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GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Seventeenth Sitting

Tuesday 22 June 2021

(Morning)

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not later than

Saturday 26 June 2021

The Committee consisted of the following Members:

Chairs: Steve McCabe, † Sir Charles Walker

† Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)
† Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 22 June 2021

(Morning)

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

9.25 am

The Chair: Before we begin, I have some preliminary reminders for the Committee. Please switch electronic devices to silent. No food or drink is permitted during sittings of this Committee, except for the water provided.

I remind Members to observe physical distancing. They should sit only in the places that are clearly marked. It is important that Members find their seats and leave the room promptly, in order to avoid delays for other Members and staff. Following a decision of the House of Commons Commission yesterday, we may now sit a little closer together—one metre—but it is important to continue to observe other distancing measures. Members should wear face coverings in Committee unless they are speaking or medically exempt.

Hansard colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk.

We completed line-by-line consideration of the existing clauses of the Bill last week. Today, we will start to consider new clauses. New clauses that were grouped for debate with amendments to the Bill will not be debated again, but if the Member who tabled the new clause indicated in their speech that they wished to divide the Committee, they will have the opportunity to do so. The selection list for today's sittings is available in the room. I remind Members wishing to press a grouped new clause to a Division that they should indicate their intention when speaking to the clause.

New Clause 74

Proceeds of crime: account freezing orders

'(1) In section 303Z1 of the Proceeds of Crime Act 2002 (application for account freezing order)—

(a) omit subsections (5A) and (5B), and

(b) in subsection (6), at the appropriate place insert—

"'relevant financial institution' means—

(a) a bank,

(b) a building society,

(c) an electronic money institution, or

(d) a payment institution."

(2) In section 316(1) of that Act (general interpretation), in the definition of "relevant financial institution", after "303Z1" insert "(6)".

(3) In section 48 of the Financial Services Act 2021 (extent)—

(a) in subsection (1), for "subsections (2) and (3)" substitute "subsection (2)", and

(b) omit subsection (3).

(4) In paragraph 14 of Schedule 12 to that Act (forfeiture of money: electronic money institutions and payment institutions) omit sub-paragraphs (3) and (4).'

This new clause amends for Northern Ireland the definition of "relevant financial institution" for the purposes of account freezing orders under the Proceeds of Crime Act 2002 so as to align the definition with that which applies in England and Wales and Scotland.—(Victoria Atkins.)

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

New Clause 1

Harassment in a public place

'(1) A person must not engage in any conduct in a public place—

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose conduct is in question ought to know that it amounts to harassment of another if a reasonable person would think the conduct amounted to harassment of the other.

(3) For the purposes of this section—

"conduct" includes speech;

"harassment" of a person includes causing the person alarm or distress.

(4) Subsection (1) does not apply to conduct if the person can show—

(a) that it was for the purpose of preventing or detecting crime,

(b) that it was under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances it was reasonable.

(5) A person who engages in any conduct in breach of subsection (1) is guilty of an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both."—*(Alex Cunningham.)*

Brought up, and read the First time.

Alex Cunningham (Stockton North) (Lab): I beg to move, That the clause be read a Second time.

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

New clause 2—*Kerb-crawling*—

'(1) It is an offence for a person, from a motor vehicle while it is in a street or public place, or in a street or public place while in the immediate vicinity of a motor vehicle that they have just got out of, to engage in conduct which amounts to harassment in such manner or in such circumstances as to be likely to cause annoyance, alarm, distress, or nuisance to any other person.

(2) A person guilty of an offence under this section is liable on summary conviction to revocation of their driving licence, or a fine not exceeding level 3 on the standard scale, or both.

(3) In this section "motor vehicle" has the same meaning as in the Road Traffic Act 1972.

(4) In this section "street" has the meaning given by section 1(4) of the Street Offences Act 1959.'

New clause 23—*Street sexual harassment*—

'(1) A person must not engage in any conduct in a public place—

(a) which amounts to sexual harassment of another, and

(b) which they know or ought to know amounts to sexual harassment of the other.

(2) For the purposes of this section, the person whose conduct is in question ought to know that it amounts to sexual harassment of another if a reasonable person would think the conduct amounted to sexual harassment of the other.

(3) The conduct referred to in subsection (1) is known as street sexual harassment.

(4) A person (A) engages in conduct which amounts to street sexual harassment, or which they know or ought to know amounts to street sexual harassment, of another (B) if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(5) In deciding whether conduct has the effect referred to in subsection (4)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case; and

(c) whether it is reasonable for the conduct to have that effect.

(6) For the purposes of this section, "conduct" includes speech, non-verbal attitudes such as gestures imitating or suggesting a sexual act, and obscene sound effects.

(7) A person who engages in any conduct in breach of subsection (1) is guilty of an offence.

(8) Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed an offence under section 1 above, he must give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty, unless subsection (9) applies.

(9) This subsection applies (and subsection (8) does not apply) if a person has previously—

(a) been found guilty of an offence under subsection (1), or

(b) made payment of a fixed penalty issued under subsection (8).

(10) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and

(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(11) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid; and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(12) Where a letter is sent in accordance with subsection (11)(c) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(13) The form of notices under this section shall be such as the Secretary of State may by order prescribe.

(14) The amount of a fixed penalty payable in pursuance of a notice under this section is £500.

(15) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.'

This new clause creates an offence of engaging in unwanted conduct of a sexual nature in public. Those found to have committed an offence would be given an on the spot fine of £500. Those who commit the offence on further occasions would liable to receive a fine of up to £1000.

Alex Cunningham: I move new clause 1 in the name of my right hon. and learned Friend the Member for Camberwell and Peckham (Ms Harman). I will also speak to new clause 23, which is in my name and those of my hon. Friend the Member for Rotherham and my right hon. Friend the Member for Kingston upon Hull North (Dame Diana Johnson).

For young women up and down the country, being harassed in a public place has become a way of life. Derogatory comments, wolf-whistling, stalking and harassment have become so commonplace that many women find themselves living in a constant state of fear simply by stepping out of their front door. The figures are as startling as they are shameful. A recent survey by UN Women UK showed that 80% of women in the UK have experienced sexual harassment in their lifetimes; that increases to a staggering 97% of women aged 18 to 24. The survey also showed that sexual harassment in the street had become so commonplace that the majority of women take no action, because they have lost all faith in the authorities to deal with it.

Shamefully, only 4% of women who had suffered sexual harassment reported the crime, and only 45% believed that reporting the crime would make any difference. Among those who did not report their crime to the police were people who had been groped, followed and coerced into sexual activity. This shows that women have a catastrophic lack of trust in the Government when it comes to doing anything about sexual harassment or to taking any concrete steps to tackle the underlying causes of it.

For many women, first-hand experience tells them that when they do report the crimes, they are often gaslighted, or told they are overreacting or making a fuss about nothing—yet nothing could be further from the truth. Being sexually harassed can have a profound impact on the lives of victims. Rose Caldwell, the chief executive officer of Plan International UK, points out:

"Street harassment makes girls feel ashamed, frightened and vulnerable. It causes them to change their behaviour, like avoiding certain streets or changing their clothes before leaving the house, which has serious implications for their freedom and autonomy."

A feature on the news last night was about women and where they felt that they could and could not go when walking home in the evening.

Sexual harassment also acts as a precursor to other acts of violence and discrimination against women and girls. Laura Bates, founder of the Everyday Sexism Project, points out:

"As a society, the normalisation of sexual harassment in public spaces plays a huge part in creating a gendered power imbalance and ingraining derogatory attitudes and behaviours towards women. What starts in public places does not stop there. It plays into discrimination against women in the workplace and abuse in the home. If we say street harassment doesn't matter, we are designating women's bodies as public property and that has a huge knock-on impact."

9.30 am

For Labour, that is the most important point. If we suggest that harassment in the street does not matter—that it is trivial or all a bit overblown—not only are we letting down women and girls, but we are complicit in giving perpetrators the green light to abuse women. It cannot be right, as one girl pointed out, that someone can be fined in this country for dropping litter, but not for harassing a woman or a girl in public.

Why have the Government taken no action at all during their 10 years in office to address that? When other Governments around the world have been faced

with the same issue, they have actively taken measures to protect their women and girls. Across the world, countries are legislating to protect women and girls from being sexually harassed in the street, but the UK remains well behind the curve.

In 2018, as the Minister is no doubt aware, France implemented a law to enable policemen and women to issue on-the-spot fines of up to €750 to those who sexually harass women and girls in public places. Despite the original concerns about how the law would be implemented, it has been a great success. In the first eight months of its being in place, 447 fines were handed down, proving that the concept works.

The purpose of Labour's new clause 23 is to replicate the same legislation that has been so effective in France. As in the French model, new clause 23 would give the police powers to hand out fixed penalty notices to those who engage in sexual harassment in a public place—that is, those who engage in unwanted conduct of a sexual nature in a public place, with the effect of violating someone's dignity or with a view to creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

As in the French model, our law would allow for a perpetrator of sexual harassment to be given an on-the-spot fine of £500, which would rise to £1,000 for repeat offenders. We believe that that would not only deter offenders from targeting women in this way, but would send a loud and clear signal to women and girls up and down the country that sexual harassment of any kind anywhere is not acceptable—that we have listened and acted. I hope that the Government agree and that Conservative Members do the right thing by women and girls and support new clause 23.

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): It is a pleasure to serve under your chairmanship, Sir Charles, as always.

I am grateful to the right hon. and learned Member for Camberwell and Peckham (Ms Harman) for tabling her amendment. I know it will not be pressed formally, but I put on the record my thanks to her for bringing the issue before the House and, indeed, to the hon. Member for Stockton North for giving us the opportunity to debate this important issue in Committee. The Government are absolutely committed to tackling all forms of abuse against women and girls, including sexual harassment. No one should feel unsafe while going about their daily life, and it is completely unacceptable for anyone to make a woman or girl feel objectified or scared.

Following tragic events earlier this year, my right hon. Friend the Home Secretary reopened the first ever public call for evidence for the new tackling violence against women and girls strategy, to capture the many stories that women and girls shared with their friends and their family and on social media. We want to capture those stories as part of our work to shape the new strategy that is coming forward later this year. More than 160,000 responses were received in just two weeks, bringing the total of public responses to more than 180,000—an extraordinary figure for a Government consultation. It says so much about the determination of women and girls to stop those sorts of behaviours.

We are equally determined to respond to the sharing of those experiences. The new strategy will include work to tackle sexual harassment and to recognise the disproportionate impact it has on women and girls.

Sarah Champion (Rotherham) (Lab): I thank the Minister for giving way—we are so intuitive now that we do not need to ask to intervene on each other.

This sort of behaviour starts at a very young age, which is why the Government were right to accept my amendment to the Bill that became the Children and Social Work Act 2017, to make relationships education for all primary school children mandatory. That should have started last September; we are now told it will start this September. Will she comment about that early intervention and the importance of it?

Victoria Atkins: I am extremely grateful to the hon. Lady for her previous work and for making this important point. I want to give the Committee an impression of the work that we are undertaking as part of the strategy. Legislation is of course an option, but we need to do so much more. We need boys and young men to understand that some of the things that they might have seen on the internet are not real life and not appropriate ways to behave towards women and girls in the street, the home or the school, as we have seen in the Everyone's Invited work. Education is critical and, I promise her, flows throughout our work on the strategy.

