PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

JUDICIAL REVIEW AND COURTS BILL

Sixth Sitting

Tuesday 9 November 2021

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 13 November 2021

The Committee consisted of the following Members:

Chairs: † Sir Mark Hendrick, Andrew Rosindell

† Barker, Paula *(Liverpool, Wavertree)* (Lab)
† Cartlidge, James *(Parliamentary Under-Secretary of State for Justice)*
Crawley, Angela *(Lanark and Hamilton East)* (SNP)
† Cunningham, Alex *(Stockton North)* (Lab)
† Daby, Janet *(Lewisham East)* (Lab)
† Fletcher, Nick *(Don Valley)* (Con)
† Hayes, Sir John *(South Holland and The Deepings)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Hunt, Tom *(Ipswich)* (Con)
† Johnson, Dr Caroline *(Sleaford and North Hykeham)* (Con)
Longhi, Marco *(Dudley North)* (Con)
McLaughlin, Anne *(Glasgow North East)* (SNP)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
† Marson, Julie *(Hertford and Stortford)* (Con)
† Moore, Damien *(Southport)* (Con)
† Slaughter, Andy *(Hammersmith)* (Lab)
† Twist, Liz *(Blaydon)* (Lab)

Huw Yardley, Seb Newman, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 9 November 2021

(Afternoon)

[Sir Mark Hendrick *in the Chair*]

Judicial Review and Courts Bill

2 pm

The Chair: Before we begin, I remind hon. Members that they are expected to wear a face covering except when speaking or if they are exempt. This is in line with the recommendations of the House of Commons Commission. Please give one another and members of staff space when seated and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week, if coming on to the parliamentary estate. That can be done either at the testing centre in the House or at home. *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent mode. Tea, coffee and any other drinks, apart from water, are not allowed during sittings.

Clause 3

Automatic online conviction and penalty for certain summary offences

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 45, in clause 3, page 4, line 29, at beginning insert—

"(1) Before this section may be commenced, the Secretary of State must—

(a) commission an independent review of the potential impact, efficacy, and operational issues on defendants and the criminal justice system of the automatic online conviction and penalty for certain summary offences as set out in Clause 3 of this Act;

(b) lay before Parliament the report and findings of such independent review; and

(c) provide a response explaining whether and how such issues which have been identified would be mitigated".

This amendment would require a review of Clause 3 of this Bill before it is introduced.

Good afternoon, Sir Mark. It is, as ever, a pleasure to serve under your chairmanship. I would like to take this opportunity to welcome my hon. Friend the Member for Hammersmith back to his place on the shadow Justice Front Bench. It was my privilege to serve as Parliamentary Private Secretary to our wonderful Mayor of London, Sadiq Khan, when he was shadow Lord Chancellor and my hon. Friend was a shadow Minister. I was pleased to learn from him then, and continue to do so today. It is also good to welcome the Minister to his place as we face each other across the room formally for the first time. I hope that this will be the first of many such opportunities.

I do not underestimate the job that the Minister has taken on, given the crisis in our courts, the record backlog in the Crown court and elsewhere, and a Justice Department stripped of resources over the last decade. Just in case he tries to rely again on the covid pandemic as an excuse, let me point out that it was all in a terrible mess long before covid and long before he arrived in his post. Just one of the facts that I have picked up is that in 2010 there were 152,791 Crown court cases, which took an average of 391 days to complete; in 2019, there were 107,913 Crown court cases, which took an average of 511 days to complete. Clearly, the Minister has his work cut out. We wish him well with it and will be happy to offer our contributions and advice along the way.

I also pay tribute to the Committee Clerks for their, as ever, first-class professionalism and support as we prepared for this Committee stage.

My final thanks go to stakeholders outside the House, including Justice, Fair Trials and Transform Justice, among others, for their energetic and constructive scrutiny and input, which have been of great assistance in identifying potential concerns about the Bill's practical implications.

Given the amendments we have tabled—the first of which I shall speak to in detail shortly—it will be no surprise to the Minister that the Opposition have reservations about clause 3. However, we do very much recognise the need for, and indeed the benefit of, potentially moving some court processes online, so I will share our concerns in the hope that the Minister can provide reassurances to quell them.

The clause will create an automatic online conviction and standard statutory penalty procedure, which will provide automatic online convictions as an alternative to the single justice procedure. Through this process, a defendant could opt to plead guilty online, which would result in an automatic conviction without the need for a hearing. The Bill's explanatory notes state that, to begin with, the procedure will apply only to offences involving

"travelling on a train or tram without a ticket and fishing with an unlicensed rod."

It is critical to note that secondary legislation approved by the affirmative procedure may make additional offences eligible.

As currently drafted, the clause has limitations. For instance, the defendant must consent to use of the process, so they retain the right to opt for an in-person hearing instead. Furthermore, the procedure is only available in respect of non-imprisonable summary offences where the accused was aged 18 or over when charged. Although we agree that these limitations, such as they are, are appropriate, there are a number of areas in which we think the safeguards built into the procedure need to go further.

The proposal to introduce online pleas was first made in the Prisons and Courts Bill in 2017. Transform Justice noted:

"It had not been subject to any public consultation then and still hasn't."

The assumption behind the clause, as with the expansion of written pleas, which we will come to in a later debate, is that a plea hearing is a straightforward and purely administrative hearing. It assumes that people will straightforwardly know whether they are guilty and will need no direction, assistance or support in pleading guilty to a criminal offence. I said earlier that this procedure is an online alternative to the single justice procedure, but there is an important difference. The single justice procedure allows defendants to choose to enter a plea in writing or online for the same types of

offences that the automatic online conviction and standard statutory penalty will apply to—that is to say, summary or non-imprisonable offences.

Those who plead guilty and do not request a hearing under the single justice procedure are convicted and sentenced by a single magistrate on the papers before them, and the defendant has the chance to submit mitigating factors to inform the magistrate in writing. If a defendant fails to respond to the letter setting out the charge within the 21-day time limit, the single magistrate will hear the case without any input from the defendant or prosecutor. However, the Bill's explanatory notes make clear that under the AOCSSP—is there a way of pronouncing that? I do not know—cases could take place entirely online and without the involvement of a magistrate.

Under the single justice procedure, the magistrate can decide that a case is not appropriate to convict under said procedure, which provides at least a minimal level of safeguarding within the process. However, under the AOCSSP, as Justice notes, there is

"no independent judicial (or indeed, human) oversight whatsoever. Moreover, defendants who use the AOCSSP procedure will face a binary choice, with no opportunity to submit mitigating factors if they plead guilty, unless they choose to decline"

the procedure and take the single justice procedure route instead.

The complete lack of human involvement in the process worries me. As a consequence, the Opposition have tabled amendments that seek to build into the process at least some level of safeguards. Although we agree completely with the Government that any online procedure should be optional, I also share Transform Justice's scepticism, in that the defendant may not feel that they have much of a choice at all. How does the Minister think those pitfalls can best be communicated to the defendant?

The current introductory letter to the single justice procedure notice does not mention the option of pleading in court at all; it is only on page 3 of the following document that it comes up. To be honest, if I received one of these notices, even as the shadow Minister for such matters, I am not sure I would understand from the document that I had a genuine option to make my plea in a physical court hearing, rather than online or by post. Even when defendants understand that such a choice is available to them, I do not think that the information accompanying the note enables them confidently to make the best decision in their case. Some legal expertise is clearly required to know the benefits of pleading in court as opposed to pleading online. Again, I admit that even as the shadow Minister—I do not have any legal training at all; I am a journalist by profession—I would not be able appropriately to weigh the benefits of one course of action against the other. I hope the Minister understands what I mean. I am not trying to be obstructive or frivolous, but I think that the lay person receiving such a notice is currently not particularly well equipped to make a decision about their plea.

Transform Justice's briefing calls on the Government to

"conduct and publish research on defendants' understanding of the concept of viable defence and of mitigation, and of the factors to be taken into account in waiving the right to a 'fair and public hearing'."

That is an important point. The briefing also notes:

"The European Convention on Human Rights requires that in the determination of a criminal charge 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. It also guarantees specific minimum rights for those charged with a criminal offence, including the right to be informed of the nature and cause of the accusation, to defend yourself in person, and to have the assistance of an interpreter. The right to a fair and public hearing can be waived by the defendant, but only if they fully understand the charge and the implications of waiving their entitlement."

Experiences of the single justice procedure suggest that many defendants will not fully understand the charges and the implications of waiving their entitlement to a public hearing. Research into such experiences could be an interesting and productive piece of work for the Department. I would welcome his thoughts on it, or, if his Department has considered the matter already, I would be grateful for more information about its work.

Another concern that has been raised about the expansion of the use of online pleas is that it may inadvertently drive an increase in the number of defendants without legal representation.

Janet Daby (Lewisham East) (Lab): Given the significant changes that are taking place in how people plead—online, by post and so forth—does my hon. Friend think that the Government should conduct a public consultation? From what I have read, that is not happening.

Alex Cunningham: I am grateful to my hon. Friend for her intervention. She is correct, and she makes exactly the point that many of the people working in the sector are saying to the Government: we need better data and more examination of the data to drive the best legal system that we can possibly have.

There is a possibility that the expansion of online pleas may inadvertently drive an increase in the number of defendants without legal representation and, importantly, and as a consequence, worse outcomes for defendants. That concern was specifically raised by Transform Justice, which worries that encouraging defendants to plead online

"will lead to more defendants representing themselves … since the process of 'doing it yourself' may appear easy."

I note that the current single justice procedure notice encourages the option of pleading online over the postal option. Pleading online, the defendant is told, is "quick and easy". They are informed that they will receive a confirmation email, so that they know their plea has gone through—just like buying something from Amazon. The notice warns:

"You need to pay correct postage and allow enough time for delivery".

That is helpful advice, but I worry that we are already seeing a push towards online pleas marketed as justice made easy for the defendant when that is not necessarily going to be the case. It may be easy, but it may deny them proper justice.

In fact, entering a plea can be a very complex decision. Transform Justice's research on unrepresented defendants in the criminal courts found that entering a plea was one of the times when defendants without legal representation were most disadvantaged. As they note in their briefing,

"Unrepresented defendants did not understand when they had a viable defence and should plead not guilty, but also pleaded not guilty when the evidence against them was overwhelming, thus losing credit for an early guilty plea if convicted."

[Alex Cunningham]

I am aware that the explanatory notes to the Bill suggest that online pleas will be able to be entered only if the defendant has legal advice, and I understand that it is the Government's intention that that would be done through the common platform. That would mean that the defendant would need to engage the services of a legal professional. However, I am concerned that that safeguard has not been put into the primary legislation. I will speak about that more fully in the debate on amendment 48 later this afternoon.

Even more worrying is the fact that paragraph 59 of the Bill's impact assessment seems to suggest that that safeguard will be available only to those accused of more serious offences. As the Minister knows, the implications of a guilty plea, even for minor offences, can be significant, including a criminal record for life that can detrimentally impact employment prospects, among other things. I would be grateful for reassurances from the Minister that the online system will include information that ensures that the defendant is aware of all the possible impacts of choosing to enter a guilty plea. Again, I will speak to that point more fully in the debate on amendment 50.

2.15 pm

I also seek further reassurances from the Minister about the extent to which the Government foresee a defendant receiving legal representation by engaging a lawyer so that they can enter a plea through that common platform. Does the Minister think that a lawyer will provide the most generic sort of legal advice—to which I just referred—about the potential impact of a guilty plea? Or does he think that the lawyer would represent the defendant in the more traditional sense, under which they would engage in the disclosure process on behalf of the defence and potentially discuss the case with representatives of the prosecution? I am keen to hear more about how the Minister foresees that a defendant's engagement of a legal representative to enter the plea would actually work. While I refer to the common platform, I also seek assurances from the Minister that the platform will work properly and will not itself be a barrier to justice.

Another concern raised is that the online plea procedure would remove the opportunity to challenge or change the charge early on in the case. Once again I turn to the detailed briefing from Transform Justice, which notes:

"The Leveson report emphasised the problem of people being wrongly charged (either over or under charged) and of the inefficiencies this causes—particularly if a charge is downgraded on the day of trial leading to the defendant pleading guilty. Sir Brian wrote: 'any failure to charge appropriately has a considerable impact throughout the life of that case...For example, in the first quarter of 2014, 15% of all 'cracked' trials in the Crown Court were due to guilty pleas entered to alternative new charges offered by the prosecution for the first time on the day fixed for trial. A further 4% of cracked trials were primarily due to late guilty pleas being entered to new charges, previously being rejected by the prosecution...In such cases, although there will have been room for different decisions to be made prior to the date of trial, the seed for potential waste has been sown from the outset and could have been avoided had the initial charging decision been appropriate'.

If there is no hearing in which there is an opportunity to discuss the appropriateness of the charge before plea, defence and prosecution lose the chance to course correct a case early on, which can have knock-on impacts further down the line, such as leading to inappropriate allocation decisions or delaying subsequent court hearings, where mistakes have to be unpicked.

Another major source of anxiety for stakeholders in the justice sector and the media is the impact that AOCSSP will have on open justice. Worries have been raised about many of the Bill's changes to criminal procedure. The *Evening Standard* courts correspondent, Tristan Kirk, has raised concerns about a range of administrative proposals in the Bill. As I used to be a court reporter myself, I have great sympathy with his cause.

I would welcome the Minister's thoughts on that issue as a whole, but I will focus on online pleas. As I have discussed already, the AOCSSP is more closed off than the current single justice procedure because there is no human oversight or involvement at all. There is much to be said about the failings of the single justice procedure even to comply with the principle of open justice. The judge sits in a closed court, which is not accessible to the public or the press. Tristan Kirk has said of it:

"It's possible these administrative hearings…will come with promises of 'openness'. Years of Single Justice Procedure experience tells me measures will be sub-standard & chronically understaffed admin offices have to deal with problems."

At least in the single justice procedure, there are listings for each day's cases published online and the results for individual cases are made available. However, the AOCSSP sounds like the current online motoring conviction system, under which there is no data or public information available at all. If the AOCSSP is set up along similar lines, there will be no opportunity for scrutiny in the process, and it will be visible only to those who have been charged. If that is the case, to borrow from Tristan Kirk's commentary again, the proposals will be

"music to the ears of defendants who'd rather no one knew they've been accused of a crime".

I identify with that. I remember cases in Darlington magistrates court when I was a junior reporter on the *Darlington & Stockton Times*—a fine weekly newspaper. People would often do anything to avoid having their criminality exposed in the local paper, from threatening me physically, which we all get used to in this place, to offering to fund an evening's beer.

The Parliamentary Under-Secretary of State for Justice (James Cartlidge): That's not much, though, is it?

Alex Cunningham: That depends how much beer a journalist drinks these days; I think we used to put away many more pints than desk-bound journalists tend to now.

The process makes it easier for offenders to escape notice. *[Interruption.]* I hear the Minister acknowledge that that is the case and I look forward to hearing his proposals to ensure that we have the open justice we all strive for. He has said that he takes issues of transparency and open justice seriously, and I do not think this is an intentional consequence of the Government's proposals, but it is potentially serious. Will he confirm that some measure of external scrutiny will still be possible under the AOCSSP? Will listings for all cases and their outcomes at least be made available to all? If not, it will be a serious blow to open justice.

