and, in the light of the facts that I have just mentioned, his rather rose-tinted view of the empowerment of local people as a result of police and crime commissioners being established. The noble Lord, Lord Bach, also talked about there being little local accountability before police and crime commissioners. That is not my experience or the experience of the noble Lord, Lord Hogan-Howe. The Metropolitan Police Authority, for example, was open, transparent and very effective in holding the Metropolitan Police Commissioner to account, setting strategic direction and priorities locally.

We are left with a situation where the Home Office has abdicated responsibility for policing, looking to blame others for crime, disorder and a lack of funding, and placing responsibility on police and crime commissioners, who are dubiously elected on small turnouts based on little or no information, largely along traditional party lines. As the noble Lord, Lord Cormack, said, placing too much power in the hands of one individual—in this case, the police and crime commissioner—creates the potential for other accountability issues. In one force we have seen inappropriate behaviour towards women being alleged against a chief constable. Vulnerable victims came forward and a case was put to the police and crime commissioner, including details of the victims, and then the PCC passed on all those details to the accused chief constable. Although that chief constable was eventually forced to resign, the police and crime commissioner is still in place.

On the other side of the coin, rather than protecting the chief constable whom the PCC appointed and has a close working relationship with, there have been instances of clashes of personality or politics between incumbent police chiefs and police and crime commissioners. The most high-profile example was Boris Johnson when Mayor of London and de facto police and crime commissioner "losing confidence" in the then Commissioner of the Metropolitan Police, Sir Ian Blair, now the noble Lord, Lord Blair of Boughton, forcing him to resign.

Arguably less likely with incumbent police and crime commissioners selecting their chief constable "in their own image", there is a danger that, with only one person responsible for hiring and firing, personality clashes can result in good chief officers being forced out of office, especially in the increasingly likely event that the PCC is replaced but the chief constable, appointed by the PCC's predecessor, remains.

Liberal Democrats want police boards, with powers similar to those of PCCs and composed primarily of local authority members, to replace police and crime commissioners. With them representing a broad cross-section of constituencies and political parties, minority groups and ideas, and having responsibility for the overall funding and provision of local services, not just the police precept and policing, most, if not all, of the problems with the existing system of police and crime commissioners could be overcome. We would support a review.

7.24 pm

Lord Rosser (Lab): My Lords, I too add my congratulations to the noble Lord, Lord Lexden, on securing this debate and on his powerful and forthright speech.

This is not the first time that we have discussed the role of police and crime commissioners. It is also not the first time that we have discussed the role of the Wiltshire police and crime commissioner in relation to Operation Conifer, which investigated allegations of child abuse by Sir Edward Heath and ended up, in many people's eyes, besmirching the late former Prime Minister's reputation on the basis of evidence unknown. The PCC declined to commission a review of the operation, even though it appears that he thought such an independent review of his force would be reasonable. The then Home Secretary declined to exercise her powers to commission such an inquiry on the grounds that it was a local policing matter, when the only thing local about it was the fact that Sir Edward, when alive, lived in Wiltshire. So here we see the advantage of having not one but two elected people in a position of authority over the way a police force conducts its operations: we end up with a difference of view and nothing happening at all, with the interests of the person whose name has been besmirched apparently of no importance at all to either of the two elected individuals concerned.

One suspects that the Home Secretary was determined not to appear to overrule the Wiltshire police and crime commissioner, because the Government had always argued that the accountability of police forces to the public they serve would be enhanced by the creation and election of PCCs. A Home Secretary overruling a PCC, however justified, would hardly be an argument in support of that case. Yet the Home Secretary has the power to give guidance to PCCs about the matters to be dealt with in their police and crime plans. This is in part, no doubt, since police forces have to discharge national and international obligations—determined presumably by the National Crime Agency and certainly by the Home Secretary—irrespective of the manifesto on which the PCC might have stood to get elected and of what the PCC might consider to be local needs and priorities. Can the Minister say on how many occasions the power of the Home Secretary to give guidance has been exercised, what guidance has been given and whether it has been followed by all PCCs?

The Home Secretary also has overall political responsibility for policing policy and national police funding, for which he or she is accountable to Parliament. Yet a police and crime commissioner has an obligation to ensure that their police force is efficient and effective. How can they do that if the funding from the Home Secretary is insufficient and they are in reality, as has been said, restricted over the amount they can raise through the precept?