I wish to correct some impressions that might exist. While there is not an offence of street harassment—or, indeed, of sexual harassment—a number of existing laws make harassment illegal, including where such behaviour occurs in a public place. That can include, depending on the circumstances of the case, offences under the Protection from Harassment Act 1997, the Public Order Act 1986 and the Sexual Offences Act 2003.

However—this is a big "however"—I assure hon. Members that we are looking closely at the existing legislation on street harassment and we are committed to ensuring that the law is fit for purpose. We remain very much in listening mode on the issue. We will continue to examine the case for a bespoke offence and will listen closely to the debate as it develops through this House and the other place.

It is important to stress that a law is of limited use unless people know it is there and have the confidence to make a report in accordance with it. Equally—this relates to the point made by the hon. Member for Rotherham about education—it is important that police officers and law enforcement know how to respond properly to such allegations.

Sarah Jones (Croydon Central) (Lab): I am glad about what the Minister has just said, that she remains in listening mode and that she will continue to examine the case. Does she have more detail on what form that listening mode takes? Are people in the Home Office looking at this? Is there any possibility of it? Is there a timeline, a review, that we are waiting for before a decision or any kind of structure around that?

Victoria Atkins: I hope the Committee will understand that it is taking us time to work through the 180,000 responses that we received—an extraordinary number for any Government survey. We have a team of officials

who are working through each and every response, and we have taken each and every response very seriously. It is taking a bit of time. Once that exercise, the results of the survey, has been fully understood—fully collated and absorbed—from that, the strategy will be shaped. Later this year, we hope to be able to publish.

The strategy will deal not just with the sorts of topics that have been discussed in the course of the Committee, along with many other forms of crimes that disproportionately affect women and girls, including, for example, female genital mutilation, so-called honour-based abuse and such like. We want this to be an ambitious strategy that meets the demands of the 2020s, including the emergence of online crimes. We know from our discussions of this Bill and the scrutiny of what became the Domestic Abuse Act 2021 that perpetrators of crime can find ample opportunity online to continue their abuse. We are being mindful of all those aspects when drawing up the strategy.

Maria Eagle (Garston and Halewood) (Lab): The Minister is indicating a willingness to look carefully at this. Does she expect the strategy to which she is referring to end up creating new legislation? Does she expect new legislation to come out of it?

Victoria Atkins: The hon. Lady is asking a question I cannot properly answer at this stage. She will know from her previous experience that drafting strategies of such depth and breadth requires cross-Government work. I am not at a stage at the moment of being able to comment directly on that. Our wider work, such as commissioning the Law Commission to look at the use of the internet and image-based abuse, which I suspect we will be talking about later this morning, and the online safety Bill, is all part of ensuring that there is lots of work across Government knitting together to provide a safer environment for women and girls, both on and offline.

We are aware that the issue is not just about the public knowing and understanding what the law is, but helping the police in knowing how to respond. I am pleased that the College of Policing has agreed to develop advice for forces in England and Wales to assist them in using existing offences in the most effective way. The Crown Prosecution Service, similarly, will revise its legal guidance on public order offences to include additional material on public sexual harassment.

Hon. Members across the Committee will agree that legislation alone cannot be expected to tackle sexual harassment. We are clear that we need to continue to drive a cultural change in attitudes and help boys and girls grow up to understand what a healthy relationship looks like and what sort of behaviour is healthy, respectful and civil in public places, and we must ensure that the sorts of episodes that girls in particular referenced in the Everyone's Invited work are no longer experienced. I acknowledge and appreciate the debate that the amendments have induced and understand what hon. Members are seeking to achieve through the new clauses. However, I hope that, given our assurance that the Government continue to explore the issues, the hon. Member for Stockton North will feel able not to press the new clause today.

Alex Cunningham: I am grateful to the Minister for her response and that commitment to tackling the issues being debated this morning. I recognise that it is not just a matter for legislation. It is a matter for education as well, working with boys, girls and young men to have a greater understanding of the impact that what they might think is a bit of fun can have on people's lives.

The Minister talked about 160,000 or 180,000 responses —I think she used both figures—but either way, 160,000 responses to any consultation exercise is a tremendous result and I am delighted about that. It illustrates the extent of the problem that has existed for many decades. She talked about the forthcoming strategy and the report later this year. I think we can act now; we can do something now. We can do small things now as we await that and we have a number of amendments that can contribute to what will want to be achieved in time by the overall strategy. We do not need to wait many more months—possibly years—before something happens on this.

There was no indication from the Minister of when the strategy will be published. If it is later this year, we are a long way from the end of the year—when will the various provisions suggested within that strategy be implemented? That may require some form of primary legislation, so we will be looking at that next year, and there will be some time before it is implemented. It could be some considerable time before we see some action.

9.45 am

We can listen so much; the very fact that we have had so many responses to the Government's consultation makes it clear that the problem is here and now—it is happening today. If we can start to take small steps to tackle some of the issues, we should do that. For that reason, when the time is right—I am sure you will guide me, Sir Charles—we will push new clause 23 to a vote. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 3

CUSTODY FOR OWN PROTECTION OR OWN WELFARE

"(1) The Bail Act 1976 is amended as follows.

(2) In Part 1 of Schedule 1 (Defendants accused or convicted of imprisonable offences) omit paragraph 3.

(3) In Part 1A of Schedule 1 (Defendants accused or convicted of imprisonable offences to which Part 1 does not apply) omit paragraph 5.

(4) In Part 2 of Schedule 1 (Defendants accused or convicted of non-imprisonable offences) omit paragraph 3." —*(Alex Cunningham.)*

This new clause would repeal the power of the criminal courts to remand a defendant into custody for their own protection (or in the case of a child, for their own welfare) pending trial or sentence.

Brought up, and read the First time.

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

The Opposition think that this excellent new clause makes up for the missed opportunity in the Bill. I thank my hon. Friend the Member for Oldham East and Saddleworth (Debbie Abrahams) and the hon. Member

[Alex Cunningham]

for Thurrock (Jackie Doyle-Price), who are the co-chairs of the all-part parliamentary group on women in the penal system. I also thank the Howard League, which acts as the secretariat to the APPG, for its continued energetic work on this issue.

Under the Bail Act 1976, the courts can remand an adult to prison for their own protection, or a child for their own welfare, without being convicted or sentenced, and when the criminal charge they face is unlikely to—or in some cases cannot—result in a prison sentence. The new clause would repeal the power of the criminal courts to remand a defendant into custody for their own protection—or in the case of a child, for their own welfare—pending trial or sentence. Last year, the Howard League published a briefing from the APPG that looked at those provisions and their use. The briefing concludes:

"The case for abolishing the power of the courts to remand for 'own protection' or 'own welfare' is overwhelming. The use of prison to secure protection and welfare is wrong in principle and ineffective, even damaging, in practice."

It goes on to say:

"Repealing the provisions in their entirety would be in-keeping with the direction of other recent and proposed reforms. In particular it is in line with, and is a necessary and urgently required extension of, the reforms to the use of police cells as a 'place of safety' under the Policing and Crime Act 2017."

Professor Sir Simon Wessely's 2018 review "Modernising the Mental Health Act" recommended the removal of the power of the courts to remand defendants for their own protection and own welfare on mental health grounds. The Ministry of Justice has already indicated that it will act on that recommendation. The Government's sentencing White Paper suggested there would be forthcoming reforms to remand for own protection but, disappointingly, that was not included in the Bill. On page 58 of the White Paper, the Government notes:

"The Independent Review of the Mental Health Act highlighted that there are still cases where sentencers appear to make decisions that prison is the safest option for some people who are mentally unwell, under current legislation in the Bail Act 1976 or the Mental Health Act 1983."

It goes on to say:

"Prisons should be places where offenders are punished and rehabilitated, not a holding pen for people whose primary issue is related to mental health."

The White Paper mentions a project by Her Majesty's Prison and Probation Service on these cases. Could the Minister provide an update on the work in that area? In the Lord Chancellor's letter responding to the APPG's report, he said,

"we are determined to ensure that remand to prison is not considered as an option when seeking a place of safety for a person in crisis. However, it is vital that the operational mechanisms are in place before any legislative reforms are made in order to ensure that the system can work smoothly and effectively to deliver this objective."

Could the Minister please share an update on the operational mechanisms that the Lord Chancellor refers to? Are they in place yet? How much longer should we expect to wait for them to be so?

The provisions in the Bail Act are already out of step with the aims of our justice system, but the implementation of the proposals in the Bill will make them look even more outdated. Since there will now be a requirement to consider welfare before remanding a child, as we know how damaging even short stints in custody are for children, how does it make sense to keep a provision on the statute book to put a child into custody to protect their welfare? The ability to remand women and children for their own protection is, as Dr Laura Janes of the Howard League put it in one of our evidence sessions, "rather Dickensian". The Opposition agree that this power in the Bail Act is completely outdated, and that it has no place in a modern justice system. We urge the Government to support the new clause so that we can do away with it.

Sarah Champion: It is always a pleasure to serve under your chairmanship, Sir Charles. I am fully supportive of new clause 3, because I think it addresses a rather patriarchal approach that is going on and needs flushing out. The all-party parliamentary group on women in the penal system recently released its third briefing report, "Arresting the entry of women into the criminal justice system", and its key finding was that 40% of women arrested resulted in no further action. That figure is even higher for women who are arrested for alleged violence.

That shows to me that women are being arrested and put into custody disproportionately, without the necessary due process in terms of what the outcome is likely to be. This creates a drain on police resources and, to be quite honest, is a waste of time, as arrest is not an appropriate response to women showing challenging behaviour. We need a more nuanced approach. Many officers arrested women for fear of criticism from more senior officers if they did not, and black women are two and a half times more likely to be arrested than white women, which raises concerns. Officers need to realise that turning up in a uniform can actually make a situation much more tense, and many women are arrested due to their response to the police turning up, not necessarily because of what the police were called in for. Frances Crook of the Howard League put it very well when she said that these women are annoying, but not necessarily dangerous.

I am interested to hear the Minister's thoughts on Lancashire police, who have started a pilot through which they bring independent domestic violence advisers to the scene where domestic altercations are going on. Officers are reporting that they have found that incredibly useful in de-escalating the situation, rather than just going straight to charging or bringing the woman in for their own protection. The new clause raises the points that first, there is a problem with the system, and secondly, more creative approaches can be used, so I am very interested to hear the Minister's thoughts on it.

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): As always, it is a pleasure to serve under your chairmanship, Sir Charles. New clause 3 seeks to remove the provision in the Bail Act 1976 for a defendant to be refused bail where the court feels it is necessary for their protection—or, in the case of children, their own welfare—that they are remanded in custody. It is extremely important to make clear to the Committee that this provision is used very rarely. It is considered to be a last resort, and it is only used when there are no alternatives, so we should be in no doubt that this is an unusual provision to use.

Maria Eagle: "Rare" is a relative concept. Would the Minister like to tell us how many people were remanded in this way during, say, the last year for which he has figures?

Chris Philp: I am afraid that I do not have that precise figure to hand: I was relaying reports I have received from people who are active in this area. I can certainly see if that figure exists, and if it does, I would obviously be happy to share it.

The intent behind this amendment is clearly to ensure that prison is used only when strictly necessary. Of course, when somebody has a mental health crisis, for example, prison is not ultimately the best place for them to be, but there may be limited circumstances in which it is necessary to use remand for someone's own protection—as a last resort, as I say. There is a risk that if we abolish this power without being absolutely clear what the alternatives are, vulnerable people could be left exposed. The Government agree with the sentiment behind this amendment, but we want to be certain that there will be no unintended consequences and no gaps created as a result.