I would be grateful for the Minister's thoughts on the suggestion that the AOCSSP could form a barrier to effective participation in the justice system. As Transform Justice notes,

"All online conviction processes will start with a postal charge. These charges are sent through ordinary mail and there is no proof of their receipt"—

no proof whatsoever. It continues:

"The fact that two thirds of defendants do not respond by submitting a plea indicates that any criminal process which relies on defendants responding to a postal charge seems to present significant barriers to effective participation."

Janet Daby: The postal charge raises significant concerns. I know of constituency cases where people have changed address and their benefit letter has gone elsewhere, so they have ended up with frozen benefits. There will be huge problems ahead if things are sent by post and end up in somebody else's postbox, or if people move and do not receive letters. I am particularly concerned about people with mental health issues and vulnerable people who, even if they do receive a letter, may not be able to interpret it.

Alex Cunningham: My hon. Friend is correct and gives excellent examples. I had an example a few weeks ago of a constituent who found out that he was likely to be locked up because he had not paid his television licence. He had not received the letter because he was no longer at that address. I know that he had a responsibility to inform people that he had moved on, but the fact that nobody tried to find him before it got to the point of court bailiffs turning up at the previous property to take goods away to pay his fines and court costs is a nonsense. Clearly, that can happen.

Paula Barker (Liverpool, Wavertree) (Lab): Does my hon. Friend agree that the Government's equality impact assessment does not recognise the issues that he has eloquently raised about the postal charge?

Alex Cunningham: Almost certainly. Our hon. Friend the Member for Lewisham East talked about people with mental health problems or disabilities who are all disadvantaged by these proposals, because no adequate system seems to be in place to ensure that they properly understand what they are doing and what is happening to them. If they do not understand, they may choose to ignore it and end up with a conviction and a criminal record, which has terrible ramifications for employment and all manner of other things, including even entering another country. If they have a criminal charge against them, they may not be able to go on holiday to some countries.

Janet Daby: I find all this deeply concerning. I wonder whether the Government actually want the postal charge system to work.

Alex Cunningham: The last thing I expect from my hon. Friend is cynicism. I am sure the Government want the justice system to work correctly, so it is time they looked carefully at this. As I develop my arguments, I will talk about the need for research and data, which is absent. We have asked for it in the past, but no specific data exists on why people choose to ignore or do not even respond in any shape or form to postal charges.

We do not know why so few people respond to postal charges. It does not seem sensible to expand the use of postal charges until we have more data on the issue. One reason that has been suggested is that many defendants do not even receive the letter. I have already talked about that; it might be sent to an old address, for example. Perhaps the person does not even understand the letter that they have received. The defendant, as we have discussed, might have a mental health condition or a neurodivergent condition that presents a barrier to understanding.

Although phone calls for someone on benefits are now on a freephone number, the initial calls to the HMCTS assisted digital advice on how to fill in a physical online form are charged at local rates. Yesterday I received from the Minister the answer to a written question on support for some vulnerable defendants. I asked what training prosecuting authorities who use the single justice procedure, and who are not the CPS, receive on disability and neurodivergent conditions. The response stated:

"The Ministry of Justice is not responsible for training prosecuting authorities and thus cannot speak to whether they receive training on disability or neurodivergent conditions. In response to the Neurodiversity in the Criminal Justice System: A review of the evidence report, the Ministry of Justice is taking a whole system approach and are working with HM Courts and Tribunal Service, HM Prison and Probation Service, Home Office, Department for Health and Social Care and the Welsh Government to"—

here is the key word for me—

"consider neurodiversity training for all frontline staff within the Criminal Justice System."

Surely, Minister, it should not be "considered". It should be a case of deciding how we ensure that it happens and that people across the criminal justice system are fully equipped and trained to deal with people in these circumstances.

For people on low incomes, I worry that the proposals present a significant and unnecessary barrier to engaging with the process. Does the Minister have any thoughts on remedying that? Earlier I looked at the AOCSSP, which seems to disproportionately affect those on low incomes. In a normal court hearing and under the single justice procedure, defendants sanctioned with a fine are asked to state their means, to enable the judge to adjust the fine if necessary. Under the online conviction procedure, everyone would be made to pay the same fine, because there would not be any information on which to base a different decision.

I understand that the equality impact assessment suggests that defendants on low incomes will be made aware of the option to opt for an in-person hearing instead, so that their financial position can be taken into account. I have already spoken about my concern that defendants would not understand that there is a real choice to opt into an in-person hearing, so I am not sure that this is a sufficient safeguard for those on low incomes. Does the Minister have any thoughts on any additional safeguards to protect those on low incomes from being further disadvantaged, since that is identified in the Government's own impact assessment? Under the AOCSSP, could it be made much clearer that it would be preferable for someone who needs their financial situation to be taken into consideration to opt for an in-person hearing? Is the Minister aware of any existing data relating to whether those who have pleaded under

[Alex Cunningham]

the single justice procedure and the automatic online conviction process have been the recipients of heftier fines than those who attended in-person hearings?

Another possible barrier to effective engagement could surface for defendants with disabilities. The Equality Act 2010 requires public bodies to make reasonable adjustments for people with disabilities. I struggle to see how the AOCSSP will be able to support the use of reasonable adjustments. The Bill makes no provision for screening to see whether defendants will need reasonable adjustments to be made. I will speak to that point more fully in the debate on amendment 57, but it is important to consider the issue briefly at this point. Under the current process for a single justice procedure, defendants are asked to tick on the form if they have a disability. What if their disability has prevented them from opening the letter or understanding the form? How does the Minister think we can address that barrier to participation?

2.30 pm

I also seek the Minister's assurance on the matter of the security of the AOCSSP. Concern has been raised that the online conviction system may not be sufficiently secure. The single justice procedure plea form requires someone to confirm that only the name, address and date of birth details presented on the form are correct. That is a much lower level of security than that used by other Government Departments through the Verify scheme. What security safeguards does the Ministry intend to use for the system? For a process that results in criminal conviction and sanction, I hope that they will be significantly more robust.

I have a couple of further concerns about the role of the prosecuting bodies that will use the AOCSSP. The first relates to an article written by Sebastian Walker about the first iteration of the proposals in the Prison and Courts Bill, as highlighted by Transform Justice:

"The Prison and Courts Bill made provision for a number of penalties to be imposed upon conviction – including for the offender to pay compensation and prosecution costs as determined by the prosecutor. It is clear from the decision in R (on the application of Faithfull) *v* Ipswich Crown Court that under English law a compensation order forms part of the determination of sentence. It seems then prima facie inappropriate, and in contravention of Art.6, that the prosecution – instead of an independent and impartial tribunal – decides the compensation to be imposed: their discretion restricted only by the maximum that can be imposed for that offence under the automatic online conviction procedure…Questions must also be raised as to whether these changes would set a negative precedent for justice as a whole. The prosecution's ability to set the amount of compensation to be paid amounts to a sentence being imposed in a criminal court by one of the parties to the case and it is difficult to see how this is not abjectly contrary to the principle of a fair trial even if it is ECHR compliant."

The second issue, which follows from that, relates to prosecuting inspection and scrutiny. The Crown Prosecution Service as a prosecuting body is subject to inspection and scrutiny through the independent inspectorate, Her Majesty's Crown Prosecution Service inspectorate. However, prosecutions made under the single justice procedure and the online motoring convictions process are not subject to the same level of scrutiny. That is a point of concern for the Opposition, especially when considered alongside the fact that media scrutiny of cases under the procedure will also be limited. I would like the Minister to explain how scrutiny will be possible for prosecutions made under the system.

I imagine that the prosecuting bodies will be similar to those that currently prosecute under the single justice procedure—the police, the BBC and transport companies. Does the Minister think that these companies should be subject to some measure of inspection in relation to the prosecutions they make, or at least publish data on their prosecutions?

With all that said, I turn to amendment 45.

James Cartlidge: Hear, hear!

Alex Cunningham: I am glad the Minister is pleased. The amendment would mandate the Secretary of State to commission and lay before Parliament an independent review of the potential impact of the AOCSSP on defendants and the criminal justice system, its efficacy and operational issues.

I have spoken at some length about the numerous concerns raised about the procedure, and sought the Minister's reassurance on many of them. The most appropriate form of reassurance would be an independent report into the impact of the procedure. The procedure marks quite a significant shift in the way we handle criminal cases and would establish the principle for all summary and non-imprisonable offences to be automated through an online plea, conviction and penalty website. The Opposition recognise the need to explore how we can deploy technology in the criminal justice system, but we do not agree that it can be done without a robust evidence base, especially when we are dealing with changes that potentially pose a threat to defendants' rights, access to justice and the principle of open justice.

As JUSTICE has noted, the evidence base for the procedure is poor and none of the reports that the Government refer to in the Bill documents—Sir Robin Auld's 2001 "Review of the Criminal Courts", Sir Brian Leveson's 2015 "Review of Efficiency in Criminal Proceedings" and the Government's own 2016 consultation, "Transforming our Justice System"—explores the real world consequences and risks inherent in the procedure. Furthermore, the 2016 Green Paper, in which the Government first proposed the introduction of an online conviction system, stated that the system should be using three offences before any decision was taken to make it permanent. It noted:

"We propose to test the system with a small number of summary, non-imprisonable offences in the initial phase of introducing the online conviction and fixed fine scheme, which would be: Railway fare evasion; Tram fare evasion; Possession of unlicensed rod and line. If this initial phase is successful, we plan to bring other offences, particularly certain road traffic offences, into the system in future."

Andy Slaughter (Hammersmith) (Lab): It does seem to be a bit of a feature of this Bill. When we were dealing with clause 2, we heard that the abolition of the Cart judicial review was to be a template for other offences, and the same is happening here. Does my hon. Friend agree with me that it is slippery slope? *[Interruption.]* I hear the Minister snorting from a sedentary position—

James Cartlidge: Chortling.

Andy Slaughter: Even with the offences my hon. Friend has named so far—offences in which honesty is a factor—it is very important that the questions that he is asking are answered before we approve the Bill, especially if we are to get the number of offences increased through secondary legislation.

Alex Cunningham: My hon. Friend is entirely correct. That is why we have tabled the amendment, which would require data and proper research to be conducted, so the Government have something by which to measure their success or otherwise in introducing the procedure. My real concern is that future offences may well just come through the secondary legislation route, where the amount of scrutiny is somewhat limited. The Government propose using the procedure in the Bill initially for these offences, but nothing in the Bill suggests that the testing procedure the Government committed to in 2016 will actually be used to assess the procedure. Can the Minister confirm otherwise? That would be welcome.

As Transform Justice has pointed out, there is no evidence in the public domain about the online motoring conviction system, which was introduced in 2015. There is no public access to the postal charge paperwork, nor to the online form. There is no public data on how many people respond to the postal charge—we covered that point already—or how many complete the form online. There is also no data on how many people plead guilty or not guilty, or on the sanctions received.

The Government consulted on the automatic online conviction proposal in 2016, and many of the respondents raised concerns. None have been allayed in the interim. Indeed, the single justice procedure, which the procedure builds on, had only been in use for one year when the Government consulted on the online procedure. Since then, much more information about the workings and indeed failings of the single justice procedure has come to light. The Government have not explained how the current issues with the single justice procedure would not simply translate across to the AOCSSP procedure, or even be exacerbated, given the removal of any human oversight. JUSTICE has also said that it is not aware of any similar system deployed in other jurisdictions from which any advantages or disadvantages could be studied.

For those reasons, the Opposition believe that amendment 45 is vital. Significant changes to our justice system should be evidence based, and making evidence-based decisions now will save the Government and the justice system a lot of problems further down the line. I appreciate that I have sought rather a lot of information from the Minister thus far, but we are very keen that we go down the route where we get it right. I look forward to hearing the Minister's thoughts.

James Cartlidge: It is a pleasure to have you back in the Chair, Sir Mark, after your brief absence. That was a very important set of questions. Obviously, I am speaking particularly to amendment 45. Other amendments have been tabled to the clause and I think we will end up covering everything. I will try to answer the main questions, but hopefully by the time we get to stand part we will have broadly covered all the key questions.

I am grateful to the hon. Gentleman for his welcome, and wish the same to him. He has a different style and approach from the hon. Member for Hammersmith, but they make an interesting pair, and I look forward to further jousting and deliberations on the Bill. The hon. Member for Stockton North said that it is not all the pandemic. He is right: most of the difficult decisions about funding criminal justice had to be made in the 2010-15 Parliament. There is a good reason for that. It was not a pandemic; it was inheriting a catastrophic economic position because of the mismanagement of the previous Government.

Alex Cunningham: You had been in power for five years.

James Cartlidge: I am talking about 2010. The hon. Gentleman knows full well that there is no parallel universe in which difficult decisions did not have to be made. Had Labour stayed in power in 2010, they would have made significant cuts to the Ministry of Justice. That is a fact, but we are here today and looking to the future, and the future is digital. Digitalisation offers many ways to improve and streamline justice, but of course we must ensure that safeguards are in place. I will come to a few of the specific questions, and then to the amendment.

Probably the most important question is what happens if the defendant does not receive notification of the charge or conviction. How will they respond? What do we do? We may be confusing two procedures. There is the single justice procedure, and there is the new procedure—I simply call it the automatic procedure. The hon. Gentleman is right: even the acronym is impossible to remember, let alone the full name. In the SJP, it is worth stressing that defendants who have no knowledge of proceedings brought against them via summons or requisition until after a magistrates court has begun to try the case will be able to make a statutory declaration to restart the proceedings—that is, for example, if the correspondence was sent to the wrong address. To reassure all colleagues, in the automatic procedure, the person considered has to opt in. If they do not receive notification, that procedure will not be used. It is fairly straightforward, and an important safeguard.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): Can my hon. Friend confirm what would happen if somebody did not receive the post, the case went to court, and they were convicted in their absence? Could that happen, or would they have to be informed?

James Cartlidge: That is a very good question. To be clear, they have to opt in. If they received it and did not respond, they would not have been able to opt in. Therefore, the online procedure would not have taken place. I understand why my hon. Friend asks that question.

The previous Government consulted on this proposal from September to November 2016. The Government's response in February 2017 to their consultation on transforming our justice system set out their intention to proceed with the new automatic online conviction and standard statutory penalty procedure, otherwise known as an acronym that I will not attempt, interesting as it is.

[James Cartlidge]

Open justice is a very important question. The hon. Member for Stockton North, as a former journalist, will very much respect the fact that matters of justice are of intense interest to the media and to journalists, and he is right that it is important in our democracy that we give them that access. We have to ask how much interest there would be in someone who has not paid a fine on an unlicensed fishing rod and so on, but to be clear, case information, including details of cases to be considered and outcomes, will be made available to the media and other interested parties in line with the criminal procedure rules.

The common platform is a very important question. There is possibly a slight confusion, which I can understand, as it is complex and there are lots of different clauses and procedures. Strictly speaking, in using the automatic procedure, the defendant is not using the common platform. It is a separate public-facing interface.

