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Public Bill Committee

NATIONALITY AND BORDERS BILL

Thirteenth Sitting

Tuesday 2 November 2021

(Morning)

CONTENTS

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Saturday 6 November 2021

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The Committee consisted of the following Members:

Chairs: † Sir Roger Gale, Siobhain McDonagh

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Baker, Duncan *(North Norfolk)* (Con)
† Blomfield, Paul *(Sheffield Central)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Gullis, Jonathan *(Stoke-on-Trent North)* (Con)
† Holmes, Paul *(Eastleigh)* (Con)
† Howell, Paul *(Sedgefield)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McLaughlin, Anne *(Glasgow North East)* (SNP)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
Pursglove, Tom *(Parliamentary Under-Secretary of State for the Home Department)*
† Richards, Nicola *(West Bromwich East)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Wood, Mike *(Dudley South)* (Con)

Rob Page, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 2 November 2021

(Morning)

[Sir Roger Gale *in the Chair*]

Nationality and Borders Bill

Clause 48

Identification of potential victims of slavery or human trafficking

9.25 am

The Chair: Good morning, ladies and gentlemen. Electronic devices switched off, please, and masks on, if possible, as a courtesy to colleagues. No food and drink in the room, and all that sort of stuff. You will have noticed that there is a change of Minister this morning. [Hon. Members: "Hear, hear!"] Welcome, Mr Whittaker. We crack on.

Holly Lynch (Halifax) (Lab): I beg to move amendment 185, in clause 48, page 43, line 3, leave out from "determination" to end of subsection (4) and insert

"determinations mentioned in paragraphs (c) and (d) are to be reviewed by the Multi-Agency Assurance Panels, who will have the power to overturn the determinations made by the competent authority."

This amendment seeks to introduce Multi-Agency Assurance Panels at the reasonable grounds stage and will enable them to overturn decisions made by a competent authority.

It is a pleasure to serve under your chairmanship once again, Sir Roger. I both congratulate and commiserate with my neighbour, the hon. Member for Calder Valley, on his rapid promotion this morning to take forward an incredibly important piece of legislation. I wish him all the very best with the rest of the week.

Amendment 185 seeks to build upon the Modern Slavery Act 2015 and introduce multi-agency assurance panels at the reasonable grounds stage, as well as enabling them to overturn decisions made by a competent authority. That would ensure that multi-agency scrutiny is applied at the first stage, offering an important safeguard. Multi-agency assurance panels were part of a range of reforms to the national referral mechanism that were announced in 2017, following the NRM review commissioned by the Home Secretary in 2014. A recent review provided key recommendations, such as establishing new multidisciplinary panels headed by an independent chair, with a view to replacing the decision-making roles of UK Visas and Immigration and the UK Human Trafficking Centre with a single competent authority.

At present, there is multi-agency scrutiny only of negative conclusive grounds decisions, which, even then, is limited, with panels having the power only to ask the single competent authority to review a decision, as opposed to overturning it. A recent review of the national referral mechanism multi-agency assurance panels conducted by the Anti-Trafficking Monitoring Group found that

"at present, MAAPs do not adequately assure NRM decision-making",

the reasons for which include that there is

"no multi-agency involvement in the reasonable grounds stage of the NRM, undermining confidence that there are any checks on bad decision-making at this first stage".

The report also pointed to

"MAAPs lack of decision-making powers"

and times at which

"the evidence reaching the panels is minimal and of poor quality".

The amendment applies those recommendations and highlights that, as the reasonable grounds stage is effectively the gateway to all anti-trafficking support, an extra level of safeguarding should be available to ensure good decision making. Both the amendments tabled to clause 48 are necessary to ensure that we are not turning our back on victims and restricting opportunities for individuals to refer into the NRM and receive the support they need. The measures have been widely endorsed across the sector and seek to introduce examples of best practice. I therefore strongly hope that the Minister will join us in endorsing these changes.

The Lord Commissioner of Her Majesty's Treasury (Craig Whittaker): It is a pleasure to serve under you, Sir Roger, but not particularly in this role. However, as always, it is a pleasure to be sitting on a Committee that you are chairing.

I thank the hon. Member for Halifax for her valuable contribution on this point. Decision making is of course central to our ability to support possible and confirmed victims of modern slavery. That is why, throughout the Bill, as she will know, we have discussed ways for that to be done as quickly and fairly as possible. It is in that vein that we have sought to clarify the reasonable grounds and conclusive grounds thresholds in primary legislation, to support that effective decision making. It is also why we are committed to reviewing the guidance that underpins the reasonable grounds test to ensure that it best supports that.

Central to that work is the premise that the reasonable grounds decision should be made quickly. Currently, where possible, that is within five working days of referral to the national referral mechanism. That timeline enables us to quickly identify possible victims and ensure that they receive the appropriate support that they need. All decision makers receive robust training to support that process, and any negative reasonable grounds decisions will be reviewed by a second caseworker or a manager/technical specialist to ensure that all decisions taken are in line with the policy. An individual, or someone acting on their behalf, may also request reconsideration of a negative reasonable grounds decision by the competent authority where there are specific concerns that a decision made is not in line with the policy, or if additional evidence becomes available that would be material to the outcome of a case.

At the conclusive grounds stage, we already have a process whereby negative decisions are considered by those multi-agency assurance panels. That process is set out in the modern slavery statutory guidance for England and Wales, under section 49 of the Modern Slavery Act 2015, and non-statutory guidance for Scotland and Northern Ireland. We believe that that is the right place for the process, enabling us to adapt it in future to changing needs. To put in place the duty for multi-agency assurance panels to review all reasonable and conclusive grounds decisions would cut across that approach. It is not appropriate for that to be set out in primary legislation,

as amendment 185 seeks to do, as that would remove the ability to change such a process to appropriate bodies and needs in the future.

Moreover, the amendment would add a new power whereby multi-agency assurance panels can overturn competent authority decisions, rather than the current approach of asking the competent authority to review a decision in specific circumstances. It is right that only designated competent authorities have a decision-making role. The current approach supports a culture of continuous improvement.

As I have set out, we do not believe that primary legislation is needed here. The current multi-agency assurance panels have been subject to an evaluation, and we will consider the conclusions and lessons learned in due course. If in the future we wished to consider multi-agency assurance panels at the reasonable grounds stage, or to change their remit, it would follow that that, too, would be a question for guidance.

Although I presume not intentionally, the amendment would also remove the provision that clarifies that the conclusive grounds threshold test is based on whether, on the balance of probabilities, an individual is a victim of modern slavery. That is the current test that is applied, in line with our obligations under the Council of Europe convention on action against trafficking in human beings.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Does the Minister agree that decision making in such circumstances is made very difficult by the fact that many people who are victims of modern slavery will not declare that because it is part of the deal with the people traffickers, and many people who claim to be victims of modern slavery are not victims but are using it as a way of getting their asylum claim accepted?

Craig Whittaker: I thank my right hon. Friend for his intervention. He is right that one of the key points in the process is that decision makers have the ability and the training to know what they are looking for to identify whether people are victims of modern slavery.

Neil Coyle (Bermondsey and Old Southwark) (Lab): I recognise that the hon. Gentleman is stepping in as Minister, but he just said that the right hon. Member for Scarborough and Whitby was right in his assertion that many of those who claim to be asylum seekers are not. Could he remind us of the Home Office statistics on that issue?

Craig Whittaker: I thank the hon. Member for that question. Unfortunately, I do not have those statistics for him, but I will ensure that he gets them by the end of today. I will ask officials to bring forward those numbers.

It is essential that the provision that clarifies that the conclusive grounds threshold test is based on whether, on the balance of probabilities, an individual is a victim of modern slavery remains in the Bill to provide legislative clarity to that threshold. For the reasons that I have outlined, I respectfully ask the hon. Member for Halifax to withdraw the amendment.

Holly Lynch: I have heard some of the Minister's attempts at reassurance. I have real concerns about some of the changes to the reasonable grounds decision. We heard in earlier discussions on the Bill about the introduction of trafficking information notices, which I am concerned will affect the need to take the reasonable grounds decision quickly. The amendment could have been a step towards improved confidence in, and scrutiny of, those early decisions, so I continue to implore the Government to consider introducing those panels in the guidance. It may not need to be in primary legislation, but I hope that the Minister has heard the case for that approach. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I beg to move amendment 176, in clause 48, page 43, line 17, leave out subsection (7).

Under this amendment and the corresponding amendment to clause 57, the Secretary of State would no longer be able to change the definition of slavery and human trafficking by regulations. Instead, any changes to the definition of slavery would require primary legislation.

The Chair: With this it will be convenient to discuss amendment 177, in clause 57, page 51, leave out lines 42 and 43.

Under this amendment and the corresponding amendment to clause 48, the Secretary of State would no longer be able to change the definition of slavery and human trafficking by regulations. Instead, any changes to the definition of slavery would require primary legislation.

Stuart C. McDonald: It is a pleasure to serve under your chairmanship again, Sir Roger. Last week, I was speculating about how long the Immigration Minister might be in post, but I was still shocked. Seriously, we all pass on our best wishes to him for a speedy recovery. I congratulate the Lord Commissioner of Her Majesty's Treasury, the hon. Member for Calder Valley, on his temporary promotion.

On the whole, we have stayed out of debates on the clause, despite having lots of sympathy for what the shadow Minister, the hon. Member for Halifax, has been saying. The clause largely applies only to England and Wales—distinct legislation is in place in Scotland and Northern Ireland. However, one part of the clause amends the "Interpretation" section of the 2015 Act and that does extend to Scotland and Northern Ireland. With the amendment, we are just posing some questions for the Minister. I appreciate that it is not easy for him to answer in these circumstances, so anything in writing afterwards would be more than acceptable.

Under the 2015 Act "victim of slavery" and "victim of human trafficking" are defined as applying to people who are victims of those respective crimes in the first couple of sections of that part of the legislation. That seemed a logical, straightforward and consistent way of doing things—define the criminal offences and then set out support regimes for victims of those offences. I have heard no complaint that that definition causes problems, but clauses 48 and 57 of the Bill—to which my amendments relate—will use a different definition of modern slavery.