Alex Cunningham: The Minister made the point that the use of this provision is very rare and that prison should be used only as a last resort. I accept that, but surely for such people we should ensure that there are facilities across the country, so that it is not necessary to remand a person, in any circumstances, to prison for the good of their own health.

Chris Philp: Clearly, the provision of alternative accommodation in those circumstances is the most desirable outcome. We need to think carefully and make sure we have covered the full range of circumstances that may arise. That is why the Government have committed to a review of this issue. We have already written to the all-party parliamentary group on women in the penal system to set out our plan for this, so that is in the public domain. I know the Howard League for Penal Reform has been campaigning in this area and it will be consulted as part of that review.

Maria Eagle: I am grateful to the Minister for giving way again. I welcome the fact that he is going to conduct a review. In doing that, could he see whether any research already exists or do some research on what the outcomes are for the small number of people who are remanded in this way? I can certainly see circumstances in which they might end up in a worse state than they would have done had they not been remanded in such a way. That is important if the Minister is considering whether to get rid of these provisions.

Chris Philp: Yes, that is exactly the type of question the review should consider, along with the counterfactual question of what would happen if this measure is not used. Both alternatives need to be considered to reach an informed decision.

Hywel Williams (Arfon) (PC): When that review takes place, can the Minister ensure that there is particular consideration of alternatives in very rural areas? Currently, women in Wales are generally held outside Wales, for example at HMP Oakwood, as there is no local provision.

Chris Philp: Yes, consideration of the available provision needs to form part of the review to ensure that, if the option were to be withdrawn, rarely used though it is, appropriate provision across the jurisdiction of England and Wales would be available.

As this is a complicated issue, and we do not want to accidently cause a gap in provision, and because a review has already been commissioned to look at the issue, I respectfully ask that the new clause is not pressed.

Alex Cunningham: I accept what the Minister says about unintended consequences. It is important that the individual is always protected. My hon. Friend the Member for Garston and Halewood has welcomed the review into this, and I do too. I also welcome the fact that the Minister responded positively to my hon. Friend when she talked about an outcome study about the people who are actually involved.

I look forward to hearing from the Minister at some time in the future about how that would work, to ensure that we work in the best interests of the people who are affected by this situation. We may well want to return to the matter in future, but for now, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 4

VIDEO RECORDED CROSS-EXAMINATION OR RE-EXAMINATION OF COMPLAINANTS IN RESPECT OF SEXUAL OFFENCES AND MODERN SLAVERY OFFENCES

"(1) Section 28 of the Youth Justice and Criminal Evidence Act 1999 comes into force in relation to proceedings to which subsection (2) applies on the day on which this Act is passed.

(2) This subsection applies where a witness is eligible for assistance by virtue of section 17(4) of the Youth Justice and Criminal Evidence Act 1999 (complainants in respect of a sexual offence or modern slavery offence who are witnesses in proceedings relating to that offence, or that offence and any other offences).

(3) This section has effect notwithstanding section 68(3) of the Youth Justice and Criminal Evidence Act 1999."—*(Alex Cunningham.)*

This new clause would bring section 28 of the Youth Justice and Criminal Evidence Act 1999, which provides for the cross-examination of vulnerable witnesses to be recorded rather than undertaken in court, fully into force for victims of sexual offences and modern slavery offences.

Brought up, and read the First time.

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

The Chair: With this it will be convenient to discuss new clause 20—*Special measures access for eligible witnesses*—

"(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In section 19(2), omit paragraphs (a) and (b) and insert—

"(a) inform the witness of the special measures which are available to them by virtue of this Act; and

(b) give a direction under this section providing for whichever measure or measures as the witness may decide they wish to be applied to apply to evidence given by the witness.

[The Chair]

Provided that a direction under paragraph (b) shall so far as possible ensure that the measure or measures provided for do not inhibit the evidence of the witness being effectively tested by a party to the proceedings.

(3) Omit section 19(3)."

This new clause would mean that once witnesses are determined as eligible for special measures they will be informed of all provisions and able to decide which option best suits them, rather than relying on the court to decide which measures would best improve the quality of evidence.

Alex Cunningham: The new clause will extend the roll-out of section 28 of the Youth Justice and Criminal Evidence Act 1999, which allows the cross-examination of vulnerable witnesses to be recorded rather than undertaken in court, to come fully into force for victims of sexual offences and modern slavery offences.

Section 28 is now in place at all 83 Crown court locations in England and Wales for vulnerable witnesses. That includes all child witnesses and any witness whose quality of evidence is likely to be diminished because they are suffering from a mental condition of a significant impairment of intelligence and social function, who have a physical disability or who are suffering from a physical condition that would impact their quality of evidence.

The Opposition are extremely supportive of the Government's work in this area. However, we are concerned that the roll-out of that measure, which can obviate the distressing and sometimes traumatising experience of being cross-examined in court, is going far too slowly.

10 am

Last year a pilot of section 28 for intimidated witnesses—that is, victims of adult sexual offences and modern slavery offences—was commenced in three early-adopter courts in Liverpool, Leeds and Kingston upon Thames. I know that the Government take this issue seriously—the pilot of section 28 in those three courts is evidence of that—and we are pleased to see the Government's direction of travel. My concern is that the Government are still not taking it seriously enough.

Even after the two years that it has taken to put together the Government's end-to-end rape review, the plans and findings lack the radical ambition that is needed to address the current crisis state for rape and sexual offence cases in our justice system. The latest figures show that 44% of rape victims withdraw support for their case before it gets to court. That level of victim attrition is utterly shameful.

Many factors may contribute to a victim's decision to withdraw from their case, but a hugely significant one is the colossal backlog of Crown court cases over which the Government have presided. Another is lack of victim confidence in a system in which rape convictions are at a record low. The Government's review notes:

"In fact, in 57% of all adult rape cases the victim feels unable to pursue the case. Some of the key reasons given were feeling disbelieved or judged, the negative impact on their mental health, and a fear of giving evidence in court."

However, even though the Government admit that one of the major reasons behind lack of victim engagement in the system is fear of giving evidence in court, their response is to extend the section 28 pilot only to another three courts. We know that the pre-recording of evidence for intimidated witnesses is a hugely important tool in limiting anxiety and distress for already traumatised victims. Why, then, are the Government re-piloting the pre-recording of evidence for intimidated victims for a further two years when it has been piloted twice already? We know it works, so why cannot we just get on with it?

The end-to-end review says:

"Subject to an evaluation of this pilot, we aim to commence the full roll-out"

of

"Section 28 to all Crown Courts for intimidated witnesses and victims".

Therefore I assume that, in principle, the Government are on board with the intention behind our new clause. Is the Minister really comfortable with the delay in the roll-out and the fact that thousands more victims will come through the justice system while the extended pilot ambles along and they will not have access to the help of section 28? What more do the Government need to know before they fully roll it out? Did the initial pilot fail or was it not carried out properly? I do not believe that to be the case.

I hope that the Government can provide some substantive answers to these questions, because victims of these offences have waited too long for action. All victims of rape and serious sexual offences should be able to have their evidence recorded and cross-examined prior to trial as soon as it is possible for the Government to implement that. If Ministers cannot implement it now, why not?

Yesterday, the Lord Chancellor acknowledged, not for the first time over the last few weeks, that a loss of resources following a cut to his Department's budget of 25% over recent years had contributed to the failure around rape prosecutions and convictions, so is this about resources? If it is, I do not hold out much hope of change, because there is little, if any, extra cash available for the Department.

Voting for this new clause today would mean that at the commencement of this Bill, rather than in two years' time, victims of sexual offences and modern slavery offences could give their evidence as soon as possible, which would also improve the accuracy of their testimony and relieve them of some of the excessive stress and anxiety caused while they are awaiting a trial. I urge the Minister to do the right thing and move with a bit more haste here. The Government have failed far too many victims of these horrific crimes already. Let us start putting that right now.

Sarah Champion: I fully support new clause 4. It links very tightly to my new clause 20, which I would like to speak to. New clause 20 would mean that once a witness was determined to be eligible for special measures, they would be informed of all provisions and able to decide which option suited them best, rather than the onus being on the court to decide which ones they were allowed. Special measures are an absolute lifeline for many victims giving evidence in court against their abuser. Navigating the criminal justice system can be incredibly challenging, and the idea of giving evidence as a witness against your own perpetrator is extremely distressing. Cross-examination causes re-traumatisation for victims and special measures are vital for reducing the impact on their mental wellbeing. Special measures include screening the witnesses from the accused, giving evidence by a live link and in private, and video- recorded

evidence. Currently, victims of child sexual abuse are eligible for special measures in court when giving evidence as a witness. However, delivery of the provisions remains inconsistent and victims often have trouble accessing the measures to which they are entitled.

The onus is currently on the court to offer the provisions to the victim if it believes it will

"improve the quality of evidence"

by witnesses—so is not about the survivor's mental wellbeing and abilities. An APPG on adult survivors of childhood sexual abuse survey found that 44% of victims were not offered the opportunity to give evidence remotely or behind a screen.

This new clause would amend the Youth Justice and Criminal Evidence Act to ensure that once a witness was determined as eligible for special measures by the court, they would be informed of all options and could decide which measure or measures suited them best. It is worth saying that some survivors I work with actually want to be in court and face their abuser—but it is up to them to make that choice.

This amendment will provide what is best for the witness's wellbeing, rather than if the judge thinks it will improve the quality of evidence. There was support for this proposal in the Bill Committee's evidence sessions. Phil Bowen, Director of the Centre for Justice Innovation, said:

"Yes, I think a presumption would be useful, but I think it also requires attention to implementation and delivery issues. Special measures should already be used in specialist domestic abuse courts across our magistrates court estate and, in many cases, domestic abuse victims are without access to those measures, for want of anyone who asked."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 43.]

Adrian Crossley, Head of the Criminal Justice Policy Unit at the Centre for Social Justice, said of special measures:

"I think it makes a massive difference to the view of the complainant and, unfortunately, it would also make a massive difference to the view of some defendants, who may face the reality of the evidence against them earlier. It may encourage pleas that should have happened earlier."

"Sometimes the implementation of special measures and, certainly, the pragmatics of what happens in court are not there and the stress that that puts witnesses through is absolutely huge."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 46.]

As we have seen too vividly with the rape review findings, lack of support for witnesses and victims in court proceedings has a genuine impact on the justice process. More than a quarter of child sexual abuse cases did not proceed through the criminal justice system last year because the victim and survivor did not support further action. One of the main reasons was that the victim worried they would find the legal process too upsetting.

The Minister may say that we should keep the law so that it is the quality of evidence that remains, because that matters the most. I say to the Government that it is obvious that when we prioritise the wellbeing of victims and survivors—the people giving the evidence—the conviction is more likely to be secured because they feel more able to speak. If the victim assumes that they will be re-traumatised in the court proceedings, why on earth would they even try to secure justice? If that is the assumption, more offenders will walk free.

Dame Vera Baird, the Victims' Commissioner, also agreed with this proposal. In her view, the problem begins

"with the fact that the needs assessment is not done clearly by a single agency."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 113.]

It needs to be carried out as part of the witness care unit, rather than across the Crown Prosecution Service and police, as it currently does. Dame Vera Baird also said that the measures that may best suit the victim are not always available. Special measures are not consistently available across the country.

