PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

JUDICIAL REVIEW AND COURTS BILL

Seventh Sitting

Tuesday 16 November 2021

(Morning)

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Saturday 20 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 16 November 2021

(Morning)

[Andrew Rosindell *in the Chair*]

Judicial Review and Courts Bill

9.25 am

The Chair: Good morning. I remind Members of the advice offered with regard to social distancing and suchlike that we have heard many times before.

Clause 8

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

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

The Parliamentary Under-Secretary of State for Justice (James Cartlidge): Good morning, Mr Rosindell. The sun shines on the Committee. This is a sunshine clause, not necessarily a sunset clause, but it is an important one. The criminal age of responsibility in England and Wales is 10 years old, which means that children aged between 10 and 17 can be charged with a crime and prosecuted in court. The majority of children's cases are dealt with in our youth courts, which are specifically designed to provide for the additional needs and vulnerabilities of children. In addition to specialist youth courts, there are bespoke procedures and processes that apply to criminal proceedings against children. That is why we are legislating for online plea and allocation for children under a separate clause, which recognises the distinct youth justice system that exists for them.

Clause 8 will help to avoid unnecessary hearings by giving children the option to provide an online indication of plea for offences that may require a subsequent trial allocation decision. Where the indication is not guilty, the clause will enable the court to deal with the allocation decision online. Like adults, children will need to have a legal representative to proceed with the new online procedure, which will be available only through the common platform. The purpose of the clause is to reduce the number of times that children, and their parents or guardians, have to travel to court. It will allow for case management of the pre-trial stage of cases to take place outside of a courtroom so that children have to attend court only for trial and sentencing hearings.

Courts will need to provide such defendants and, where appropriate, their parents or guardians with information explaining the written procedure, the choices available to them and the effects of those choices. Where a child provides an indication of a plea online, courts will have to ensure at the first court hearing that the child has understood their decision and confirms their written indication of plea before proceeding any further with the case. As with any case involving a child, when dealing with preliminary matters in writing or online, courts must continue to have regard to the current overarching statutory duties to prevent children from reoffending, and to have regard to their welfare.

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Mr Rosindell. As the Minister said, the clause creates a new pre-trial allocation procedure similar to that of clause 6, whereby an individual would be able to indicate a plea in writing for all summary-only, indictable-only and triable either-way cases, but this time it is for children. Thus far on the criminal procedure changes in the Bill the Opposition have tried to work with the Government's proposals to find a workable solution through amendments; however, that is not the case with clause 8, as we believe that it is wholly inappropriate for remote proceedings of this kind to be used in cases with child defendants. The law rightfully affords children additional protections and safeguards to reflect their inherently vulnerable nature, and propensity to plead guilty notwithstanding the evidence or potential defences, as shown, for example, in the evidence-based Justice Lab report on incentivised legal admissions in children.

The Minister outlined the theory of what will happen with this set of measures, but sadly the implementation of it could prove to be very different. The Bar Council opposes the provisions too, saying:

> "We do not accept that a written procedure for indicating plea or determining mode of trial in the case of children will do anything other than impede access to justice for the most vulnerable cohort of defendants within the criminal justice system.
>
> It has long been the position of the Criminal Bar Association and the Bar Council that the prosecution of children and young people requires wholesale overhaul to ensure that they only enter into the criminal justice system as a very last resort, if diversion and other interventions are unsuitable.
>
> Representation of children and young people, and the courts that administer youth justice, need to be properly funded, regulated and restructured in order to be fit for purpose."

The Bar Council goes on:

> "At present, these courts are not fit for purpose, and all too often act as a gateway for vulnerable youths into more serious offending. It follows that moving to a written procedure will compound the situation, limiting the opportunities for lawyers working under a legal aid system to meet with vulnerable defendants and their families, signpost interventions by other appropriate agencies and identifying children and youths with additional needs. It will also impede the child and youth's understanding of the seriousness of the process into which they have entered."

I very much agree with the Bar Council's assessment. There is much wrong with the youth justice system, and the provisions of this clause would exacerbate the existing issues rather than do anything to improve them. I would also like to seek further clarity on whether the provisions of this clause would allow online pleas for children, which would be seriously concerning. I emailed the Minister about it last week, and he responded with a note from officials. However, I wonder if he could provide some more specific guidance about it on the record.

Although it is not within the Bill itself, paragraph 181 of the explanatory notes states:

> "Clause 8 inserts new section 24ZA of the MCA 1980 that enables a child or young person under 18 years who is charged with a triable either-way offence to be provided with the choice to indicate a plea in writing/online, without the need for a youth court hearing."

We are opposed to the introduction of a written procedure for indicating plea or determining mode of trial in the case of children in any way, but have even stronger objections to an online procedure being introduced directly for them.

I share the concern of the Equality and Human Rights Commission, which says:

"The Commission is concerned that children as young as ten could be engaging with the criminal justice system through an online process insufficiently adapted to their needs and with minimal engagement from a parent or guardian. Children are already more likely to struggle to understand and engage with legal processes. Youth Court hearings provide an important opportunity to respond to the specific and additional needs of children. This is particularly important in light of recent evidence indicating that children are more likely to enter a guilty plea when they are not guilty."

While the Bill provides that a parent or guardian should be aware of proceedings where they take place online, the Opposition are not convinced that that is sufficient to mitigate against the risks posed to children. As the EHRC briefing notes:

"The law currently provides that, where a child under sixteen is charged with a criminal offence, a parent or guardian must attend all proceedings save where it would be unreasonable to require them to do so. For cases where a plea is entered by a child under sixteen in writing or any part of the proceedings is to be conducted on the papers, the Bill only requires the court to ascertain whether a parent or guardian is aware that proceedings are taking place and where necessary provide that information."

That is in new section 34A(1B) and (1C) of the Children and Young Persons Act 1933.

Janet Daby (Lewisham East) (Lab): My concern about children above 10 years old being able to make an online plea is that when children use a computer and everything is very much virtual, it is a different level of interaction and can seem like a game. I agree with my hon. Friend's point that their understanding of the process or their experience of making an online plea will be of a less serious nature. I also support his view that children are more likely to say that they are guilty because they are used to apologising, or they want to get out of the situation quickly. This is not the appropriate way forward.

Alex Cunningham: Yes, computers may be learning tools for children, but they are also their game world. Those of us who have families or grandchildren know that to be very much the case. It is so easy to press buttons and tick boxes, and I am really concerned, as is my hon. Friend, that young people may well think, "Let's take the easy way out. Let's just tick the box, and let's get this over and done with. Then I can forget about it." Unfortunately, they cannot forget about it, because they can end up with a criminal record, even if they are not guilty of the offence of which they have been accused. That is all the more reason why we need to review this clause in some considerable detail.

Of course, the issues applying to children under 16 do not apply to 17-year-old children. Furthermore, article 40(2)(b) of the convention on the rights of the child sets as a minimum standard the right that a child hearing be held in the presence of legal or other appropriate assistance and, unless not in the best interests of the child, his or her parents or legal guardian. In addition, the UN Committee on the Rights of the Child recommends

"that States parties explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings".

This clause does the direct opposite. We do not believe that it makes adequate provision to protect the rights of children in the justice system. It is not appropriate that the important safeguards that exist for children should be watered down in that way through the provisions in clause 8. As such, we will oppose the inclusion of the clause in the Bill.

James Cartlidge: I appreciate where the hon. Members for Stockton North and for Lewisham East are coming from, in the sense that of course we have to be careful in matters involving children. It is fair to point out, however, that these are not revolutionary changes of procedure. In my view, there will certainly be cases where, particularly for vulnerable people, the online environment is more suitable in many ways, because after all they will have legal representation.

I will explain clearly exactly what the clause does, what the safeguards are and where the discretion lies, to try to ameliorate some of the concerns. At the moment, there would be the plea before venue and allocation decision procedures for children of 10 to 17-years-old, which can be completed only at a court hearing. The Bill enables those procedures to be completed in writing online via the common platform without the need for a hearing, as is clear.

On the safeguards, defendants will need a legal representative to proceed with online plea and allocation. That is an important safeguard that will remain firmly in place due to the accessibility restrictions created by the common platform and the stipulations in secondary legislation under the criminal procedure rules. Courts will need to provide information explaining the written procedure, the choices available to defendants and the effects of those choices. If a defendant fails to engage with an invitation to proceed in writing or online, the court will default back to a traditional first hearing. Clause 13, which we will come to, applies with regards to requiring and enabling the court to ascertain whether the parent or guardian is aware, and if they are not, to provide them with the relevant information.

Finally, in terms of discretion, it is the defendant's discretion to proceed with online indication of plea and allocation in writing or online, so they can still have a traditional hearing. It is also the court's discretion to withhold or disapply online indication of plea and allocation in writing, if it thinks that is appropriate in the circumstances. There are significant safeguards in place.

It means that we will have greater consistency, but I accept what the hon. Member for Stockton North is saying, which is why we have been keen throughout the debate on these clauses to stress the important safeguards and discretions that exist. I hope that, on that basis, hon. Members can support the clause.

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

The Committee divided: Ayes 10, Noes 5.