The issue has been raised today of alleged rape victims having to hand in their phones to the police or risk the police investigation into their case being dropped, and the associated introduction of a standard national consent form to replace 43 separate police forms. It is not clear whether this is being done on the initiative of the police, the Crown Prosecution Service, the Home Secretary or, indeed, all three. But it does not seem to have been driven by elected PCCs, who will presumably have to accept the new arrangement, which is a move to more central control. Or is it not the case that the PCC in each police area will have to accept the new arrangement announced today? Again, perhaps the Minister could clarify that point.

In 2015, the Committee on Standards in Public Life found confusion among the public, chief constables and PCCs about roles and responsibilities, especially in relation to where operational independence and governance oversight begins and ends. The very helpful documentation from the House of Lords Library for this debate includes a research document commissioned by the National Police Chiefs' Council, containing the experiences of chief police officers—some retired—of

[Lord Rosser]
their working relationships with PCCs. Those experiences are certainly not all positive; they frequently relate to differences of view over the role and responsibilities of PCCs and chief police officers and the impact on morale within a force where there is disagreement. Included in those experiences are issues about the accountability of PCCs themselves, or lack of it. The police and crime panels do not seem to have any effective checks on how a PCC exercises their powers since the views of the panel can, in almost every instance, be ignored by the police and crime commissioner if they so wish. Likewise, although a police and crime commissioner will not want their force to receive an adverse assessment from the police inspectorate, the PCC cannot be held in check directly by the inspectorate over how they exercise their powers.

Concern has already been expressed today, as well as in the research document, over the power of a police and crime commissioner to dismiss their chief constable, and some figures were provided in the research document to suggest that to date this was more likely to happen when the chief constable was a woman. Previously, the police authority had to secure the support of the Home Secretary if it wished to dismiss its chief constable. Now, a PCC has only to take note of the views of the inspectorate and police and crime panel before proceeding to dismiss. The head of the police inspectorate said in 2016 that the use of the power to dismiss was,

"conspicuously unfair, disproportionate and unreasonable",

and that he could not understand how such decisions were arrived at. The presiding judges in the case in question said that the approach adopted was, "wholly disproportionate", "surprising in the extreme" and "a serious error". As has been said on more than one occasion during this debate, the appointing of chief constables by PCCs also seems to have led to a significant reduction in applications, because of the belief that there is an inevitability about who will be appointed.

As I understand it, there has been some case law regarding the legislation on the roles of PCCs and chief constables. I could well be wrong, but if I am right in thinking that, could the Minister set out what that case law has been, either now when responding or subsequently in writing?

Could the Minister also say whether the police and crime panels, which are meant to provide some means of holding PCCs to account but lack any real teeth, are properly trained, resourced and supported? On average per panel member, what training and resources are provided and what support is given? Is it the same or roughly the same for all police and crime panels, and who makes the decision on what training, resources and support will be provided? Has the level of training, resources and support provided to police and crime panel members increased since the panels were set up, and if so, by how much? How often do police and crime panels as official bodies have meetings with their PCCs, and who has responsibility for spreading best practice between police and crime panels? Indeed, who has responsibility for spreading best practice between police and crime commissioners?

The police complaints system has been changed to give a greater role for police and crime commissioners. I understand that these new arrangements have not yet come into force. If I am right in saying that, what is the reason for the delay? What additional resources will be provided to police and crime commissioners for this apparent addition to their role?

The subject of this debate is whether the Government plan to establish a review of the role and responsibilities of police and crime commissioners. The case for such a review would seem strong. First, there appear to have been differences in some instances between PCCs and chief constables about what in practice, as opposed to theory, their differing roles are and what are the grey areas. Since the PCC draws up the budget then presumably, if the PCC is very precise over how the money being allocated has to be spent, he or she can have a big influence in determining how, and on what activities, the chief constable will deploy their officers and staff. Would the Minister agree that that is the case, and that that is a potential source of difficulty between a PCC and the chief constable—and his or her operational independence?

An objective of a PCC is the reduction of crime and disorder in their area. While closer working with other agencies and bodies is an important way of seeking to achieve that objective, so too must be the priorities for deployment of a force's officers and staff and their activities. Is that an area in which a PCC can argue that they can get involved, to deliver their objective of reducing crime and disorder in their area? Could the Government comment on that point?