What will the Minister do to ensure that resources and funding are sufficient to support victims giving evidence? Some witnesses who gave evidence have claimed that special measures should remain available at the discretion of the judge. The Minister may use that argument in the Government's response to my new clause. However, we know that the current system is letting victims down, and something needs to be done so that it is legally required that they have these options available to them. The majority of court proceedings have taken place via a live link since the pandemic began. What reason is there to refuse the same provision to vulnerable witnesses? Let us be frank: the court is not always functioning with the victim's best interests at the centre of its decisions. This change would grant vulnerable witnesses much more autonomy over their experience in court, rather than the courts relying on who and how they are able to give evidence—the same courts that have let so many down.

If it were better for special measures to be left to the flexibility of the court rules, we would not have a situation where victims wait years to give evidence, and often then face their abuser in court. Additionally, under this new clause, the court would still be included in the decisions. It would still have to ensure that the measures or measures provided

"do not inhibit the evidence of the witnesses being effectively tested by a party to the proceedings."

As the Victims' Commissioner said, it should be the default position that victims, if they choose, can pre-record their video evidence weeks, months or years before the trial takes place. Not only would that be less traumatic for them, but it means the recollections are more current and therefore more reliable.

Cross-examination can also take place on video under section 28 of the Youth Justice and Criminal Evidence Act. This is particularly useful to reduce the huge backlog that the courts currently face, and these measures already exist. We just need to make sure that victims can access them as they should. The Government need to ensure that implementation is effective, and that the courts are fully resourced for it. More funding must be given to courts to provide places for vulnerable witnesses to give evidence securely, and ISVAs must also be available and dramatically expanded, so I am glad that the Minister has said that as part of the review she will actively look to employ more ISVAs.

I hope the Government listen to this argument and address the issue urgently, so that no more victims have to suffer the traumatising process of giving evidence without access to special measures.

Chris Philp: I am grateful to the shadow Minister, the hon. Member for Stockton North, and the hon. Member for Rotherham for raising this important issue. Clearly,

[Chris Philp]

all hon. Members from across the House would want victims of these terrible crimes to be supported at what are often traumatic court hearings, and the Government have certainly been working hard on it.

Reference was made to the rape review published last week. As the hon. Member for Rotherham suggested, it contains a range of measures designed to help support victims of these terrible crimes, not least a provision for more ISVAs, as she said in her remarks. It also asks the police to take a better, more proactive, faster, more comprehensive approach to the investigation of rape. No victim is to be left without their phone for 24 hours; digital material will be requested only where strictly necessary and proportionate to the line of inquiry; and there will be better joint working between the police and the CPS and so on. So numerous measures were announced last week, all designed to help improve the situation in the area that we are discussing. In all frankness, it certainly does need to be improved.

Specifically, the clauses mention pre-recorded evidence permitted under section 28, as we have heard. It is worth saying that for vulnerable witnesses we have already fully rolled out the availability of section 28 pre-recorded evidence; that was completed in November last year. Vulnerable witnesses include all child witnesses, and also witnesses whose quality of evidence is likely to be affected because of a mental health disorder or some form of physical disability. The measure has already been implemented in every single Crown court across the country.

On intimidated witnesses, as the shadow Minister said we are already piloting the use of section 28 evidence for intimidated witnesses in three early adopter Crown courts—Leeds, Kingston upon Thames and Liverpool. That means that victims of those crimes have access to this measure and are able to pre-record their evidence, cross-examination and possibly re-examination via video early in the process, outside of the courtroom environment. That, for reasons we have discussed, is often of significant benefit to the victim.

10.15 am

Following the rape review announced last week, we are extending that to a further three Crown courts—Durham, Isleworth and Wood Green—which will obviously increase the number of hearings that are taking place. With those six Crown courts out of 80 or so, that is now getting close to 10% of the total. The extended pilot will enable us to learn the necessary lessons from the six sites now being used, with a view to then rolling out rapidly once we have ensured that we fully understand all the operational, technical and resourcing implications. The assumption is that that will happen as quickly as possible, but it is a significant departure from the way things have been done previously, so there is a reasonable desire to ensure that we properly understand how it works before activating it across the whole jurisdiction. That is the reason for the use of the six pilot sites.

Sarah Champion: I am very heartened by what the Minister is saying. One problem that keeps getting raised with me is that if victims choose to go down the live link route there must be authorised sites, but there are so few in the country, and they have backlogs and so on. There is a resourcing issue. However, it is my understanding that a lot more live evidence has been given by video link during the pandemic. Surely we have had a year of piloting this, as well as the specific pilots that the Minister is doing, so is he now looking at rolling back the opportunity to give evidence via live link, in order to wait for the pilot?

Chris Philp: Giving evidence by live link in proceedings is obviously different from section 28, which applies to pre-recorded evidence and cross-examination. In answer to the question about live links, no, there is no intention to try to influence the judiciary to use live video links less than they have been doing so. Generally speaking, it has worked very successfully. Each week there are 20,000 court sessions across all jurisdictions—criminal, civil, family and tribunals—using video technology, and there is no desire on the part of the Government to see that reduced, should the judge and other participants want to continue with it. That option is available. All Crown court rooms have the cloud video platform installed in them, which will remain the case.

A new system is coming in that will improve things further, but there will be no removal of remote capability from Crown court rooms. They will have the ability to take live evidence by video link. Every cloud has a silver lining, and one of the silver linings has been the fact that every Crown court room now has that capability.

Sarah Champion: My new clause shifts the choice to the victim rather than the judge. What the Minister is saying is great, but will he support my new clause, so that the victim is able to choose whether to give evidence by live link?

Chris Philp: Having spoken to new clause 4, let me turn now to new clause 20. As the hon. Lady says, it moves the discretion away from a judge and makes it the witness's choice whether the section 28 recording is conducted. We want to encourage as many eligible people as possible to make use of the special measures that are available, and we have taken a number of steps to ensure that objective. For example, the revised victims code, which came into force just a few weeks ago, on 1 April, focuses on victims' rights and sets out the level of service that victims can expect to receive from criminal justice agencies. The code also enshrines victims' rights to have their needs assessed by the police or a witness care unit in order to determine whether they are eligible to give evidence using special measures and would benefit from doing so, to help relieve some of the stress involved in giving evidence. We want to ensure that every single eligible witness is identified, and that the matter is actively considered.

Maria Eagle: Does the Minister accept that many of these offences leave the victims feeling powerless? Powerlessness, and having things done to them, is part of the horror that arises from such offences. To give victims agency—to allow them to decide for themselves in those proceedings what would work for them—would be a powerful fillip to their psychological wellbeing, so that the court system is not then doing to them, after they have had the perpetrator doing things to them, and all the while they are feeling powerless. The Minister could do a lot of good by accepting the provision.

Chris Philp: Clearly the victims code, published a few weeks ago, is designed to help victims in many of the ways that the hon. Lady described. I will come on to the specific question of who makes the decision in a moment. In addition to the victims code, however, we are doing more work with important agencies such as the police and the CPS, drafting guidance to share with victim care units and making sure that the understanding of the special measures, such as section 28, is as high as it possibly can be. We are also looking to maximise the use of section 24 and to improve the use of remote link sites—the point that the hon. Member for Rotherham made a moment ago—again to help victims.

On the question of empowerment, which the hon. Member for Garston and Halewood just asked about, there is clearly a balance to strike. Obviously we want to ensure that victims are protected and looked after, and that we minimise the trauma that may follow from reliving the experience. We should also be aware, however, that these are court proceedings, designed to determine guilt or innocence. The consequence of a conviction in such cases is, most likely, a long time in prison—rightly so. We therefore need to ensure that the interests of justice are considered, as well as the interests of the victim, which are also extremely important; they are both important.

Ultimately, the judge decides whether a live link may be used or the other special measures may be activated for someone who is eligible. The reason for that is that it is for a judge to make a determination in an individual case on how that case is managed and conducted, having regard to all the particular facts in the case—the circumstances, the victim and the nature of the victim, the nature of the questioning or cross-examination that might need to take place.

The concern of the Government is that if we simply legislate to remove that judicial discretion, saying that the judge cannot decide and what happens is automatic, it means that the judge will in some sense lose control of how the proceedings are conducted. There may be circumstances in which that undermines the delivery of justice.

We hope that judges listen to our proceedings—I am sure they do—and hear the very strong emphasis that we in this House give to victims. The judges are aware of the victims code and the strengthened rights that it gives victims, and they will keep that at the front of their minds when they make such decisions. I hope that they will make them—they normally make them and I hope will continue to do so—in a way that is sympathetic and sensitive. To wholly extinguish judicial discretion, however, would go a long way.

Sarah Champion: I appreciate the Minister's giving way. I am not entirely convinced that his civil servants have read my amendment. After proposed new paragraph (b) in subsection (2), the new clause states:

"so far as possible ensure that the measure or measures provided for do not inhibit the evidence of the witness being effectively tested by a party to the proceedings."

It explicitly gives the ultimate call to the judge. We would be giving the victim the right to have a choice, but if the judge believes that it in any way discredits the evidence that they are able to give, the judge has the right not to allow it.

Chris Philp: The drafting is:

"Provided that a direction under paragraph (b) shall so far as possible ensure that the…measures provided for do not inhibit the evidence".

As far as I read it, it does not give the judge the power not to make the order; it simply states that they must make the order in such a way as not to inhibit the evidence being given

"so far as possible".

My understanding of the words on the page is not that the judge has an ultimate veto; they must simply exercise a direction in that way.

Furthermore,

"so far as possible"

is not a high test when it comes to justice being done and ensuring that evidence is given fairly. When we are potentially convicting someone and sending them to prison for a long time, ensuring that justice is done

"so far as possible",

intuitively, does not feel like the standard is quite high enough.

Sarah Champion: I am happy to work with the Minister to get the wording exactly right, so that it does exactly what I think we both want.

Chris Philp: The Government's position, in conclusion, is that it is very hard to sit in Parliament and legislate definitively and bindingly—

Sarah Champion: We do it every day.

Chris Philp: Let me finish the sentence—for all the circumstances that may arise in an individual case. Therefore, although we have guidelines, procedures and so on, ultimately, the management of any particular case, including things such as the use of live links and proceedings in the courtroom, are a matter for the very experienced judge who is looking at the case, the defendant and the witnesses in front of him or her, the judge.

That is why, ultimately, judicial discretion is required. However, we agree with the direction of travel. I have already mentioned some of the things that we are doing to push things further. I am certain that judges looking at our proceedings will respond accordingly and will take a positive, constructive and accommodating view where the issues arise. In fact, they already have a duty under section 19 of the Youth Justice and Criminal Evidence Act 1999 to take into account the views of the witnesses in making their decisions. We feel that that strikes the right balance.

Alex Cunningham: I do not know whether the Minister accepted the kind offer of my hon. Friend the Member for Rotherham to assist him in developing new clause 20 to make it fit for purpose. He has indicated with a nod of the head that he is pleased to work with her—is that the case?

Chris Philp: Always happy to work together on any issue.

Alex Cunningham: I am grateful for that clarification.

[Alex Cunningham]

I am also heartened by the Minister's response to new clause 4. I will not take anything away from the Government for the tremendous progress that they have made in this area. However, there have been many pilots and I believe that those have already proved that the system is working. I suspect that if it were not working, he would be looking to do something else, rather than extending the pilot. I hope that we can make some more progress sooner rather than later.

The Minister talked about the various recommendations in the rape review. I do not think that we need to wait for the Government to roll out their actions from the rape review. We could take some action now. I see the new clause as another opportunity to take another small step, but it is a significant step, to protect victims and even to improve the quality of evidence that is given in court. Who knows, that, too, might improve some of those abysmal conviction rates that we suffer as a country—suffered by victims who do not receive justice.