The new definitions do not totally supplant the existing definitions of victims of modern slavery or trafficking in the 2015 Act, but they add a new and potentially different definition for the purposes of identification and support of the victims. The question therefore arises as to why we should have one definition of a victim for some purposes, but another for the purposes of identifying those to be supported? If there is to be a different definition, why is it not on the face of the Bill?

[Stuart C. McDonald]

Why is it, somewhat bizarrely, left to the Secretary of State to define in regulations what must be two of the most fundamental concepts for the purposes of this part of the Bill?

We do not know how the Secretary of State will use the powers, so that is another question for the Minister: what is the intention? It could be that she wants to be generous and to adopt a wider definition for the purposes of identifying and supporting victims and survivors. In line with other provisions of the Bill, however, it could be that she wants to be more restrictive and to confine the category of people who can get support to a much narrower group. If Parliament really wants to be back in control, it should not be allowing the Government to pass legislation such as this. I simply ask the Minister for an explanation as to why it has been done in this way.

Craig Whittaker: I thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for his questions. Basically, he asked whether we are amending the definition of modern slavery, and the straightforward answer is no.

To underpin the measures in the Bill, we are creating a power to make regulations to define the meaning of "victim" in accordance with our ECAT obligations. The definition of a victim of slavery or trafficking for the purposes of the Bill will be set out in regulations made under the affirmative procedure.

The hon. Gentleman also asked why we are raising thresholds as such. As I said before, the proposed measure in this Bill will amend the wording of the reasonable grounds threshold in the Modern Slavery Act so that it mirrors some of our ECAT obligations. Alongside this, we are reviewing the reasonable grounds test and the corresponding guidance for decision makers to ensure they are best able to identify genuine victims and reduce the potential for non-genuine victims to misuse the system.

Stuart C. McDonald: I thank the Minister for his answer. I have made the point I need to make, which is that it is not appropriate to leave it to regulations to define these two fundamental concepts. I am sure this is something that will be pursued in the House of Lords. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 6.

Division No. 45]

AYES

Anderson, Stuart	Howell, Paul
Goodwill, rh Mr Robert	Richards, Nicola
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Blomfield, Paul	Lynch, Holly
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo

Question accordingly agreed to.

Clause 48 ordered to stand part of the Bill.

Clause 49

IDENTIFIED POTENTIAL VICTIMS OF SLAVERY OR HUMAN TRAFFICKING: RECOVERY PERIOD

Holly Lynch: I beg to move amendment 1, in clause 49, page 43, line 33, leave out "30" and insert "45".

This amendment would increase the recovery period for victims of slavery or human trafficking from a minimum of 30 days to a minimum of 45 days.

This amendment would ensure that victims of modern slavery continue to receive a recovery period of at least 45 days, bringing this provision in line with current statutory guidance. We strongly welcome the inclusion in domestic law of a recovery period with support for victims, and we support this decision. However, the reduction of the minimum recovery period during which victims in England and Wales receive support from the current 45 days to 30 days is a worry.

The Independent Anti-Slavery Commissioner said in her written correspondence with the Home Secretary that the average length of time it takes for a conclusive grounds decision to be made in 2020 was 465 days. It is therefore difficult to understand why the Government are seeking to reduce the timescale from a target they are already significantly failing to meet. Their focus should be on increasing the efficiency of decision making, rather than reducing the already short recovery time to which victims are entitled.

In its written evidence to the Committee, Hope for Justice highlights that the explanatory report on the European convention on action against trafficking in human beings clearly states that the purpose of the recovery and reflection period is to allow victims to recover and escape the influence of traffickers. A reduction of this period therefore represents a step backwards in our ability to offer effective protection to victims of trafficking.

The assistance and support that should be provided during this recovery period is essential and wide-ranging, and it may include mental health support and counselling, legal advice, secure housing and access to social services. It also allows the police time to gather evidence during their investigation and to establish a working relationship with victims, strengthening their ability to secure a prosecution. It is estimated that there are between 6,000 and 8,000 modern slavery offenders in the UK, yet there were only 91 prosecutions and 13 convictions in England and Wales last year for specific modern slavery offences as a principal offence, and only 267 prosecutions for all related crimes.

Both sides of the Committee can agree on our desire to see more perpetrators of human trafficking and slavery brought to justice. This clause is a disappointing backward step away from the appropriate period necessary to break the bonds of slavery and to allow victims to establish a relationship with the relevant agencies in order to support their recovery and secure a prosecution.

Justice and Care has highlighted that many victims already decline to enter the national referral mechanism. As we have heard, Care UK says that 2,178 adults referred by first responders declined entry into the NRM last year. We have discussed the barriers that some might

experience, including not recognising that they are, in fact, a victim, but it can also be because it is not immediately obvious what support the NRM provides for victims. This reduction in the recovery period certainly is not going to help.

I anticipate that the hon. Member for Calder Valley is about to tell me that under the Council of Europe convention on action against trafficking in human beings, the current threshold is set at 30 days. However, the minimum of 45 days in the UK, which was established in 2009, was a clear distinction that we could be proud of, and it is unclear why the Government are seeking such a change. Victims in Northern Ireland and Scotland are entitled to longer periods of support—the recovery period in Scotland is actually 90 days. I ask the Minister to outline how the change will have a positive impact for victims in any way. Amendment 1 would ensure that victims are protected and that we do not undermine the progress that has been made so far by reducing the recovery period further.

I will speak to clause 49 more broadly. I draw the Minister's attention to subsection (2), which states:

"A conclusive grounds decision may not be made in relation to the identified potential victim before the end of the period of 30 days beginning with the day on which the positive reasonable grounds decision was made."

I welcome the sentiment, but I wonder whether he could address the concerns raised by Dame Sara Thornton, the Independent Anti-Slavery Commissioner, that there are pilot schemes under way to test approaches to devolving national referral mechanism decisions for children to local safeguarding partners. As part of the pilots, conclusive grounds decisions are being taken at the same time as reasonable grounds decisions, where the evidence is strong enough to do so. I hope that the Minister will join me in welcoming that approach, and although I am worried about the clause's intended consequences, I also hope that he will recognise that this could be an unintended negative consequence, which we can hopefully all agree would be wholly regrettable. The clause is relatively simple and we do not support it standing part of the Bill.

9.45 am

The Chair: In the light of the hon. Lady's comments, we will also consider clause 49 stand part.

Stuart C. McDonald: I will be brief, because I fully endorse what the shadow Minister has said. I absolutely welcome the fact that the measure will be in statute, but I share her concern and astonishment that the Government have decided, for no apparent reason, to reduce the prescribed recovery period to 30 days. Yes, that is consistent with the trafficking convention, but equally so is 45 days. There is nothing in the convention to say that it cannot be done and, for all the reasons she outlined, that was a welcome additional safeguard in the UK's approach.

What is the Home Office driving at here? What signal does it send by making this change? As the shadow Minister pointed out, it is completely artificial, given where we are with average decision times. In one sense, this is just about sending signals. What a signal it sends—that we want to reduce the support given to folk who are suspected of being victims and survivors of trafficking. I support the amendment and endorse everything that the shadow Minister said.

Craig Whittaker: I thank both hon. Members for their contributions. Let me see if I can answer some of their questions. Basically, there is no need to amend clause 49 to provide a 45-day recovery period as that is already provided for in guidance. The guidance is the statutory guidance under section 49 of the Modern Slavery Act 2015, where victims will still receive a 45-day recovery period unless disqualifications apply.

The hon. Member for Halifax is right when she quotes our obligations under the Council of Europe convention on action against trafficking in human beings, which require us to provide a 30-day recovery period or, as the legislation states, until

"the conclusive grounds decision is made."

In 2020, the average time for conclusive grounds decisions was actually 339 days. That long period stems from pressures on the system, which we are working to reduce through our transformation project, to ensure that victims get certainty much more quickly. This period is notably much longer than the 45 days that the hon. Member is proposing.

With regard to how that impacts on devolved pilots, as set out in the new plan for immigration, the Government are also piloting new ways of identifying child victims of modern slavery that will enable decisions to be taken within existing safeguarding structures by local authorities, the police and health workers. This approach will enable decisions about whether a child is a victim of modern slavery to be made by those involved in their care and ensure that decisions made are closely aligned with the provision of local needs-based support and any law enforcement response. The Government will continue to monitor the consequences of this measure and whether it will reduce further flexibility around decision making.

On that basis, I ask the hon. Lady to withdraw the amendment and to support the clause as drafted.

Holly Lynch: I thank the Minister for his response. We have seen this approach at previous stages of the Bill. The Minister cites the realities of processing times, but the fact that it is 45 days in the statutory guidance shows why the Bill is an absolute nonsense and does not make the first bit of sense. We should ignore it and trust the guidance. There is a commitment to driving down the processing times anyway. I hope that the Minister can therefore see why the amendment was tabled. On that basis, I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 46]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

NOES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 47]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike
Holmes, Paul	

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

Question accordingly agreed to.

Clause 49 ordered to stand part of the Bill.

Clause 50

NO ENTITLEMENT TO ADDITIONAL RECOVERY PERIOD ETC

Holly Lynch: I beg to move amendment 180, in clause 50, page 44, line 4, at end insert—

"(aa) the person was aged 18 or over at the time of the circumstances which gave rise to the first RG decision;".

This amendment seeks to preclude those exploited as children from being denied additional recovery periods if they are re-trafficked.

The Chair: In line with what appears to be custom and practice, with this it will be convenient to consider clause stand part.

Holly Lynch: Clause 50, as drafted, should not stand part of the Bill. The amendment would ensure that those exploited as children will not be denied additional recovery periods if they are re-trafficked or if additional periods of trafficking are disclosed. Children, in particular, who make up 47% of those referred to the national referral mechanism, are at serious risk of being trafficked and going missing from care. In 2017, one in four identified trafficked children were reported as going missing. The number of children referred to the NRM is also rising, with last year seeing an almost 10% increase compared with the previous year. The average number of missing incidents for each trafficked child has also increased, from 2.4 to 7.4 between 2014-15 and 2017-18. Therefore, amendment 180 is even more vital, considering the worrying trends we are seeing.