Division No. 11]

AYES

Cartlidge, James	Johnson, Dr Caroline
Fletcher, Nick	Longhi, Marco
Hayes, rh Sir John	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 8 ordered to stand part of the Bill.

Clause 9

POWERS TO PROCEED IF ACCUSED ABSENT FROM ALLOCATION HEARING

James Cartlidge: I beg to move amendment 2, in clause 9, page 22, line 34, at end insert—

"(1A) In section 17B (power to proceed with indication of plea hearing in absence of disorderly but represented accused)—

(a) for the heading substitute "Power to proceed if accused does not appear to give indication as to plea";

(b) for subsection (1) substitute—

"(1A) This section has effect where—

(a) a hearing is held for the purposes of section 17A,

(b) the accused does not appear at the hearing,

(c) any of the conditions in subsections (1B) to (1E) is met, and

(d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

(1B) This condition is that a legal representative of the accused is present at the hearing and signifies the accused's consent to the court's proceeding in the accused's absence.

(1C) This condition is that—

(a) a legal representative of the accused is present at the hearing, and

(b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1D) This condition is that—

(a) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, and

(b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1E) This condition is that—

(a) the accused has appeared on a previous occasion to answer the charge, and

(b) the court does not consider that there is an acceptable reason for the accused's failure to attend.

(1F) This section also has effect where—

(a) a hearing is held for the purposes of section 17A,

(b) the accused appears at the hearing,

(c) the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused's presence, and

(d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.";

(c) in subsection (2), for the words before paragraph (a) substitute "If a legal representative of the accused is present at the hearing—";

(d) after subsection (4) insert—

"(5) If no legal representative of the accused is present at the hearing—

(a) the court is to proceed in accordance with section 18(1), and

(b) the accused is to be taken for the purposes of section 20 to have indicated that the accused would (if the offence were to proceed to trial) plead not guilty."".

This amendment allows a magistrates' court to proceed if an accused person does not appear at the "plea before venue" hearing in a wider range of circumstances (equivalent to those provided for in relation to allocation hearings by clause 9(3)).

The Chair: With this it will be convenient to discuss Government amendments 3, 4, 8 and 9.

James Cartlidge: I have tabled these amendments to correct some errors in the Bill, which would prevent this measure from having the desired impact. When it comes to triable either-way offences, the procedures for plea and allocation are invariably completed in immediate succession of each other in the same court hearing. The primary purpose of clause 9 is to enable the court to complete preliminary pre-trial proceedings in the absence of a defendant in a wider range of circumstances than the law currently allows. That will help to ensure the timely progression through the criminal justice system of cases that would have otherwise stalled indefinitely where a defendant deliberately disengaged.

As currently drafted, clause 9 does not afford the same extended set of circumstances to proceed in absence for the plea procedure as there will be for the subsequent allocation procedure. That will in effect act as a legislative roadblock that prevents the courts from being able to make use of the new powers that clause 9 provides. Therefore, these amendments will ensure that the court has the same powers to proceed in the absence of a defendant for both the plea and the allocation decision procedures. Where the court decides that it is in the interest of justice to proceed in a defendant's absence, it will be assumed that the defendant has pleaded not guilty, and the court will allocate the case for a trial.

A further amendment rectifies a drafting error in clause 9 to ensure that it remains consistent with current law, whereby there is no requirement for the presence of a legal representative when a court decides to proceed with allocation, having removed a disorderly defendant from the courtroom.

These amendments will allow the clause to work as intended, maximising the benefits for the criminal justice system. Clause 9 will continue to ensure that the court cannot proceed in absence unless it is satisfied that it is in the interests of justice to do so.

Alex Cunningham: I thank the Minister for his explanation of the need for a raft of amendments to his own Bill.

Clause 9 will introduce additional circumstances in which the magistrates court could continue with the proceedings in the defendant's absence in triable either-way cases. This applies to adults, and there are similar provisions for children. I will speak on our general concerns in the debates on the Opposition amendments.

I again thank Justice for its assistance in highlighting potential concerns in this area. Currently, the Magistrates' Courts Act 1980 provides that the process for triable either-way cases begins with a plea before venue, where an adult defendant is required to appear in a magistrates court to indicate whether they wish to plead guilty or not guilty. Thereafter, if the defendant pleads not guilty or refuses to state a plea, the case proceeds to the allocation hearing. That involves deciding whether the case should be tried in the magistrates court or the Crown court. The defendant is required to be present for both

the plea before venue hearing and the allocation hearing. However, in both scenarios there are two circumstances where the court can proceed in the defendant's absence: where the defendant has legal representation and the court considers that, by reason of the defendant's disorderly behaviour, it is not practicable for the proceedings to be conducted in their presence—the legal representative will of course act on the defendant's behalf—or where the defendant gives consent via their legal representative for proceedings to take place in their absence.

Clause 9 would introduce additional circumstances where the magistrates court could proceed with the allocation proceedings in a defendant's absence in triable either-way cases. In its current form, the Bill does not introduce any changes to the way plea before venue hearings are conducted for triable either way cases. In addition to the two existing circumstances that I have mentioned, clause 9 would empower the magistrates court to now proceed and allocate the case without the defendant's input in cases where the defendant does not engage in writing or does not appear at their hearing without an "acceptable reason", provided that the court is satisfied that the defendant has been properly served. The allocation decision would be made on the basis of an assumed not guilty plea—the Minister said that—and the court would proceed to allocate the case to the magistrates court or Crown court. Defendants, however, will continue to have an opportunity to elect for a trial in the Crown court until the start of the summary trial.

Government amendment 2 will now allow a magistrates court to continue with the proceedings in cases where the defendant does not appear at the plea before venue hearing in a wider range of circumstances. The circumstances mirror those proposed for allocation hearings as set out in clause 9(3), including where a defendant does not appear at the hearing without an acceptable reason. The amendment proposes changes to section 17B of the Magistrates' Court Act 1980, which currently empowers magistrates courts to proceed with the plea before venue hearing

"in the absence of a disorderly but represented accused"—

one of the two exceptions to the general rule mentioned earlier.

However, the amendment does not include any requirement for a defendant's legal representative to be present, which is currently provisioned in the Bill for the allocation hearing, although the Government propose removing it through amendment 3. A number of other circumstances in which the plea can go ahead in the defendant's absence also do not require the defendant's legal representative to be present.

9.45 am

Proposed new section 17B(5) of the Magistrates' Court Act 1980 would provide that, where a legal representative is not present at the plea before venue stage, the defendant is taken to have plead not guilty. As Justice explains,

"This would significantly weaken an existing safeguard, since the court would not benefit from any input from the defendant or their representative at the plea stage",

which presents a rather big concern for the Opposition.

Government amendment 3 would allow a magistrates court to continue with the allocation hearing in the absence of a disorderly defendant, even if they are not legally represented, by removing from the Bill the need for the accused's legal representative to be present, even in cases where

"the court considers that by reason of the accused's disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused's presence".

If the accused behaves in a disorderly manner, the court would be able to proceed with the allocation hearing in their absence, without their legal representative needing to be there.

Janet Daby: Does my hon. Friend agree that children in particular are vulnerable, and that they should always have legal representation in any plea or pre-plea situation?

Alex Cunningham: I most certainly do. My hon. Friend knows that I will talk about children in the justice system forever, if I need to. It is absolutely critical that they are given every support. Not every parent is capable of offering the appropriate advice, so it is very important that legal representation is in place, in particular in the absence of parents.

Although the Bill previously expanded the circumstances in which an allocation hearing could take place in the defendant's absence, it at least required that where the defendant was absent due to disorderly conduct, their legal representative would need to be present for the hearing to continue. However, the amendment removes the need for their legal representative to be present; instead, it empowers the court to proceed with the allocation hearing in cases where both the defendant and their legal representative are absent. I do not at all see the need for the removal of that important safeguard, and the Minister's comments thus far have not convinced me. I wonder how many cases he expects those provisions to be used for.

Government amendment 4 would allow a magistrates court to move straight to the allocation stage if, under the provision inserted by amendment 2, it decides at the plea before venue stage to proceed in the absence of the accused or their legal representative, without needing to consider the merits of the proceedings in the absence of the accused. The court could therefore proceed with an allocation decision in the defendant's absence, in which case the defendant would be deemed to have indicated a not guilty plea. Justice states that the amendments represent

"a significant alteration of the status quo",

which permits plea before venue hearings and allocation hearings in the absence of the defendant only for reasons relating to the defendant's disorderly conduct, or where the defendant consents via their legal representative to proceedings taking place in their absence.

The Opposition share Justice's concern that clause 9 as a whole—especially with the Government amendments—may remove essential safeguards put in place for the accused's effective participation in the proceedings, and instead prioritise alleged court efficiency over a defendant's right to a fair trial. I do mean "alleged" court efficiency—as I will discuss in our next debates, I have concerns that some of the measures the Government are seeking to introduce to improve efficiency may in fact have the opposite effect. I am concerned that the Government amendments would expand the scenarios in which the court could proceed in the absence of a defendant's legal representative at both the plea before venue stage and the allocation hearing.