Sarah Champion: Does my hon. Friend agree that the fear of giving evidence as the system stands, prevents any justice from happening? Any movement that the Government can make that is sensitive to the needs of victims and survivors would be hugely beneficial.

Alex Cunningham: That is very much the case. Yesterday, following the statement from the Lord Chancellor, there were various discussions of the statistics around cases. For some people, the case does not get beyond the police investigation; it never reaches the CPS. That is because of some of the issues outlined by my hon. Friend. We believe that it is time to start taking action. I say gently that it is great to have warm words from Ministers, but we actually need to make real progress. I will therefore press the new clause to a Division.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 8.

Division No. 29]

AYES

Champion, Sarah	Eagle, Maria
Charalambous, Bambos	Jones, Sarah
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Higginbotham, Antony
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

New Clause 6

OFFENCE OF PET THEFT

'(1) The Animal Welfare Act 2006 is amended as follows.

(2) After section 2 ("protected animal") insert—

"2A Definition of pet

A protected animal is a "pet" for the purposes of this Act if it provides companionship or assistance to any human being."

(3) After section 8 (fighting etc.) insert—

"8A Pet theft

A person commits an offence if they dishonestly appropriate a pet belonging to another person with the intention of permanently depriving that other person of it."

(4) In section 32 (imprisonment or fine) before subsection (1) insert—

"(A1) A person guilty of an offence under section 8A (pet theft) shall be liable—

(a) on summary conviction to imprisonment for a term for a term not exceeding 51 weeks, or a fine, or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(A2) When the court is considering for the purposes of sentencing the seriousness of an offence under section 8A it must consider the following as aggravating factors (that is to say, a factor that increases the seriousness of the offence)—

(a) the theft caused fear, alarm or distress to the pet, the owner or the pet or another person associated with the pet;

(b) the theft was for the purposes of commercial gain."

(5) In section 34(10) (disqualification) after "8," insert "8A,"."—*(Alex Cunningham.)*

Brought up, and read the First time.

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

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

New clause 7—*Offence of pet theft (Scotland)*—

'(1) The Animal Health and Welfare (Scotland) Act 2006 is amended as follows.

(2) After section 17 (protected animals) insert—

"17A Definition of pet

A protected animal is a "pet" for the purposes of this Act if it provides companionship or assistance to any human being."

(3) After section 23 (animal fights) insert—

"23A Pet theft

A person commits an offence if they dishonestly appropriate a pet belonging to another person with the intention of permanently depriving that other person of it."

(4) In section 40 (disqualification orders) after subsection (13)(b) insert—

"(ba) an offence under section 23A,".

(5) In section 46 (penalties for offences) after subsection (1) insert—

"(1A) A person guilty of an offence under section 23A (pet theft) shall be liable—

(a) on summary conviction to imprisonment for a term for a term not exceeding 51 weeks, or a fine, or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(1B) When the court is considering for the purposes of sentencing the seriousness of an offence under section 23A it must consider the following as aggravating factors (that is to say, a factor that increases the seriousness of the offence)—

(a) that theft caused fear, alarm or distress to the pet, the owner or the pet or another person associated with the pet;

(b) the theft was for the purposes of commercial gain."

(6) In Schedule 1 (powers of inspectors and constables for Part 2) after paragraph 4(5)(a) insert—

(aa) an offence under section 23A,"."

New clause 8—*Offence of pet theft: consequential amendments—*

'(1) The Police and Criminal Evidence Act is amended as follows.

(2) In section 17(1)(c)(v) (entry for purposes of arrest, etc in connection with offences relating to the prevention of harm to animals), for "and 8(1) and (2)" substitute "8(1) and (2) and 8A"."

10.30 am

Alex Cunningham: We now turn our attention to quite a different subject. New clauses 6 to 8 would work as a package to create a new specific offence of pet theft, punishable by a custodial sentence of up to two years. As the Minister is aware, the theft of pets is currently an offence under the Theft Act 1968. However, although the law of theft caters for certain specific offences—for example, bicycles, scrap metals and even wild mushrooms, unbelievably—that is not the case for pets. That matters because the Theft Act does not consider a pet's intrinsic value as a much-loved member of the family. Instead, it takes into account only its monetary or sale value.

I am sure that, like me, the Minister gets a regular flow of emails from animal lovers and owners who want tougher laws to deal with those who would deprive them of their pets. They value their pets way beyond many things in their lives and even make sacrifices to ensure they get the expensive vet treatment that they need. It seems absurd to us that the theft of a much-loved pet is currently regarded in law as the same as the theft of a mobile phone or a handbag.

Pets are living, sentient beings that come into our lives and become irreplaceable members of our families. I do not mind saying that it broke my heart when my dog, Lady, died. It was the same when KT the cat died. He was called KT after we discovered that we had a male cat, which had previously been named Katie by one of my sons.

We believe that legislation and sentencing must reflect reality, and that is why Labour tabled new clause 6. It would create a specific offence of pet theft that would enable courts to deliver sentences for pet theft offences that properly reflect the attitudes of modern society. I know the Minister will remind us that the Government are looking to reform this area of the law, but that was due to happen last year.

Fewer than 1% of pet thefts lead to charges being brought. Although the Theft Act allows for a minimum custodial sentence of up to seven years' imprisonment, the evidence shows us that someone found guilty of pet theft is far more likely to be handed a caution than a custodial sentence. That is because the vast majority of cases involving pet theft will be handled by the magistrates courts, rather than the Crown court. That is exactly why we need a change in the law. Creating a specific offence of pet theft, rather than leaving offences to be prosecuted under the Theft Act, would mean that judges are able to sentence acts of pet theft in accordance with the huge emotional damage that the offence causes.

The change is as important as it is timely. As the Minister is aware, the number of pet thefts—dog thefts in particular—has skyrocketed during the pandemic. Five police forces across England and Wales reported more acts of dog theft in the past seven months than during the whole of the previous year. Indeed, the number of dog thefts has been increasing year on year for the best part of the past decade, and we are now at the point where, on average, at least five dogs are stolen in England and Wales each and every day. That is a staggering and horrifying figure. I have heard of pets actually snatched from their owners in the street, as criminals steal them to order.

What is even more worrying is that, while the number of dog thefts increases with each year, the number of court charges relating to dog theft has gone down. In 2015, only 62 court charges were brought. In 2016, that had decreased to 48, and by 2017 the number was only 37. By failing to take decisive action as pet thefts rocket and successful prosecutions fall, the Government are sending a dangerous message to criminals—that they can continue to break the hearts of families up and down the country with complete impunity.

Given that the Government have taken no action, the Opposition feel that we must step in and offer them an opportunity for change with a specific offence of pet theft, punishable with a custodial sentence of up to two years. Again, that would allow judges to hand down sentences that properly reflect the emotional family value of a pet, rather than simply its value as an object. That seems to us a wholly sensible response to the current crisis of pet thefts that we see today. Pets are not simply objects; they are invaluable members of our family, within our homes. They provide emotional comfort, support and happiness to families across the country.

It is not just the Opposition who recognise that. The Minister will be aware that many animal welfare groups support a change in legislation, as do members of his own party and the vast majority of the public. The current system does not work and it is the country's 12 million households that have pets who are being let down. I hope that the Minister, rather than saying that the Government will sort this issue out some other time, will take decisive action and support the new clauses today.

Sarah Champion: I am extremely grateful to my hon. Friend the Member for Stockton North for tabling these new clauses, because during the pandemic in particular the rate of dog theft has gone through the roof, as the cost of puppies, dogs and all other pets has also skyrocketed.

These animals are worth so much more than their monetary value; they are valued members of our households. And we have seen some very high-profile cases that demonstrate the impact when pets are stolen. The law needs to catch up and I really urge the Minister to take this opportunity to do that.

In March, DogLost—a UK charity that helps victims of dog theft—recorded a 170% increase in the rate of this crime between 2019 and 2020. It is very welcome that in May the Government announced a taskforce that will consider the factors contributing to the rise in dognapping and recommend solutions to tackle the problem, but we do not need just another consultation. What we actually need is action and the Bill provides the perfect opportunity for the Government to take that action.

Campaigners against dog theft have called for pet theft to be made a specific offence and they are right to do so. That crime needs more robust punishment than

[Sarah Champion]

just being covered by theft of property; treating pets just as "property" does not recognise the emotional attachment that people place on them.

Hywel Williams: Does the hon. Lady recognise, as I do, the value of pets in therapeutic situations, especially when people have a disability and perhaps build a particular relationship with a cat or dog? In that respect, the theft of such an animal is even worse than the theft of just a family pet, as it were.

Sarah Champion: I completely agree. While the hon. Gentleman was talking, I was reminded of my grandma, who had a budgie called Bluey. As a child, I did not realise why, every few years, Bluey changed colour. But for my grandma, if Bluey had been stolen it would have broken her, as Bluey was the one constant in her life. The value of a budgie is—what? I do not know—£20? What we find, though, is that when people are caught for petnapping they only receive a small fine; indeed, sometimes they just receive a suspended sentence. Those punishments do not reflect the emotional worth that the pets have.

According to the Pet Theft Reform campaign, in recent years only 1% of dog thefts have even led to prosecution. Campaigners have called for reform of the current system of pet microchipping, to improve the chances of reuniting stolen animals with their owners.

As we have discussed, it is heartbreaking when a beloved family pet is stolen. Currently, however, it is very difficult to collate definitive statistics on pet theft, which is principally due to, first, the different methods of recording pet theft that are used by different police forces and, secondly, pets not being differentiated under the Theft Act 1968. Pets are more than property and legislation should reflect that.

Siobhan Baillie (Stroud) (Con): I have campaigned on this incredibly important issue. However, having looked into the details and worked with different campaign groups and the Gloucestershire police force, which is recording these crimes well, I think some of the issues that the hon. Lady has touched on are becoming wider and wider in scope. There is a range of things that we need to fix.

I am inclined to say that the taskforce is the way forward to get to legislation. Does the hon. Lady agree that we must look at all of the issues, rather than just trying to tackle either specific sentencing or specific legislation?

Sarah Champion: I completely agree with the hon. Member. Yes, of course, we need robust data to be able to do that. We are in a chicken-and-egg situation because, as the hon. Member highlights, different police forces record different things, so it is hard to grasp the problem. The thing that I am most mindful of is that the opportunity to make changes to the legislation are slight in Parliament, but the Minister has an opportunity now, so I urge him to grasp it.

Does the Minister agree that the punishment should outweigh the potential rewards for stealing pets? At the moment, people receive tens of thousands of pounds for stealing dogs, but they are not given a sentence if they are convicted. I completely understand the work of the taskforce, but we need a positive response, which campaigners and pet owners have called for. There have been some really disturbing cases, with increasing violence used in dog thefts. That is another reason why I want the Government to send a strong message that that is not acceptable and is punishable.

A dog owner was knocked to the ground and punched in a terrifying attack by two men trying to steal her pet. Allie Knight, 22, was attacked near Mutley Plain, Plymouth, as she walked her pug, Paddy. Mike Jasper was walking his dog Ted—this was awful—a sprocker spaniel, in south London in December after visiting his allotment when he was brutally attacked by two men wearing face masks and Ted was taken. "BBC Breakfast" raised this case, and it highlighted the depth of the loss that someone feels when their pet is taken. A 50-year-old woman was attacked and had her dog stolen while she was out walking in Moira Road in Woodville, Derbyshire. One man pushed her to the floor, and grabbed her two-year-old dachshund called Minnie, while the other held his fist to her face.