The common platform is used by practitioners and the criminal justice system. Clauses 6 and 8 relate to the common platform, because in those cases, the person would have to have legal representation because they could not enter, for example, an early plea online because it has to be done through the common platform and that has to be done through a practitioner. To be clear, there is a difference.

2.45 pm

On the question about low incomes, which is perfectly fair, I will make two points. First, before deciding whether to opt for the procedure, users will be given clear information on the best option for ensuring that any mitigating circumstances can be made clear. Secondly, more importantly for people on low incomes, or anyone such as a jobbing plumber who is working hard, who is self-employed or who works shifts, the question is whether they can easily afford to give up a day to go to court. The measure is favourable to such people, notwithstanding the fact that—let us be honest—one is assuming that they are guilty, they have looked at all the information and they have decided that they would rather do it online than give up their day to go to court, which could be relatively expensive for them.

Alex Cunningham: I am interested in the issue of people having a day in court or saving a day off work. Many people will make the wrong decision when they come into contact with the justice system in that way. Is there not a real concern about individuals who do not know what they are doing, who may have mental health problems or other disabilities, and who cannot make the right decision? A day off work would not actually matter.

James Cartlidge: To be clear, I am not talking about a day off work. If they go into court, the issue is not having the income—for example, if someone is self-employed. It may be less of an issue for someone who is permanently employed; it depends on their contract. I think it is important for people to have the option, particularly if they are time poor. I stress that it is a choice.

Dr Johnson: What information will be provided in the letters when they are sent out, so that people can make the right choice? If the hypothetical plumber chooses to pay a fine, which may be less than the money that he would lose from missing a day's work, he may think that he is financially better off because he is not going to court. Assuming that he is innocent, however, how will he get information about the consequences of the record? Will that be provided in the letters?

James Cartlidge: The answer is very simple. If the person concerned is innocent and pleads not guilty, the case is heard in court. This procedure is for people who are guilty and wish to plead guilty online to save themselves the hassle of going to court, given that they are guilty.

Liz Twist (Blaydon) (Lab) *rose—*

Alex Cunningham *rose—*

James Cartlidge: Hang on, there were simultaneous interventions. I will give way to the hon. Member for Blaydon.

Liz Twist: I wanted to address the issues in amendment 49 that we discussed at the evidence session with Justice, which is the class of case that will be dealt with through the system. I raise it now because the Minister is talking about the ease of going through the automatic procedure. Is he not concerned that people will be tempted to plead guilty just to get it over with, and will then find that they have a conviction? In my experience as a trade union officer, people accepted a caution because it got it out of the way, but then found that they had a criminal record that they had to declare to their employer.

James Cartlidge: It is a good question. I respect the hon. Lady's background before she became an MP and she speaks with a lot of experience. These are non-recordable offences, such as not being in possession of a valid ticket on a train or tram or having an unlicensed fishing rod. They are all non-recordable, so they will not result in a criminal record.

I will amend what I said earlier to my hon. Friend the Member for Sleaford and North Hykeham. When I said "if a person is innocent", I meant to say "if they intend to plead not guilty." It is a semantic point but important to get right.

Andy Slaughter: I have a genuine question. If the provision is extended to other offences, is it the Government's intention that any offences dealt with will be non-recordable in that way?

My hon. Friend the Member for Stockton North made some really thoughtful points, which the Minister is now addressing. What I am getting at is that the court appearance is a sort of framing event, and that can work both ways. First, it avoids trivialising the offence: it concentrates on it, is public and has the effect of exhibiting the offence to the wider world. Secondly, it acts as a way of thinking about where the offence is going—there may be legal advice, the court itself may be able to advise and the process of going to court may alter the defendant's disposition. Has the Minister thought about all that and about the type of offences to which the provision might apply in future?

James Cartlidge: If I address that, I will be straying into the territory of future amendments. If the hon. Gentleman will forgive me, I should say that we will cover those issues in considerable detail.

I will now crack on with the remainder of my comments about amendment 45, which is about a review. I appreciate that this is a very new type of procedure for dealing with certain minor offences and that we cannot be certain of its impacts. However, we are committed to reviewing the operation of the procedure, which is why we are proceeding with caution.

Only three offences have initially been proposed for prosecution under the new procedure: failure to produce a ticket for travel on a train; failure to produce a ticket for travel on a tram; and fishing with an unlicensed rod and line. As part of this initial implementation phase, we will carefully monitor and review the potential impacts of the procedure before we consider whether to extend it any further. The procedure has a number of safeguards, which I will set out in further detail when we discuss the next group of amendments and during the stand part debate. I want to stress that the procedure is entirely optional and that it will remain the defendant's choice whether they wish to proceed with an automatic online conviction or opt for a traditional hearing in court.

Alex Cunningham: I am grateful to the Minister for his response and recognise that there are other issues to cover, which I mentioned in my speech; there are other amendments as well.

I am pleased to hear the Minister commit to carrying out a proper review of the procedure, as that is what the amendment sought. I see no need to press it to a vote. I thank him for his input and look forward to developing some of these issues during debates on the remaining amendments. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alex Cunningham: I beg to move amendment 46, in clause 3, page 4, line 29, at beginning insert—

'(1) Before this section may be commenced, the Secretary of State must publish—

(a) an equalities assessment concerning the impact the automatic online conviction and penalty process will have on individuals with protected characteristics, as defined in the Equality Act 2010; and

(b) an impact assessment on the effective participation for defendants with vulnerabilities, and must lay such assessment before Parliament."

This amendment would mandate the Secretary of State to publish assessments regarding the impact of Clause 3 on individuals with protected characteristics as defined in the Equality Act 2010 before its commencement, as well as those with vulnerabilities.

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

Amendment 47, in clause 3, page 4, line 29, at beginning insert—

'(1) Before this section may be commenced, the Secretary of State must publish statutory guidance which sets out how prosecutors should provide and explain to defendants any information contained within the required documents in an accessible way."

This amendment will mandate the Secretary of State to publish guidance for prosecutors on how to ensure that defendants fully understand the information provided to them.

Amendment 48, in clause 3, page 5, line 32, at end insert—

"(e) the prosecutor is satisfied that the accused has engaged a legal Representative".

The amendment would provide that the accused cannot be convicted online via the AOCSSP procedure without legal assistance.

Amendment 57, in clause 3, page 5, line 32, at end insert—

"(e) the prosecutor is satisfied that the accused does not have any vulnerabilities and disabilities that impede the ability of the accused to understand or effectively participate in proceedings, having undertaken a physical and mental health assessment."

This amendment would require that all accused persons considered for automatic online convictions are subject to a health assessment, and that only those who do not have any vulnerabilities or disabilities are given the option of being convicted online.

Amendment 50, in clause 3, page 6, line 6, at the end insert—

"(d) a document in clear and accessible language which—

(i) explains the consequences of agreeing to an automatic online conviction and penalty; and

(ii) directs the accused to legal advice and information."

This amendment would include further information about the consequences of engaging with the automatic online conviction process and a signpost to legal advice within the required documents that are sent to the defendant.

Alex Cunningham: I thank Justice and Fair Trials again for their helpful input into these amendments. As a set, the amendments all deal with the need for safeguards in the procedure—we know the procedure that we are referring to—both by identifying possible issues before the procedure is used and by building in safeguards to the procedure itself. The Minister may think that he has covered the bases, but I want to help him to ensure that the belt and braces are in place, to best support justice.

Amendment 46 would mandate the Secretary of State to publish assessments on the impact of clause 3, before its commencement, on individuals with protected characteristics as defined in the Equality Act 2010, as well as on those with vulnerabilities. I have just spoken at length about amendment 45 and the need for the provisions in clause 3 to be well evidenced before they are implemented; amendment 46 addresses that point further. I am aware of the equalities impact statement, published alongside the Bill, which states that, in relation to the criminal procedures section of the Bill:

"we do not expect these changes to have a negative impact on any particular group, as the majority of these measures are designed to make the criminal court process easier for all court users by offering additional ways in which people can engage with the court that will significantly improve user experience and reduce user costs."

Some may think that that's all right then, but it certainly is not. The Government's equality impact assessment deals with the impact of the procedure in two paragraphs and only discusses issues relating to income levels. However, there is evidence, predominantly from the single justice procedure, that suggests that the new procedure may disproportionately impact individuals with protected characteristics.

Stephanie Needleman, the acting legal director of Justice, shared such concerns with the Committee in the evidence session last week. She mentioned women as a

[Alex Cunningham]

group of concern, as the existing single justice procedure disproportionately targets women. APPEAL's Women Justice Initiative notes,

"the vast majority of those being prosecuted and convicted of TV licence evasion are women."

Its research shows what can happen in the absence of sufficient safeguards, with women facing criminal records despite not having received a letter, or where the letter was sent to the wrong address. Although there are issues that can affect anyone who receives a postal charge, the fact that women are more likely to commit certain so-called low-level offences means they are impacted to a greater extent. The Government's impact assessment does not recognise that, and therefore does not suggest anything to address the issue. It is important that this disparity is recognised and is not replicated in this procedure. Stephanie Needleman he also raised concern about the potential impact on disproportionate representation of ethnic minorities in the criminal justice system, particularly as the new procedure has such minimal safeguarding built in.

The Opposition believe it is vital that further research is done to ensure that disproportionate numbers of ethnic minority individuals are not unduly criminalised through procedures that contain weaker safeguards than are currently provisioned under the single justice procedure. We are also concerned that the impact assessment makes no attempt to look at whether the new procedure will have a disproportionate impact on neurodivergent individuals or others living with mental health conditions and other disabilities. Justice's report "Mental Health and Fair Trial" notes that criminal justice processes often do not account for an individual's particular needs, which may hamper their ability to understand what is happening. This concern is then amplified within the single justice procedure where there is lack of opportunity to screen for health conditions or vulnerabilities and assess whether the process is suitable.

Sir John Hayes (South Holland and The Deepings) (Con): The hon. Gentleman is making a compelling case. I agree with a lot of what he says and I know the Minister will too, because he has been very sensible about the need to review this and consider it carefully before it is extended. In addition to the groups that the hon. Gentleman identifies, there are simply older people—people who do not have the wherewithal to navigate systems. They may not be people with mental health issues, although I take the point about that. They may simply be people who are not comfortable with online transactions. I would rather see far fewer things put online, by the way—I would like a move in the opposite direction in life and in the provision of public services generally, but the hon. Gentleman is not pressing for that; I am far more radical than him, I can tell. I hope he would include in his assessment, and I hope the Minister will too, those people who may simply struggle with online services.

Alex Cunningham: The right hon. Gentleman makes my case for me. I am most grateful to him. My dad is 90 and my mother is 88; she sadly has dementia but my dad still looks after her. As someone who is on the ball, I think he would really struggle in this sort of situation. I would not want that.

I am encouraged by the Minister's very positive response to the first amendment. I am sure he is moving in my direction and I am very grateful. Perhaps when we come to a vote, the right hon. Gentleman will join me in saying, "Aye!" at the appropriate moment.

Sir John Hayes: I'm going shortly.

Alex Cunningham: Some might say he had gone a long time ago.

We are worried that the issue will only be further exacerbated by the new procedure, with the removal of any form of human oversight and involvement in the process at all. As I said in my earlier speech, the new process may represent a significant shift in our justice system as we look to increase the use of technology to maximise efficiency, but it is important that we do not take the step without knowing what it will entail for all types of defendants and place appropriate mitigations in place. The Government's assessment further states:

"However, as is the case more generally across England and Wales, there is over-representation of certain people in the criminal justice system with protected characteristics",

which will affect some of the proposed measures.

It sounds to me like the Government are simply accepting disproportionality as an inevitable consequence of our criminal justice system. That is simply not good enough, and that is why we want the Minister to go further with all these protections. It is also why the Opposition would like to see a more detailed equality impact assessment of clause 3 before it is commenced, as that will allow the Government to address the issues now rather than waiting until disproportionality is further exacerbated—when they say that they are committed to reducing it.

3 pm

Let me move to amendment 47, which would mandate the Secretary of State to publish guidance for prosecutors on how to ensure that defendants fully understood the information provided to them. I give notice, Sir Mark, that without the appropriate response from the Government, I intend to press the amendment to a vote.

The Bill's only criterion on which defendants are appropriate for the new procedure is that they are aged 18 when charged. Vulnerable individuals, especially those who might not understand the charge, any documents sent to them or the consequences of pleading guilty will therefore be placed at a disadvantage by that process. Furthermore, as Fair Trials has noted,

"the Bill does little to ensure that plea decisions are made knowingly and voluntarily. The European Court of Human Rights has stated that one of the safeguards necessary to ensure compliance of trial waivers with the right to a fair trial is that 'the bargain had to be accepted… in full awareness of the facts of the case and the legal consequences and in a genuinely voluntary manner.' In theory, that requirement could be satisfied if accused persons have in fact understood the consequences of their plea and entered into the procedure voluntarily, however the Bill does not contain adequate provisions to ensure that that is the case."

Those are not my words, but those of Fair Trials.

We think that the Government guidance to prosecutors on how they should provide and explain the information to defendants could help to allay that lacuna in the Bill. I would be interested in the Minister's thoughts on that point, especially as it links to the point I made earlier

about the lack of scrutiny and inspection with respect to the prosecuting bodies bringing charges under the procedure.

The question that we are interested in is how we can ensure that prosecuting bodies are enabled and supported to engage in the procedure in a way that supports the defendant's rights and access to justice. Government guidance to prosecutors is just one way of doing that, and I would welcome the Minister's thoughts on others, including any that Departments have already mooted.

We tabled amendments 50 and 57 to address the point of ensuring that vulnerable individuals understand and can engage with the new process, so I shall jump slightly ahead and speak to them now. Amendment 50 is straightforward and would mandate the inclusion of further information about the consequences of engaging with the automatic online conviction process and a signpost to legal advice in the required documents sent to the defendants.

Again, Fair Trials has referred to documents relating to the Bill:

"There is no explicit mention of the need for defendants to be informed of their rights and the wide range of implications of pleading guilty—and if such information has been provided, there is no way of ensuring that it has been sufficiently understood."

The Opposition therefore believe that an additional required document must be added that sets out the consequences of agreeing to a guilty plea under the new procedure and to signpost the defendant to high-quality legal advice and information. That should all be provided in the clearest and most accessible language possible to ensure that as many defendants as possible understand the procedures they are engaging in.

Let me turn to amendment 57, which is perhaps the most important amendment in this group for the Government to engage with as it goes to the heart of protecting individuals with vulnerabilities. The amendment would require that all accused persons considered for automatic online convictions were subject to a health assessment and that only those with no vulnerabilities or disabilities should be given the option of being convicted online. I appreciate that the feasibility of that might be limited, but the Opposition strongly believe that some level of screening needs to be put in place, so we have tabled the amendment. We would, however, be keen to work with the Government to identify a screening process that was more feasible, and I look forward to the Minister's response on how that might work.