[Alex Cunningham]

I really do not understand why this is at all necessary. Plea and allocation decisions can have significant consequences for an individual and their liberty. It is right that every effort be made to ensure that defendants are properly engaged in their proceedings. The Minister knows that we are all too keen to support the Government in improving the efficiency of our courts, but it is important that the measures we introduce have a genuine evidence base and are not obviously detrimental to the rights of defendants and due process, and I think these amendments would fail both criteria.

The Opposition want an efficient court system every bit as much as the Minister does. However, I worry that if we get it wrong the measures will have the opposite effect. That said, we will not oppose the amendments at this stage, but instead will offer the Government an opportunity to improve the clause through our own series of amendments, to which I hope the Minister will be as accommodating as we have been to his.

Amendment 2 agreed to.

Alex Cunningham: I beg to move amendment 80, in clause 9, page 23, leave out lines 15 and 16 and insert—

"(b) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend".

This amendment would ensure that the defendant is given the opportunity to provide a reason for their non-attendance and avoid the court speculating as to what that reason might be.

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

Amendment 81, in clause 9, page 23, leave out lines 22 and 23 and insert—

"(b) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend".

See Explanatory Statement for Amendment 80.

Amendment 82, in clause 9, page 23, leave out lines 27 and 28 and insert—

"(b) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend".

See Explanatory Statement for Amendment 80.

Amendment 83, in clause 9, page 24, leave out lines 36 and 37 and insert—

"(e) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend".

See Explanatory Statement for Amendment 80.

Alex Cunningham: I begin by thanking Justice for its detailed briefing on the clause, which was extremely helpful for identifying potential issues of concern. As the Minister has outlined, clause 9 introduces additional circumstances in which the magistrates court can proceed with the allocation proceedings in a defendant's absence in triable either-way cases. That applies to adults, and the clause contains similar provisions for children. A magistrates court would now be able to proceed and allocate the case without the defendant's input in cases where the defendant does not engage in writing or appear at their hearing without an "acceptable reason", provided that the court is satisfied that the defendant has been properly served.

The allocation decision would be made on the basis of an assumed not guilty plea and the court would proceed to allocate the case to the magistrates court or the Crown court. Defendants, however, will continue to have an opportunity to elect for a jury trial until the start of the summary trial. That would represent quite a significant expansion of current practice, which only permits allocation hearings in the absence of the defendant for reasons relating to the defendant's disorderly conduct—we have discussed that already—or where the defendant gives consent via their legal representative for proceedings to take place in their absence.

I note that the Law Society expressed some concern with the clause. In its Second Reading briefing, it said:

"If the court decides the defendant's case should be tried in the magistrates' court, the defendant will only subsequently be able to elect a jury trial if the court agrees that it would be in the interests of justice to reopen the question of the mode of trial. This would effectively result in the defendant losing their right to a jury trial without their consent. In our view a defendant should only lose the right to elect a jury trial if they have expressly waived that right."

Will the Minister outline a couple of illustrative examples of he imagines a magistrate would consider it in the interests of justice to reopen the matter of allocation, so we can understand how stringently it is intended to be imposed?

Justice also considers clause 9 to be problematic for three reasons. First, it is concerned that the measure would significantly impair the ability of defendants to engage in their proceedings. It notes that

"At present, the defendant has a right to choose the trial venue in cases of triable either way offences. Clause 9, however, empowers the Magistrates to determine the trial venue in cases of triable either way offences in the defendant's absence, where the defendant does not engage in writing or appear at their hearing without an "acceptable reason", for which no definition is provided in the Bill or in the Explanatory Notes."

I agree that it is therefore difficult to assess how it would operate in practice when magistrates would be given a wide discretion to proceed and allocate the case in the defendant's absence. Indeed, if a defendant has not appeared at the allocation hearing and has not been able to instruct or inform their counsel as to the reason for their non-appearance, it would be impossible for the magistrates to know whether an "acceptable reason" exists or not. Moreover, should the magistrates allocate the case to a court that is different from the one the defendant wants, that could result in the case returning to the allocation stage: they could make a statutory declaration under the Magistrates' Court Act 1980, stating that they did not know of the summons or the subsequent proceedings. That would result in both being void. As Justice explained,

"This will cause delays and additional expenditure of resources, contrary to the aim of this provision, which is to 'provide the court with an important means of progressing cases which would otherwise stall creating uncertainty and lengthy waiting times'."

I would welcome the Minister's thoughts on that point. We certainly do not want to pass measures aimed at increasing efficiency in the system if they will have the opposite effect in reality. In an attempt to avoid those issues, the Opposition have tabled amendments 80, 81, 82 and 83, which all do the same thing, and together would ensure that the defendant was given the opportunity to provide a reason for their non-attendance and avoid the court speculating as to what that reason might be. I am also interested to hear whether the Minister has any further thoughts on how such speculation by the court can otherwise be avoided.

James Cartlidge: The hon. Gentleman has asked some very good questions. I accept that these are important points, so let me try to clarify some of them.

The hon. Gentleman asked about the statistics. We do not have precise data on failure to appear, and particularly about prediction of failure to appear in the context of these powers. The majority of defendants prosecuted for triable either-way offences who are sent to Crown court for jury trial are sent there by a magistrates court, rather than by the defendant electing. In 2019, magistrates courts sent 32,262 defendants to the Crown court for a jury trial; of those they decided not to send, 5,277 defendants elected for their case to be sent to be tried by a jury at the Crown court.

In 2019, of the 250,387 adult defendants scheduled to appear at magistrates court for a triable either-way offence, 41,968 defendants had a recorded outcome of failing to appear. However, as the hon. Gentleman will appreciate, it is extremely difficult to predict how this clause will affect those figures. Regarding the circumstances in which the decision could be revisited, to be clear, where a defendant has no knowledge of the proceedings brought against them through a summons or requisition until after a magistrates court has begun to try the case, they will be able to make a statutory declaration and restart the proceedings from the beginning, providing adults with another opportunity to elect for a jury trial.

The hon. Gentleman has tabled amendments 80, 81 and 82 in order to ensure that adult defendants are given the opportunity to provide a reason why they are not attending an allocation hearing, and to avoid the courts speculating as to what that reason might be. Amendment 83 would extend the same opportunity to children. The whole point of clause 9 is to give the courts powers to deal with defendants who deliberately delay proceedings and try to evade justice in a wider range of circumstances. These amendments would achieve the opposite by preventing the court from progressing cases in the absence of any communication from the defendant who has not attended. If no reason is given for the court to consider, the case simply cannot progress.

Sir John Hayes (South Holland and The Deepings) (Con): I listened to the Opposition spokesman, and it seemed to me that he made a persuasive case. However, a few moments ago, the Minister introduced an important addition to this discussion in the form of a safeguard. He said very clearly that the accused could restart the whole process if they were not aware of the circumstances, so it seems to me that the people the Minister is describing who are malevolent or malign—who are deliberately trying to frustrate justice—will be caught by this clause, but those who are not will be protected by the safeguard. Perhaps the Minister should amplify or accentuate that safeguard, because it seems to be exactly what the Opposition spokesman was asking for.

James Cartlidge: My right hon. Friend, who is an expert on amplification, makes an excellent point. He is entirely right: there are safeguards—as with any safeguards, they are there to protect those who have been subject to inadvertent circumstances. They are not there to allow those who have deliberately avoided justice to do so: that distinction is absolutely crystal clear and important. My right hon. Friend has hit the nail on the head, as it were.

10 am

Defendants have many ways of contacting the court and explaining why they will not be attending a hearing. They can write, email, telephone, instruct their solicitor, or ask the Prison Service, a friend or a family member to pass on a message. These amendments could potentially encourage defendants to not contact the court at all, safe in the knowledge that the case will stall until the police are able to locate and arrest them for failing to appear. That would simply not be acceptable. Clause 9 does not seek to disadvantage defendants; it seeks to prevent victims and witnesses from being disadvantaged by the stress and uncertainty of deliberate action by the defendant to delay justice.

There are protections in place for defendants who have legitimate reasons for failing to attend a hearing, as my right hon. Friend the Member for South Holland and The Deepings just outlined. For example, if an adult defendant goes on to subsequently provide a genuine reason after a case has been allocated in their absence, safeguards in the clause, as I have set out, mean they would get another opportunity to elect for a jury trial at any time before the start of the summary trial. I therefore urge the hon. Member for Stockton North to withdraw his amendment.

Alex Cunningham: I appreciate the Minister's explanation outlining again the safeguards in place. I do not believe the safeguards are sufficient and I hope that, over time, the Government will look again at the issue.

I accept wholeheartedly that we do not want people to deliberately slow down their cases for time immemorial, but it is important to recognise that the people we are concerned about are those who have a genuine reason for not having been in touch with the court. Even if we get to the point where they can opt for a trial at a later stage, an awful lot of time and resource are wasted in the interim period. I accept what the Minister says for now and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 3, in clause 9, page 23, leave out lines 33 and 34

This amendment allows a magistrates' court to carry on with an allocation hearing in the absence of the accused if the accused disrupts the hearing, even if the accused is not legally represented.