Every Child Protected Against Trafficking UK has warned that clause 50

"may severely impact child trafficking survivors"

who are at high risk of going missing and being re-trafficked, particularly when

"they transition to adulthood and require access to support and protection through the NRM."

To make that point, I want to share a real-world case study provided by ECPAT UK that demonstrates why our amendment is necessary.

Huang was referred to the local authority children's services at age 17, following a police operation in a nail bar. He was also referred as a potential victim of trafficking into the NRM and received a positive reasonable grounds decision. He was accommodated by the local authority. He told his support worker that he had been scared because his family back home were receiving threats to pay back his debt. Shortly after, he went missing. He was found by the police just after his 18th birthday and went on to develop trust with his lawyer, where he disclosed for the first time a significant period of exploitation in Vietnam, across Europe and in the UK, prior to being found in the nail bar. He remains in fear, and while the dangers facing his family back home persist, sadly, there is still a high likelihood that he will go missing again.

Without amendment 180, Huang may be unable to be referred to the NRM again, given the new disclosure of previously unknown periods of exploitation. As he is now 18, he would not be looked after by children's services. Clause 50, as it stands, will place him at great risk of subsequent re-trafficking in the absence of access to safe accommodation and support through the NRM during his reflection and recovery period.

The increase in the number of British children in the NRM in relation to child criminal exploitation gives us further cause for concern. I recently met officers from the Metropolitan Police Service who are leading the response on trafficking, slavery and exploitation. They told me that it is becoming standard practice that when a child or young person is sent on their first county lines journey, their exploiter will arrange for them to be robbed of the drugs they have been instructed to sell. When they then have to come back and explain what has happened, they are immediately told they have to work off the value of the drugs. That traps them in debt bondage, even though the real criminal will have recovered the drugs, having arranged what can sometimes be a particularly violent mugging in the first place, so in reality there is no debt.

It would not be unusual for children in such vulnerable and exploited positions to be identified by the authorities but then go missing from the NRM because of the risks that persist. They must be treated as a safeguarding concern and not by way of immigration compliance, not least because so many of those children are British nationals. So I ask the Minister again: why are children subject to clause 50, given their particular vulnerabilities? Amendment 180 seeks to right that wrong. I am sure all colleagues will agree that a child rights-centred approach, which ensures children's safety and their protection, must be a priority. I therefore hope the Minister will reflect on the points we have made and accept Amendment 180.

More broadly, clause 50 has the potential to exclude trafficked children and adults from being identified following re-trafficking, thereby leaving them unable to access the support they should be entitled to. I worry that with this clause the Government are suggesting that making repeat claims of having been trafficked undermines someone's credibility. However, we also know that traffickers are increasingly coaching those they are exploiting on what to say should they be identified by authorities. An expectation is placed on the victim that they will return to their exploiters due to their perceived debt bondage, in order to avoid consequences for them or often their families.

Re-trafficking has increasingly become a part of a trafficker's operating model, so why are we not responding to that? The changes negatively affect the victim and not the perpetrator of such crimes. It also appears to contradict the identified need for individual assessment and support, as required under ECAT. The Government have described the clause as necessary

"to prevent the recovery period being misused by those wishing to extend their stay in the UK and to remove unnecessary support and barriers to removal where these are not needed".

Will the Minister present the evidence to support that claim? That explanation fails, not least, to recognise that the most common nationality of all referrals to the NRM for victims of modern slavery in 2020 was that of UK nationals, primarily referred for criminal exploitation. We know that children make up the lion's share of those referrals. Does that not make the Government stop and think about what is in the clause?

There is a fear that the NRM is being misused by those wishing to extend their stay in the UK. Without amendment 180, the clause means that we are sending children, both migrant and British, back into the arms of their exploiters. We plead with the Minister to think again about the clause. We cannot see it stand part of the Bill.

10 am

Stuart C. McDonald: I support the amendment and join the calls for the clause not to stand part of the Bill. I very much echo the comments of the shadow Minister. Like her, and as on previous occasions, I find myself not at all clear why the clause is necessary, and what problem it is driving at. Again, I find myself asking for evidence. I have not seen or heard about an issue with abusive additional trafficking claims sparking extra NRM recovery periods. I recognise that that could absolutely happen in theory, but we need much more by way of evidence before we enact such a clause.

Even though someone might be describing earlier events of trafficking, disclosure of that additional information and trafficking or slavery histories could have all sorts of significant implications for that survivor. It could, for example, mean a break from a controlling partner. It could give rise to other dangers for them or to new trauma. Furthermore, as the Independent Anti-Slavery Commissioner has noted, survivors can feel more able to disclose their trafficking experiences relating to one particular form of exploitation than another, so forced labour can sometimes be disclosed earlier than sexual exploitation, due to feelings of shame or mistrust.

The fact that if the competent authority considers it appropriate in the circumstances of a particular case another recovery period can be granted is better than nothing, and it is good that that provision is in the clause, but that protection needs to be considerably strengthened to ensure that those who need it will have it. As matters stand, we have no idea how that analysis is going to be undertaken. What if the disclosure of this new information leads to new dangers or new trauma? Surely we would all agree that that should require a new decision and a new recovery period, but there is nothing in the Bill to say that that would definitely happen.

Perhaps the clause should be reversed—the Home Office might want to consider turning the presumption around, so that we assume instead that a new recovery period would be needed unless we are satisfied with a very restricted route for a very restricted range of reasons, and the reasonable grounds decision should not occur. The Home Office needs to explain its thinking here.

Finally, on the issue of trafficking, the Independent Anti-Slavery Commissioner and the Rights Lab at the University of Nottingham are conducting research on that subject at this very moment in time. I urge the Home Office to wait to see the evidence, rather than jumping in with two feet.

Craig Whittaker: I would first like to clarify that the clause does not prevent individuals who have been re-trafficked from receiving a further recovery period. Rather, the clause introduces a presumption against multiple recovery periods where an individual has already benefitted from a recovery period and the further reported exploitation happened prior to the previous referral into the national referral mechanism and period of support. This is not a blanket disqualification from multiple recovery periods; it is focused on removing the presumption for multiple recovery periods where the period of exploitation happened before the original recovery period was provided.

The clause will provide further recovery periods where required—for example, where an individual has a second referral for an incident that happened before the first incident for which they were referred and have already received a recovery period. It may not be appropriate or necessary to provide the further recovery period. A discretionary element is included, underpinned by guidance, so that cases are considered on an individual basis.

Stuart C. McDonald: I put to the hon. Gentleman the suggestion I made towards the end of my contribution: that he reverses the situation so that the presumption is that somebody does need an additional recovery period unless there are specific circumstances that mean it is not appropriate. Is that something he could pass on to his ministerial colleague, for when he takes the Bill forward?

Craig Whittaker: As I have said, there is already a provision for the decision makers to amend the care and support package needed on a case-by-case basis. That is the case for recovery periods as well. On the matter of children, I recognise the complexity of children's vulnerabilities, as well as those of other modern slavey victims. As a result, this clause has scope to consider an individual's circumstances, even where the new referral for exploitation occurred prior to the previous recovery period. That is why, under this clause, individuals will be considered for more than one recovery period on a case-by-case basis, taking into account their specific needs and vulnerability. Safeguarding and ensuring the welfare of children will, of course, be taken into account as part of any decision to withhold a recovery period.

Further details of how to apply this discretionary element will be outlined in guidance for decision makers. This will ensure that victims of modern slavery who genuinely need multiple periods of protection and support actually receive it. It would not be appropriate to have a blanket approach to children, but our proposed approach ensures that their vulnerabilities are considered. I hope that, in the light of that explanation, the hon. Member for Halifax will be content to withdraw her amendment.

Holly Lynch: I thank the Minister for that contribution. I have been consistently concerned by the lack of provision for children and young people within the clauses before us. With that in mind, I will not be withdrawing amendment 180.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 48]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

NOES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 49]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	
Gullis, Jonathan	Whittaker, Craig
Holmes, Paul	Wood, Mike

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	
Lynch, Holly	Owatemi, Taiwo

Question accordingly agreed to.

Clause 50 ordered to stand part of the Bill.

Clause 51

IDENTIFIED POTENTIAL VICTIMS ETC: DISQUALIFICATION FROM PROTECTION

Holly Lynch: I beg to move amendment 164, in clause 51, page 44, line 31, at end insert—

"was aged 18 or over at the time of the circumstances which gave rise to the positive reasonable grounds decision and—"

This amendment would exclude children from the disqualification from protection measures outlined in clause 51.

The Chair: I will take the stand part debate with this, and would like to explain why. Where there are relatively short clauses with only one amendment to them, experience tells me that it is sometimes better to take the stand part debate with the amendment, because discussions that might be out of order in debate on the amendment can be in order if clause stand part is taken with the amendment. In other words, it allows for a greater freedom of discussion.

Holly Lynch: Thank you for that advice, Sir Roger.

Like a number of our other amendments, amendment 164 seeks to ensure that no child victim of trafficking or modern slavery is denied protection. Clause 51 introduces the following reasons why someone would be disqualified from protection: they are a threat to public order, or they have claimed to be a victim of modern slavery in bad faith. The Independent Anti-Slavery Commissioner, Dame Sara Thornton, says in her letter to the Home Secretary on the Bill:

"I have grave concerns about this clause because it casts a wide net, with the potential to prevent a considerable number of potential victims of modern slavery from being able to access the recovery and reflection period granted through the NRM. Without such support prosecution witnesses will be unable to provide witness evidence and this will severely limit our ability to convict perpetrators and dismantle organised crime groups."

She says these changes will make it harder to convict perpetrators and go after organised crime groups. I doubt any of us came into politics to pass laws that work to the advantage of criminals, so why is the clause included in the Bill?

The Children's Society has emphasised concerns regarding the impact on children who are victims of child criminal exploitation. In 2020, of the 47% of referrals to the NRM that were for children, 51% were for criminal exploitation. According to the National Crime Agency, referrals to the NRM for British children have grown due to an increase in child criminal exploitation, particularly by groups using the county lines model. The average custodial sentence length given to children has increased by more than seven months over the last 10 years, from 11.3 to 18.6 months in 2020.