We believe that it must be incumbent on prosecutors to consider the appropriateness of the procedure for defendants, taking into account any potential vulnerabilities. For prosecutors to do so, the vulnerabilities need to be identified. As Fair Trials explains:

"Automated decision-making systems pose significant risks to neuro-diverse people, and people with mental health conditions or cognitive impairments. Many of these defendants already face serious disadvantages that affect their ability to participate effectively in legal proceedings, which will be worsened where there are reduced opportunities for in-person, physical interactions with the court."

It continues:

"The Equality and Human Rights Commission has stated that remote justice is unsuitable for disabled people, such as those with learning difficulties, cognitive impairments or mental health conditions. It noted that such proceedings lead to a loss or reduction of 'opportunities to identify impairments and make adjustments'. The EHRC were also concerned that the emergency use of remote justice may 'place protected groups at further disadvantage and deepen entrenched inequality.'"

Furthermore, a recent criminal justice joint inspectorate report emphasised the need for default screening of all criminal suspects and defendants for disability, including neuro-disability. That proposal was supported by the former Lord Chancellor, the right hon. and learned Member for South Swindon (Robert Buckland), who in July 2021 stated that

"screening is absolutely essential if we're really going to get to the heart of the needs of those who come into contact with the criminal justice system".

He went on to say that it is "an ineluctable truth"—I have tried to pronounce that word a dozen times—that

"the number of people in the system with that type of need is disproportionately higher than the rest of the general population",

and that it is an issue that he "hears every day". He even promised that "there will be action". However, the Bill makes no effort whatever to address that.

Again, as Fair Trials recognises:

"The nature of online proceedings as proposed in the Bill are such that defendants are denied physical access to courts altogether, or that such access is delayed until later stages in the proceedings or during appeals. This removes opportunities to screen for and identify disabilities, impairments, or other factors that affect a defendant's ability to participate knowingly and effectively in the proceedings, thereby enabling appropriate adjustments to be made."

I am aware that the explanatory notes state that

"a full hearing at court will always be available when needed and where the court considers it to be in the interests of justice",

but in the absence of effective processes for identifying vulnerabilities, that is meaningless.

The Government's fact sheet suggests that legal representatives

"will be able to identify any vulnerabilities",

but the majority of lawyers are not specialists in mental health and disability, and it is not fair for the burden of identifying hidden disabilities to be placed on them.

Transform Justice illustrates the issue well, stating that

"unrepresented defendants who plead online will not meet a lawyer. Many defendants may receive a postal requisition for a crime, having been interviewed unrepresented. So, unless all those who are encouraged to plead online are subject to a health assessment, reasonable adjustments will not be made. Assisted Digital (the service offered by HMCTS) is inadequate for this purpose since it is only accessed by those confident enough to open the postal charge, who understand they need help, who can pay to phone HMCTS, and who know they have a right to access to the Assisted Digital service."

There is simply not enough protection in the new process to ensure that those with vulnerabilities are not adversely impacted. Without those appropriate screening measures, the Opposition will not be able to support the clause.

Amendment 48 would provide that the accused could not be convicted online via the new procedure without having had legal assistance. While the Bill limits the procedure to summary non-imprisonable offences, the consequences of a conviction for many of these offences are still serious. As Justice notes:

"Punishments that do not result in a custodial sentence can have significant consequences for an individual—not least a criminal record"—

I take the Minister's point about the current charges covered by the clauses—

"increased motor insurance costs, potential social stigma, and loss of employment or educational opportunities.

It is concerning that those charged with a criminal offence may choose to take the 'easy option' of using the"

new procedure

"without fully understanding the consequences of doing so."

The Bill does not require a defendant to have legal advice or representation to be subject to the new procedure, so it will, in effect, be a do-it-yourself set-up that allows defendants to be convicted and sentenced through an automated process, without any effective support or assistance. I agree with Fair Trials that

"there is a worrying risk that"

defendants

"will be waiving their rights unknowingly."

Ensuring that defendants were at least assisted by a lawyer would guarantee at least some human oversight of the process. Fair Trials also points out that unless another effective mechanism is put in place to

"carry out an assessment of the defendant's vulnerabilities, legal assistance provides an important safeguard helping to ensure that people with cognitive impairments or severe mental health conditions do not unknowingly opt into automated decision-making processes."

Paula Barker: Does my hon. Friend agree that not having the appropriate checks and balances in place, as the amendment suggests, could lead to further litigation down the line from those who are charged?

Alex Cunningham: Indeed, that is very much the case. The Minister talked about how a conviction made by a magistrate in the absence of a defendant can always be challenged down the line. I do not see where that fits with respect to this, and I hope the Minister will explain it.

I stress that I do not think that this is the ideal safeguard for identifying individuals with vulnerabilities—legal professionals are trained primarily in the law, not to identify issues relating to vulnerabilities. I have already said that that is not their responsibility and I do not want the Government to think that the Opposition are advocating placing that safeguarding burden on the legal profession. We are certainly not doing that. We are, however, in favour of more safeguards being built into the system. This is an important safeguard for all defendants, not just those with vulnerabilities.

As I said earlier, I am aware of the Government's intention for online pleas to be entered via the common platform, which I understand might seem to address the concerns we express here. As it is not in the primary legislation, however, we do not feel sufficiently reassured, which is to say nothing of the ongoing issues with the common platform—I understand the senior presiding judge has told Her Majesty's Courts and Tribunals Service to halt the roll-out until it has been stable for at least three weeks.

I appreciate that the Government have looked at the matter, but I want to ensure that this works in some way, even if we do not agree with the method. I would therefore welcome the Minister's thoughts on strengthening the safeguards in the legislation.

James Cartlidge: I will come to the specific amendments, but, once again, some wider points have been made. An interesting one, made by my right hon. Friend the Member for South Holland and The Deepings, was about whether the broad thrust of policy should be somehow to regress towards being more paper based than online.

That was a serious point. It was interesting that, in evidence, Aidan O'Neill from the Scottish Law Society—I asked him about the Scottish experience of the pandemic and use of technology, although my right hon. Friend will know of other areas of his expertise—made some positive observations about how technology had in many ways enabled access to justice to be maintained during the pandemic, precisely because people who would otherwise not be able to appear in court or take part in tribunals or other cases were able to do so because of the technology.

My view is that, while we have to have safeguards—I therefore totally agree with the hon. Member for Stockton North that we should go through the details of the safeguards—in principle we should never discount the sense in which technology gives more access to justice. After all, a generation of people do not have printers—they work not off paper, but off their phone. They might even feel slightly excluded if they cannot do things online.

That might seem like a strange point and, as my right hon. Friend the Member for South Holland and The Deepings said, some older generations might find that extraordinary. To be clear, however, someone could be not even analogue, but completely paper-based in how they work. My parents are pretty much like that if I am completely honest. These offences obviously exist in the single justice procedure, which is paper based. Or, as I have said throughout, people could simply opt to have their case heard in court in the traditional way.

3.15 pm

Sir John Hayes: I do not want to delay the Minister because I am keen to get on myself, but the point really is not so much the test of convenience, which is the one he is describing, or even the test of accessibility; it is more the absence of personal interaction. The problem with moving to technologically based systems, across the private and public sectors, is that we take people out of the equation, and actually people are the cleverest thing we have. They have imagination and intuition, and sensitivity and understanding. When we systemise things, we risk losing all those virtues. By the way, long before I came here, I was in the information technology industry, so I remember well knowing that then, just as I know it now.

James Cartlidge: My right hon. Friend makes a good point. There are some things that should always be done in person. A good example is parliamentary debates because we need interventions. When we had people appearing on a television screen, unable to intervene, how could we hold them to account for what they said? However, in the legal system—the Bill underscores this—some things must be done in person, and in respect of which the resource is so precious. Of course, we are talking particularly about trials in the Crown court, which are the most serious cases. A huge part of our focus is digitising relatively—I say that word carefully—straightforward or less serious procedures, so that we maximise at every turn the physical, in-person resource for the most important proceedings. That is important.

Before turning to the amendments, I will make one further point on the position of vulnerable defendants and give slightly more information, because this is a fair point. The procedure will operate in a similar way to the current written charge and requisition procedure, and the single justice procedure. Prosecutors using those methods of initiating proceedings have developed procedures for identifying those who may need additional support. Support channels will also be available to users who require clarification of information and processes ranging from web chat or telephone assistance to more intensive face-to-face assistance. The Department has recently awarded a new contract for significant support in that area, and I am happy to provide more information later.

Amendment 46 would require the Government to publish an equalities and impact assessment before the commencement of clause 3. When the Bill was introduced, an equalities assessment and an impact assessment were published on all the measures, including the new automatic online procedure. As such, we have already given consideration to the impact that the measure could have on those with vulnerabilities and protected characteristics, as the hon. Member for Lewisham East mentioned. We have recognised that the steps we are taking to digitalise criminal court procedures have the potential to affect groups that are less digitally enabled. That is why we will ensure that the online processes are easy to follow and understand, and that support channels, ranging from web chat or telephone assistance to more intensive face-to-face assistance, will be available to all defendants who might need them, as I said earlier.

The new procedure is completely optional, and it will remain the defendant's choice whether they wish to proceed with automatic online conviction or opt for a traditional hearing in court. The number of disabled people using the internet is increasing, and defendants with certain disabilities might in fact welcome the introduction of a new online procedure, which will reduce their need to travel to court unnecessarily and enable them to resolve their case quickly in the comfort of their own home. As I say, the new procedure can improve access to justice in some respects. I agree that it is important to monitor its impact, including on those with vulnerabilities, and we will do so on the three offences initially before we consider whether to extend the procedure further.

Amendment 57 would require all defendants charged with an eligible offence to submit to an assessment of their physical and mental health before a prosecutor could decide whether it would be appropriate to offer them the option to proceed with the new automatic online procedure. The hon. Member for Stockton North made a reasonable case, and I share his concerns that the new procedure should only be used appropriately—that word is so important. As I think I said on Second Reading in my summing up, I am someone who is I would not quite say evangelical about, but strongly supportive of, using the internet to create efficiencies, improve access, increase productivity and ensure all those benefits; nevertheless, we have to have safeguards.

As I have already set out, that is why we have built a number of safeguards into clause 3. For example, a prosecutor will offer this online option to a defendant only once they have considered all the facts of a case and deemed it suitable for the procedure. All the options will be explained clearly to defendants offered the procedure, including their right to come to court if they wish to and the potential consequences of their choosing this route. Defendants who decide to opt into the new procedure will be guided through the process, and will have access to both telephone support and face-to-face support if they should need them.

Clause 3 also provides the court with the power to set aside a conviction in the event that the defendant did not understand the consequences of their decision to accept the conviction. The effect of the amendment may be to deter some people from using a procedure whose speed and simplicity they would otherwise welcome. Indeed, there would be no reason for defendants to opt for the new procedure if the resolution of their case would be swifter under existing procedures, such as the single justice procedure, where no mental or health assessment is required.

Amendment 47 would place an additional duty on the Secretary of State to publish statutory guidance before clause 3 could be commenced. As proposed, this would be guidance setting out how prosecutors should provide and explain to defendants any information in the required documents. Clause 3 already provides for guidance under the criminal procedure rules to set out the detail of how required documents should be served on a defendant offered the new automatic online procedure.

As I have said, under the procedure defendants will be provided with all the information they need to make an informed decision, and that will be written in a clear and accessible way. The information will include details of the evidence against them, the potential consequences of choosing this route and full details of the prospective fine. Similar information is already provided on the single justice procedure notice currently sent out to defendants, which is drafted and regularly reviewed in consultation with a wide range of user groups.

If it is helpful, I will be more than happy to provide every member of this Bill Committee, either by email or even through the post if necessary, a sample of the single justice procedure, to show how it looks. I think that once members see it, they will agree that it is very clear. It is similar to what will be used in the new procedure.

Amendment 47 would require all defendants to have engaged a legal representative before a prosecutor could offer them the option to proceed with the new automatic online procedure. I stress that only summary-only, non-imprisonable offences that are straightforward and simple to prove will be eligible for the new procedure. As such, we intend the design of the procedure to be simple enough to ensure that it can be used without legal assistance.

Defendants would need to opt in actively to the procedure and could choose at any point prior to accepting the conviction to have their case heard in court instead—when they wish to plead not guilty or want the court to consider mitigating factors, for instance.

Amendment 47 is unnecessary and would contradict current practice where, generally speaking, cases of this type do not normally attract legal aid and the vast majority of defendants already represent themselves, whether under the single justice procedure or in court. That is an important point to stress—*[Interruption.]*

The Chair: Order. I did make an announcement at the beginning about electronic devices, so I would appreciate it if you took cognisance of that. Thank you.

James Cartlidge: Thank you, Sir Mark.

This is a new procedure; it is a new means of realising whatever the outcome of a case is. It is not a new form of justice—let me be absolutely clear about that. People plead guilty or not guilty to these offences every day and in the overwhelming majority of cases there is no legal representation because the cases are straightforward. I accept the point made by the hon. Member for Stockton North, but I hope he is reassured by the fact that defendants will be advised of their right to obtain legal advice under the procedure and will be entitled to request a full trial and obtain counsel at any time during the process if they so wish.

Amendment 50 proposes to insert an additional level of detail into primary legislation, which I would argue is unnecessary. It would require the documents served on defendants to explain the consequences of agreeing to an automatic online conviction and penalty, and direct the defendant to legal advice and information.

We have already been clear that defendants will be provided with all the information they need to make an informed decision. That specifically includes making sure that they are aware of the consequences of entering a guilty plea and accepting a conviction. The notice and online process for the procedure will be very similar to the one for the single justice procedure, which clearly sets out the consequences of making a plea. As I have said, I am happy to send copies of the single justice procedure document to colleagues.

The notice that defendants receive formally commences proceedings for the offences and gives them a set period of time in which to respond. The notice will advise defendants to use this time to obtain legal advice. As I said before, only summary-only, non-imprisonable offences that are straightforward and simple to prove will be eligible under the new procedure. As such, we intend the design of the procedure to be simple enough to be used without legal assistance.

I hope that the hon. Member for Stockton North will be reassured by the fact that we intend to implement the procedure for a small number of offences to begin with and will carefully review how it operates before deciding whether to extend it any further.

Liz Twist: I welcome the Minister's assurance that the procedure will not be extended. However, he has just mentioned that the offences to be considered under the procedure will be reviewed. Concern was expressed during our evidence sessions that the procedure might be extended to other offences, so what further reassurance can the Minister give on that issue?

James Cartlidge: I was just about to conclude, but I think I am due to cover that point in detail when dealing with the other groups of amendments. If I am mistaken, I will make sure that it is covered, but I think I will go into more detail about that issue later, if the hon. Lady will forgive me.

As I have set out, we already have the appropriate safeguards in place to ensure that defendants are fully informed of their options under the new procedure. These amendments are therefore unnecessary, and I urge the hon. Member for Stockton North to withdraw them.

Alex Cunningham: I am grateful to the Minister for his response. We have tabled these amendments because we want to be helpful—we are not trying to be difficult. We want to ensure that there is fair justice with fair access, and that justice is done for everyone at the end of the day.

I accept much of what the Minister said, but I still have real concerns about the information provided and the systems for providing that information. He has referred to what is included in the Bill, but I am still very concerned about how people will get the right information from the right person in order to make the correct decision, and I am most concerned about the vulnerable.