Police forces need sufficient resources and training to be able to deal with pet theft in a sensitive manner and highlight resources where owners can turn for support. Blue Cross strongly supported the recent decision of Nottinghamshire police to appoint Chief Inspector Amy Styles-Jones as the first specialist dog-theft lead in the country. Having a dedicated dog-theft specialist in each police force would make a huge difference, and would address the point made by the hon. Member for Stroud about the disparities across the country.

Chris Philp: Once again, I am grateful to the shadow Minister and his colleagues for raising an extremely important issue: criminals seeking to profit from the theft of a pet. Sadly, it is a growing trend. Dog owners do not feel safe or comfortable very often, and it can be heartbreaking when a much-loved family pet is taken. Recognising that, the Lord Chancellor, the Home Secretary and the Secretary of State for Environment, Food and Rural Affairs have recently created a new taskforce to investigate the problem end to end and find solutions—not just in relation to the criminal offence, which we will come on to in a moment but in relation to prevention, reporting, enforcement and prosecution of the offences. It will make clear recommendations on how the problem can be tackled. We have seen in other contexts—for example, there was a problem a few years ago with scrap-metal thefts from church roofs—how an end-to-end approach can have an effect. We should not look simply at one element of the problem but at the whole thing end to end, and that is what the task force is urgently doing, as well as taking evidence from experts. The Minister for Crime and Policing is also involved, to make sure that police investigation is what it should be.

As we have heard, the theft of a pet is currently a criminal offence under the Theft Act 1968, so the question arises of why we need a new offence. The first thing I would say is that the maximum sentence for the new offence proposed by the new clause is only two years, whereas the maximum sentence under the Theft Act is seven years. The new clause, if adopted, would reduce the maximum penalty available for stealing a pet from seven years to two years, which strikes me as incongruous, given the purported objectives of the new clause.

The shadow Minister made some points about whether the emotional value of the pet was recognised and accounted for. I draw his attention, and the Committee's attention, to the Sentencing Council guidelines on theft, which are used by judges when passing sentence for theft up to the seven-year maximum. Under the guidance, which judges are bound to use, harm includes the emotional distress caused by the theft. The guidance also talks about the value to the person who suffered the loss, regardless of monetary worth, so the emotional distress and the non-monetary value are baked in already, in black and white, in those Sentencing Council guidelines. Indeed, the table specifying the level of harm sets out that emotional damage and harm to the victim cause an escalation in the sentence, over and above what would be the case based simply on monetary value.

10.45 am

The hon. Member for Rotherham mentioned that, in some cases, the value of a dog can run to tens of thousands of pounds. If a dog or any pet with such a value is stolen and there is emotional harm, that is classed as category 1 level of harm. Even in cases with the lowest level of culpability, where the person doing the stealing is being directed by somebody else, the custody range for that level of harm under the Theft Act 1968 is between six months and two years, which is up to the maximum the shadow Minister is proposing. If, however, there is level A culpability, which means the theft has been heavily planned and it involved intimidation and coercion, the custody range is between six months and six years. The six years would not be available if we made the change; the sentence would be capped downwards, at just two years.

Siobhan Baillie: Characteristically, the Minister is absolutely correct in everything he is saying, but we cannot get away from the fact that even though legislation provides for sentences of up to seven years, such sentences are not being passed. It is important to recognise that. One of the reasons that I would not back the proposal is that the Minister is right about the two years. We already have a greater sentencing option in the legislation, but that is not being taken, which is why the taskforce is key to looking at the range of options. That includes the judiciary and the Sentencing Council.

Chris Philp: My hon. Friend makes a good point, and those topics are precisely the ones the taskforce is addressing to make sure the appropriate statutory powers exist. The maximum sentence of seven years is there. The ability to take account of emotional distress and non-monetary value is there in black and white, in the Sentencing Council guidelines. I talked through a couple of examples in which instances of high harm and high culpability can lead to substantial periods in custody. Even if the level of harm was 3, there would still be level A culpability and the possibility of between six months and several years in custody. The powers are there in statute. The question is more practical, as my hon. Friend says, and that is exactly what the taskforce will address.

Alex Cunningham: The Minister is outlining how people who steal pets could get up to seven years in jail, but there is no evidence at all, anywhere in the country, to suggest that those cases go beyond magistrates court. The sentence is normally a fine; there is no evidence of custodial sentences. I do not know what the Minister proposes to do to improve guidance to the courts on how they deal with that, but perhaps it is something he needs to consider.

Chris Philp: That is exactly the kind of question the taskforce will be considering. Under the 1968 Act, theft is a triable either-way offence, which means it can be tried in the Crown court or the magistrates court. One matter the taskforce might consider is where the more serious of those offences are prosecuted. The option of the CPS seeking to have more of the cases tried in the Crown rather than the magistrates court could be explored, and that is a topic the taskforce most certainly may consider.

It is also worth mentioning that, in addition to the work of the taskforce and the existing powers relating to a maximum sentence of seven years, there is a lot more the Government are doing. For example, in the area of animal welfare, we are introducing legislation to recognise animals as sentient beings and putting animal welfare at the heart of Government policy decision making. We have also supported calls for increasing the penalty for animal cruelty from six months to five years under the Animal Welfare (Sentencing) Act 2021, which received Royal Assent in April.

Maria Eagle: The Minister is making an interesting point about classifying animals in law as sentient, which is overdue. Does he foresee such a change leading to changes in this legislation? Theft of a sentient being appears to be a somewhat different offence from theft of what is currently seen as an object with monetary value.

Chris Philp: On monetary or emotional value, the Sentencing Council guidelines recognise emotional value and non-monetary worth. The hon. Lady asks about the interaction between the 2021 Act and sentience, on which we are looking to legislate. That is the kind of topic that the taskforce will have in mind. It is an interesting point, and I will ensure that it features in the taskforce's deliberations.

Given the work that the taskforce is doing across a far wider area than the criminal offence, and given that the criminal offence already has a maximum of seven years and that emotional value is recognised, I feel that the taskforce is doing the necessary work to step up action in this area. We recognise that there is a problem. More needs to be done, and the taskforce is doing it.

Alex Cunningham: Pet owners across the country will be delighted that we have had the debate. We listened to what Members have said and listened the Minister's response, and we look forward to the taskforce reporting. I do not know when the report is due, but pet owners across the country still want the Government to take action. We do not want any more dilly-dallying; we need the Government to act. We hope that they will press the taskforce to report quickly and to make recommendations that will deliver what the public want: more severe sentences for people who would steal their pets. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 9

RENTAL OF HIGH PERFORMANCE VEHICLES

"(1) It is an offence to offer for rental a motor car of more than 300 brake horsepower, unless the motor car is fitted with a black box.

(2) For the purposes of this section, a black box is a telematic device which records information about the way a motor car is driven.

(3) The Secretary of State must by regulations determine the information which a black box must record for the purposes of this section.

(4) Regulations under subsection (3) must provide, at a minimum, for the following information relating to the motor car to which it is fitted to be collected throughout the period of rental—

(a) its location;

(b) its speed; and

(c) its rate of acceleration or deceleration.

(5) The information recorded by the black box must be disclosed to a constable on request, and the failure to disclose such information is an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(7) The Secretary of State must by regulations determine how the brake horsepower of a motor car is to be calculated for the purposes of this section.

(8) For the purposes of this section, "motor car" has the meaning given by section 185 of the Road Traffic Act 1988." —*(Sarah Jones.)*

Brought up, and read the First time.

Sarah Jones: I beg to move, That the clause be read a Second time.

The new clause was tabled by my hon. Friend the Member for Halifax (Holly Lynch), with my support and that of my hon. Friends the Members for Hove (Peter Kyle) and for Stockton North. It would produce more accountability in the rental of high-performance vehicles or supercars. I understand that the issue of high-powered vehicles being driven recklessly in and around neighbourhoods, thereby plaguing towns and communities, is a challenge not only in parts of West Yorkshire, but across the country. Many attempts have been made to combat the issue at local level, involving local authorities working side by side with police forces, but such partnership initiatives can go only so far, and it has become clear to all involved that action at national level is needed.

More often than not in the examples of road traffic offences committed by people using cars described as high-performance vehicles, supercars or even prestige cars, the driver is not the owner, but has hired the vehicle. In recent years, there has been an increase in people hiring cars such as Lamborghinis and Ferraris and passing the keys to someone else, if not several others. The vehicles are then driven at dangerously high speeds, which puts other road users, pedestrians and the drivers themselves at risk.

Often the driver will not have the appropriate insurance. They will argue that they believed that they were somehow covered by the rental agreement, by their own insurance or simply by the fact that the person who hired the car had given them consent to take it around the block. They will say that they had not intended to crash, so they did not need insurance. In the majority of cases, they will not have experience of handling 300 hp-plus vehicles, which can be deadly in the wrong hands. Many companies that hire out vehicles operate responsibly and with transparency, but there are much darker elements in the industry. The sliding scale of criminality ranges from drivers engaging in antisocial use of the roads in communities to dangerous and reckless driving through to serious and organised crime.

What can we do to ensure that all companies that rent performance vehicles act responsibly and drivers are accountable for their actions behind the wheel? The new clause makes a start, and it follows a ten-minute rule Bill that was introduced on the Floor of the House on 24 February by my hon. Friend the Member for Halifax. She recalled a recent example in which a police officer had stopped two high-performance vehicles on the same 40 mph road, one going at 76 mph and the other at 86 mph.

The new clause would mandate all rental vehicles of 300 hp or above for use on public highways to be fitted with a black box. A black box is typically the size of a matchbox and it records information about how and when a car is driven. Many hire car companies act competently and do their very best to ensure that their vehicles do not fall into the hands of the irresponsible—that includes fitting black boxes—but a minority fail to carry out due diligence.

Mr Robert Goodwill (Scarborough and Whitby) (Con): I am a member of the all-party parliamentary historic vehicles group, and I am a little concerned that many older vehicles that may be hired—for example, vintage Bentleys—cannot be fitted with a black box, which might prevent those vehicles from being enjoyed by people who perhaps want to hire a little of our history.

Sarah Jones: I confess that I am not a car expert, but my understanding is that the vehicles in question are 300 hp or more. I do not know whether the vehicles the right hon. Gentleman has mentioned are in that category. The new clause relates to powerful cars that are hired by people—often young people—who pass them on to their friends. In some cases, significant damage is caused.

Mr Goodwill: I thank the hon. Lady for her generosity in giving way. I understand the problem she has identified. However, the Jaguar F-Pace 3.0 litre 4x4, for example, which families might hire to pull a caravan on a holiday or to go on a trip, would fall into that category. I am a little worried that many people who are not part of the problem might be drawn into additional cost and the difficulties that that might present.

Sarah Jones: I imagine that if a vehicle could not accommodate a black box, it would not fall within the remit of the new clause. Perhaps we could work on the guidance accompanying the new clause to fix the issue that the right hon. Gentleman has mentioned. I am grateful to him for doing so.

Sarah Champion: Does my hon. Friend agree, though, that fitting a black box would not inhibit a good driver, and it should not put an additional cost on the hire?

The new clause would allow us to capture the data that could prove that people had been acting recklessly after hiring sports cars.

Sarah Jones: My hon. Friend is right, as always. The purpose of the new clause would be of no concern to people who drive safely and competently.