Amendment 4, in clause 9, page 23, line 41, at end insert—

"(1G) This section also has effect where a magistrates' court determines that section 17B(5) applies and proceeds straight away to a hearing in accordance with section 18(1)."—*(James Cartlidge.)*

This amendment allows a magistrates' court to move straight to the allocation stage if (under the provision inserted by Amendment 2) it decides at the plea-before-venue stage to proceed in the absence of the accused or a representative, without fresh consideration of the merits of proceeding in the absence of the accused.

Alex Cunningham: I beg to move amendment 58, in clause 9, page 23, line 41, at end insert—

"(1G) In a case within subsection (1A)—

(a) the accused may, at any time before the taking of a plea in the summary trial, apply to the court for the question of the mode of trial to be reopened;

(b) the court may, if it considers it in the interests of justice to do so, accede to the application and arrange a hearing under paragraph (c);

[Alex Cunningham]

(c) if a hearing takes place under this paragraph and the accused appears at it, the court is not to proceed to summary trial by virtue of subsection (1A), but is to proceed in accordance with subsections (2) to (9) of section 20 above."

This amendment would allow defendants to reopen the allocation process and elect for jury trial up to the point of taking a plea in a summary trial if the court considers it in the interest of justice to do so.

I will be very brief. Members will understand why we tabled amendment 58—simply to introduce another safeguard for the use of the new powers under clause 9. The amendment provides defendants with an additional opportunity to reopen the allocation process and elect for a jury trial where this provision is used. That would save the summons or proceedings from being void should a defendant have to make a statutory declaration under section 14 of the Magistrates' Court Act 1980. It does not go as far as the Law Society suggests in keeping the matter of electing for a jury trial open unless the defendant has explicitly waived that right, but it at least provides an additional opportunity for the defendant to reopen the matter. It is critical that we do everything possible not just to protect the integrity of the new way of working but to ensure that justice is done. I look forward to the Minister's response.

James Cartlidge: As the hon. Gentleman says, the amendment would enable an adult defendant to apply to a magistrates court to re-open an allocation decision taken in their absence to try an either-way offence summarily and thus provide the defendant with another opportunity to elect for a jury trial. Such an application could be granted provided it was done before the start of the summary trial and the court considered that it was in the interests of justice.

Clause 9 already provides that important safeguard, albeit with two minor differences. First, the amendment will not explicitly require the court to consider the reason why the defendant failed to appear at the allocation hearing when considering whether it is in the interests of justice to re-open the allocation decision. That is an important provision: it recognises that there will be legitimate reasons why a defendant fails to appear—if they were gravely ill in hospital or were genuinely unaware of the proceedings against them, for example. However, it also recognises that allowing defendants to deliberately hold up proceedings by absconding on bail or refusing to leave their cells does not serve the interests of justice.

Secondly, the amendment gives absent defendants who were represented by a legal representative at their allocation hearing the opportunity to make an application to re-open the allocation decision. Clause 9 already ensures that if a legal representative is present at the allocation hearing but is unable to signify an absent defendant's consent to a summary trial, the case must be sent to the Crown court for jury trial anyway. This amendment would simply provide defendants with a further means of deliberately delaying proceedings.

The amendment undermines the purpose of clause 9, which aims to tackle deliberately obstructive defendants who are intent on denying victims justice, while protecting the trial rights of those who are genuinely unaware of proceedings. I therefore urge the hon. Member to withdraw his amendment.

Alex Cunningham: Again, the Government concentrate on the people who are difficult in the system rather than those who might have a genuine reason for seeking change. I accept the Minister's explanation and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alex Cunningham: I beg to move amendment 84, in clause 9, page 24, line 21, leave out subsection (4).

This amendment would remove cases involving children and young people from the provisions of Clause 9.

Again, I will be relatively brief. I remain surprised, given what we have discussed already, that the new proposed procedures for adults will, through clause 9(4), apply to children. Given our debate on previous clauses, it will be no surprise to the Minister that this causes me and the Opposition some considerable unease. It introduces a power for the court to proceed with allocation proceedings in a child's absence. Children are considered inherently vulnerable. While the Bill recognises children's increased vulnerability and additional requirements, it is not specified how their rights will be appropriately safeguarded.

The Opposition have tabled amendment 84, which would remove subsection (4) and thus limit the provisions of the clause to cases not involving child defendants. I am interested in the Minister's thoughts as to why the procedure needs to be extended to cases involving children at all. I imagine the number of cases to which it would apply would be relatively few in number anyway, although the Minister may have some data to show otherwise. If so, I would like to hear of it and gain some understanding as to why, once again, the Government want to apply adult criteria to children. Without sufficient reassurances from the Minister, I intend to press the amendment to a vote.

James Cartlidge: The amendment would prevent clause 9 from applying to cases involving children. I do not have those statistics to hand, but I will see if I can endeavour to find them for the hon. Gentleman.

I want to start by acknowledging the hon. Gentleman's concerns about the application of the clause when it comes to children. As I said before, I recognise the sensitivities here, which is why we have emphasised safeguards, and I fully agree that it is vitally important that we protect the interests of children in the criminal justice system.

Subsection (4), which the hon. Gentleman proposes to remove, has been specifically drafted for children. It takes into consideration that defendants under the age of 18 have an extremely limited role to play when it comes to allocation hearings, given that they do not have the same rights as adults to elect for a jury trial at the crown court. It recognises children's increased vulnerability in the criminal justice system and provides additional safeguards. For example, the additional new circumstances that will enable the allocation of children's cases in their absence are far more limited than those provided for adults. In addition to the existing exception of disorderly conduct, the clause specifies that the court can only proceed to allocate in a child's absence where the child has been invited, but failed, to provide an online indication of plea and either the court is satisfied they were served with a notice of the hearing or the child has already appeared at court on a previous occasion to answer the charge. The court must consider whether there is an acceptable reason for the child's

absence and must be satisfied it would not be contrary to the interests of justice for the hearing to proceed in the child's absence.

The provision must be viewed in the context of existing safeguards in primary legislation. When a child is arrested and held in police detention, the law requires that a parent or guardian must be notified as soon as possible. If a summons and postal requisition is served, it will always be sent to their parent or guardian. When the case is then brought before a youth court, the law will continue to enable the court to require a parent or guardian to attend during all stages of the subsequent proceedings where that is deemed appropriate.

Sir John Hayes: There are concerns about children in care. Again, the Minister makes a compelling case about the role of parents and guardians in respect of the clause and the amendment. However, many Members recognise that sometimes children in care are in very difficult circumstances. What provision will there be for those children and what consideration has the Minister given to their plight in those circumstances?

James Cartlidge: My right hon. Friend makes a very good point. It is difficult to have specific clauses for children in care in that sense, but I will give consideration to that important point and provide him with further information.

Courts also have a statutory duty to have regard to the welfare of children. They will always have the discretion as to whether to proceed to allocate in a child's absence. We recognise that in the majority of cases, the courts may not deem it appropriate to proceed if a child is absent from the plea and allocation hearing. However, the clause provides the court with an important means of progressing a case involving a child where it is in the interests of justice to do so. I therefore urge the hon. Member for Stockton North to withdraw the amendment.

Alex Cunningham: I am grateful to the right hon. Member for South Holland and The Deepings for raising the issue of looked-after children. He helps to illustrate further why subsection (4) is inappropriate and why we support its removal. The Minister talked about the court being satisfied that notice has been served on the child. I am not sure how the court determines that, because children can always spirit things away and parents do not always find out until much later down the process.

Sir John Hayes: I am grateful for the hon. Gentleman's remarks, but I took from what the Minister said that he is going to go away and think about that. When a combination of a diligent Opposition and a brave Government Back Bencher raises an issue and the Minister has given—I will not say concession—that acknowledgement, the wise thing for an Opposition to do is to take that as a win and withdraw their amendment.

Alex Cunningham: I think the right hon. Gentleman almost makes my argument for me. The Minister does not actually know how the subsection will apply to a particularly vulnerable group of young people, those in care. Perhaps it is the Minister who should support the amendment.

James Cartlidge: Just to clarify the point about our not knowing, we are talking about primary legislation setting out the core changes. The most important part, as always, is that there is discretion in the courts and that is inherent in almost all aspects of proceedings in the courts. I have great faith in the judiciary in these matters. The courts have discretion over whether to apply these—and other clauses that we have been talking about which have similar measures—to children and so on. Whatever the detail in respect of the most vulnerable children—I think I have answered some of that—the most important part is the discretion that exists which is inherent in our legal system.

Alex Cunningham: I too have tremendous confidence in our judiciary, but this is an additional power that it does not require. I suspect if it was consulted, it would not particularly want it either, unless the Minister has evidence to the contrary. I maintain that it is totally unnecessary.

James Cartlidge: The hon. Gentleman will know that the judiciary will not set out explicit views on proposed legislation. Of course, we have the Law Society, the Bar Council and other important stakeholders, and we feel that there has been significant consultation on these matters. I would add that there is detail to come in the normal way through the procedure rules which is then agreed by negative resolution. I will write further to my right hon. Friend the Member for South Holland and The Deepings and happily share that with the hon. Gentleman if he so wishes.

Alex Cunningham: I am grateful for that, but again, the impacts on different groups of vulnerable children have not been fully thought through. It does not take into consideration what happens when a child fails to appear and perhaps nobody is aware that the child has been charged. I remain very concerned about the amendment and we will press it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 12]

AYES

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

NOES

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

Question accordingly negatived.