A case study supplied by the Children's Society following a serious case review by Waltham Forest Safeguarding Children Board is one of the most depressing of the many case studies we have been sent during our preparations for this Committee. Child C was a vulnerable child who lived in Nottingham. He was regularly excluded from school and was eventually home-schooled. His family noted that he regularly ran away from home. In January 2018, his mother said he was threatened by an older youth, who said that Child C had money for them. The incident was reported to Nottinghamshire police, but the police have no record of it. Also in January, Child C was arrested by police in possession of an air gun, a knife and cannabis. He later informed the youth offending team that an older boy had given him these. The youth offending team worked with Child C on a programme designed to highlight the dangers of carrying weapons. The incident was reported to the multi-agency safeguarding hub, but no further action was taken because of the youth offending team's involvement.

Child C moved to Waltham Forest in April 2018. In October 2018, he was arrested in Bournemouth in what is known as a cuckoo flat—a person's home that criminals take over and use to facilitate exploitation. There was significant evidence of drug use and sales in the flat. Child C was found to be in personal possession of 39 wraps of crack cocaine, and was arrested for possession of class A with intent to supply. That was a pivotal moment in providing support to the child. For the first time, the authorities in Waltham Forest had been presented with completely unequivocal evidence that Child C was being criminally exploited. From that point, he had multi-agency involvement and a further conviction for carrying an offensive weapon. The case study ends with Child C being murdered in January 2019.

That is the operating model for county lines gangs. We know that criminally exploited children are driving up referrals to the NRM, meaning that children will be coerced into committing crimes as part of their exploitation.

That is explicit in section 45 of the Modern Slavery Act 2015. It is unclear what, if any, assessment the Government have made of how children will be affected by changes in clause 51 and the risk to them of remaining in exploitative situations. Disqualifying child victims from protection is incompatible with the duties on local authorities and other public bodies under section 11 of the Children Act 2004 to safeguard and promote the welfare of children. I urge the Minister to adopt amendment 164 and stand with child victims of modern slavery; it will allow him to go after the criminal gangs who will welcome this clause.

Clause 51 is incompatible with the duties on local authorities and the Home Office to safeguard and promote the welfare of children. It fails to take into account that children are at greater risk of exploitation owing to their developing capacity and, under the UN convention on the rights of the child, should never be denied protection. The fact that the Government have decided to ignore those fundamental principles to protect the most vulnerable children is simply shocking. The Government's equality impact assessment promises to mitigate the adverse impact on vulnerable people but fails to identify any exemptions or specialist support for children in part 4 of the Bill.

10.15 am

Other shocking findings include the more than twelvefold increase in the number of children waiting longer than a year for an initial decision; the number has gone from 563 children in 2010 to 6,887 in 2020. Additionally, more than 250 people have been waiting for five years or more for an initial decision on their case, of whom 55 are children. We believe that clause 51 is incompatible with the protections in section 45 of the Modern Slavery Act. The exclusion of victims of all nationalities and ages with convictions for offences listed in schedule 4 of the 2015 Act is too broad, considering that exclusion from support is different from protection from criminal convictions under section 45, for which the list in schedule 4 was created.

Subsection (3) of clause 51 stipulates that an individual is considered a threat to public order if

"the person has been convicted of any other offence listed in Schedule 4 to the Modern Slavery Act 2015"

or a corresponding offence under the law of any other country. That incorporates criminality not just committed in the UK but potentially older and minor offences committed in the person's country of origin. As the Human Trafficking Foundation has highlighted, many victims from eastern Europe are targeted precisely because they have had minor convictions; prison leavers are sought out precisely for that reason.

Operation Fort, which involved dismantling the UK's biggest modern slavery network, demonstrated that traffickers

"targeted the most desperate from their homeland, including the homeless, ex-prisoners and alcoholics. "

The Independent Anti-Slavery Commissioner has explained that she has "grave concerns" about clause 51 because it

"casts a wide net, with the potential to prevent a considerable number of potential victims of modern slavery from being able to access the recovery and reflection period granted through the NRM. Without such support prosecution witnesses will be unable to provide witness evidence and this will severely limit our ability to convict perpetrators and dismantle organised groups."

She also includes a second case study—Operation Elibera:

"In 2018 a Romanian trafficker was convicted of offences under the Modern Slavery Act 2015, having trafficked at least 15 people from Romania and forcing them to work in the construction industry without pay whilst being threatened with violence. He received a seven year sentence, and was also given a Slavery and Trafficking Prevention Order. Each victim received compensation of approximately £1,000. Of the 15 potential victims identified, two provided statements to support the police investigation. One of those witnesses, whose evidence was significant in securing the conviction, had three previous convictions in Romania all of which attracted sentences in excess of 12 months."

Dame Sarah goes on to say:

"We know that traffickers already have a modus operandi of recruiting individuals with offending history, including those who have recently left prison, who are less likely to engage with authorities and seek support. Should this cohort be prevented from accessing support through the NRM, they are likely to be increasingly targeted by traffickers."

The Government repeatedly talk about breaking the business model of people smugglers, but the clause will undermine our ability to do just that. For example, Hope for Justice says that 29% of individuals in its current case load have committed offences that would meet the criteria for exemption under public order grounds. There are many other examples that demonstrate that; the most recent is the judgment of VCL and AN in February this year, in which the European Court of Human Rights found that the United Kingdom had violated articles of the European convention on human rights. That case involved two victims, both Vietnamese minors, who were found by police working in a cannabis farm. On the advice of their legal representatives, they pleaded guilty and were charged with drug-related offences, despite having been trafficked to the UK as children. That case shows that identification is key to protecting victims from exploitation, particularly children who have diminished capacity and are therefore at greater risk.

Of course we agree that the public should be protected from serious criminals who pose a threat to our society, but there is simply no data to support the Government's claims in relation to clause 51. Research undertaken by the National Crime Agency suggests that, as we have discussed, there are between 6,000 and 8,000 modern slavery offenders in the UK. However, in the England and Wales last year, there were only 91 prosecutions and 13 convictions where modern slavery offences were the principal offence.

The clause will drive more people underground and make it significantly harder for the police and the authorities to investigate the perpetrators of human trafficking. It also sends a clear message to those perpetrators that they are free to exploit someone with a criminal record, knowing that they will be exempt from protection. We agree with the Independent Anti-Slavery Commissioner that securing prosecutions against those who commit those heinous crimes will become harder if the clause stands part, which we do not believe it should.

Stuart C. McDonald: I rise to support the amendment and to make the case for the removal of the clause. The amendment is absolutely right, and excluding any survivors, especially children, from the scope of the clause will alleviate its worst impacts. The whole clause is bad.

Unlike with previous measures, it is absolutely apparent what the Government are driving at this time, but there is already a perfectly good procedure for dealing with

[Stuart C. McDonald]

this issue. Guidance implementing the European convention on action against trafficking says that where there is an improper claim of victim status, or there are public order grounds for doing so, the state can make a negative conclusive grounds decision and decide not to observe the reflection and recovery period. That remedy is available right now. How many times has that remedy been used in the United Kingdom? I hope the Minister can answer that, now or later.

The Home Office wants to go much further and help itself to a different remedy. Despite Home Office claims, nothing in the convention justifies simply failing altogether to make a conclusive grounds decision. On the contrary, article 10 of the convention requires states to identify victims, and that position is recognised in the Home Office's guidance. That is why the Independent Anti-Slavery Commissioner has expressed, as we have heard, serious concern about the compatibility of the clause with ECAT—they just are not compatible. The measures will not only breach international obligations, but they will be counterproductive in the fight against trafficking and slavery.

We have already heard one or two of the case studies provided by the commissioner. I will add one more, from the Anti Trafficking and Labour Exploitation Unit. It relates to the case of Z, who was trafficked to the UK after being used for prostitution in Europe for a number of years. Her child had been removed from her by the traffickers. She managed to escape from the traffickers in the UK, and used a false document that she grabbed during her escape, as she wanted to go back to Europe to find her child. She was arrested and prosecuted for a document offence and given a sentence of more than 12 months after being advised to plead guilty. Trafficking was never explored as part of the criminal process. Later, Z was referred to the NRM and claimed asylum. The Home Office agreed that she was a victim of trafficking, and she was then given leave to remain on that basis. It also agreed not to pursue deportation because of her trafficked status.

After Z was referred to the NRM, a decision still had to be made about whether she was a victim of trafficking. The Home Office ultimately decided to grant her leave to remain and halt deportation, having been required to make that decision. Had the clause been in force, Z would never have been identified as a victim of trafficking; she would have been deported. That would have been absolutely dreadful for Z, who would have lost out on support and help that she clearly needs for her recovery, but it is also dreadful for many others, because it will clearly make it infinitely more difficult to track down Z's traffickers. They will not be apprehended, and other people will fall victim to the very same crime, as is shown by the other case studies provided by the Anti Trafficking and Labour Exploitation Unit, and by the commissioner in her letter to the Home Secretary.

In short, people who need support will be denied it, and the perpetrators of the crimes against them will not be caught and punished. As we have heard, the clause will simply encourage traffickers to target those who have criminal convictions and who are sentenced to more than two at once, and even compel them into criminal activity precisely so that the exclusions will apply to them if the trafficker threatens to disclose their crimes. We have heard from the commissioner that that is already the traffickers' modus operandi—excuse me; my Latin is terrible. The reason is that traffickers know that the absence of support and removal from the country will make it easier for the trafficker and their colleagues to avoid justice. The clause is, in essence, a gift for people traffickers, and it totally undermines the work of the Modern Slavery Act 2015.

I will briefly mention some other problems. The commissioner has rightly expressed concern about the huge breadth of offences that would be caught by the provision, particularly as it includes sentences imposed outside the UK that might not reflect sentencing guidelines in the UK; that could mean that minor offences are brought within scope. Will the Minister confirm that trafficking victims who enter the UK in breach of clause 37 of the Bill would end up in prison, possibly for even three or four years, and would therefore be excluded from support? A huge proportion of survivors will be left with the threat of exclusion from support hanging over them, putting them in even more vulnerable position.