It seems to me that, some seven years after police and crime commissioners came into being, there are enough examples of uncertainty, and indeed disagreement, over the role, powers and responsibilities of police and crime commissioners, particularly in relation to those of chief constables—and also those of the Home Secretary in relation to policing—to justify, and indeed necessitate, a review to examine areas of disagreement, uncertainty and possibly unintended consequences over roles and responsibilities that have arisen since the position of PCC was established.

7.34 pm

Baroness Barran (Con): My Lords, I join other noble Lords in congratulating my noble friend Lord Lexden on securing this debate. I appreciate the breadth and expertise of the remarks all noble Lords have made, but I fear that they might require me to write a long letter, as I think time will not permit me to respond to all of them now. I undertake to write and place a copy in the Library. I recognise the depth of feeling among Members of the House on the issues raised. With PCC elections due to take place in a little over a year, the roles and responsibilities of police and crime commissioners will be brought into sharp focus again as the public hold them to account via the ballot box.

The Government have no plans currently for a formal review of the role and responsibilities of police and crime commissioners, but, as my noble friend Lord Lexden pointed out, since their introduction in 2012, the Home Affairs Select Committee has published two reports on their work, including both a recognition of the greater clarity of leadership that they provide

and the increasing recognition by the public of their role, their accountability and the strategic direction that they offer. I am not sure that those reports used the phrase of the noble Lord, Lord Bach, who spoke of his friends being "quite impressed" by what PCCs do, but they might have done; I think it was implicit. Those reports, and the report referred to from the Committee on Standards in Public Life, include a number of recommendations about how to improve the effectiveness of the model. I will aim to highlight progress in these areas, but also where there is more room for improvement. I reassure my noble friend Lord Wasserman that the Government have no plans to throw any babies out in any amount of bathwater.

Further evolution of the model means that police and crime commissioners now have responsibility for the fire service in some areas, closer co-operation across blue-light services and commissioning of victim services. As my noble friend Lord Wasserman and the noble Lord, Lord Bach, remarked, this is crucially underpinned by engagement with local communities to ensure that those needs are met.

A key recommendation from the Home Affairs Select Committee in 2016 was that police and crime commissioners should use their convening power to improve service provision. There are numerous examples of how this has developed, including in Northumbria, where Dame Vera Baird has launched the first ever regional strategy to tackle violence against women and girls. The number of forces that have adopted this has now increased from three to seven. Similarly, in Sussex PCC Katy Bourne is leading the introduction of video-enabled justice across five forces, with the potential for further rollout.

The noble Lord, Lord Hogan-Howe, and my noble friend Lord Wasserman referred to wider partnership work. Anecdotal evidence suggests that having the police and crime commissioner as the chair of the local criminal justice board brings a welcome local focus and renewed energy to agencies that otherwise do not share accountability. On policy issues, PCCs have collaborated extensively on the links between mental health problems and crime, and in relation to rural crime, which the noble Lord, Lord Wigley, mentioned.

Importantly, PCCs operate in the full gaze of the media and are held accountable for their record by the public every four years. At the 2016 elections, around 9 million votes were cast, which was a 67% increase on the number of votes in the elections of 2012. I hear the concerns of a number of noble Lords, including the noble Lord, Lord Paddick, about the level of turnout. I think that all noble Lords will share my hope that we will see a further increase in the next elections.

A number of noble Lords have raised concerns about the relationship between police and crime commissioners and their chief constables, including how to address the performance of a police and crime commissioner who might be underperforming, and the impact on chief officer recruitment. The second recommendation from the Home Affairs Select Committee was to strengthen the role of police and crime panels, which provide both support and challenge to police and crime commissioners on the exercise of their functions, acting as a critical friend. A number of noble Lords expressed concern about the robustness of these panels, but, as with other parts of the model, there are now a number of examples where they have taken a constructive approach in challenging the police and crime commissioner in their area.

The noble Lord, Lord Rosser, asked how best practice was shared among PCCs, panels and others. Obviously, the Association of Police and Crime Commissioners plays a critical role in sharing best practice, as does the similar association for the chief executives and chief financial officers—I will spare noble Lords the acronym.

Lord Rosser: I am not surprised at the response the Minister has just given, but does that mean that the Government are satisfied that best practice is being properly disseminated and that it is being acted upon, by the bodies she has just mentioned and by individual police and crime commissioners?