10.15 am

Alex Cunningham: I beg to move amendment 85, in clause 9, page 25, line 5, at end insert—

"(5) If the court proceeds with the allocation decision procedure in the absence of the accused, the accused must continue to have the opportunity to plead guilty at any time before the start of the summary trial and still receive the full credit had he pleaded guilty at the first stage of the proceedings."

[Alex Cunningham]

This amendment would ensure that the accused is entitled to the full credit that they would have received had they pleaded guilty at the first stage of the proceedings.

Another area of concern is that the Bill could remove the potential for any credit or reduction in sentence to which the defendant would have been entitled for pleading guilty. That is because magistrates would be able to proceed to allocate the case on the basis of an assumption that the individual wishes to plead guilty. Currently, courts have the power to reduce a sentence if a defendant pleads guilty. A defendant who pleads guilty at the first stage of proceedings, defined as up to and including the allocation hearing, can benefit from a maximum reduction of one third of the sentence that would have been imposed if the case had progressed to a trial.

Justice notes:

"It is therefore beneficial to seek engagement from the defendant as to how they would like to plea rather than make it easier for Magistrates to assume based on the uncertain criterion of an 'unacceptable reason', since the measures may result in cases progressing whereas they otherwise may not have. This is counterproductive and may in fact result in cases being disposed of in a less efficient manner. This would therefore represent a significant disadvantage to both defendant and the criminal justice system."

If we want a more efficient system, we should make sure that the measures will actually deliver one. For these reasons, the Opposition have tabled amendment 85, which would ensure that the accused is entitled to the full credit they would have received if they had pleaded guilty at the first stage of the proceedings, but where the court proceeds in their absence and presumes a non-guilty plea and they later affirmatively plead the contrary.

I would welcome the Minister's assurances that full credit for a guilty plea would still be available in these circumstances. As we know, where appropriate, a defendant pleading guilty at an early stage saves the court time and money and can save the alleged victim and their family the stress and difficulty of a trial. We would not want to disincentivise appropriate pleas because the credit would be reduced due to the proposals in the Bill.

James Cartlidge: Amendment 85 seeks to ensure that a defendant, whose case is allocated in their absence, is still entitled to the full reduction on their sentence that they would have otherwise received had they appeared at court and pleaded guilty at the first available opportunity. The location of the amendment in the new legislation means that it would only apply to children. However, as the hon. Gentleman's explanatory statement makes reference to all "accused" persons, I hope that I have correctly understood that the amendment was intended for both child and adult defendant alike.

The safeguard that the hon. Member's amendment intends to implement is already provided for under the existing Sentencing Act 2020 and the Sentencing Council's guidelines for both child and adult defendants. The early guilty plea provisions of the guidelines are intended to support the efficient administration of justice and the early resolution of cases. The key difference is that the existing guidelines take into account the reasons why the defendant's plea was delayed—which I believe is the right approach—rather than reducing the sentence irrespective of why they failed to appear.

Currently, where a defendant fails to appear at a plea and allocation hearing, the case stalls until the defendant appears; under the new provisions a case can progress. Defendants who fail to attend for allocation and then later plead guilty will create inefficiencies in the system; the court and prosecution will expend time and effort preparing for a trial that is not required, and victims and witnesses—who we should not forget—will be caused anxiety and inconvenience because they are told to attend court. In such circumstances, it is right that defendants should not always be entitled to the full reduction of one third off their sentence.

Alex Cunningham: The Minister just used the phrase "not always". Could he expand on that, please?

James Cartlidge: The existing law and Sentencing Council's guidelines provide that magistrates' courts must consider whether there are particular circumstances which otherwise made it unreasonable to expect a defendant to have indicated a plea at an earlier stage in the proceedings. This means that defendants who fail to appear at the plea and allocation hearing for legitimate reasons will continue to be entitled to the full reduction of one third off their sentence—just to be clear. I therefore urge the hon. Member to withdraw the amendment.

Alex Cunningham: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

James Cartlidge: As I have said, this is an important clause. We have considered the amendments, and I understand the motivations of the hon. Member for Stockton North, but just to remind us, under the current law, a magistrates court cannot reach a decision in the absence of an adult defendant about whether to allocate a triable either-way case for summary trial at magistrates court or jury trial at Crown court.

Until that decision is made, the case cannot progress any further. The only exceptions to the rule are if the defendant has agreed, through their legal representative, that the court can proceed in their absence or if the defendant's disorderly conduct in the court means that it is not practicable to proceed in their presence.

That means that the timely progression of cases through the criminal justice system can stall indefinitely when defendants deliberately disengage from the proceedings—for example, by absconding on bail or refusing to leave their cell when held on remand. That can have serious negative impacts on victims and witnesses and cause serious delays to justice. In some cases, it may lead to witnesses withdrawing their support for the prosecution, causing cases to collapse and allowing perpetrators to go unpunished.

Clause 9 will enable magistrates courts to decide mode of trial for such cases in the absence of defendants in a wider range of circumstances than the law currently allows for, where the defendants fail without good cause to appear at court for their allocation hearing. Any decision to allocate in absence will be subject to the interests of justice test.

Adult defendants will retain the right to elect for a jury trial at Crown court up until the start of any subsequent summary trial, depending on why they failed to attend the allocation hearing. Defendants with legitimate reasons for failing to appear will get another opportunity to elect before the start of a summary trial allocated in their absence.

Although defendants under the age of 18 do not have the same right as adults to elect for a jury trial at Crown court, there are still occasions when a court will need to reach an allocation decision in a child's absence. The current law only provides one exception that allows for this: where it is not practicable due to a legally represented child's disorderly conduct before the court. Subsection 4 provides additional new circumstances—albeit far more limited than those provided for adults—that will enable the allocation of children's cases in their absence in a way that acknowledges their increased vulnerability and provides additional safeguards to those already in the youth justice system.

Alex Cunningham: Briefly, the Minister has heard our arguments in relation to children throughout this. That, of course, remains our principal concern around this clause. I would ask that—whether for children or adults—the Government look again at the various safeguards that are in place, to see if there are opportunities for them to be improved. Again, the Government are concentrating on the difficult defendants rather than the wider range of defendants within the court system, even if they do have an opportunity at a later stage to elect for that particular type of trial. Despite our reservations about children, we will not oppose the clause, but we hope that the Government will reflect on the many things we have said, particularly on young people.

Question put and agreed to.

Clause 9, as amended, accordingly ordered to stand part of the Bill.

Clause 10

Sending cases to Crown Court for trial

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

James Cartlidge: Measures in this Bill will clear away obstacles in current legislation standing in the way of the courts carrying out more of their administrative case management outside of the courtroom. Clause 10 will help to deliver that by removing the legal requirement that defendants charged with indictable offences must first appear before a magistrates court to be informed that their case is being sent to the Crown court.

Under existing law, where a defendant has been charged with an indictable-only offence, such as conspiracy to defraud, and there is no other reason to hold a hearing—for example, to consider issues of bail—then a court hearing is surely superfluous. The defendant will be sent to the Crown court for trial regardless of his or her consent.

Similarly, in triable either-way cases, where a defendant has engaged with the court in writing or online and elected for a Crown court trial, equally there would be no need to hold a hearing. This provision will help to streamline criminal procedures by reducing the need for physical appearances in the magistrates court and removing unnecessary hearings. However, this is a discretionary power. A magistrates court will only exercise that power where it considers it appropriate and in the interests of justice to do so and no issues, such as bail, need to be considered.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

Powers of Crown Court to remit cases to the magistrates' court

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

James Cartlidge: We come to a particularly important clause in the context of court recovery.

Clause 11 will help create a more flexible and unified court system by providing the Crown court with increased flexibility to return certain cases to the magistrates court. Currently, the Crown court can return cases to the magistrates court in a very limited set of circumstances. The clause will provide the Crown court with a new general power to return cases to the magistrates court, including to the youth court, for trial and sentencing, when the judge is satisfied that magistrates have the necessary jurisdiction.

A defendant's right to elect for jury trial is unaffected by this measure. Before the Crown court can return a case back to the magistrates court for trial, it must first obtain the defendant's consent to do so if the defendant is over 18.

Clause 11 also requires the Crown court to provide reasons whenever it decides not to send a child defendant under the age of 18 back to the youth court. The clause recognises that the nature and seriousness of criminal cases can change as they progress through the criminal justice system. It helps to create a more efficient criminal court system by ensuring that cases are always heard in the most appropriate venue.

On the important point of court recovery, we estimate that clause 11 will make room for a further 400 Crown court sitting days. Those days will be saved on the following assumptions: that 5% of not guilty triable either-way cases would be sent back for trial and 10% of guilty triable either-way cases would be sent back for sentencing. The 5% and 10% figures are of eligible cases—in other words, cases that received less than six months at Crown court; that is based on pre-covid 2019 data. I remind colleagues that 400 days saved in the Crown court are 400 days when we can hear murder cases, rape cases and cases in the backlog. That is why the clause is incredibly important.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): I was fortunate enough to witness a case at the Old Bailey last week, and to see how the process operates. There are people waiting quite a long time on remand to have their cases processed. Can my hon. Friend confirm that the terms of the clause will also reduce the amount of time that people spend on remand, waiting for their trial?