Why is the expression "bad faith" used in the clause, rather than the convention's wording or the wording of the guidance that the Home Office has put in place, which relate to "improper purpose"? The use of a different form of words needs to be explained. Why is it that in some cases, suspicion of certain offences, rather than an actual conviction, is enough for exclusion? The key point is that if we do not identify victims, neither do we identify traffickers. In breach of the convention, the clause expressly provides for that, so it should be amended.

Craig Whittaker: Let me see whether I can answer some of those questions. The hon. Member for Halifax asked whether the clause is incompatible with the statutory safeguarding responsibilities. The answer to that question is no, it is not incompatible at all with the statutory safeguarding responsibilities. Section 45 of the Modern Slavery Act 2015 is a criminal defence, but clause 51 of the Bill is a very separate system. Section 45 is separate from the public order disqualification. A section 45 defence is not applicable to the serious crimes set out in schedule 4 of the Bill. The Government will of course continue to work with local authorities to safeguard children and take their particular vulnerabilities into account on a case-by-case basis.

I will just highlight one or two points that piggyback on the back of what the Government are doing in this field. The hon. Member for Halifax mentioned county lines, and we have invested in specialist support for the under-25s and their families who are affected by county lines exploitation in London, the west midlands and Merseyside. We also fund a missing persons safe call service—a national, confidential helpline for young people, families and carers who are concerned about county lines exploitation—and the Home Office is funding the Children's Society's prevention programme, which works to tackle and prevent child criminal exploitation, child sexual abuse and exploitation, and modern-day slavery and human trafficking on a regional and national basis. There is also a public awareness campaign that started in September, which is called Look Closer. What I would say to the hon. Member for Halifax is that the public order grounds for disqualification are set out in ECAT, in which it is envisaged that the recovery and reflection periods will be withheld—

Stuart C. McDonald: That wording is absolutely right. It is possible for the recovery period to be withheld, but the convention absolutely does not allow for a decision to be made on public order grounds. It is absolutely contrary to article 10 of the convention. Does the Minister have anything that can help him with that point?

Craig Whittaker: As I have already explained, such decisions will be made on a case-by-case basis. Regardless of whether they are children or vulnerable people, it is important that all aspects of the individual's case are taken into account, such as whether they have been exploited and to what extent.

Stuart C. McDonald: I do not want to make life difficult for the Minister, because I know he is in a very difficult situation, but the point is that it will not happen on a case-by-case basis, because decisions will not be made at all. As a result of the clause, people will just be excluded altogether from having a decision made about them. The point is that there is no case-by-case basis. It is an absolute blanket, and huge swathes of people will just not have a decision made about them, with no assessment made of whether they might be a victim of trafficking.

Craig Whittaker: I thank the hon. Member for his further intervention. I will take some advice on the technicalities in what he says, but that is not my understanding of what the clause says. I have already said that the decision to withhold recovery periods on public order grounds will be made on a case-by-case basis. That will balance the need to safeguard exploited individuals against public protection concerns and allow the Secretary of State to withhold the protections of the national referral mechanism, where the particular circumstances of an individual mean it is appropriate to do so.

10.30 am

Neil Coyle: In light of the fact that the Minister is asking for the amendment to be withdrawn and given his understanding that decisions will be made on a case-by-case basis, can the Minister tell us if the guidance that goes with the legislation will set out the exemptions and the process by which cases will be decided on an individual basis, and if there will not be the blanket exemption that is the Opposition's understanding?

Craig Whittaker: Of course we will fully assess the issues in policy guidance. The hon. Member is exactly right that it will be set out in policy guidance, to ensure that due account is taken of the circumstances, so that any permitted actions, including prosecutions, are proportionate and in the public interest. It is right that the Bill seeks to target ruthless criminal gangs who put lives at risk by smuggling people across the channel.

The changes are not intended to deter people from seeking help from the authorities when they are being exploited and abused. However, it is right that we should be able to withhold protections from serious criminals and people who pose a national security threat to the United Kingdom. Indeed, ECAT envisages that the recovery period should be withheld in such cases, and it does not specify an age limit either, in answer to the question asked by the hon. Member for Halifax. It is important that the UK maintains this scope, as set out in ECAT. I hope in light of this explanation, hon. Members will be content to withdraw the amendment.

Holly Lynch: I am grateful to the Minister for his response. As we have heard from the interventions made by hon. Members, the case studies before us mean that we have grave concerns about clause 51. The assurances that the Minister has sought to make do not overcome some of the barriers that clause 51 will put in place.

I look forward to hearing more detail about the Children's Society projects that the Government are funding and the Look Closer campaign, which I very much welcome, but, as things currently stand, this is much more of a blanket exemption than the Minister has tried to suggest. The very broad public order definitions in the Bill go beyond the intention that he has tried to explain, so once again I am concerned that children will be particularly vulnerable to the negative impacts of clause 51 if unamended, so I am minded to press amendment 164 to a division.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 50]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

NOES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike
Holmes, Paul	

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 51]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike
Holmes, Paul	

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

Question accordingly agreed to.

Clause 51 ordered to stand part of the Bill.

Clause 52

Identified potential victims in England and Wales: assistance and support

Holly Lynch: I beg to move amendment 4, in clause 52, page 46, line 9, after "50A" insert—

"Meaning of assistance and support

'(1) For the purposes of guidance issued under section 49(1)(b) and regulations made under section 50, "assistance and support" includes but is not limited to the provision of—

(a) appropriate and safe accommodation;

(b) material assistance, including financial assistance;

(c) medical advice and treatment (including psychological assessment and treatment);

(d) counselling;

(e) a support worker;

(f) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person;

(g) translation and interpretation services;

(h) assistance in obtaining specialist legal advice or representation (including with regard to access to compensation);

(i) assistance with repatriation, including a full risk assessment.

(2) Assistance and support provided to a person under this section—

(a) must not be conditional on the person's acting as a witness in any criminal proceedings;

(b) may be provided only with the consent of that person;

(c) must be provided in a manner which takes due account of the needs of that person as regards safety and protection from harm;

(d) must be provided to meet the needs of that person having particular regard to any special needs or vulnerabilities of that person caused by gender, pregnancy, physical or mental illness, disability or being the victim of violence or abuse;

(e) must be provided in accordance with an assistance and support plan which specifies that person's needs for support and how those needs will be met for the full duration of the period to which that person is entitled to support under this Act.

(3) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision.

50B"

This amendment would define the types of assistance and support that must be provided to a victim of modern slavery in England and Wales in line with Article 12 of the European Convention on Actions Against Trafficking in Human Beings; and conditions associated with its provision.

The Chair: With this, it will be convenient to discuss the following: Amendment 2, in clause 52, page 46, line 16, leave out from "receiving" to the end of line 19 and insert

"in their physical, psychological and social recovery or to prevent their re-trafficking."

This amendment would define the objective of assistance and support in line with Article 12 of the European Convention Against Human Trafficking 2005.

Amendment 3, in clause 52, page 46, line 16, at end insert—

'(6A) When a person who is receiving assistance and support under this section receives a positive conclusive grounds decision, the Secretary of State must secure assistance and support for at least 12 months beginning on the day the recovery period ends."

This amendment would give modern slavery victims in England and Wales with a positive conclusive grounds decision the right to receive support and assistance for at least 12 months.

Clause stand part.

Holly Lynch: The amendments seek to incorporate our international legal obligations under ECAT within the provisions of support available to victims during the recovery period, as well as extending statutory support for those who have received a positive conclusive grounds decision.

Having already discussed the changes to the recovery period in our discussion of clause 50, I will not repeat myself, but it is important to consider these amendments alongside the provisions in clause 50. We share the concerns of Christian Action, Research, and Education, or CARE, which has worked with us on amendment 4, that clauses 52 and 53 have the potential, if they remain unamended, to

"make matters worse for victims".

Amendment 2 would update the definition of the reasons for providing a recovery period as solely to harm

"arising from the conduct which resulted in the positive reasonable grounds decision in question,"

and replace it with the requirement to assist a person

"in their physical, psychological and social recovery or to prevent their retrafficking."

Therefore, amendment 2 would put into the Bill the wording of article 13 of ECAT, which provides support

"necessary to assist victims in their physical, psychological and social recovery".

The British Red Cross has highlighted that

"making support dependent on specific 'harm' caused by the 'conduct' that led someone to be identified as a victim, fails to recognise the reality of human trafficking".

The Home Office's own research from 2017 says that

"unlike most crimes, which are time-limited single events, modern slavery is a hidden crime of indeterminate duration"—

in that it involves multiple locations and individuals. Therefore, amendment 2 better reflects the Home Office's own assessment of the nature of human trafficking.

Amendment 4 seeks to set out the types of assistance and support that must be provided to a victim of modern slavery. Colleagues will be aware that presently neither the Modern Slavery Act 2015 nor the Bill includes such a provision, and therefore amendment 4 would fill a significant void in the legislation. The types of assistance and support include a range of provisions, such as safe accommodation, medical advice, a support worker, access to translation services, counselling, and assistance in obtaining legal advice or representation.

Amendment 4 is a practical and reasonable measure, and one that we hope will provide a sense of certainty and security to support survivors as they move towards recovery and towards justice, as confidence in the process grows, which will foster trust between agencies and victims, and enable more perpetrators to be brought before the courts. The types of assistance defined are basic provisions that victims should be entitled to if they are to rebuild their lives.

Building upon this idea of defining assistance, amendment 3 would offer long-term support to survivors with a positive conclusive grounds decision, stipulating that the Secretary of State must also secure assistance for at least 12 months, beginning on the day that the recovery period ends.

Given that there is no mention of statutory support after a conclusive grounds decision, amendment 3 seeks to correct another considerable omission from the Bill. In 2020, the Centre for Social Justice said:

"Long-term support is a further significant gap in the support system. In recent years a number of reports have concluded that the lack of long-term support puts victims of modern slavery at risk of homelessness, destitution and even re-trafficking after

they exit the NRM support provision. It also has a significant negative impact on their engagement with the criminal justice system".