The other issue, raised by my hon. Friend the Member for Blaydon, is about what the next tranche of offences could be. Will we get to a point where more serious offences will fall under that process and will be recordable offences, which will have all the impacts on employment that we described earlier?

James Cartlidge: To be clear, I think the next amendment is very specific on that point, and I will definitely cover it.

Alex Cunningham: I am grateful to the Minister. On that basis, I will withdraw amendment 46, but will press amendment 47 to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 47, in clause 3, page 4, line 29, at beginning insert—

"(1) Before this section may be commenced, the Secretary of State must publish statutory guidance which sets out how prosecutors should provide and explain to defendants any information contained within the required documents in an accessible way."—*(Alex Cunningham.)*

This amendment will mandate the Secretary of State to publish guidance for prosecutors on how to ensure that defendants fully understand the information provided to them.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 6]

AYES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

NOES

Cartlidge, James	Johnson, Dr Caroline
Fletcher, Nick	Mann, Scott
Hayes, rh Sir John	Marson, Julie
Higginbotham, Antony	Moore, Damien
Hunt, Tom	

Question accordingly negatived.

3.30 pm

Alex Cunningham: I beg to move amendment 49, in clause 3, page 5, leave out lines 33 to 35 and insert—,

'(4) An offence may not be specified in regulations under subsection (3)(a) unless it is—

(a) a summary offence that is not punishable with imprisonment; and

(b) a non-recordable offence, which excludes any offence set out in the Schedule to the National Police Records (Recordable Offences) Regulations 2000/1139 (as amended)."

This amendment would exclude any offences which are recordable from the automatic online conviction option.

I come to the Opposition's final amendment to clause 3, although we have already strayed into the territory that this covers. Amendment 49 would exclude any offences that are recordable under the new procedure. I understand that the Government intend the procedure to apply only to summary or non-imprisonable offences, but we think that this needs to be further restricted.

Examples of recordable offences that the new procedure could cover include the offence of failing to provide for the safety of children at entertainments under section 12 of the Children and Young Persons Act 1933 or the offence of exposing children under 12 to the risk of burning under section 11 of that Act. Others are the offence of drunkenness in a public place under section 91 of the Criminal Justice Act 1967 and the offence of selling alcohol to a person who is drunk, under section 141(1) of the Licensing Act 2003.

Particularly topical, given that the Police, Crime, Sentencing and Courts Bill is in Committee in the other place, are the offence of failing to comply with conditions imposed on a public procession under section 12(5) of the Public Order Act 1986 or the offence of failing to comply with conditions imposed on a public assembly under section 14(5) of the Public Order Act 1986. The threshold for committing these offences will become significantly lower upon the introduction of part 3 of that Bill, where individuals could inadvertently commit an offence by causing "serious unease" or "noise". Yet more examples relate to the sale of alcohol to children under the Licensing Act and a range of football offences, including the use of missiles and the chanting of racist language.

Those are just some illustrative examples. I do not believe that these sorts of offences are really appropriate for the new procedure, mostly because, as I have mentioned in my earlier speeches—it is important, so I stress it again—the consequences of conviction can still be extremely serious. The Government's apparent justification for removing any human oversight in the procedure is that it will apply only to minor offences where the defendant faces no risk of imprisonment. But as Fair Trials points out,

"The absence of the risk of imprisonment should not, on its own, be a justification for trivialising criminal justice processes. Criminal convictions, even for minor offences (other than certain types of traffic offences), can have far-reaching and very serious implications on people's lives and opportunities. The existence of a criminal record can, for example, seriously undermine someone's chances of finding employment, especially in certain sectors and professions (including nursing, social care, child-minding and teaching), accessing educational and training opportunities, obtaining certain types of insurance, or the ability to travel to certain countries. For those who are non-UK citizens, criminal records can affect the right to remain in the country."

The Opposition believe that it is crucial that the procedure applies only to those offences for which convictions are unlikely to have these impacts on individuals' rights and opportunities.

Justice has noted that it is likely that the new procedure

"as it currently stands, would act to incentivise individuals to plead guilty out of convenience, regardless of whether they have an arguable case. Without legal advice, this risk is all the more profound [and]… many will not fully appreciate the impact a conviction could have on their lives and future prospects."

By limiting the new procedure to non-recordable offences only, we would ensure that automated convictions are limited only to the most minor offences, which do not appear on most criminal record checks. That would be a vital safeguard in the online conviction procedure.

I do not think we will be overly limiting the use of the new procedure if we include that further limitation. Between 40% and 45% of all criminal offence convictions each year are for non-recordable offences, so a significant proportion of cases could still be dealt with. I look forward to hearing the Minister's thoughts.

James Cartlidge: This interesting amendment covers some of the questions from earlier. Clause 3 provides that only certain non-imprisonable and summary-only offences can be specified as eligible for the new automatic online procedure. Amendment 49 would restrict it further to non-recordable offences. That is straightforward enough.

I reassure the hon. Gentleman that the initial three offences proposed under the new procedure—failure to produce a ticket for travel on a train, failure to produce a ticket for travel on a tram, and fishing with an unlicensed rod and line—are non-recordable offences. In fact, the vast majority of eligible offences in scope are non-recordable, with only a couple of exceptions. There is currently no intention to extend the procedure to any recordable offences. Once we have reviewed how it operates, we might consider extending to other similar non-recordable offences, such as certain road traffic offences—for example, low-level speeding and driving without insurance. Clause 3 enables us to do so.

However, for an offence to be appropriate, it would have to be relatively straightforward and simple to prove, with no complex grounds and a high degree of consistency in sentencing. Prosecutors would also have the discretion, based on the individual facts of any given case, to not offer the option of the procedure for an eligible offence if they felt it would not be suitable. Furthermore, any extension of the procedure to additional offences would be subject to the affirmative procedure and done by regulations, which would have to be approved by Parliament.

Alex Cunningham: That was a very interesting response. I think the Minister was confirming that what is in the amendment will, in fact, be the case going forward and that the Government will not seek to introduce any offences that would be recordable in the scenario I described. I ask the Minister why he does not accept the amendment if that is the Government's intention. I invite him to intervene on me.

James Cartlidge: That is very kind of the hon. Gentleman. In this situation it is very standard to have a Bill with what is effectively a pilot. I would not quite say that it is formally a pilot, but it is effectively trialling these three non-recordable offences and will be reviewed.

However, as I said, any extension of the procedure to additional offences would be subject to the affirmative procedure and done by regulations that would have to be

[James Cartlidge]

approved by Parliament. That is a very standard way of operating. We think that is more flexible. I do not want to invite a conspiracy that says there is a clear plan to move very soon to including recordable offences. As I say, there is currently no intention to extend the procedure to any recordable offences. We think that this way of legislating is perfectly standard. The amendment is not necessary.

Alex Cunningham: I am afraid that although I accept that the Minister is an honourable man, I would like to see this measure nailed in legislation so that a future Government cannot start to introduce recordable offences. There is no guarantee from what the Minister said that that will not happen. New Ministers can change things. The amendment will ensure that they cannot go beyond the guarantee that the Minister has offered today, and I intend to press it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 7]

AYES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

NOES

Cartlidge, James	Johnson, Dr Caroline
Fletcher, Nick	Mann, Scott
Higginbotham, Antony	Marson, Julie
Hunt, Tom	Moore, Damien

Question accordingly negatived.

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

Damien Moore (Southport) (Con): It is nice to see you back in the Chair, Sir Mark. I just want to make some quick remarks in support of clause 3 stand part. First, it is about speeding up the system and tackling the backlog, which we have and have all heard about in the course of proceedings on the Bill. It is important that we get to grips with the backlog. Using online technology to help to remedy it is, I think, incredibly important, but I do not think it should be the only way we do that. If someone does not want it or have it, that should be up to them. Representing a constituency with a higher-than-average-age population, I certainly understand the fears and concerns that my constituents have when we talk about putting things online, because they always feel as though they will not be able to access them, and accessing justice is incredibly important.

The offences that we are talking about are summary offences. As we have heard, the provision will be used only in a small number of cases, whether it is the non-payment of a train or tram ticket or the possession of an unlicensed fishing rod or line. These matters have to be dealt with, and the provision for automatic online conviction—no pun intended—allows that to happen going forward. I do not think a physical court is needed for justice. We have seen that in the course of the pandemic. We have to remember that technology, in all aspects of life, is not going to go away.

I also support the clause because the defendant can choose. They do not have to do this, and rightly so. It is something that people can opt in to; they are not forced to do it. These days, many people may actually feel more comfortable in the online environment than they would in the traditional one. Although they have committed an offence and are pleading guilty to it, that does not mean that we should cause them unnecessary pain and anguish through going to a court, which they might feel very uncomfortable with. We have to think about protecting them in every way we can, while punishing them for the crime that they have committed.

As my hon. Friend the Minister mentioned before, it is important, particularly for those who are self-employed, who might have difficult work circumstances or who might have childcare issues to be able to access justice in this way. The Minister has already mentioned a number of the safeguards that are in place, and I thank him for that. Access to justice and the need to go to court are two very different things. I am pleased that the clause recognises that and I am very pleased to support it. I think that all of my constituents will be very pleased that our access to justice is not impeded by just having to go to court.

3.45 pm

Andy Slaughter: I will be brief, Sir Mark. This has been a very interesting debate, and my hon. Friend the Member for Stockton North has put forward some points that the Minister has engaged with. I am not sure that we are entirely happy with the responses. Disposing of matters online, without going to court, is a significantly different way to do things and makes a lot of differences. Some of the examples that my hon. Friend gave included the ability to get advice, the ability to monitor the quality of proceedings—including the way that the prosecution puts its case—the accountability of the defendant, and justice being done in public. Yes, it is more convenient in some cases to be able to deal with everything online in the way that most of our lives are dealt with now, but criminal proceedings are an important event. There are now many fewer courts than there were, but the process of going to court and appearing there is significant. It concentrates the mind, and it is an event. It frames the offence, and it makes the defendant think about the consequences of their actions.

What most concerns me is the point about open justice, which is very easy to lose. I am conscious that this afternoon the Justice Committee is taking evidence on the issue in relation to an inquiry done by the Bureau of Investigative Journalism in which it tried to attend possession proceedings, which are ordinary in-chambers proceedings that go on every day in dozens of civil courts around the country. On a number of occasions, it was wrongly refused permission to proceed by the judge or the administrative clerk of the court, which is an increasing trend. It has been exacerbated by covid, because clearly much more has been done remotely during the pandemic. That may have been necessary, but when were are making changes to procedure, it is important not to throw the baby out with the bathwater. It is important not only that justice is done, but that it is seen to be done.

I am not persuaded that the clause has been sufficiently thought through at the moment. Therefore, I will listen to what the Minister and my hon. Friend may say in

relation to that, but although the Government are aware of, and concede, the points that have been made, I do not think they have done enough to put safeguards in place. At the moment, I feel that we are not sufficiently reassured about the clause.

Nick Fletcher (Don Valley) (Con): It is a pleasure to serve under your chairmanship, Sir Mark.

I will move on from what I said this morning about dealing with my constituents. Again, I go back to what people say to me about these things on a daily and weekly basis: the law is only any good if it is enforced. The one thing that people see time and again is that somebody is caught in the act of doing something, yet it can take months to get them to court and to get them dealt with. That is bad for two reasons: it says a negative thing to law-abiding citizens, but it also means that charges are held over somebody's head for a long time, which is no good. It is no good for people to have cases hanging over them. Punishment should be quick, cases should be dealt with, and people should move on very quickly, especially with small misdemeanours. The whole point of the clause is to clear the backlog in the courts. I have mentioned fly tipping, which is a real issue, and I know there have been backlogs with getting such offenders into court and dealing with them. The clause will expediate the court process and get swift justice to those who need it.

Before I was elected to this place, I got paid when I turned up to work. Other Members have referred to builders, plumbers and electricians, who do not have the luxury that a lot of people have. If they do not turn up for work, they can lose a day's pay, which can be hugely costly to them, especially in these times. If they have made a small error, being able to deal with it very quickly online, maybe when they get in in the evening—saving them a day in court, which would increase anxiety for people—will be welcomed.

Alex Cunningham: I will be brief and will not repeat the points made by my hon. Friend the Member for Hammersmith on open justice and the requirement for safeguards. I have two points to make, which relate to our previous debate. First, although I feel my trust in the Minister building this afternoon as time goes on, sadly I do not trust a future Conservative Minister who may well decide to use the powers that the Minister is attempting to take to himself to do things that I would hope none of us would approve of, through having a series of online cases that could lead to recordable offences. That could have an impact on people's lives. For that reason, it is important that we do not support the clause.

Secondly, there is the issue about the information that defendants have. The Minister was at some pains to point out what is already in the Bill. The fact that vulnerable people may not get the support, or not even be identified if they use this particular system, is of great concern. That is the second reason, in addition to those that my hon. Friend the Member for Hammersmith mentioned, why we will not support the clause.

James Cartlidge: Again, some very interesting points have been made. I was only appointed not much more than a month ago—

Alex Cunningham: You're doing a grand job.

James Cartlidge: It is interesting to have two shadows at once—I should probably take it as a compliment. It is interesting that the hon. Member for Hammersmith said that he would wait until he had heard my remarks and those of the hon. Member for Stockton North before taking his position. I hope the hon. Member for Stockton North has persuaded his hon. Friend. It is an interesting position, but there we are.

My hon. Friend the Member for Southport gave a very good speech. As he said, the physical court is not needed for justice in many ways these days. Of course, it is still crucial for many aspects of law. The best example is those big Crown court cases with a jury. There is no getting away from that point. My hon. Friend the Member for Don Valley mentioned the backlog. It is absolutely crucial that we remember that by increasing the use of digitisation, we free up resource elsewhere, effectively streamlining through the whole system.

We are not saying that this measure alone will clear the backlog—of course it will not, that is absurd—any more than the 180 days taken by Cart judicial reviews would somehow of themselves be the silver bullet to solve the backlog. I was obviously not saying that. It is the accumulation. If, for example, using this procedure causes less pressure or fewer cases to be heard physically in the magistrates court, the magistrates court in turn can hear more triable either-way cases coming from the Crown court. The whole point is a process to reduce the pressure and free up space where it is needed most, which is in those crucial cases in the Crown court, where the backlog is most severe.

We have gone through the main points and the safeguards in great detail, so I am not going to speak at great length. This is about choice. If a defendant wishes to plead not guilty or otherwise decides that they wish to have a hearing in a traditional courtroom or their case considered by a magistrate under the single justice procedure, the current arrangements will apply. By introducing this new online process for dealing with the most straightforward and minor offences, the measure will save court time, allowing magistrates to focus on the more serious cases and help deliver swifter justice. That is the essence of our case.

I have one final point to make, which is important to have on the record. I thank the Scottish Government for their support for this measure and note the legislative consent motion that they have approved. However, the motion contained within it reserves clauses that in the Government's view do not engage the legislative consent motion process.

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

The Committee divided: Ayes 7, Noes 5.