James Cartlidge: My hon. Friend makes an excellent point. We should be cognisant of those on remand—whether in custody or on bail, but particularly those in custody. She makes exactly the right point: by definition,

[James Cartlidge]

if we free up space in the Crown court through the clause, we are enabling more cases to be heard more quickly.

It is important to stress that those cases would go back to the magistrates court. We can do that because the "backlog" in the magistrates court is now far better; we have seen a huge reduction in the outstanding case volume because it has faster throughput. All of us would pay tribute to our voluntary judiciary. I was pleased yesterday to hold a meeting with MPs invited from all parties who are currently magistrates or have been magistrates. A number of hon. Friends were there and we had a very interesting discussion. I have great faith in the ability of the magistrates courts to take more cases and to assist the Crown court, which has the serious matter of indictable cases.

Without further ado, I should say that this is an important clause, which forms an important and significant part of court recovery.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

POWERS OF YOUTH COURT TO TRANSFER CASES IF ACCUSED TURNS 18

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

10.30 am

James Cartlidge: Clause 12 amends existing legislation relating to the power of the youth court to return defendants who have turned 18 before the start of trial to the adult magistrates court or to send them to the Crown court. Although the power is already operationally possible, the clause makes the process for exercising it much clearer. It also enables such decisions to be made other than in open court where appropriate, provided that the youth court serves certain documents on the defendant.

The clause also provides that, where the youth court proposes to remit a person to the adult magistrates court for an offence triable either way, the court must give the defendant the opportunity to elect for a jury trial. It also provides that the criminal procedure rules should set out the circumstances when joined cases or co-defendants are to be sent to the Crown court along with the main offence.

The clause aims to ensure that new provisions for adults, which enable cases to be sent to the Crown court without the need for a hearing, are replicated in the youth court system.

Alex Cunningham: As the Minister outlined, clause 12(3) inserts proposed new subsection (1D) in section 47 of the Crime and Disorder Act 1998, empowering the youth court to transfer the proceedings without an in-person hearing if the accused turns 18. Organisations that campaign on youth issues have raised several concerns about this cliff-edge clause.

Moving into the adult courts system can have a number of knock-on impacts on sentencing and the spending periods associated with convictions. It is therefore significant, and it is important that the accused is involved in the hearing. I am not convinced that it is appropriate to proceed with such a hearing in the absence of the accused via a written procedure. As the backlog continues to grow, more youths are likely to cross the significant age threshold while their case is still travelling through the justice system.

The Minister will be as concerned as I am by the backlogs in the youth courts, although they are not as significant as those in the adult system. The Minister of State, the hon. Member for Louth and Horncastle (Victoria Atkins), confirmed in her answer to my written question No. 58390 that the average time taken to deal with youth cases had doubled recently from 52 days in April 2020 to 102 days in June 2021.

Sadly, no up-to-date figures are available. I suspect, given inaction and the pandemic, that the period of time for youth cases to be heard will have grown along with others. If it is taking months on end to get youth cases into court, it follows that more and more young people could be transferred to the adult courts. With the magistrates court backlog as it is, there could be further delay in getting the case to court, with young people being forced to lead their lives on hold, not knowing their fate. That is all the more reason why the Minister should think again about the new measure he wants to introduce.

I would welcome the Minister's thoughts on how we can mitigate the cliff edge at the end of the youth justice system. It seems to me that simply proceeding with this jump on paper, without engaging the defendant, does the opposite. Yes, the person may be an adult by the time they get to court, but they were children at the time of the alleged offence. I repeat what I said about clause 9: we must do everything possible to ensure that justice is done and that children are properly protected.

James Cartlidge: I stress an important point to colleagues about children. I am afraid that it is a fact that they can commit very serious crimes. Although, in all aspects of the justice system that deal with younger people, we have to be cognisant of vulnerabilities, they have to face justice as well under our system as it is configured.

Let me deal with the point about whether the provision would lead to more cases of a defendant who has turned 18 after committing the offence being sent to the adult system. As the power already exists, the provision is not intended to result in any such increase. Alongside the provision to enable the Crown court to remit cases back to the magistrates court, the clause aims to ensure that courts have the discretion to ensure that cases are always heard in the most appropriate venue.

Alex Cunningham: Will the Minister make a statement on the record about his view of children being transferred from the youth court to adult courts, having committed the crime as a child? What is his position on those transfers?

James Cartlidge: The hon. Gentleman knows that this is not a new matter. When that is the case, when it comes to sentencing, the court will have to take into account the age at which the offence was committed. That is the most important point we need to remember.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13

INVOLVEMENT OF PARENT OR GUARDIAN IN PROCEEDINGS CONDUCTED IN WRITING

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

James Cartlidge: Under the current law, when a defendant under 16 years old is charged with a crime, or is for any other reason brought before a court, the court must require a parent or guardian to attend court at all stages of the proceedings, unless it would be unreasonable to do so. When a defendant is 16 to 17 years old, the court may require a parent or guardian to attend.

The purpose of the provision is to ensure that this important safeguard applies to the new written and online procedures in the Bill—for example, when a child is invited to indicate a plea online, or receives a written notification that the court has decided to send their case directly to the Crown court.

Clause 13 provides that, having regard to the circumstances of the case, the court must ascertain whether the parent or guardian of a child under 16 years old is aware of any written or online proceedings and, if not, to provide them with information about the proceedings. The court may do this for children aged 16 to 17 years old. Where it is appropriate to make a parent or guardian aware, the clause also requires the courts to provide them with information explaining the new written and online procedures, including the choices available to the child, and the effects of those choices.

Alex Cunningham: Given what I have already said about the need for full and proper safeguards for child defendants involved in the criminal process, I am sure it will be no surprise to the Minister that the Opposition are minded to oppose the clause. I will not go over again matters debated on clauses 8 and 12, but I wish to share the additional concern of the Bar Council, which says:

"Many parents of children coming into the criminal justice system have literacy issues and are often themselves vulnerable adults. Securing their involvement in writing, as a 'safeguard' for a child or youth, who is also to be dealt with by way of a written process, is an insufficient safeguard for the administration of criminal justice.

Face-to-face hearings that require the attendance of the parent, guardian or responsible adult mark the gravity of the proceedings. They also allow for further opportunities for appropriate intervention by relevant agencies on behalf of vulnerable children and youths, or in support of parents or guardians that need help and guidance, for which the legal representative is often the point of referral."

I agree with that entirely, and clause 13 contributes to the watering down of the vital safeguards for child defendants. We are therefore unable to support it.

James Cartlidge: To be fair to the hon. Gentleman, he is being entirely consistent. He will appreciate that it would be odd and inconsistent if we were to keep the other clauses and remove this clause, given that it has safeguards in relation to those clauses. Notwithstanding the fact that he has some overarching concerns, he will appreciate that it would be odd for us to remove it in those circumstances.

Sir John Hayes: I wish to add remarks similar to those I made about children in care. When the Minister sends a note, as he said he might, and gives this further consideration, perhaps he could also address this clause, as the same arguments I made earlier apply.

James Cartlidge: My right hon. Friend is correct; to be clear, this clause sits with the other clauses, as it contains safeguards relating to them. They are part and parcel of the same set. I will ensure that he receives the further information that he seeks.

Sir John Hayes: I am grateful to the Minister.

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

The Committee divided: Ayes 10, Noes 5.

Division No. 13]

AYES

Cartlidge, James	Johnson, Dr Caroline
Fletcher, Nick	Longhi, Marco
Hayes, rh Sir John	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 13 ordered to stand part of the Bill.

Clause 14

REMOVAL OF CERTAIN REQUIREMENTS FOR HEARINGS ABOUT PROCEDURAL MATTERS

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

James Cartlidge: The clause gives judges greater flexibility to manage criminal proceedings, avoid unnecessary hearings and speed up justice. It allows the Crown court to determine an application for a witness summons without a hearing. It also removes certain statutory requirements in criminal proceedings for the court to hold a hearing before lifting reporting restrictions. Courts will continue to have the option of convening a hearing in those cases, but this provision will enable them to make such decisions on the papers when they consider that appropriate and in the interests of justice. They will still have to consider any representations made by the parties concerned, including perhaps that the issue requires a hearing, before making a decision.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

DOCUMENTS TO BE SERVED IN ACCORDANCE WITH CRIMINAL PROCEDURE RULES

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

The Chair: With this it will be convenient to consider that schedule 1 be the First schedule to the Bill.

James Cartlidge: It is vital that we ensure that the courts are accessible to everyone who needs to use them, and that includes how documents may be sent

[James Cartlidge]

and received. In some older legislation, a particular document is deemed served only if sent by registered post, which is both inflexible and inefficient.

As we introduce the common platform, it is important to ensure that our court users have the opportunity to make full use of online processes where appropriate when interacting with the court and other interested parties. The clause gives effect to schedule 1, which contains amendments to existing legislation—14 Acts in total—to enable the service of documents in criminal proceedings in accordance with criminal procedure rules, by whichever means is the most appropriate, including by electronic means.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 16

POWER TO MAKE CONSEQUENTIAL OR SUPPLEMENTARY PROVISION

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

James Cartlidge: The clause gives the Lord Chancellor the power to make consequential or supplementary amendments to legislation in relation to any of the criminal procedure provisions in clauses 3 to 15. It is to be read in conjunction with clause 45, which covers regulations relating to all the provisions in the Bill.