Baroness Barran: The Government are confident that there is a real energy among police and crime commissioners to share best practice. As one police and crime commissioner said to me, that individual and their chief constable have a shared interest in their force being the best it can possibly be.

Turning to chief constable recruitment, the noble Lord, Lord Hogan-Howe, in particular, raised concerns about chief officer recruitment. I am thankful to Mike Cunningham, chief executive of the College of Policing, who is doing excellent work in ensuring that the Association of Police and Crime Commissioners, the National Police Chiefs' Council and the College of Policing work together to agree a plan for addressing the key barriers to recruitment, retention and progression.

However, it is not entirely accurate to suggest—as my noble friend did in referring to remarks made by the noble Lord, Lord Blair, as did the noble Lord, Lord Hogan-Howe—that the problems of chief officer recruitment and retention are related solely to the introduction of police and crime commissioners. A report commissioned by the National Police Chiefs' Council suggests that the tenure of chief constable posts fell very sharply between 1992 and 2002 and has actually been stable over the past seven years. A survey by the College of Policing showed chief officers citing their fear of the risk of dismissal and the reputation of the local police and crime commissioner as elements in their decision whether or not to apply for a role, but coming close behind those reasons were financial considerations, the absence of work/life balance and the existence of an internal candidate.

Given the concerns that have been raised by a number of noble Lords about the need for greater checks and balances in this model, I will undertake to write to my noble friend the Policing Minister, sharing the issues that have been raised.

A number of noble Lords spoke about funding for the police service, including my noble friend Lord Lexden and the noble Lord, Lord Bach. This year's police funding settlement provides the biggest increase in funding since 2010, with a total increase for the police of over £1 billion. Although I would not want to suggest to the noble Lord, Lord Bach—who I fear is rolling his eyes—that the problem has gone away, or that anyone would suggest that, there is a

[Baroness Barran]
clear commitment from the Home Secretary. He has made it absolutely clear that he will prioritise police funding at the next spending review. The noble Lords, Lord Paddick and Lord Wigley, raised their concerns about the police funding formula; again, there is a commitment to look at that in the next spending review.

Questions were also raised about the Government's commitment to addressing serious crime and violence, knife crime in particular. I will put the details in a letter but all noble Lords will be aware that the Prime Minister led a recent summit at Downing Street on that very subject.

Lord Campbell-Savours: The noble Lord, Lord Wasserman, proposed that some kind of recall procedure be introduced, as is the case for Members of Parliament who are elected. Will Ministers seriously consider that proposition?

Baroness Barran: Ministers are open to considering a recall procedure and I will raise that with the Policing Minister.

If I may turn to the points regarding Sir Edward Heath and Operation Conifer, noble Lords will not be surprised to hear me reassert that the police are, rightly, operationally independent of the Government and that the Government continue to take the view that they should not seek to influence the exercise of those functions. My noble friends Lord Cormack and Lord Lexden, and the noble Lord, Lord Campbell-Savours, raised a number of points in this area. This House has debated on a number of occasions the issues raised by Operation Conifer, and I remain deeply sympathetic to the concerns raised by noble Lords as they seek to defend the reputation of a man who served his country at the very highest level. I reiterate that according to the police's summary closure report, no inference of Sir Edward's guilt should be drawn from the conclusions of Operation Conifer.

Finally, turning back to the title of—

Lord Berkeley of Knighton (CB): I thank the Minister for giving way. There is a great deal of unhappiness around the House, and I think in the Palace of Westminster, about the blight on Sir Edward Heath's reputation. I had the chance to speak to the civil servant who was most close to him, who agreed that the whole thing seemed utterly ludicrous to anyone who knew him well. There is a disquiet—a feeling of real hurt—about this issue. I stress to the Government that I do not think this will go away, because it could affect other people in the future. I add my support to what has been said.

Baroness Barran: Unfortunately, we have run out of time but I hear the noble Lord's concerns.

I look forward to returning to the topic of a review as we continue to widen the role of our elected and accountable police and crime commissioners. I thank all noble Lords for their contributions and, as mentioned above, I will write on those points that I was unable to cover and share noble Lords' remarks with my right honourable friend the Policing Minister.

House adjourned at 7.49 pm.

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