Division No. 8]

AYES

Cartlidge, James	Mann, Scott
Fletcher, Nick	Marson, Julie
Higginbotham, Antony	Moore, Damien
Hunt, Tom	

NOES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

Question accordingly agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4

GUILTY PLEA IN WRITING: EXTENSION TO PROCEEDINGS FOLLOWING POLICE CHARGE

Alex Cunningham: I beg to move amendment 51, in clause 4, page 9, line 34, leave out "16" and insert "18".

This amendment would raise the age of eligibility for written procedures for entering guilty pleas from 16 to 18.

I will be relatively brief on clause 4, which extends the existing "pleading guilty by post" scheme in section 12 of the Magistrates' Courts Act 1980. Under the provisions in the Bill it would apply to defendants who have been charged with a summary offence at a police station. If the defendant chose to make use of the written procedure, the court would then be able to try the case as if the defendant had pleaded guilty in court, but without the defendant—or the prosecution—having to attend. From 1957, when it was introduced, until 2015, the section 12 procedure was used by all police forces to prosecute mostly traffic offences, although it was also used for some other minor offences. Around 50% of all court cases were dealt with under it. Following the introduction of the single justice procedure in 2015, the section 12 procedure became relatively rare; it is still used for some cases that are not eligible to be prosecuted under the single justice procedure, for instance because the prosecuting body is not eligible to use it or there is a victim involved in the case. Given its current rarity and the limited likelihood of its future use now that the single justice procedure is available, I cannot really see the benefit, or indeed the point, of the extension of section 12, but the Opposition are not necessarily opposed to it.

Amendment 51 is straightforward; it would simply raise the age of defendant for which the procedure can be used from 16—that is, when the defendant is a child—to 18, when the defendant is an adult. I understand that under section 12, children aged 16 to 17 can be prosecuted in the youth court for summary-only offences under the section 12 procedure. Furthermore, under the same legislation, children under 16 can also be prosecuted for summary-only offences under the section 12 procedure, but only if there is an adult co-defendant in the case. However, I believe that the procedure has never actually been used in this way. Just because in 1980 it was decided the section 12 procedure should be able to apply to 16 and 17-year-olds, it does not mean that we have to extend that provision 40 years later. Just as the Government have decided not to extend the provision for children under 16 when there is no adult co-defendant, it could also remove 16 and 17-year-old children from the process altogether.

As it is drafted in clause 4(3), proposed new section (2A)(b) of section 12 allows for a magistrates court not only to accept guilty pleas from children aged 16 and 17 in writing, but to try, convict, and sentence them on papers. Following the accused child's guilty plea, it would allow the court to sentence them at a court hearing in their absence. Other parts of the Bill, namely clauses 3 and 6, recognise that remote procedures are available only for accused adults—that is, those aged over 18—taking into account the fact that children need additional support and assistance to ensure effective participation. In addition, I understand that the provisions under clause 13, which mandate the involvement of a parent or guardian in proceedings involving a child, will not apply to the entry of a guilty plea by post by a 16 or 17-year-old under section 12. That also strikes me as odd, and I would be grateful if the Minister could clarify the reasoning behind it. To us, it is not clear why the threshold must remain at 16 for this clause.

4 pm

I will spare the Committee what could have been a substantial contribution. I was going to speak of the rights and wrongs of treating children as adults in the justice system, particularly around the maturity issues, but I struggle to find any justification for it, just as I can find no justification for a child who commits an offence but is not tried before reaching adulthood being transferred to the adult court for trial and sentencing. Sadly, however, that issue is not covered by the Bill, and our attempts at tabling amendments and new clauses in that area were ruled out by our very efficient Clerks.

Instead of that contribution, I will reference the Chair of the Justice Committee, the hon. Member for Bromley and Chislehurst (Sir Robert Neill), who captured the matter in a few sentences. On Second Reading, he said:

> "What is the logic in using the age of 18 in one provision and 16 in a provision that covers broadly similar grounds? We need particular safeguards for dealing with young offenders, to ensure that they do not enter a plea that is not fully informed, either through immaturity or a lack of good advice, as that could have permanent consequences for their future."—[*Official Report*, 26 October 2021; Vol. 702, c. 206.]

The Opposition agree with him entirely on that point, as do Fair Trials and the Bar Council. I hope that the Minister will too, and will reconsider yet another move to turn our children into adults.

James Cartlidge: I should point out for the record, as I spoke to him privately, that I did discuss that intervention from the Chair of the Justice Committee, and explained to him what I am about to explain now.

Amendment 51 would raise the age of eligibility for the section 12 procedure—often referred to as "pleading guilty by post"—from 16 to 18 years of age for cases where the defendant is charged at a police station. The section 12 procedure has been available as a suitable means of summary-only prosecution against defendants aged 16 and over since 1957, as I believe the hon. Member for Stockton North rightly said. I am not aware of that having raised any particular issues of concern for child defendants during that time. In a case where the defendant is summonsed or charged by post and intends to plead guilty, the section 12 procedure provides the option to do so by post rather than having to attend court. The subsequent hearing will still take place in open court and the defendant can still attend if they wish, so this is not about online procedure as such.

This procedure is primarily used for minor offences, such as driving without due care or littering, and has seen a sharp decline since the introduction of the single justice procedure. Once again, the hon. Gentleman noted that point. The purpose of clause 4 is to ensure that prosecutors can also offer that long-established procedure for suitable cases where a defendant is charged in person at a police station. That will maintain the same age criterion that exists for prosecutions initiated by summons or postal charges for 16 to 18-year-olds. Prosecutors will decide whether it is appropriate to provide a defendant

with the option to proceed with the section 12 procedure, and summons and postal requisitions served on children will always be sent to their parent or guardian, which will include details about the section 12 procedure if it has been offered.

When a child is arrested and held in police detention, existing primary legislation also requires that a parent or guardian must be notified of that as soon as possible, and legislation will continue to enable a youth court to require a parent or guardian to attend during all stages of the subsequent proceedings at court where that is deemed appropriate. The amendment would create confusion by applying different rules to a well-established procedure simply because the defendant is charged in a different way. It also ignores the safeguards in place to ensure that the rights of children are protected. I therefore urge the hon. Gentleman to withdraw the amendment.

Alex Cunningham: I am grateful to the Minister for his response. I make no apology for always raising every issue in relation to children when the Government are trying to convert them into adults. There are many more serious examples of that in the Police, Crime, Sentencing and Courts Bill, which is going through in the other place. The Minister will not be aware of this, but I spoke at length in the Committee on that Bill against the creation of adults from children. While I accept what he says about this being a relatively minor example in comparison to elsewhere, it is important that the Government recognise that children are children, and not adults. I worry at times that we will see childhood further eroded in matters of justice going forward.

James Cartlidge: Just for clarity—this is what I explained to the Chair of the Justice Committee—I can quite understand that, at face value, it looks from the Bill as if this is uniquely being set at the age of 16 compared with the automatic procedure, which is set at 18. Of course, they are very different things, so I hope the hon. Gentleman appreciates that it is purely a consistency matter within a well-established procedure—although admittedly, within the Bill next to the other part, it is easy to see why these questions have been raised.

Alex Cunningham: That is exactly the reason why I will not push the amendment to a vote, but I make the point again that we cannot go forward in this country's justice system moving more to converting children into adults when they are 16 or 17 years of age. I worry that we will see further proposals that will be far more damaging to young people in the future, so I will continue to prosecute this matter, and the Minister will get very bored of me over the coming months as I do so. In the circumstances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

James Cartlidge: I will give a short exposition, because it is important to clarify the point that I emphasised in my last intervention. Section 12 of the Magistrates' Courts Act 1980 is a long-established procedure, providing defendants with the option to indicate a guilty plea in writing to a summary-only offence. In such cases, defendants can also agree to be tried, convicted and sentenced to a fine at a court hearing, which neither they nor the prosecution have to attend. However, a magistrates court cannot impose a custodial sentence without bringing the defendant before the court. Nor can they impose a driving disqualification in the defendant's absence without adjourning the case and giving the defendant an opportunity to attend a hearing.

Under the existing law, the procedure can only be applied to defendants whose prosecution is initiated by way of a summons or postal requisition. Clause 4 will change that, so that it can also apply when a defendant is charged in person at a police station and bailed to attend court for their first hearing. In circumstances, for example, where a defendant decides to plead guilty by post without having to attend the hearing, clause 4 also provides the court with a power to discharge the defendant from the need to surrender on bail. That means that prosecutors will be able to apply the procedure to suitable cases that would have otherwise been excluded simply because of the way in which the prosecution was initiated.

In all cases, opting to plead guilty in writing and be convicted and sentenced in absence will continue to remain entirely voluntary for defendants. The police and other prosecutors will continue to have the discretion to decide whether it is appropriate to apply the procedure to any case. Furthermore, all the current restrictions on the imposition of custodial sentences and driving disqualifications will still apply. Therefore, a defendant's appearance at a traditional court hearing will always be available where necessary, or if the defendant desires it. Clause 4 is one of a number of measures the Government are bringing forward in the Bill to simplify criminal procedures and make our courts more efficient for its users.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

Extension of single justice procedure to corporations

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

The Chair: With this it will be convenient to discuss New clause 1—*Review of the Single Justice Procedure*—

"(1) Before the Commencement of this Act, the Secretary of State must commission a review and publish a report on the effectiveness of the Single Justice Procedure.

(2) A review under subsection (1) must consider—

(a) the transparency of the Single Justice Procedure in line with the principle of open justice,

(b) prosecution errors under the Single Justice Procedure and what redress victims of errors have,

(c) the suitability of the use of the Single Justice Procedure for Covid-19 offences,

(d) the proportion of defendants who do not respond to a Single Justice Procedure Notice and the reasons why defendants do not respond,

(e) the suitability of the Single Justice Procedure for people living with disabilities or neurodivergent conditions,

(f) the possible introduction of training for prosecutorial bodies who use the Single Justice Procedure on identifying and supporting individuals with vulnerabilities or disabilities.

(3) The Secretary of State must lay a copy of the report before Parliament."

Alex Cunningham: We have already had a number of debates on our concerns about the extension of some of the powers. I have talked about the single justice procedure in detail, but it is now appropriate to give more direct and constructive criticism of that particular procedure. It is no good recognising the problems of the procedure in discussions of other clauses without any recourse to try to make improvements to the procedure.

I have become quite interested in the workings and failings of the single justice procedure in recent months, as I am sure the Minister is aware. I have raised my concerns with his predecessor at the Dispatch Box in Justice questions and requested a meeting with his predecessor to discuss the use of the procedure for covid offences, which the Minister's private office has assured me is still in the works once his diary settles down a bit.

I thank Transform Justice, Fair Trials, and Big Brother Watch for the interesting and helpful briefings and discussions we have had on the topic in recent months, and I thank APPEAL and others who have researched and raised the alarm about elements of the SJP. For those who are not familiar with the procedure, APPEAL helpfully outlines it in its briefing "Conveyor Belt Justice", which I will quote from at length to help Members better understand it:

> "Summary offences which are not punishable with imprisonment may be tried by a single magistrate, with a legal adviser available, under what is known as the single justice procedure…Relevant offences include common assault and battery, truancy, non-payment of TV licenses and, from July 2020, offences under emergency Coronavirus legislation. Legal aid is not available to people charged with these offences.
>
> In 2020, SJP prosecutions accounted for 47% of all criminal prosecutions in England and Wales.
>
> Those prosecuted under the SJP receive a notice in the post and are asked to submit their plea within 21 days online or by post.
>
> If someone receives a notice and does not respond, or if they respond and plead guilty, they are automatically convicted on the papers, in closed court. If no evidence is submitted of their financial circumstances, they are assumed to be able to afford the standard fine and costs, which can amount to hundreds of pounds."

I am sure my fellow Committee members will agree that is a useful summary.

The new clause would require the Secretary of State to undertake a review of the single justice procedure and lay it before Parliament. The review would have to consider a number of issues with the procedure that have been raised by organisations working in the justice sector over the years.

The first issue the review would have to consider is how the SJP complies with open justice, which we knocked around a bit earlier in the day. In an earlier speech, I referred to the difficulties that Tristan Kirk has had accessing information on such cases. In its inquiry on covid-19 and the criminal law, the Justice Committee said that a lesson learnt from the use of the single justice procedure in relation to covid-19 offences was

> "that the Ministry of Justice should review the transparency of the single justice procedure and consider how the process could be made more open and accessible to the media and the public."

I know the Minister has commented on that, but I hope he can go a little further. The Opposition would echo that particular call. With almost half of criminal cases going through the procedure, the Government need to do more to ensure that justice is still seen to be done.

The second matter that needs to be looked at is prosecution errors under the SJP and what redress the victims of those errors have. In the last year, the error rate in the SJP was around 10%, according to a written answer that the Minister recently gave to my right hon. Friend the Member for Tottenham (Mr Lammy), in which he said:

> "A review of Single Justice Procedure…cases dealt with between 1st September and 30th October 2020 showed that legal advisers and justices identified errors in 10% of cases. The errors are not caused by the type of proceedings; work done over the summer of 2020 suggested that the primary cause was the volume of regulations and the constant amendments, combined with the speed of introduction and the conditions in which officers issuing fixed penalty notices had to work. In the autumn of 2020, work was done with police forces and justices' legal advisers to reduce the errors. Anecdotally, and from limited data, the error rate with the new round of SJP proceedings appears to be lower than last year. As the regulations ceased in the summer, the numbers of Covid SJP cases are set to decline."

I share the Minister's hope that the error rate will decline. An error rate of 10%, when almost half of all the criminal cases in the country are being dealt with under the SJP, is quite something. It certainly is not justice at its best.

4.15 pm

In another written answer, the Minister said:

> "As with all other types of cases dealt with by magistrates courts, if an error is made by the court, whether upon conviction or sentencing, whilst using the Single Justice Procedure we would always notify the defendant and correct any error following the case being re-opened."

However, does that not usually depend on the defendant and their legal representatives identifying any error?

I am particularly concerned about this issue of redress because of a matter I will come on to shortly, whereby individuals have been prosecuted through the SJP under schedule 22 to the Coronavirus Act 2020, even though that schedule has never been activated in England or Wales. I have sought answers from the Minister's Department—it was not the current Minister who was answering, but the previous Minister—on what redress will be provided to individuals convicted of a non-existent offence, but I have yet to receive a satisfactory answer. Again, I look forward to hearing the Minister's thoughts on this matter, because I am not sure that the current system's means of redress would work in all SJP cases.

Next, the review would need to consider the appropriateness of the use of the SJP for the prosecution of covid-19 offences. I hope, as everyone does, that we will not be prosecuting such offences into the future, but I think that the way in which the procedure was used during the pandemic can help inform its future use in a more general sense. In relation to the procedure's use for covid-19 offences, the Joint Committee on Human Rights has stated that

> "We are concerned that the single justice procedure is an inadequate tool to provide the necessary fair trial protections for people accused of offences that are so poorly understood and lacking in clarity and where so many mistakes have been made by enforcement authorities."