The clause provides that the Lord Chancellor may amend, repeal or revoke any provisions within an Act of Parliament passed before this legislation or during this parliamentary Session. It will also enable the Lord Chancellor to amend, repeal or revoke any provisions within secondary legislation, irrespective of when that legislation was made. Any regulations that amend or repeal primary legislation are subject to parliamentary scrutiny through the affirmative resolution procedure. The wording is standard, and standard practice to have in a Bill, as I understand it.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

CONSEQUENTIAL AND RELATED AMENDMENTS

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

The Chair: With this it will be convenient to consider that schedule 2 be the Second schedule to the Bill.

James Cartlidge: The clause introduces schedule 2, which amends existing primary legislation as a result of the implementation of clauses 3 to 12. The amendments in schedule 2 take account of the new court processes we are introducing and the changes we are making to current criminal procedures. They include amendments to the Magistrates' Courts Act 1980, the Road Traffic Offenders Act 1988, the Courts Act 2003, the Criminal Justice Act 2003, the Police and Criminal Evidence Act 1984, which includes legislation about bail after arrest, the Crime and Disorder Act 1998, the Coroners and Justice Act 2009 and the 2020 sentencing code. These are technical and consequential amendments required to enable these clauses to have the intended effect. I commend clause 17 and schedule 2 to the Committee

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

10.45 am

Schedule 2

CRIMINAL PROCEDURE: CONSEQUENTIAL AND RELATED AMENDMENTS

Amendments made: 5, in schedule 2, page 65, line 26, leave out from "17BA" to end of line 27.

See the explanatory statement for Amendment 1.

Amendment 6, in schedule 2, page 65, line 28, leave out paragraph (d).

See the explanatory statement for Amendment 1.

Amendment 7, in schedule 2, page 65, line 32, leave out "18(1)" and insert "17BA".

See the explanatory statement for Amendment 1.

Amendment 8, in schedule 2, page 65, line 32, at end insert—

"(b) in subsection (3), for "and section 18(1) below" substitute ", section 18(1) and section 20"."

This amendment makes a clarification of section 17B(3) of the Magistrates' Court Act 1980 for consistency with the amendments to that section proposed in Amendment 2.

Amendment 9, in schedule 2, page 66, line 22, at end insert—

"; or

(c) section 17B has effect and no legal representative of the accused is present at the hearing referred to in that section."

This amendment is consequential on Amendment 2.

Amendment 10, in schedule 2, page 68, line 7, after "accused" insert—

", or a legal representative of the accused,".

See the explanatory statement for Amendment 1.

Amendment 11, in schedule 2, page 68, line 8, leave out "subsections (2) to (6) of".—*(James Cartlidge.)*

See the explanatory statement for Amendment 1.

Schedule 2, as amended, agreed to.

Clause 18

RULES FOR ONLINE PROCEDURE IN COURTS AND TRIBUNALS

Alex Cunningham: I beg to move amendment 86, in clause 18, page 34, line 38, leave out "require online procedural assistance" and insert "are digitally excluded".

This amendment would require regard to be had to the needs of persons who are digitally excluded when making Online Procedure Rules.

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

Amendment 87, in clause 24, page 41, line 30, leave out "require online procedural assistance" and insert "are digitally excluded".

This amendment would require the Lord Chancellor to have regard to the needs of persons who are digitally excluded when allowing or disallowing Online Procedure Rules to be made.

Amendment 88, in clause 27, page 42, line 31, leave out "require online procedural assistance" and insert "are digitally excluded".

This amendment would require the Lord Chancellor to arrange for the provisions of appropriate and proportionate support for persons who are digitally excluded.

Amendment 89, in clause 31, page 44, leave out lines 11 to 15 and insert—

> ""persons who are digitally excluded" means persons who, for reasons including their inability to access the internet or digital devices, lack of basic digital skills, or problems with confidence and motivation, experience difficulty in engaging with computers or online processes".

This amendment inserts a new definition of "persons who are digitally excluded".

New clause 2—*Online Procedural Assistance*—

"(1) Online Procedural Assistance, must be made available and accessible to any party or potential party to proceedings governed by Online Procedure Rules that requires it. In delivering this duty, the Lord Chancellor must have due regard to the intersection of digital exclusion with other factors, such as age, poverty, disability and geography and deliver support services accordingly.

(2) It must include assistance to enable such a party or potential party to have a reasonable understanding of the nature of the proceedings, the procedure applicable under Online Procedure Rules and of how to access and navigate such procedure. To this effect, it will provide both advice and technical hardware, as appropriate, and will provide assistance to such individuals throughout the course of their proceedings.

(3) Anyone who requires Online Procedural Assistance must have the option of receiving it either via remote appointments or in-person appointments at a site local to them.

(4) Online Procedural Assistance must include, for a party or potential party whose first language is not English, assistance, by interpretation or translation as appropriate, in a language that is familiar to the party or potential party.

(5) The delivery of Online Procedural Assistance must be evaluated at yearly intervals by an independent evaluation team. To assist in these evaluations, data must be routinely collected relating to the protected characteristics of those using the service, outcomes of cases that used Online Procedural Assistance and the frequency and location of the appointments provided. This must also be made publicly available."

This new clause clarifies the nature of online procedural assistance.

Alex Cunningham: We now move to part 2, chapter 2 of the Bill, which sets up powers to make online procedure rules for specified proceedings in civil, employment, family and tribunals to be started, conducted, progressed or disposed of by "electronic means". The Opposition recognise the importance of expanding the use of online procedures in our court processes, and its role in making the system more efficient and cost effective, and so are broadly supportive of the provisions of this chapter.

However, we seek some reassurances about the provisions for digitally excluded individuals in the Bill. Research by Lloyds Bank shows that 16% of the UK population lack basic digital skills and are unable to

"participate in a digital society."

It is vital that these people are not left behind by the provisions in this Bill.

The amendments aim to introduce further safeguards and accountability and scrutiny mechanisms at points we think may be appropriate, so as to ensure the measures do not preclude practical access to justice. I look forward to hearing what the Minister thinks of them.

The amendments relate to the parts of the Bill that refer to

"persons who require online procedural assistance."

I thank Justice and the Public Law Project for their assistance and input. This phrase is used at a number of points in the Bill, including at clause 18(3)(a), which requires

"Powers to make Online Procedure Rules…are to be exercised with a view to securing…that practice and procedure under the Rules are accessible and fair,".

Clause 18(4) states:

"For the purposes of subsection (3)(a), regard must be had to the needs of persons who require online procedural assistance."

Clause 24(4) states:

"In deciding whether to allow or disallow rules,"—

made by the Online Procedure Rule Committee—

"the Lord Chancellor must have regard to the needs of persons who require online procedural assistance."

Clause 27 places a duty on the Lord Chancellor to arrange for support that is

"appropriate and proportionate for persons who require online procedural assistance."

Such persons are defined in Clause 31, which states

"'persons who require online procedural assistance' means persons who, because of difficulties in accessing or using electronic equipment, require assistance in order to initiate, conduct, progress or participate in proceedings by electronic means in accordance with Online Procedure Rules;".

The Bar Council's briefing for Second Reading noted:

"It is unclear if "persons who require procedural assistance" is a socio-economic, physical, mental or other difficulty."

It also recognises that this

"seems to raise potential equality and diversity issues."

Justice is also concerned that the definition is "unduly narrow and unclear". Although the Opposition support the inclusion of the duty to arrange support for persons who require online procedural assistance, we share the concern that the current definition of such persons undermines the effectiveness of the duty. Justice explains that people may be able to access or use electronic equipment but may still be unable to effectively engage with or participate in online proceedings for other reasons—for example, people who speak English as a second language, people with learning difficulties, cognitive or sensory impairments, and those who require different modes of communication, such as braille or sign language. Furthermore, digital exclusion can be situational, because people

"who might normally be confident online may struggle with online services when faced with crises such as divorce or debt which reduce people's confidence and capability."

Those are some of the findings from Justice's excellent 2018 report, "Preventing Digital Exclusion from Online Justice", of which I am sure the Minister is aware. Justice also notes that it is unclear whether the definition as currently drafted would include people who are able to use electronic equipment but do not have access to the internet—for example, because they cannot afford the data, as opposed to the equipment, such as a phone, tablet or computer. Will the Minister please provide some clarification on this point? I hope the intention is that the definition will cover such scenarios.

In its 2018 report, Justice argued for the need to provide effective support to those who are digitally excluded, in order to realise the full potential of online justice services and improve access to justice for many people. In the report, Justice used the term "digitally excluded" to describe people who, for reasons such as

"an inability to access the internet or digital services, lack of basic digital skills, or problems with confidence and motivation",

[Alex Cunningham]

experience difficulty in engaging with computers and online processes. We think reflecting that meaning in the legislation would ensure that the duty to provide support to those who need it would be most effective and would encompass all those who may need assistance. To that end, amendment 89 inserts a new definition into clause 31, stating that

"'persons who are digitally excluded' means persons who, for reasons including their inability to access the internet or digital devices, lack of basic digital skills, or problems with confidence and motivation, experience difficulty in engaging with computers or online processes."