The new clause would also make it a requirement for companies to hand over that black box data to the police should they request it. As Members of the House have communicated to me, this problem is repeatedly raised on the doorstep in some communities and in constituency surgeries, and getting a grip of it would not only make people safer, but push back on the costs picked up by responsible road users who are penalised through their own insurance to cover the risk presented by a minority of reckless road users who drive vehicles without insurance that become involved in crashes.

The Motor Insurers Bureau has shared with me some troubling examples of questionable insurance policies being used by some companies in this rental sector. Agencies agree that costs are passed on to law-abiding road users by those abusers of system. A black box would help to provide an evidence base for determining whether road traffic offences had been committed and, ultimately, for securing prosecutions if necessary. That would protect law-abiding road users from risk and cost to them.

Over the years, I have seen the police and various partnerships deploy several attempts to address the issue, with varying success. The new clause would make a start by using legislation to address reckless driving facilitated by the irresponsible use of hired supercars.

Victoria Atkins: I have listened very carefully to the arguments made by the hon. Lady, and it seems to me that the issue comes down to the driving habits of the small group of people in West Yorkshire and elsewhere that she described.

11 am

Our concerns are couched around proportionality. As my right hon. Friend the Member for Scarborough and Whitby said, these measures would have an impact not just on the group of drivers about which the hon. Lady is understandably concerned, but on law-abiding members of the public going about their business or going on holiday, and hiring cars while doing so.

I reassure the Committee with respect to some of the measures that are already in place. Many reputable firms that rent out high-performance vehicles put restrictions on drivers of those vehicles. Such restrictions can include a minimum driver age limit of 25 or 30, or the requirement to have had a driving licence for at least three years in order to rent such a vehicle. Many vehicle rental firms adhere to the codes of practice set down by the British Vehicle Rental and Leasing Association, which aims to ensure that rented vehicles are driven safely.

In addition, many high-performance vehicles are fitted with telematics devices—black boxes—given their value. Those boxes can send the hire company a warning when the vehicle is driven on to a racetrack or near a ferry port, as it is a standard provision of the hire agreement that the vehicles cannot be used on a racetrack or driven abroad. That data may be used following a collision or to assist the police in their duties under the Police and Criminal Evidence Act 1984.

There is a range of police powers to tackle the type of antisocial behaviour the hon. Lady has described. Under the Police Reform Act 2002, officers can seize vehicles being driven carelessly or inconsiderately on or off the road, or that are being driven in a manner causing or likely to cause "alarm, distress or annoyance" to members of the public. Under the Sentencing Act 2020, the police can ask for a criminal behaviour order to be imposed on sentencing. Under the Anti-social Behaviour, Crime and Policing Act 2014, a local authority can make public space protection orders and the police can use their dispersal powers to prevent illegal racing, and it is an offence to race motor vehicles on public ways under the Road Traffic Act 1988.

As to which vehicles would be covered by the new clause, I am told by those who know more than me that the 300-brake horsepower threshold means the sort of engine that is found not just in high-performance vehicles, but in family saloon cars. Examples of cars that may be affected include versions of the Mini hatchback, the Audi S series, the Honda Civic, the Volvo V60 and the Mercedes C class. I may not be Jeremy Clarkson, but even I would struggle to describe the Honda Civic as an obvious candidate for a boy racer.

Sarah Jones: I fear, Sir Charles, that two non-car-experts are talking about cars, which is probably uncomfortable for car experts across the country. Many of the cars the Minister has mentioned are fitted with black boxes. Police cars are fitted with black boxes. A lot of companies offer much cheaper insurance if someone has a black box fitted to their car. Indeed, there are insurance companies with the words "black box" in their name. The provision is not extreme, and this is becoming normal anyway. Given the Minister's argument about the breadth of models of car that might be affected by the new clause, perhaps she will commit herself to considering a better definition so as to tackle this particular, extreme problem, which is very concerning for a lot of people.

Victoria Atkins: There are other concerns about the new clause, which come back to the proportionality argument. I fully accept, of course, for those communities that are affected by the sort of antisocial—indeed dangerous—driving that hon. Lady has described, that their feelings as to proportionality will differ from those in a quiet rural area, for example, where there is no such behaviour, but this is where the powers that I have already outlined come in. They include public spaces protection orders, which can be particularly powerful, because they allow a local area to address the concerns in a particular part of the area as appropriate.

The concern that we have for the wider hire market is that the requirement to fit devices to these vehicles—the Honda Civic, the Volvo V60 and suchlike—could restrict choice and availability of vehicles. The low threshold may defeat the objective of stopping higher-performance vehicles being driven at speed. Consumers may in fact switch to lower-powered vehicles so as not to be monitored by black boxes, and continue to break the law.

Sarah Jones: As I understand it, given the problems that have been described to me, people specifically want to hire these high-glamour cars—Lamborghinis and so

[Sarah Jones]

on—because they want to show off and race each other. Getting a lower-performance car is not what they are aiming for; the point is to hire these big, high-powered, high-glamour cars and show off in front of their friends.

Victoria Atkins: This is difficult, in terms of defining the type of car. But I also fall back on the proportionality argument, because in requiring devices to be fitted to every single car as a matter of law, we would be affecting the overwhelming majority of law-abiding citizens, who do not race Lamborghinis and so on—although I do note, having watched Jeremy Clarkson's farming programme, that he has a Lamborghini, albeit a Lamborghini tractor, which I suspect would not fall into this category.

We would have further concerns about the privacy consequences of fitting these devices, because to ensure that we were acting in the way that the new clause sets out, it would have to affect responsible road users as well as irresponsible ones. Telematic data is normally used to assess individual road safety risk, which can be an inexact science. As the hon. Lady said, this is currently voluntary, not mandatory. Forcing those using even medium-sized rental cars to have these devices fitted could understandably lead to privacy concerns on the part of all rental vehicle users and not just the irresponsible racers, on which the new clause is understandably focused.

For those reasons—for reasons of proportionality but also because there are existing powers to deal with this irresponsible, dangerous behaviour—we do not believe that the new clause is proportionate and therefore we hope that the hon. Lady feels able to withdraw the motion.

Sarah Jones: I have heard from several MPs about the problem that this behaviour is causing in their constituencies. The argument of proportionality is always a strong one, but in this case the problem is such that people are concerned for their safety and for the lives of the people hiring these vehicles, and therefore I would like to press the new clause to a vote.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 8.

Division No. 30]

AYES

Champion, Sarah	Eagle, Maria
Charalambous, Bambos	Jones, Sarah
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Higginbotham, Antony
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

New Clause 10

RESTRICTION ON EVIDENCE OR QUESTIONS ABOUT COMPLAINANT'S SEXUAL HISTORY

"(1) Section 41 of the Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In subsection (1)—

(a) starting in paragraph (b) omit "in cross examination, by or on behalf of any accused at the trial,";

(b) at end insert "with anyone other than the defendant".

(3) In subsection (2)—

(a) for "an accused" substitute "a party to the trial";

(b) in paragraph (a) omit "or (5)".

(4) For subsection (3) substitute—

"(3) This subsection applies if the evidence or question relates to a relevant issue in the case and that issue is not an issue of consent."

(5) For subsection (5) substitute— In subsection (6), for "subsections (3) and (5)" substitute "subsection (3)"."

"(a) For the purposes of subsection (3) no evidence may be adduced or question asked unless the judge determines in accordance with the procedures in this subsection that the question or evidence has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

(b) In determining that question the judge shall take into account—

(i) the interests of justice, including the right of the accused to make a full answer and defence;

(ii) the need to preserve the integrity of the trial process by removing from the fact-finding process any discriminatory belief or bias;

(iii) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(iv) the potential threat to the complainant's personal dignity and right to privacy;

(v) the complainant's right to personal security and to the full protection and benefit of the law;

(vi) the provisions of the Victims Code;

and any other factor that the judge considers relevant."

(6) In subsection (6), for "subsections (3) and (5)" substitute "subsection (3)"."—*(Sarah Champion.)*

This new clause excludes the admission in evidence of any sexual behaviour of the complainant with a third party, whether by the prosecution or the defence, to show consent, whilst leaving it admissible if it is relevant to any other issue in the case. It sets out the additional requirement that to be admitted the material must be more probative than prejudicial and sets out the considerations the judge must have in regard to considering that extra requirement.

Brought up, and read the First time.

Sarah Champion: I beg to move, That the clause be read a Second time.

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

New clause 11—*Definition of "issue of consent"*—

"(1) Section 42 of the Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) For paragraph (b) substitute—

"(b) "issue of consent" means any issue where the complainant in fact consented to the conduct constituting the offence with which the defendant is charged and any issue where the accused reasonably believed that the complainant so consented;""

This new clause re-defines "issue of consent" for the purposes of section 41, including in the definition the defendant's reasonable belief in consent, and thus removing it as a reason for the inclusion of a complainant's sexual history or behaviour.

New clause 12—*Admission of evidence or questions about complainant's sexual history*—

"(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) After section 43 insert—

"43A In any trial or contested hearing to which section 41 of the Youth Justice and Criminal Evidence Act 1999 applies, if no pre-trial application in accordance with Part 36 of the Criminal Procedure Rules has been made, or if such application has been made and refused in whole or in part, no further application may be made during the course of the trial or before its commencement to call such evidence or ask such question, and no judge may allow such application or admit any such questions or evidence.""

This new clause would have the effect that no section 41 evidence or questions could be admitted by a judge at trial unless there had been an application before trial in accordance with the practice directions; and the amendment would ban applications from being made immediately before or during the trial.

New clause 13—*Complainant's right of representation and appeal on an application to adduce evidence or questions on sexual conduct—*

"(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) After section 43 insert—

"43A In any trial to which section 41 applies, where notice is given that there will be an application under Part 36 of the Criminal Procedure Rules for leave to ask questions or to adduce evidence as to any sexual behaviour of the complainant—

(1) The complainant may not be compelled to give evidence at any hearing on the application.

(2) The complainant will be entitled to be served with the application and to be legally represented (with the assistance of legal aid if financially eligible) as "a party" within the meaning of the Criminal Procedure Rules in responding in writing to the application and in presenting their case at any hearing on the application.

(3) If the application succeeds in whole or in part, the complainant will have a right to appeal for a rehearing of the application to the Court of Appeal on notice within 7 days of the judgement being delivered.

(4) On any such appeal, the Court of Appeal will rehear the application in full and may grant or refuse it in whole or in part.

(5) The Secretary of State may, by regulation, set out rules of procedure relating to any hearing or appeal under this section.""

This new clause would give the complainant a right of representation, with legal aid if they are financially eligible, to oppose any application to admit section 41 material about them. This new clause would also give complainants a right of appeal to the Court of Appeal if the application is allowed in whole or in part. The new clause also provides that the complainant is not compellable as witness at the application.

New clause 14—*Collection of and reporting to Parliament on data and information relating to proceedings involving rape and sexual assault—*

"(1) The Secretary of State shall collect and report to Parliament annually the following data and information—

(a) The time taken in every case of rape or sexual assault for the case to progress from complaint to charge, from charge to pre-trial plea and management hearing; and from then until trial.

(b) The number of applications to ask questions or adduce evidence of any sexual behaviour of the complainant under section 41 of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act") made in the Magistrates and Crown Courts of England and Wales, irrespective of whether a trial was subsequently held.

(c) The number of cases which involved questions on or evidence of any sexual behaviour of the complainant in all rape, sexual abuse and other trials or contested hearings in the Magistrates and Crown courts in England and Wales, irrespective of whether an application was made to admit such questions or evidence in advance of the trial or hearing.