This approach has broad support, as these amendments would build upon the recommendations made by the Work and Pensions Committee in 2017, which stated that

"There is very little structured support for confirmed victims once they have been given a 'Conclusive Grounds' decision...We recommend that all victims of modern slavery be given a personal plan which details their road to recovery, and acts as a passport to support, for at least the 12 month period of discretionary leave."

Similar measures were also incorporated in the Modern Slavery (Victim Support) Bill introduced by Lord McColl of Dulwich, which awaits its Second Reading in the House of Lords. That Bill was greatly welcomed across the human trafficking sector and by all parties.

To summarise the case for amendments 2, 4 and 3, they are vital in expanding support for victims, and can boast wide support. I very much hope that the Minister will reflect on their merits.

On clause 52 more broadly, we welcome the fact that support for victims in England and Wales is being placed on a statutory basis during the recovery period, but this change is undermined by the limitations on support, and the decision to reduce the minimum recovery period from 45 to 30 days under earlier clauses. The clause introduces provisions for assistance and support only

"if the Secretary of State considers that it is necessary"

for recovery, mental health and wellbeing purposes, and crucially only if the recovery is from harm caused directly by the trafficking.

In the explanatory notes, the Government state that the intention behind the clause is to implement the UK's ECAT obligations under article 13 to provide a recovery period to potential victims of modern slavery, but that is not really what has been included in the Bill. The explanatory report on ECAT says that articles 12 and 13 are

"an important guarantee for victims and serve…a number of purposes."

This wording emphasises the "guarantee" of support, and its serving different purposes. By contrast, the clause narrows the scope of the recovery support received solely to support needed as a result of harm

"arising from the conduct which resulted in the positive reasonable grounds decision in question."

The Anti Trafficking and Labour Exploitation Unit claims that as a result, the clause will

"create a huge evidential burden on survivors, in demonstrating that their recovery needs are linked to their experiences of having been trafficked".

It adds that the clause will also

"necessitate an increase in the number of medico-legal reports that the Competent Authority will be required to consider."

To summarise, the clause has the potential to further disqualify victims from support entirely. It has nothing at all to offer a person who had physical and mental needs before being trafficked—needs that may have been a factor in them having been targeted by criminal gangs. It risks trapping victims in an endless cycle of exploitation, which will undermine our ability to identify victims and prosecute the perpetrators of these crimes. For these reasons, the clause should not stand part of the Bill in its current form.

Craig Whittaker: I thank the hon. Lady for raising important issues around the support and assistance offered to victims of modern slavery and trafficking. Support for potential victims is a fundamental pillar of our approach to assisting those impacted by this horrendous crime and reducing the risk of their being re-trafficked. We are agreed on the importance of placing the entitlement to support in legislation, which is what the clause will do. Our intention in our drafting was to provide victims with certainty about the circumstances in which support is provided through the NRM; we know that is imperative in aiding their recovery. To this end, we have sought to put in clause 52 that support will be provided where

"it is necessary for the purpose of assisting the person receiving it in their recovery from any harm to their physical and mental health and their social well-being arising from the conduct which resulted in the positive reasonable grounds decision in question."

Amendment 2 would restrict this support to where it was needed for a victim's

"physical, psychological and social recovery or to prevent their re-trafficking."

This provides less clarity on what these terms mean for victims and decision makers, reducing the clause's effectiveness in supporting victims. Our approach is not to do as amendment 4 suggests and go into detail in the clause on the types of support provided, but to instead do that in guidance. The reason is twofold: it provides us with the flexibility to tailor support to victims, and to ensure that we are able to amend the guidance and support as our understanding of victims' needs changes.

After entering the NRM, potential victims are entitled to access a wide range of specialist support services to help them rebuild their lives. This includes safe house accommodation, financial support, and a social worker to assist with access to services including, but not limited to, health care, legal advice and translation services. Following a positive conclusive grounds decision, confirmed victims' ongoing recovery needs are assessed, and a clear plan is tailored to their specific recovery needs to help them transition out of support and back into a community, where this is possible. Confirmed victims' recovery needs are assessed to ensure that the overall support package provided through the modern slavery victim care contract is specific to the individual. This needs-based approach ensures that the Government provide targeted and personalised support to victims to help them recover and rebuild their lives.

10.45 am

As I have outlined, the details of the types of assistance and support that can be provided already exist in the modern slavery statutory guidance under section 49 of the Modern Slavery Act 2015. Bringing this detail into primary legislation, as amendment 4 seeks, is not appropriate and would create a fixed, blanket approach to support, making it harder to adjust our approach in the future and tailor to victims' individual needs as our understanding of trauma develops. Amendment would also necessitate that assistance and support may be provided only with the consent of that person. As children are not necessarily able to offer their consent in an informed way, the amendment may—unintentionally, I am sure—exclude children from the provision.

Finally, amendment 3 seeks to stipulate the minimum length of time support is provided after a positive conclusive grounds decision. In contrast, our approach is to provide tailored support to victims following a recovery needs assessment through a tailored transition plan. The plan can be put in place for up to six months at a time, with no overall limit. This will enable us to deliver the most appropriate and effective needs-based support to victims.

Neil Coyle: The Minister said earlier that the tailored plan would support someone until they move back into the community. Can he confirm that that support will be provided whatever setting the person is living in, not only to those who happen to be in a detention centre or accommodation centre, for example?

Craig Whittaker: I think I have made it quite clear that the amendment would restrict the ability to assess on an individual, case-by-case basis, as the clause intends. I also went on to say that the time period for that is up to six months but is not limited. I hope that answers the hon. Gentleman's question. Amendment 3 would go against that approach and would not increase benefits to victims. For the reasons I have outlined, I respectfully invite the hon. Member for Halifax to withdraw the amendment.

Holly Lynch: I am grateful to the Minister, once again, for his response. He paints a picture of the NRM that I do not think would be recognised by those working with it on the frontline. We heard testimony from those within the NRM that it was not clear that they were even in it, because it was not clear what provisions or support they were receiving. I wish it was the case that the description and the offer of support that he outlines were there in reality.

The Minister says the discretion within the Bill is necessary in order to facilitate going further and doing more, but we know that discretion is also used to offer less than we think is appropriate for victims who require that support. We will continue to argue and make the case for amendments 2, 3 and 4, but in the interests of time, we will simply vote against clause 52 in its entirety. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 5.

Division No. 52]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike
Holmes, Paul	

NOES

Blomfield, Paul	Lynch, Holly
Charalambous, Bambos	
Coyle, Neil	Owatemi, Taiwo

Question accordingly agreed to.

Clause 52 ordered to stand part of the Bill.

The Chair: For future reference, I understand that abstentions are supposed to be recorded by saying, "No vote", although I am happy to be corrected. I am not always right.

Clause 53

LEAVE TO REMAIN FOR VICTIMS OF SLAVERY OR HUMAN TRAFFICKING

Holly Lynch: I beg to move amendment 7, in clause 53, page 47, line 12, after "Kingdom" insert

"for a minimum 12 months".

This amendment would give modern slavery victims in England and Wales with a positive conclusive grounds decision leave to remain for a minimum of 12 months.

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

Amendment 5, in clause 53, page 47, line 14, leave out from "recovery" to the end of line 16 and insert "personal situation,".

This amendment would define the criteria of providing leave to remain in line with Article 14 of the European Convention Against Human Trafficking 2005.

Amendment 189, in clause 53, page 47, line 21, at end insert—

"(2A) If the person is aged 17 or younger at the point of referral into the National Referral Mechanism, the Secretary of State must give the person leave to remain in the United Kingdom if that is in the person's best interests.

(2B) In determining the length of leave to remain to grant to a person under subsection (2A), the Secretary of State must consider the person's best interests and give due consideration to—

(a) the person's wishes and feelings;

(b) the person's need for support and care; and

(c) the person's need for stability and a sustainable arrangement."

This amendment seeks to incorporate the entitlement to immigration leave for child victims (as per Article 14(2) of ECAT) into primary legislation.

Amendment 6, in clause 53, page 47, line 22, leave out subsections (3) and (4).

This amendment would remove the criteria of not granting leave to remain if assistance could be provided in another country or compensation sought in another country.

Holly Lynch: Amendments 7, 5 and 6 concern the provisions to provide leave to remain for survivors of trafficking. Similar to our amendments to clause 52, amendment 5 seeks to bring the provisions in line with article 14 of ECAT by changing the criterion for providing leave to remain from "recovery" to "personal situation". The reference to "personal situation" recognises that leave is necessary for a range of reasons. The explanatory report to ECAT states:

"The personal situation requirement takes in a range of situations, depending on whether it is the victim's safety, state of health, family situation or some other factor which has to be taken into account."

Amendment 6 would remove the criterion for not granting leave to remain if assistance could be provided in another country or compensation sought in another country. It is not clear why the Government introduced that criterion, and I would be grateful if the Minister could outline in his response how he could possibly envisage that working in practice.

Amendment 7 provides a clear minimum timeframe for granting leave to remain, thereby creating more certainty for victims. Under the Home Office's current guidance on assessing discretionary leave for survivors of modern slavery, leave to remain is granted for a mixture of different time periods—sometimes as little as six months. Those timeframes are short, and the inconsistency can set back recovery.

In 2017, the UK Government issued figures on grants of leave to confirmed modern slavery victims. Some 21% of confirmed victims who were neither UK nor EU nationals were granted asylum in 2015. A group of more than 13 frontline charities that are expert practitioners in providing support to victims of slavery highlighted the problem, stating that:

"The support currently provided to survivors of human trafficking and modern slavery is not meeting recovery needs. Government funded support ends abruptly and too early and there is little information or data as to what happens to survivors in the longer term. The current situation leaves survivors with little realistic opportunity to rebuild their lives, with some ending up destitute, vulnerable to further harm or even being re-exploited."