I share that concern, especially as Big Brother Watch has pointed out that, in an unprecedented step that acknowledged the complexities of new offences, the Crown Prosecution Service committed to reviewing all

charges made under the Health Protection (Restrictions, Coronavirus) (England) Regulations 2020 and the Coronavirus Act 2020. Those monthly reviews have overturned hundreds of unlawful charges, 18% under the regulations and 100% under the Act. However, the majority of charges made under those regulations and that Act have not been reviewed, as they have been brought using the SJP.

As I have just mentioned, one set of cases that has been particularly interesting to me in recent months is the 37 people who have been prosecuted under schedule 22 of the Act through the single justice procedure. Given that those offences were in relation to a schedule dealing with "events" and "gatherings" that has never been activated in England, those prosecutions simply cannot be lawful. I continue to seek more information about that set of cases from the Minister, but they also speak to a wider point about the types of cases that can be brought under the procedure. The covid-19 offences were clearly too complex, so how does the Minister think we can identify and recognise the threshold for which cases are too complex for the procedure and which are appropriate?

Fourthly, the review would look into the perplexing issue of why such a high proportion of defendants do not reply and enter a plea under the SJP. As I have said before, 71% of those who receive a SJP notice letter in the post do not respond, and in the case of offences prosecuted under coronavirus legislation only, that figure rises to almost 90%. That means that thousands of people were convicted and fined for offences in their absence—how we manage to align that with our commitment to the rule of law in this country, I honestly do not know. We also do not know why so few defendants respond to those postal charges. APPEAL suggests that

> "Some may not receive the notice (it is considered to be 'served' once posted and there is no record of whether it arrives) or may not receive it within good time to respond (you must respond within 21 days, a period which starts when it is posted, not received), and some may not understand the letter or its seriousness and do not know how to respond. Others may have mental health problems or learning difficulties which prevent them from responding."

It is time that the Ministry of Justice stepped in and got some proper data on this point, otherwise we cannot take targeted action to address the low response rate.

As APPEAL concludes, however,

> "Whatever the reasons, it is clear that the SJP system does not support effective participation in the criminal process, as is required by Article 6 ECHR, the right to a fair trial. The high 'no response' rate also calls into doubt whether the SJP is compliant with the Article 6 obligation to inform a defendant 'promptly, in a language which he understands and in detail, of the nature and cause of the accusation'."

Furthermore, if someone is unaware that they have been found guilty, they may also be unaware of the requirement to pay a fine. They would then be put at risk of imprisonment for non-payment and may get a criminal record as well—all because they did not open a letter or perhaps did not even receive it.

The next issue is the suitability of the SJP for people living with disabilities or neurodivergent conditions. The recent joint inspectorate report "Neurodiversity in the criminal justice system" came to the conclusion that the default screening of all criminal suspects and defendants for disability was necessary. Under the SJP, defendants may be asked to indicate whether they are disabled in the postal form, but that does not address cases where defendants have an undiagnosed disability or a condition that prevents them from understanding the form.

The Equality and Human Rights Commission concludes:

> "While no substitute for adequate screening, an in-person hearing may provide an opportunity for a criminal justice professional to identify a defendant's impairments and consider the need for reasonable adjustments."

It recommends that the Government,

> "conduct research to understand the extent to which those sharing certain protected characteristics—and disability in particular—are processed through the single justice procedure and carry out user testing to understand their experience of navigating the process."

I agree that the Government should undertake such research to ensure that defendants with protected characteristics are not unduly disadvantaged.

The final issue is the possible introduction of training for the prosecuting bodies that can use the SJP in identifying and supporting individuals with vulnerabilities and disabilities. I repeat the written answer that I received from the Minister on the issue yesterday, which said:

> "The Ministry of Justice is not responsible for training prosecuting authorities and thus cannot speak to whether they receive training on disability or neurodivergent conditions."

I will not continue, as that is already on the record.

Although I am glad to hear that proactive work is being done in response to the "Neurodiversity in the criminal justice system" report, I do not think it is good enough for the Ministry of Justice simply not to engage with the prosecuting authorities that use the single justice procedure to ensure that they are not driving worse justice outcomes for people with vulnerabilities. Could it not be a prerequisite of eligibility to prosecute under the single justice procedure that the prosecuting agents using it have at least some training on how to prosecute in a way that does not worsen the over-representation and criminalisation of neurodivergent individuals? That does not seem too taxing a requirement to me.

In summary, I am concerned by much of what I have heard about the procedure, and at times I have found it difficult to get constructive answers from the Minister's predecessors on what the Government are doing to address the problems. I hope that that will not continue under the new Minister's tenure and I look forward to positive engagement on the matter going forward.

I am strongly of the view that if a procedure is used for nearly half of criminal convictions in our country, it needs to function well, but it is clear that the single justice procedure does not in many instances. The first step in redressing that is to work out what the problems are. A review, as recommended by the new clause, is one way of doing that, and I hope that the Minister agrees that it would help to build the foundation of a better justice system in the long run.

James Cartlidge: The hon. Gentleman is engaging—he is an engaging fellow and I am engaging with him. I am more than happy to do that. I understand his request for a meeting. I would be more than happy to meet him to discuss some of the questions he has raised about the single justice procedure. If I do not answer them in my reply, I hope that we can go into them at that juncture. That is important.

[James Cartlidge]

The new clause would require a review and report into the effectiveness of the single justice procedure before the Act could be commenced. The single justice procedure is a more proportionate way of dealing with straightforward, uncontested, summary-only non-imprisonable offences, which almost exclusively result in a financial penalty. Previously in such cases, defendants tended not to engage at all and trials often went ahead without them. Many of these cases reach the court simply because the defendant has ignored other more informal ways of resolving the matter, such as a fixed penalty notice. We introduced this more accessible procedure as a way of encouraging defendants to engage with the court process.

It is a matter for prosecutors to decide whether it is appropriate to prosecute a defendant under this procedure, but various safeguards are built into the process. All defendants can veto the procedure and choose a hearing in open court. In addition, the magistrate can decide to refer the case to open court if they think that it cannot be dealt with appropriately using the procedure. Defendants who choose to use the procedure have access to support throughout the process, either by telephone or face to face. The single justice procedure written notice and online process have been designed with input from users and a wide range of organisations at public user events. Her Majesty's Courts and Tribunals Service is constantly working to improve the documentation and has developed a clearer and more concise single justice procedure notice and information pack, copies of which I will share. That was recently piloted and is now being implemented.

There is a specific question relating to disability and accessibility needs in the form. To my knowledge, the single justice procedure does not in practice disadvantage any particular group. Defendants who choose to opt into the single justice procedure will be carefully guided through the process and will have access to both telephone and face-to-face support. For those who decide to proceed with a hearing, the necessary adjustments will be made at court in the usual way.

I am aware that concern has been raised that the single justice procedure lacks transparency. However, the criminal procedure rules oblige courts to give certain additional information on cases upon request from the media and other interested third parties. This applies to single justice procedure cases as well. To improve transparency arrangements, a list of pending SJP cases is published each day on a common platform that is available to the public online.

I am also aware that concerns have been raised about errors, as they were by the hon. Gentleman. Errors can occur in any system and there are processes in place to correct them. I am not aware of any evidence to suggest that the error rate is higher under the single justice procedure than under ordinary court procedures. As with all types of cases that magistrates courts deal with, if an error is made by the court, whether upon conviction or sentence, the court will always notify the defendant and correct it, following the case being reopened. Similarly, the defendant has the automatic right of appeal to the Crown court against conviction and sentence. If a defendant was unaware of the proceedings, they are entitled to make a statutory declaration that revokes the conviction and recommences the proceedings.

Given the safeguards in place and our commitment to continually review and improve the single justice procedure processes—

Alex Cunningham: The Minister appears to be coming to the end of his remarks and I want to press him on the unlawful convictions under the coronavirus legislation. Is the Department moving to ensure, or at least to encourage, proactivity in getting these people's convictions removed?

James Cartlidge: One reason that I am more than happy to meet is that we can go through more detail. There are a range of issues here that I would need to discuss with the hon. Gentleman.

On the new clause, I can see no reason for a formal evaluation and certainly not one that would delay the implementation of all provisions in the Bill. I therefore urge the hon. Gentleman to withdraw the new clause.

Clause 5 makes it clear in law that the single justice procedure can be used to prosecute legal persons such as corporations as well as individuals. Often, corporations are charged with offences that are suitable for the single justice procedure, such as lorry overloading. The clause ensures that a corporation can benefit in the way that an individual can from the speed and convenience of having such cases dealt with under this procedure.

Alex Cunningham: I appreciate the Minister's response on new clause 1. We can all accept that the SJP is not perfect. We are trying to persuade him of the need to look at data and consider how well it is working, when it is not working and where the problems are. I have illustrated where I think some of them are. The Minister is only a month into his role and is doing a grand job so far. It is important that these issues are explored and not just shoved to one side. I am grateful for his offer to meet and I am sure that will happen.

I will just make one final point on transparency. It needs to be better. There are some good things happening already, but the Minister recognises that transparency is an issue and I look forward to seeing the changes that he might make in the future. I have already covered the issue of unlawful convictions.

4.30 pm

Andy Slaughter: Listening to this debate, I am reminded that I was on the Bill Committee when the SJP was first introduced. A lot of these concerns were raised at the time and the fact that we are still talking about them now means that there is some way to go. It should also make us wary about further innovations that could compromise justice being done openly, as happened before.

I mentioned the investigation today and it has provoked the Master of the Rolls to write to all civil judges to remind them about the importance of allowing media access. Recently, we have seen the head of the family division taking very important strides to open up family courts, which have often been a closed book for so long.

We should be doing more to encourage open justice and therefore I think we should be aware of these issues. I fully support what my hon. Friend has said in relation to these matters and his caution, even if he trusts the Minister more than I do.

Alex Cunningham: I am grateful to my hon. Friend for those comments. Sometimes, it seems that we end up talking about the same things in every single Bill Committee when it comes to justice. I remember well the days on the Legal Aid, Sentencing and Punishment of Offenders Bill Committee, when my hon. Friend was leading for the Opposition. There were so many places where we felt that more information or data needed to be recorded to ensure that the justice system was working correctly.

However, as I said, on this occasion I am content not to press the new clause, and I look forward to working with the Minister in the future.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

Written procedure for indicating plea and determining mode of trial: adults

Alex Cunningham: I beg to move amendment 52, in clause 6, page 11, line 10, at end insert—

"(c) the court has been provided with a physical and mental health assessment of the accused confirming that the written procedure will not impede their ability to understand or effectively participate in proceedings".

This amendment would require that all accused persons whose cases are considered for the written or online procedure are subject to a health assessment, and only those who are considered not to have vulnerabilities or disabilities are able to indicate their pleas remotely.

The Chair: With this, it will be convenient to discuss amendment 56, in clause 6, page 18, line 5, at end insert—

"(4) The Secretary of State must, before the changes to the written procedure for indicating plea and determining mode of trial are introduced, conduct a pilot in two police force areas to evaluate the impact of the changes on effective participation in the justice process. The evaluation should include—

(a) the proportion of defendants with disabilities affected by the changes;

(b) the impact on the effective participation of all defendants including those with disabilities; and

(c) the effectiveness of reasonable adjustment measures".

This amendment would require the expansion of online pleas and online indication of pleas to be piloted in two areas of England and Wales, and the pilot evaluated with published results, before any further changes are introduced.

Alex Cunningham: Clause 6 adds new sections to the Magistrates' Courts Act 1980 that enable defendants to engage with the plea before venue and allocation procedures in writing, rather than in court. The new sections apply in cases involving a defendant aged 18 or over who has been charged with an either-way offence. This effectively creates a new pre-trial allocation procedure, whereby an individual will be able to indicate a plea in writing for all summary-only, indictable-only and triable either-way cases. This would remove the need for a defendant to attend an allocation hearing in person, as is currently required. The provisions under the clause are not mandatory and a defendant could attend a physical hearing if they wished to do so.

As with other measures in the Bill, the Opposition are not necessarily completely opposed to clause 6, but we need further reassurance from the Minister and possibly amendments that would introduce safeguards into the procedure. That is because, as the Minister will be aware, deciding how to plead and deciding where a case may be heard can have significant consequences for a defendant. One example would be if a defendant chooses to proceed to the Crown court in a triable either-way offence. They may receive a harsher sentence than in a magistrates court, because of the greater sentencing powers of the Crown court.

Decisions regarding plea and the venue of criminal trials are crucial ones that determine the course of the trial and have serious implications for the rights of the defendant, which can be extremely difficult to reverse. Fair Trials states:

"In particular, pleading guilty amounts to a waiver of the accused's right to a trial, and all the defence rights that are related to trial processes. Although the Bill purports to enable accused persons to only make an 'indication' of their plea, which can later be revoked, Fair Trials has doubts that many defendants would do this, unless they benefit from effective legal assistance."

I will speak further about legal assistance when we discuss amendments 53, 54, and 55.

Fair Trials goes on to say:

"Moreover, the right to a public hearing with the presence of the accused person is of fundamental importance not only to the defence, but also to the public. First appearances in court are crucial stages of the criminal justice process, where important decisions regarding criminal cases and the rights of the accused are made. Clause 6 will mean that many of these hearings will effectively take place in secret....it is crucial that there are sufficiently strong safeguards to ensure that defendants entering their pleas online, or via written procedures make adequately informed decisions."

The Bar Council believes that hearings that involve indicating plea and determining mode of trial should remain as in person. It explained in its briefing ahead of Second Reading:

"Moving to a written procedure would ultimately impede access to justice for defendants who are often vulnerable due to a range of additional needs, and a disproportionate number of whom (relative to the overall population) have literacy issues, and some of whom may not speak or read English as a first language… Any criminal charge is serious, an either way offence self-evidently so. Moving to a written procedure for an indication of plea and mode of trial increases the probability of defendants, even if entitled to legal advice, suffering a disadvantage. Consequently, there is good reason to question the fairness of such written procedures and we do not believe therefore that it would be in the overall interests of justice or efficiency to adopt such a new approach... Further, the early plea and mode of trial hearings are some of the most procedurally complex in the criminal justice system. In order to ensure that defendants are able properly to navigate the various issues which such hearings present, it is essential that they are able to secure representation at the moment at which they are required to make—and inform the court of—key decisions."

The Bar Council also referred to the crucial role that criminal solicitors and junior barristers often play in the magistrates court in referring vulnerable defendants to support services that can offer them help. That possible moment for intervention is clearly lost when such hearings are no longer in person.

That is a serious catalogue of concerns levelled against the clause. I appreciate that it is not the Minister's intention to cause those potentially extremely adverse consequences, but the reality is that potentially many thousands of defendants will face those and suffer worse case outcomes.

The Opposition understand the concerns and share the reservations of Fair Trials and the Bar Council, but we first seek assurances from the Minister that appropriate safeguards will be put in place. Amendment 52 would

[Alex Cunningham]

require that all accused persons whose cases are considered for the written or online procedure are subject to a health assessment, so that only those who are considered not to have vulnerabilities or disabilities are able to indicate their pleas remotely. That is for the same reasons that I outlined in my speech on amendment 57 to clause 3, so I will not rehearse all the arguments again. We are again concerned that the Bill does not address the risk of vulnerable defendants indicating pleas with insufficient knowledge and understanding of the implications. We therefore seek some form of screening safeguard to be put in place.