(d) In cases to which section 41 of the 1999 Act applies—

(i) whether Part 36 of the Criminal Procedure Rules was followed in each application and if it was not, how it was not;

(ii) the questions proposed to be asked;

(iii) the evidence proposed to be called;

(iv) whether the prosecution opposed the application and if so the content of their representations;

(v) whether evidence was called to support or oppose the application;

(vi) whether the application was allowed in whole or in part and a copy of the judgement made on the application; and

(vii) any other material which might assist in an assessment of the frequency, basis and nature of applications for the use of such questions or evidence and the likely impact on any parties to any trial and the trial outcome.

(2) The data and information to be collected under subsection (1) shall include—

(a) all the material from any pre-trial application;

(b) the questions in fact asked and the evidence in fact called about any sexual behaviour of the complainant in the trial;

(c) any application at the start or during the course of the trial to vary or alter any judgement given in any earlier application or any further application to admit such questions or evidence;

(d) whether any material not previously authorised was used in the trial;

(e) whether the prosecution objected; and

(f) any ruling made or action taken by the judge on the further conduct of the trial as a consequence of the admission of questions or evidence under section 41 of the 1999 Act.

(3) The data and information to be collected under this section shall be collected from the date of Royal Assent to this Bill."

This new clause requires the Secretary of State to collect and report to Parliament data and information on trial delay and section 41 matters.

New clause 15—*Training for relevant public officials in relation to the conduct of cases of serious sexual offences—*

"(1) The Secretary of State shall, on this Act coming into force, publish and implement a strategy to provide training on the investigation of rape and alleged rape complainants, and the admissibility and cross-examination of complainants on their sexual history to—

(a) the Crown Prosecution Service;

(b) Police Forces;

(c) the Judiciary; and

(d) such other public bodies as the Secretary of State considers appropriate.

(2) The Secretary of State shall ensure that any judge who is asked to hear a trial where the accused is charged with rape or any other serious sexual offence has attended and completed a training programme for such trials which has been accredited by the Judicial College."

This new clause ensures that all criminal justice agencies shall be trained and that no judge can hear a sexual offence trial of any kind unless they have attended the Judicial College serious sexual offence course.

New clause 42—*Enhancement of special measures in sexual offences—*

"(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In section 27, after subsection (1), insert—

"(1A) Any interview conducted under this section of a complainant in respect of a sexual offence must be conducted by—

(a) a member of the Bar of England and Wales,

(b) a member of the Faculty of Advocates,

(c) a member of the Bar of Northern Ireland, or

(d) a solicitor advocate.""

New clause 57—*Restriction on evidence or questions about mental health counselling or treatment records relating to complainant or witness*—

"(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) After section 43 insert—

"43A Restriction on evidence or questions about mental health counselling or treatment records relating to complainant or witness

(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

(a) no evidence may be adduced, and

(b) no question may be asked in cross examination,

by or on behalf of any accused at the trial, about any records made in relation to any mental health counselling or treatment which may have been undertaken by a complainant or witness.

(2) The records made include those made by—

(a) a counsellor,

(b) a therapist,

(c) an Independent Sexual Violence Adviser (ISVA), and

(d) any victim support services.

(3) The court may give leave in relation to any evidence or question only on an application made by or on behalf of a party to the trial, and may not give such leave unless it is satisfied that—

(a) the evidence or question relates to a relevant issue in the case which will include a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant,

(b) the evidence or question has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice, and

(c) a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(4) For the purposes of making a determination under paragraph (3)(b) the judge shall take into account—

(a) the interests of justice, including the right of the accused to make a full answer and defence;

(b) the need to preserve the integrity of the trial process by removing from the fact-finding process any discriminatory belief or bias;

(c) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(d) the potential threat to the personal dignity and right to privacy of the complainant or witness;

(e) the complainant's or witness's right to personal security and to the full protection and benefit of the law;

(f) the provisions of the Victims Code; and

(g) any other factor that the judge considers relevant.

(5) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—

(a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(6) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

(7) In relation to evidence or questions under this Section, if no pre-trial application in accordance with Part 36 of the Criminal Procedure Rules has been made, or if such application has been made and refused in whole or in part, no further application may be made during the course of the trial or before its commencement to call such evidence or ask such question, and no judge may allow such application or admit any such questions or evidence.""

This new clause would restrict evidence or questions about mental health counselling or treatment records relating to complainant or witness unless a defined threshold is met.

New clause 68—*Law Commission consideration of the use of complainants' sexual history in rape trials*—

"The Secretary of State must seek advice and information from the Law Commission under section (3)(1)(e) of the Law Commissions Act 1965 with proposals for the reform or amendment of the law relating to the use of complainants' sexual history in rape trials."

Sarah Champion: I would like to speak to new clause 57, which would restrict evidence or questions about mental health counselling or treatment records, unless a defined threshold is met. Under current legislation, the police and defence are able to access all the victim's counselling notes relatively easily. That results in many victims fearing that their counselling notes will be used against them in court proceedings, while some victims are actively discouraged from accessing counselling until after the trial has taken place.

New clause 57 would create a presumption that the disclosure of counselling notes would not be used as evidence, so that only in exceptional circumstances could the victim's records be accessed. The new clause would add a new section to the Youth Justice and Criminal Evidence Act 1999, so that the judge would have to take into account multiple factors, including the victims' code, and the potential threat to the person's dignity and right to privacy of the complainant or witness.

The mental health records would also have to relate to a relevant issue in the case, and the judge would have to ensure that the evidence has significant probative value. That would reassure victims that it would be unlikely that their records would be used, and give them more confidence in working with the police and courts to secure justice.

I recently received an email from a brave woman who used to live in my constituency. She has now moved away from the UK because she did feel emotionally or physically safe in Rotherham, or indeed in England. She left the UK as a direct result of the traumatic court case. She literally moved to the other side of the world. In 2011-12, she reported childhood sexual abuse to South Yorkshire police. In her email to me, she wrote:

"After I completed my video evidence, the officers told me it would complicate the trial if I sought any mental health support, and to wait until it was over. That took 18 months, 18 of the most difficult months, when I was emotionally abused and outcast by my family for reporting the abuse. I had nowhere to turn, needed to see a psychologist for support and I was utterly traumatised. Today, I suffer from post-traumatic stress from that trial, and I feel it is related to being denied my human right of access to mental health support. If the police denied anyone cancer treatment during court proceedings, there would be uproar. We need to see mental health in the same way."

She goes on to say:

"Despite it not being illegal to see a counsellor, it appears to be more convenient for the police case if one is not seen. When someone in such an immense position of trust indicates it would be better not to see a counsellor, the victim is so vulnerable and so strongly led by the police that I fear it will continue, even if it is off the record. Furthermore, the fear of past or ongoing counselling notes being shared with the courtroom is so overwhelmingly terrifying it is enough to put someone off seeking help, even if they were not directed against it by the police, as I was."

Minister, this needs systematic change. Receiving counselling or mental health support should not make a victim unreliable as a witness. In 2018, in a debate about the victims' strategy, the then Solicitor General, now Lord Chancellor and Secretary of State for Justice, the right hon. and learned Member for South Swindon (Robert Buckland), said:

"Where we have suitably qualified…mental health professionals, there should…be no bar to the sort of general counselling help that would be of real value to people who are experiencing some form of trauma."—[*Official Report*, 11 October 2018; Vol. 647, c. 374.]

More recently, in response to my written question, the Minister for Crime and Policing, the hon. Member for North West Hampshire (Kit Malthouse), said:

"Victims of crime have a right to be referred to support services and have services and support tailored to their needs. There are no rules that restrict access to therapy in advance of criminal proceedings."

My constituent was denied mental health support. I received a letter from South Yorkshire police confirming that there is guidance, which the CPS relied on in this case, to deny therapy to vulnerable witnesses in cases where the evidence can be argued as tainted and the prosecution lost. My constituent was refused counselling, but the police then found and shared counselling notes from sessions she had had at university, four years before the court case. She states:

"I was already fearful about how much of that information I'd freely shared in confidence four years earlier would be shared with my abuser and whoever else turned up to court that day."

11.15 am

In 2019, in response to a petition, the Attorney General's office stated:

"Access to a victim's counselling notes should not be sought by an investigating officer merely because they exist."

The Government must ensure that police investigate sexual assault crimes appropriately. In the rape review, we are seeing how that does not always happen. I urge the Minister to review the police's actions to ensure that that does not happen to any further victims. We need to take poorly handled cases seriously, whether they occurred this week, last year or 10 years ago.

South Yorkshire police's response to my constituent's formal complaint was not good enough:

"You provide no appropriate reason as to why it has taken you until now to make the complaint. For us to deal with a complaint against the police, now would be unfair on the officers involved."

What about fairness to the victim?

In 2014, a report by Her Majesty's Crown Prosecution Service Inspectorate noted that prosecutors

"do not always consider properly whether or not there is a need to disclose everything in medical records and counselling notes. Nor do prosecutors always actively consider whether or not a complainant's consent has been obtained to disclosure to the defence."

More recently, in 2018, the Justice Committee published a report, "Disclosure of evidence in criminal cases". The Committee noted that prosecution disclosure failings had led to the high-profile collapse of a number cases between December 2017 and spring 2018, most of which related to rape and sexual assault. The Committee called for a cultural shift and technological developments to ensure that the principles of disclosure were properly applied on the ground.

We must ensure that the culture surrounding abuse and rape victims is thoroughly addressed. I hope that the Government will support and help to strengthen the recently updated CPS rape and sexual offences legal guidance, in particular focusing on case building, tackling rape myths, the issues relevant to particular groups of people, including those with mental health conditions, and psychological reactions to sexual abuse. It is vital that the Government ensure that the guidance is implemented to the full.

The criminal justice system is difficult enough to navigate for victims as it stands, but having their mental health investigated and used as evidence in a trial is wholly inappropriate and only deters further victims from coming forward. According to the recent Centre for Social Justice report "Unsafe Children", about 28% of child sexual abuse cases did not proceed through the criminal justice system last year, because the victim or survivor did not support further action.

That can be for a number of reasons, but clearly we need a more empathic approach towards victims, where they do not feel that they are being investigated for the crime they reported. My former constituent said:

"Sadly, after 18 months of re-traumatizing, I was too unstable to give evidence at a repeat trial and my abuser still walks the streets a free man."

For immediate action, I urge the Government to support my new clause 57. We need legislation to restrict questions around mental health records, in the same way in which we have existing legislation restricting questions around a complainant's sexual history, under section 41 of the Youth Justice and Criminal Evidence Act 1999. My new clause would add a new section to that Act to ensure that evidence will take into account the victim or complainant's wellbeing. If the records were genuinely needed for a trial, however, they would be allowed if

"the evidence…relates to a relevant issue in the case".

For example, if a complainant had a history of false allegations, which the defence was seeking to prove, the evidence may be permitted.

Victims need to be able to have trust in their therapist without worrying that a court could order their notes to be disclosed to the police, prosecution and defence. The fear of those records being easily accessed is a huge problem—even if they do not end up being used, the thought can be terrifying, as I have highlighted with my constituent's case. Victims also need to be able to trust the police and prosecution to be on their side when they report a crime. Will the Government support new clause 57 and ensure that a victim-focused approach to criminal justice is enshrined in the legislation?

Ordered, That the debate be now adjourned.—*(Tom Pursglove.)*

11.20 am

Adjourned till this day at Two o'clock.