The Government may argue that they are already providing support for confirmed victims in England and Wales through the recovery needs assessment. However, under the RNA, victims are not guaranteed long-term support. Victims will receive a minimum of 45 days of move-on support, with the RNA determining how much—if any—extra support is required under the modern slavery victim care contract; that extra support will be for a maximum of six months at time, and may be only a few days or weeks.

Furthermore, Labour believes that victims' needs are not fully addressed in the RNA. In the 2020 annual report on modern slavery, the support recommended by victim support workers was agreed to in full by the Home Office in only 53% of cases, which raises questions as to whether the process genuinely responds to victims' needs or is, instead, focused on moving victims out of the service. In summary, amendments 7, 5 and 6 are necessary to address the fundamental challenge facing victims and provide them with far greater certainty.

Amendment 189 is necessary because all child victims must be granted immigration leave in line with their best interests as standard, as stated in international law and UK guidance. The amendment seeks to incorporate the entitlement to immigration leave for child victims as per article 14 of ECAT into primary legislation. It will specify that if the person is aged 17 or younger at the point of referral into the national referral mechanism, the Secretary of State must give the person leave to remain in the United Kingdom if that is in the person's best interests, giving due consideration to a victim's need for support and care and a sustainable arrangement.

The Independent Anti-Slavery Commissioner has echoed concerns on the lack of clarity around what the clause would mean in practice for children, with this having been acknowledged in the Government's response to the new plan for immigration consultation. Dame Sara Thornton states

"it is disappointing that this detail was not included as part of the Bill",

and we share that frustration. There is no consistent public data available on the outcomes for potential child victims of trafficking, but evidence shows that our current policies are not being implemented adequately.

Every Child Protected Against Trafficking requested data through the Freedom of Information Act on the immigration outcomes for those exploited as children, the response to which showed alarming results in the data. It found that only about 5% of child-related considerations resulted in a positive decision for discretionary leave. The data indicates that discretionary leave is not being granted to children as victims of trafficking, and that in the small number of cases where it is, the average length of grant is short, suggesting that decisions are not being taken with their best interests as a primary consideration, providing minimal stability.

How many child victims of trafficking were subsequently granted indefinite leave to remain under the policy is unknown but, based on those figures, we can estimate that they are few. That is despite the explicit current policy that states the need to consider the length of leave, including a grant of indefinite leave to remain in line with the child's best interests. That requirement is set out to fulfil the Secretary of State's statutory obligation under section 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the wellbeing of children. All child victims of trafficking must be granted immigration leave in line with their best interests as only standard, as stated in international law and UK guidance.

Stuart C. McDonald: I want to say a few words in support of the amendments, which have the SNP's full support. Currently, while someone might be in limbo for a long time, they are more secure the day after their referral into the NRM than they are the day after they receive a positive conclusive grounds decision, and that is not right. If they have been accepted as a survivor of trafficking, it makes them less secure. We should move towards a period of automatic leave to remain. The provision of leave is often an absolute prerequisite for meaningful recovery. With some security of status, the ability to seek employment or education and participate in the community builds confidence and stability, and the amendments broaden the number who will achieve that stability.

We also absolutely agree that there are problems regarding consistency between article 14 of the trafficking convention and current Home Office guidance. That is what amendment 5 would fix, so we support it. The convention speaks of allowing leave where necessary, given a survivor's personal situation, and the explanatory report to the convention refers to issues around safety, their state of health, and the family situation or similar. The Home Office guidance calls for a much broader, individualised human rights and children's safeguarding legislation-based approach, which seeks to protect and assist a victim and safeguard their human rights. Decision makers are to assess whether a grant of leave is necessary to meet the UK's objectives under the trafficking convention and to provide protection and assistance to that victim owing to their personal situation. The current guidance is therefore closer to the convention than what is in this Bill.

The clause considerably reduces the scope of article 14 and the idea of a personal situation by adopting wording from the totally different article 12 and not offering any justification for that. The purpose and aim of leave to remain is recovery first in the host state if a survivor seeks that before any further upheaval is forced on

[Stuart C. McDonald]

them. That helps a survivor, and it helps us with law enforcement. It is also the only realistic way that they will be able to seek redress through compensation from those who exploited them. Pursuing such compensation from abroad just does not happen in practice.

Putting emphasis on the possibility that protection might be offered in the survivor's home state, as the clause does, risks undermining a proper analysis of the personal circumstances as a whole and risks putting survivors back to square one and at risk of re-trafficking. Crucially, watering down the current position will mean fewer survivors remaining here or being in the best position to work with law enforcement authorities to bring the perpetrators of these awful crimes to justice. Again, that is dreadful news for survivors, but dreadful news for all of us as the perpetrators will escape punishment and other people will become the next victims. We support these amendments and call on the Government to explain why they do not just adopt the wording of article 14 of the European convention.

11 am

Craig Whittaker: The Bill is groundbreaking in its provision of a specific grant of temporary leave to remain for confirmed victims of modern slavery by putting it in primary legislation. Clause 53 sets out the circumstances in which a confirmed victim may qualify for a grant of temporary modern slavery-specific leave. I think we all agree that this is a crucial provision that enhances the rights of the victims. Our approach is to set out the circumstances in which this new form of leave to remain will be provided, giving victims and decision makers clarity as to entitlements, in line with our international obligations.

In contrast to amendment 7, the clause does not seek to specify the length of the leave conferred on an individual, as that will be determined through an assessment of the specific circumstances of the individual. This approach is designed to provide flexibility based on an individual victim's needs. To specify the length of time up front is not required in legislation, as that can be better—

Neil Coyle: The Minister is right: a huge number of organisations welcome the specific leave to remain on these grounds. Perhaps he could tell us the average length of time that it takes to prosecute gangs on these specific circumstances and whether it is the Government's intention to protect anyone who has been trafficked for the entire period of the case in order to prevent them from being intimidated if they are outside the UK and in their country of origin, for want of a better term.

Craig Whittaker: The hon. Gentleman will know from his own experience that that is done through the criminal justice system in this country. If any victim or any person needs to be taken into any form of witness protection, that will be done via the courts. You may want to come back in.

Neil Coyle: But I am asking very specifically about the circumstances in clause 53(2)(c), where the Government are offering leave to remain on these specific grounds. Is it the Government's intention that that leave to remain is extended for the period of any case involving the individual who is believed to have been trafficked?

Craig Whittaker: As I have said, each individual case will be considered on an individual, case-by-case basis. That is why the measure is written the way it is—so that decision makers can make individual decisions, based on individuals' needs and support.

Neil Coyle: Shall I try it the other way round?

Craig Whittaker: You can try it whichever way you like.

The Chair: Order. I have been trying not to interrupt the Minister, but "you" is me.

Craig Whittaker: Sorry, Sir Roger.

Neil Coyle: Let us try it the other way round. Can the Minister confirm that it is not the Government's intention to end leave to remain during criminal proceedings if that could mean that someone is forced to leave the UK and could be at risk of intimidation in another country?

Craig Whittaker: As I clearly stated in my previous answer, each individual case will be treated on the merits of that case, so it will be the decision makers' decision as to what action, care or support will be needed for the individual.

Let me go back to what I was saying about amendment 7. To specify the length of time up front is not required in legislation, as that can be better met through provision in guidance and flexibility for the decision makers to determine it.

With regard to amendment 5, I think we agree that the primary aim here is to provide clarity to victims on the circumstances in which they are eligible for a grant of temporary leave to remain. To support clarity of decision making, we have sought to define the circumstances in which victims are eligible for a grant of modern slavery-specific leave. By contrast, amendment 5 would reduce clarity by providing that leave should be granted where necessary to assist the individual in their "personal situation", without actually defining the term "personal situation". This is why we have chosen to define what we mean by "personal situation" in this clause, for domestic purposes, and have set out that temporary leave to remain will be provided where it is necessary to assist an individual

"in their recovery from any harm arising from the relevant exploitation to their physical and mental health and their social well-being".

Stuart C. McDonald: But the point is that "personal situation" is the wording in the convention and it is also the wording in the Home Office's own guidance, and I do not understand it to have created problems for the Home Office up to this point. The problem is that this Bill is narrowing the scope of the circumstances that will be taken into account when considering this.

Craig Whittaker: The clause defines what personal circumstances mean. Amendment 5 does not do that and, in doing so, reduces clarity for victims. That is completely against the aim of the clause, which is to give clarity to victims.

Neil Coyle: Could the Minister provide some statistics to help us—I do not expect him to have this to hand, but perhaps he can respond in writing—on the average

length of these cases, the number of people granted leave to remain who were believed to be victims of traffickers and the average length of the leave to remain they granted? Those would be useful statistics for the Committee and for the House ahead of Report.

Craig Whittaker: I have resisted saying these words, but I will make sure that we write to the Committee with those statistics if they are available.

The link to exploitation is an important one, and it is based on our Council of Europe convention on action against trafficking in human beings obligations to assist victims in their recovery. Given that the aim is to provide a clear framework to deliver certainty for victims and decision makers, I do not think that amendment 5 would enhance that at all. Turning to amendment 189, I recognise the importance, again, of bringing clarity to victims about the circumstances in which they are entitled to temporary leave to remain. That is exactly what clause 53 will do. I understand the particular vulnerabilities of children, and I can reassure the Committee that these are built into our consideration of how the clause will be applied.

Clause 53, in contrast to amendment 189, seeks to clarify our interpretation of our international obligations and it brings clarity for victims and decision makers, too. It purposefully does not use terms such as

"the person's wishes and feelings",

which are unclear and would not enable consistent decision making.

We are also clear that all these considerations must be based on an assessment of need stemming from the individual's personal exploitation. Amendment 189 seeks to remove that link to exploitation, moving us away from the core tenets of our needs-based approach. It would not support victims in better understanding their rights; nor indeed would it help decision makers have clarity on the circumstances in which a grant of leave is necessary.

I want to be clear that clause 53 applies equally to adult and child confirmed victims of modern slavery. Crucially, through this clause, we have already placed our international legal obligations to providing leave for children in legislation—which I think we all agree is a milestone in itself.

I want to reassure the Committee that decision makers are fully trained in making all leave to remain decisions, including considering all information to assess the best interests of the child and to account for the needs to safeguard and promote the welfare of all children. All decision makers will receive training and up-to-date guidance on the policy outlined in clause 53.