Amendment 56 would require the expansion of online pleas and online indication of pleas to be piloted in two areas of England and Wales, and the pilot evaluated with published results, before any further changes are introduced. Transform Justice's briefing notes suggest that

"encouraging online pleas could act as a driver to lack of legal representation, worse outcomes, and exacerbates efficiency issues encountered later in the justice process such as difficulties obtaining full disclosure from the prosecution."

The Equality and Human Rights Commission said in its briefing that the provisions for pleas in writing

"risk the ability of people with certain protected characteristics to effectively participate in criminal proceedings".

Given those serious concerns about the impact of the proposals on effective participation in the justice process, the changes should be piloted in two police force areas and an evaluation of the costs and impact of the changes, including on disabled people, should published before wider roll-out is considered. I am interested to hear what safeguards the Minister has considered for the new allocation procedure for adult defendants. As I have said, plea and allocation hearings can have major impacts on case outcomes, and I am sure he agrees that it is vital that we get the procedure right before it is rolled out across the country.

James Cartlidge: The amendments relate to vulnerable defendants using the provisions in clause 6 that allow adults to indicate a plea online. To be clear, I share the concern of the hon. Member for Stockton North to ensure that vulnerable defendants, including those with disabilities, are able to engage effectively with online procedures. That is why we have built a number of safeguards into all the criminal procedure measures in the Bill, including this one.

Amendment 52 would ensure that a court cannot invite a defendant to indicate a plea online unless it has been provided with a physical and mental health assessment indicating that the online procedure will not impede the defendant's ability to effectively participate in proceedings. It will be a matter for the court, in any case, to decide whether it is appropriate to invite the defendant to indicate a plea online before their first hearing. Not all defendants will be offered the option of engaging with the court online before their first hearing, and the courts will do so only where they consider it appropriate. Defendants will be under no obligation to accept an invitation to proceed online and can choose to discuss these matters at a traditional court hearing if they so wish.

Where a defendant fails to engage online, the proceedings will simply default back to existing court-based procedures. Those who do choose to indicate a plea online will be given information about the procedures available, how they work, the consequences if followed, and the need to obtain legal representation. They will only be able to enter a plea and allocation decision through their legal representative. As they do currently, legal representatives can help to identify if the defendant has any vulnerability that would mean that they cannot understand the process. Furthermore, any online indication of plea will remain just that—an indication. A defendant will be able to withdraw it. They still have to appear before a court to enter a binding plea where the court will be able to assess the extent to which they are making an informed decision. The court can set aside earlier steps in proceedings where it decides that a defendant has not made an informed decision when indicating a guilty plea online, and that indication of guilt cannot then be admitted as evidence against them in later proceedings.

Amendment 56 would require a pilot of the online indication of plea procedure to be undertaken and evaluated before the procedure is implemented to assess the impacts on defendants and, in particular, vulnerable defendants. I share the concerns of the hon. Member for Stockton North about impacts on defendants but do not agree that a pilot is necessary. We have undertaken an equality impact assessment and have built a number of safeguards into the online procedures to protect vulnerable defendants. As with all criminal procedures, the operation of this new procedure will be closely monitored by the Criminal Procedure Rule Committee. I have already set out the safeguards we have built into these procedures so that defendants will not be disadvantaged by engaging with the court in this way, and to ensure that any impacts are positive in minimising the stress of having to attend court unnecessarily. I therefore urge the hon. Gentleman not to press the amendments.

Alex Cunningham: The crux of this matter is the defendant making an informed decision. The Minister referred to that. Coupled with that is the need for appropriate legal advice. The Minister also alluded to that. I do not know how we ensure that the person understands that they need to seek legal advice before participating in this process. However, given what the Minister has said, I am content and beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alex Cunningham: I beg to move amendment 53, in clause 6, page 11, line 10, at end insert—

"(2A) Subsection (3) only has effect where a magistrates' court is satisfied that the accused has engaged a legal representative, who is responsible for responding to the charge and giving any written indication of plea."

This amendment would mean that defendants must be legally represented in order to indicate a plea in writing.

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

Amendment 54, in clause 6, page 11, line 29, after "plea" insert "and consequences of pleading guilty"

This amendment will require that an accused person informed about the practical consequences of pleading guilty, such as gaining a criminal record and what that may mean for the defendant.

Amendment 55, in clause 6, page 11, line 36, at end insert—

"(4A) The prosecutor must obtain proof of receipt by the accused of the information outlined in subsection (3)".

This amendment would require prosecutors to obtain proof of receipt of the information relating to written pleas sent to defendants.

Alex Cunningham: Amendment 53 would mean that defendants must be legally represented in order to indicate a plea in writing. As I said in my previous speech, early plea and mode of trial provisions are among the most procedurally complex in the criminal justice system. The Opposition therefore agree with the organisation Justice that, as a minimum safeguard, defendants must have the opportunity to receive legal advice and assistance prior to indicating a plea or trial venue. Allocation decisions can currently be taken at court with the assistance of a duty solicitor.

As Justice set out in its 2016 response to the Government consultation, "Transforming Our Justice System", in a physical court there is a network of informal assistance available for people that can help explain procedure and guide towards legal assistance where necessary—from the usher, to the justice's clerk, the barrister waiting for their case to be called, or the magistrate if the case appears before them. This informal assistance can act as an important safeguard and support mechanism for those going through the often difficult and confusing process of being engaged in our justice system, and would be unavailable, on the face of it, for those able to engage in the new allocation procedure remotely.

The Opposition welcome the clarification from the Government, in the courts fact sheet accompanying the Bill, that defendants will

"not be able to access the online procedure for indication of plea or trial venue allocation decision directly",

because submissions would be made through the common platform, for which defendants

"will need to instruct a legal representative to act on their behalf who will of course ensure they fully understand the process and will be able to identify any vulnerabilities."

I am glad that the Minister recognises how crucial legal support and advice are for decisions concerning whether to indicate a plea before venue and deciding where the case should be heard, either in a magistrates court or the Crown court.

4.45 pm

However, the Opposition are concerned that the Bill itself provides no such guarantees of access to legal advice, and we believe that the Government's intention in this regard should be set out in primary legislation. Our amendment would simply ensure that the Government's promise that individuals can benefit from legal advice when using the new allocation procedure is clear in the Bill, so I hope that they can support it.

Amendment 54 would require that an accused person is informed about the practical consequences of pleading guilty, such as gaining a criminal record, and what that may mean for them. I have stressed several times the serious consequences of a criminal conviction, even for a seemingly minor offence, although the clause deals with either-way offences, which are by their very nature serious. A criminal conviction and consequent criminal record can be life-changing and life-limiting in many ways, as we have discussed earlier, namely in our consideration of clause 3.

As currently drafted, the primary legislation does not go quite as far as we would like because it does not require accused persons to be told about the consequences of pleading guilty. The current text requires only the provision of information concerning the consequences of deciding whether or not to indicate a guilty plea. Again, I worry that that would have a disproportionately negative impact on neurodiverse people, and people with mental health conditions or cognitive impairments, who may not realise the impact of their guilty plea, and therefore receive worse case outcomes. It is only a small amendment, but it is an important one in practice, so I hope that the Minister can provide me with some reassurance that the information we want to be shared with defendants will be available to them.

Finally, amendment 55 would require prosecutors to obtain proof of receipt of the information relating to written pleas sent to defendants. As has emerged in our discussions thus far, across all offences the response rate to single justice procedure charges is very low. Less than a third of defendants plead either guilty or not guilty to the offence with which they are charged. As far as I am aware, there has been no research on why so few defendants respond to postal charges. I keep saying it: we need the data.

It has been suggested that those charged may not receive the letter, may not understand it, or may have mental health problems or learning difficulties that prevent them from responding to it. All defendants who do not return a plea under the new proposals would be convicted and receive a criminal sanction—the maximum possible fine, costs and a criminal record—in their absence. Requiring the prosecutor to obtain proof of receipt of information relating to written pleas would help to mitigate the low response-rate problems with the single justice procedure and increase the likelihood of effective participation in the justice process. Again, with offences as serious as either-way offences, that is even more important. For such serious offences, prosecuting bodies should not simply send a letter in the post and allow someone to be criminalised, as in many cases they may not have received it. It could happen to any one of us sitting in this Committee room today. I would therefore be grateful for the Minister's thoughts on this point, and I seek reassurance that he will make sure that the low-response problems with the single justice procedure will not be replicated here as well.

James Cartlidge: The amendments would all add further safeguards to clause 6, which allows adults to indicate a plea online. As I have said, I share the concerns of the hon. Member for Stockton North that defendants can engage effectively with online procedures. In the previous group of amendments, I set out the numerous safeguards included in the provision, which also apply here.

Amendment 54 would require that defendants who are given the option to provide an online indication of plea for an either-way offence are informed about the real-world consequences of pleading guilty to a crime at court and what it could mean to get a criminal record. The hon. Member for Stockton North is right that the prospect of a criminal record is not something that

[James Cartlidge]

should be taken lightly. Clause 6 already ensures that the court must provide important information about the consequences of giving or failing to give an online indication of plea. I must stress again that this is an indication of plea and is not binding. That means that a defendant will have to appear at a subsequent court hearing to enter a binding guilty plea before they can be convicted. The court will need to be satisfied that the defendant has made an informed decision.

Defendants will also be able to withdraw an indication of guilty plea, and that previous admission of guilt cannot be used against them. They will require a legal representative to engage online, who I would fully expect to explain the serious implications of pleading guilty at court and getting a criminal record. If the courts decide that it would be appropriate to provide any additional information to defendants invited to plea online, the legislation enables this to be done under the criminal procedure rules. The Criminal Procedure Rule Committee was created by Parliament precisely for the purpose of making detailed rules of procedure for criminal courts in a flexible way. Delegation to the Committee is widely accepted as appropriate for this sort of secondary legislation.

Amendment 53 would provide that a court cannot invite a defendant to indicate a plea online unless the court is satisfied that the defendant has engaged legal representation. It is our intention to ensure that defendants seek legal representation at the earliest opportunity in all criminal proceedings. As I have said, they will already require legal representation in order to indicate a plea online. That is because the online procedures are made possible through the common platform, which is not accessible to defendants.

Amendment 55 would require prosecuting agents, such as the Crown Prosecution Service, to obtain proof that a defendant had received all the necessary information sent to them by the court about the new written procedure for indicating a plea online for an either-way offence. There are already procedures in place to ensure that information is sent by the court securely and to the correct correspondence address of the intended recipient. These procedures will continue to be followed as normal. I appreciate that there may be occasions when an invitation does not reach the recipient, but that will not disadvantage any defendant. After all, it is up to a defendant if they want to provide an indication of plea online. If they do not—because they choose to ignore the invitation or never received it in the first place—the proceedings will simply begin, as they do now, at the scheduled first hearing. The absence of a response will not be held against them.

I remind the hon. Member for Stockton North that it is also our intention to ensure that defendants seek legal representation at the earliest opportunity in all criminal proceedings. They will need to do so in order to indicate a plea online. Their legal representative will be qualified to ensure that they understand the procedure, have all the information they need to make an informed decision and understand all the consequences that come with it. It would be disproportionate and inefficient to mandate the prosecutor to obtain proof of receipt for each and every invitation that was sent by the court, especially when we have all these safeguards in place, paired with the fact that some defendants will have absolutely no intention of engaging online, opting for a traditional first hearing instead.

Alex Cunningham: I have a simple question about receipt of the charge. Through the post office, people can have a recorded delivery and actually sign for a letter. Why are the Government resisting that? They would know that the person had definitely received the charge, because there would be a signature saying that they had.

James Cartlidge: There are pluses and minuses to that approach. To repeat the point I made earlier, if they never received the notice in the first place, the proceedings would simply begin, as they do now, at the scheduled first meeting. In that sense, there is not a fundamental difference. I think I have covered all key points on this group of amendments and I urge the hon. Member not to press them.

Alex Cunningham: I will not detain the Committee long. I listened carefully to what the Minister said about doing everything possible to make sure that the defendant accesses legal support. I would prefer to see that on the face of the Bill to make sure that it definitely happens, so I will push amendment 53 to a vote but not press amendment 54 or 55.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 9]

AYES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

NOES

Cartlidge, James	Johnson, Dr Caroline
Fletcher, Nick	Mann, Scott
Higginbotham, Antony	Marson, Julie
Hunt, Tom	Moore, Damien

Question accordingly negatived.

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

The Committee divided: Ayes 8, Noes 5.

Division No. 10]

AYES

Cartlidge, James	Johnson, Dr Caroline
Fletcher, Nick	Mann, Scott
Higginbotham, Antony	Marson, Julie
Hunt, Tom	Moore, Damien

NOES

Barker, Paula	Slaughter, Andy
Cunningham, Alex	
Daby, Janet	Twist, Liz

Question accordingly agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 7

INITIAL OPTION FOR ADULT ACCUSED TO REJECT SUMMARY TRIAL AT HEARING

James Cartlidge: I beg to move amendment 1, in clause 7, page 18, line 10, leave out lines 10 to 20 and insert—

"(1) This section has effect in the circumstances set out in section 17A(7) (indication of not guilty plea by accused at hearing), 17B(2)(d) (indication of not guilty plea by accused's representative at hearing) and 22(2B) (scheduled offence found at hearing to be triable either way after indication of not guilty plea)."

This amendment and Amendments 5, 6, 7, 10, and 11 remove drafting inconsistencies to do with the applicability of section 17BA of the Magistrates' Courts Act 1980 as inserted by clause 7.

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

Government amendments 5 to 7, 10 and 11.

Clause stand part.

James Cartlidge: This group contains minor and technical amendments to clause 7 and schedule 2 to the Bill, as well as the clause stand part.

When a defendant indicates a not-guilty plea to a triable either-way offence at magistrates court, the court must embark on the allocation decision procedure to establish whether the case should be tried in a magistrates court or at the Crown court. The sequence of this procedure is dictated by primary legislation and currently means that if the court decides that a summary trial at magistrates court is suitable, it must have deliberated and reached that decision before asking the defendant if they want to overrule it and elect for a jury trial at Crown court instead. Sir Brian Leveson, the former president of the Queen's bench division, highlighted the inefficiency of the current sequence in "Review of Efficiency in Criminal Proceedings", stating:

"The allocation procedure could be conducted more quickly if the defence was invited to indicate at the outset if the accused intends to elect Crown Court trial."

Clause 7 will provide defendants with the opportunity to elect for a jury trial at Crown court before the court embarks on the allocation decision procedure. It will help to save valuable court time and resources by ensuring that time is not spent considering the suitability of a case for summary trial where the defendant intends to elect for jury trial in any event. The Government amendments to the clause are minor and technical in nature, and amend the drafting to ensure that clause 7 can apply consistently in all suitable circumstances. They will have no practical effect on policy.

Amendment 1 agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Scott Mann.)*

5.1 pm

Adjourned till Tuesday 16 November at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

JRCB08 JUSTICE (Part 1 of the Bill)

JRCB09 Transform Justice