For the reasons I have outlined, such changes do not add clarity and, in our view, are not required. I hope the hon. Member for Halifax will not press her amendments.

Holly Lynch: I thank the Minister, once again, for his contribution. In the interests of time, I will seek to move amendment 189 formally as, once again, I am not satisfied that the appropriate provisions for children have been recognised. I will gently make the point that statutory guidance has been referred to so often as the place where we would look for further detail on how the Bill would actually affect people's lives that it would have been diligent to produce the statutory guidance at the same time as the Bill. That would have given Members the ability to really scrutinise it in full.

With that in mind, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 189, in clause 53, page 47, line 21, at end insert—

"(2A) If the person is aged 17 or younger at the point of referral into the National Referral Mechanism, the Secretary of State must give the person leave to remain in the United Kingdom if that is in the person's best interests.

(2B) In determining the length of leave to remain to grant to a person under subsection (2A), the Secretary of State must consider the person's best interests and give due consideration to—

(a) the person's wishes and feelings;

(b) the person's need for support and care; and

(c) the person's need for stability and a sustainable arrangement."

This amendment seeks to incorporate the entitlement to immigration leave for child victims (as per Article 14(2) of ECAT) into primary legislation.—(Holly Lynch.)

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 53]

AYES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

NOES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike
Holmes, Paul	

Question accordingly negatived.

Craig Whittaker: I beg to move amendment 72, in clause 53, page 48, line 10, leave out "reasonable" and insert "conclusive".

This amendment corrects a drafting error.

The Chair: With this it will be convenient to consider clause stand part.

Craig Whittaker: The Government have tabled a minor amendment to subsection (9) of the clause to reflect that a grant of leave comes after the positive conclusive grounds decision rather than the reasonable grounds decision. Subsection (9) has therefore been amended to provide that the relevant exploitation for the purpose of granting leave under subsection (2) of the clause means the conduct resulting in the positive conclusive grounds decision rather than the positive reasonable grounds decision. This corrects a minor drafting error.

I will briefly speak on clause 53. It reflects our commitment to supporting victims of modern slavery by setting out in legislation, for the first time, the circumstances in which a confirmed victim may qualify for a grant of temporary modern slavery-specific leave. The aim of the clause is to provide clarity to decision makers as to the circumstances in which confirmed

[Craig Whittaker]

victims qualify for temporary leave to remain. It is a Government priority to increase prosecutions of perpetrators of modern slavery. As such, the legislation makes it clear that where a public authority such as the police is pursuing an investigation or criminal proceedings, confirmed victims who are co-operating with this activity and need to remain in the UK in order to do so will be granted temporary leave to remain, to support that crucial endeavour. The clause will ensure that victims and public authorities have surety about victims' ability to engage with prosecutions against those who wish to do harm.

Holly Lynch: I have heard the Minister's opening remarks on clause 53 stand part. Only 11% of confirmed victims with a positive conclusive grounds decision between 1 January 2016 and 31 March 2020 received discretionary leave. I therefore ask the Minister to make it clear how an individual's need for leave will be judged under the criteria in the Bill, and to provide us with clear evidence on how he believes that clause 53 is in keeping with the ECAT obligations.

As colleagues are aware, just weeks ago the High Court delivered a significant judgment that foreign national victims of human trafficking should be granted leave to remain, which really requires starting from scratch on these clauses. The ruling came following the case of a 33-year-old Vietnamese national who was coerced into sex work in Vietnam back in 2016, before being trafficked to the UK in the back of a lorry. From November 2016 to 2018 she suffered further exploitation, being forced to work in brothels and cannabis farms. In April 2018, she was identified as a victim of human trafficking. However, as is the case with many victims, she was charged with conspiring to produce cannabis, and was sentenced to 28 months imprisonment. In May 2019, a trafficking assessment was sought once again by her lawyers, to which the Home Office responded that it had no record of her case; she was later placed in immigration detention. It was not until her legal representatives made a further referral that she was finally recognised as a victim. In his judgment, Mr Justice Linden said,

"The effect of the refusal to grant the claimant modern slavery leave is that she is subject to the so-called hostile environment underpinned by the Immigration Act 2014."

11.15 am

Sadly, cases such as these are representative of many of the systemic issues that currently exist that leave victims in limbo and vulnerable to further exploitation. I ask the Minister, have the Government considered a different course of action in light of that ruling, and might clauses 52 and 53 be revised at a later stage?

Another area of concern is subsection (3) of the clause, that states that there is no obligation to provide leave to remain on the grounds of a victim's need for support in their recovery if the victim could receive support in their own country, or a third country, although there is no requirement for there to be evidence that the victim will receive that support—I very much hope there is good news in the note being passed along the Front Bench to the Minister. Therefore, the clause risks imposing a blanket rule for inadmissibility. I ask the Minister to set out how the UK will know what support can be provided in another country and how the impact on the victim of going to potentially a third country could possibly be assessed.

We have already discussed at length the importance of adopting a trauma-led approach, and the same must be applied here. It must be recognised that victims will very rarely be able to work with law enforcement agencies, even those that will be investigating their cases, if they have the fear of removal hanging over them. The Government acknowledged that in their new plan for immigration, which states that certainty over their immigration status is for many victims a

"crucial enabler to their recovery and assisting the police in prosecuting their exploiters".

I ask the Minster, where is certainty provided in the clause?

As mentioned in my previous remarks, this is an area where there is considerable cross-party support. I am sure the Minister will be aware of concerns raised by the right hon. Member for Chingford and Woodford Green (Sir Iain Duncan Smith), who has stated:

"The ability of a victim to remain in the UK is unchanged by the Bill, and one would therefore expect that the proportion of confirmed victims in receipt of leave to remain would remain low…this Bill would perpetuate rather than address the current arrangements in which the vast majority of confirmed victims are denied leave to remain in the UK to help their recovery."—[*Official Report*, 19 July 2021; Vol. 699, c. 746.]

I do hope the Minister reflects carefully on these remarks and applies the same enthusiasm that his colleague the Under-Secretary of State for the Home Department, the hon. Member for Corby, expressed last week in working with the sector to simply start again in light of the High Court judgment made since the Bill was first published.

Clause 53, as it stands, shows that the Government are only cherry-picking at parts of ECAT to satisfy their agenda, rather than adopting article 14 in its entirety. On that basis we cannot support the clause.

Craig Whittaker: Let me see whether I can answer some of those questions. The hon. Member for Halifax asked how the clause is compatible with ECAT, and where is the certainty. This measure will clarify in primary legislation the obligations set out in article 14 of the European convention on human rights, and clarify the policy that is currently set out in guidance. This confirms that victims of all ages, including children, who do not have immigration status will automatically be considered for temporary leave. A grant of temporary leave to remain for victims of modern slavery does not prohibit them from being granted another, more advantageous, form of leave, should they qualify for it. It continues to be the core principle of the approach to modern slavery—

Holly Lynch: The Minister refers to a piecemeal approach to extending leave—and extending leave—and extending leave. That is preventing victims from moving on with their recovery, from trusting the agencies and from establishing relationships that will lead to the prosecutions that we all hope for. Since he says that further extensions are likely, could we not reflect on more significant periods of leave being given in a single grant?

Craig Whittaker: I am a little surprised that the hon. Lady says "piecemeal approach". I thought I was very clear throughout the process that it is a highly trained

decision maker that will be looking at each individual on a case-by-case basis. They will have the ability to look at the individual person's needs and extend. That approach is at the opposite end of the spectrum to the "piecemeal approach" mentioned by the hon. Lady.

Neil Coyle: I think the Minister is suggesting that there would be variation in the lengths of leave provided. Can he set out that it is the Government's expectation that there would not be a minimum, bog standard six months that everyone is given, and that there will be quite considerable variation in the periods provided?

Craig Whittaker: I thank the hon. Gentleman for that intervention asking for clarity. He is absolutely right; decisions will be made on the basis of individual needs. I can understand where the word "piecemeal" comes from, but the reality is that if an individual's mental and physical health and wellbeing support needs mean that those periods need to be extended, the individual highly trained decision maker will have the ability to extend the period.

Neil Coyle: The Minister is again saying extend, rather than grant for the necessary period. Coming back to the criminal prosecution case, it is very unlikely that the case will be heard within six months. It will not even get to court within six months, let alone be heard. Is it the Government's expectation that someone will be protected with a period of leave that covers a court case? Will the individual decision maker have access to the average statistics on the time it takes to hear a case of this nature?

Craig Whittaker: I do not think that the decision maker will need the statistics on the average timescale for a decision. What they will need to make a decision is the individual person's history and needs, which is what they will use throughout the process. If they need six months, they will get six months. If they need longer than that—whether for a court case or other circumstances—that is intended to be allowed for the individual.

There was one more question on how we assess the victim's needs to be met in another country. The policy will make it clear for the first time in legislation that confirmed victims with recovery needs stemming from their exploitation will be entitled to a grant of leave where it is necessary to assist them in their recovery. Decision makers will assess, in line with guidance and available country information, whether the support and assistance required by the victim to aid their recovery is readily available in their country of return. This will be carried out on a case-by-case basis, in line with individual assessments for each victim.

Amendment 72 agreed to.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 9, Noes 7.

Division No. 54]

AYES

Anderson, Stuart	Howell, Paul
Baker, Duncan	Richards, Nicola
Goodwill, rh Mr Robert	Whittaker, Craig
Gullis, Jonathan	Wood, Mike
Holmes, Paul	

NOES

Blomfield, Paul	McLaughlin, Anne
Charalambous, Bambos	McDonald, Stuart C.
Coyle, Neil	Owatemi, Taiwo
Lynch, Holly	

Question accordingly agreed to.

Clause 53, as amended, ordered to stand part of the Bill.

The Chair: The Opposition have indicated that when we return this afternoon they wish to make brief remarks on clause 54 and 55 taken together and then discuss clause 56 separately. We will then take clause 57 without debate. I hope that is clear.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No.88).

Adjourned till this day at Two o'clock.