Amendments 86, 87 and 88 insert the phrase

"persons who are digitally excluded"

in the place of

"persons who require online procedural assistance"

at the points I mentioned previously. The Opposition and Government have the same intention here: to provide support to those who need it, so that no one is precluded from accessing justice. I hope the Minister can see where we are coming from and will look favourably on the amendments.

I turn now to new clause 2, which is another approach to dealing with some of the concerns. It simply clarifies the nature of online procedural assistance, and I would be grateful if the Minister could address each of its subsections and tell the Committee whether they are matters that he and his team have already considered, and whether he envisions that the Bill as drafted would cover them. Does the duty on the Lord Chancellor currently include consideration of other factors that intersect with digital exclusion, such as age, poverty, disability and geography? The right hon. Member for South Holland and The Deepings was helpful on these issues in an earlier debate, when he spoke up for older people. I am sure that he, too, will want answers to our questions and, I hope, a few of his own.

Will the assistance cover both advice and technical hardware, and will it be available throughout the proceedings? Will persons receiving the assistance be able to do so via either a remote appointment or an in-person appointment at a site local to them? For those whose first language is not English, will assistance be provided through interpretation or translation, as appropriate, in a language that is familiar to the party or potential party? Will the assistance be monitored and evaluated at regular intervals? If so, how and by who? We want to be able to offer the Government keen support for the proposals, so I look forward to the Minister's response to the concerns we have raised.

James Cartlidge: I am grateful to the hon. Gentleman for giving us the opportunity to talk through the issues of digital exclusion. These are important issues. As colleagues know, much of the Bill, particularly once we go beyond the judicial review clauses, relates to digitisation and I feel very strongly that digitisation has many benefits.

Colleagues will remember the evidence from the Scottish Law Society. One of its most interesting points was how, in Scotland, its experience had been that the use of video technology and so on had kept justice going during the pandemic. That has certainly been the case in England and Wales. I appreciate that the hon. Gentleman is not saying otherwise—he is looking at those who are excluded. In principle, in many ways digitisation can enhance access to justice. In the greatest collective challenge to access to justice that this country has seen for many decades—the pandemic—digitisation maintained access to justice when otherwise many more cases would have been stuck and the backlog would have been even worse.

I have two points to make on a personal note. I am not a lawyer by background, but I spent my year off as an outdoor clerk in the High Court, carrying bundles of paperwork around the Royal Courts of Justice, from window to window. Some were shut in my face, because it was not the right window or the person was going off for lunch—it is quite common, actually. There has always been an enormous amount of paperwork in the system, as the hon. Member for Hammersmith, who I believe was a barrister, will know. Trying to reduce those bundles will take time. In the Crown court in particular, we will still see large bundles of papers. We will still have large paper packs for the jury to look at; in many ways, that is still the most effective method. Stripping out the paperwork and increasing digitisation will have its moments of frustration for practitioners and staff. It will have its downsides. The system will never be perfect, but in general and in principle digitisation enhances the system.

The second personal point is about my business idea. Mr Rosindell, you will know about house prices in London. The idea was to enable groups of friends who were renting to buy property together. It was for flatmates to buy and was called "Share to Buy". Once we had come up with it and had approached a lender, who was supportive, we realised that the problem was how to get people to apply. We decided that the only way to do it was online. At that time, there were not really online mortgage applications. We thought at great length about what to do if people do not have internet access and want to make a paper-based application. Obviously, that scheme is not as significant as the legal system, but the same principles apply. I am a great believer in the ability of the digital sphere to enhance accessibility, to increase people's access to important things, alongside having the appropriate safeguards and support, which are the two key words.

We recognise that those who are digitally excluded may need assistance in starting or progressing their case online. Therefore, HMCTS has set up a digital service that is designed with and for users to help navigate the justice system. It will be supported through HMCTS user contact functions, who will issue guidance and help on the journey through the service over the phone and related call-centre channels, such as web chat. As I said in discussion on earlier clauses, HMCTS recently awarded a national contract to deliver positive and practical solutions to support users and break down barriers to digital inclusion across civil, family and tribunal jurisdictions.

Although the measures seek to direct as many users as possible through primary digital channels, some users may have problems accessing digital services. The hon. Member for Stockton North made some quite specific points about geography, age and disability. We recognise that some users may have particular problems. As I noted in the previous discussion, paper forms will remain available, and work is ongoing to review and simplify those forms. HMCTS will ensure users receive equal service no matter what channel they use to engage.

Amendment 86 would require regard to be had to the needs of persons who are digitally excluded when making online procedure rules, changing, as a number of the amendments would do, the terminology "require online procedural assistance" for that of being "digitally excluded". Amendment 87 would require the Lord Chancellor to have regard to the needs to persons who are digitally excluded when allowing or disallowing online procedure rules to be made.

The duty to have regard to the needs of those who may be digitally excluded is addressed in clause 27, which requires the Lord Chancellor to make provisions for those who require additional support. Through that measure, court users will be supported through their online journey in person and remotely. When considering whether to allow or disallow rules, the Lord Chancellor must have regard to those who require online procedural assistance.

Amendment 88 would require the Lord Chancellor to arrange for the provision of appropriate and proportionate support for persons who are digitally excluded. The measures already seek to ensure appropriate and proportionate support for persons who are digitally excluded or who, in the Bill's terms,

"require online procedural assistance"

so that they are able to engage with online procedures. That includes assistive technology, such as a screen reader, and simplifying language to ensure that users understand what they are required to do.

11 am

Amendment 89 inserts a new definition of

"persons who are digitally excluded".

As I have set out, there are provisions in place for those who are digitally excluded, so we do not think that changing the terminology or inserting a definition to go with it are necessary. HMCTS will provide persons who are digitally excluded with support through several means, including a service over the phone and more intensive face-to-face services. Those services will address an inability to access the internet or digital devices, a lack of basic digital skills, problems with confidence and motivation, and difficulty engaging with computers or online processes.

New clause 2 sets out extensive duties to provide online procedural assistance of a particular sort. I do not, however, consider that to be either necessary or desirable, though I accept that the hon. Member for Stockton North put a lot of work into it. I have set out the extensive safeguards in place. I stress that extensive support services will be delivered across different channels to ensure that all those who require support are able to access it. Those channels will include local centre support—there are more than 300 physical sites for users to attend in-person appointments, and we are currently adding more—over-the-phone support, remote one-to-one video appointments with those who have access to but need supporting navigating the service, and in-home, face-to-face support from a trainer in the region who will attend the applicant's home with the necessary equipment to enable them to deliver support.

As that demonstrates, HMCTS has already considered a huge range of support, and I do not think that such a duty is necessary. I believe that the measures in the Bill provide significant safeguards for those who are digitally excluded, and the amendments are simply not necessary. On that basis, I urge the hon. Member for Stockton North to withdraw the amendment.

Sir John Hayes: I was delighted to hear that in his earlier life the Minister was a kind of Wemmick figure to Mr Jaggers before his expectations were even greater and he came here. His account of carrying papers around the courts perhaps prepared him for the immense amounts of paperwork that one deals with as a member of the Government, from my memory of it. However, I could not disagree with him more on this part of the Bill, for three reasons.

The first is accessibility. There are profound problems with moving what was previously a personal connection or a written connection with any organisation or body to an online one. It is particularly disadvantageous for vulnerable groups, including people with learning difficulties, people with mental health problems, people with particular disabilities such as hearing loss, and the unsighted. The hon. Member for Stockton North mentioned the elderly too, and the Minister acknowledged that point in respect of his own parents, who he said were not as switched on to these matters as he doubtless is.

There are other issues too, such as security and confidentiality. There is an immense myth. I know that from having been in the IT industry and having been Security Minister. The combination of those experiences taught me a long time ago that online procedures and processes are very hard to secure beyond doubt, so I have great doubts about whether confidentiality can be maintained as it can by more conventional means.

Fundamentally, my problem is one of community. We have to ask in what kind of place we want to live, and how we want to conduct our lives. That applies to our work in Parliament, to the exercise of the law, and to business, as the hon. Member for Stockton North said. Personal interaction and the intimacy associated with face-to-face engagement are critical to framing and affirming our sense of community and connection with others. The more remote and anonymous we make that engagement, the more we will undermine that sense of what we share, so I have profound doubts about the whole move to online government, as I mentioned earlier.

The Minister is being extremely adroit in his handling of the Committee; indeed, I sent him a note to say how deftly he handled my earlier inquiries. I do not mean to patronise him, but I think he can be very proud of his performance. I have been in that seat many times, as he knows, and I know how tough it is. However, when I raised these matters previously he suggested—slightly untypically and rather clumsily—that I was regressive. He must know that the very concept of progress is suspect, because believing in progress means believing in a destination—a pre-ordained destination towards which we are all hurtling.

In truth, of course, that is profoundly philosophically unsound. I can only assume that, standing there under those dreadful Whigs in Gladstone's Cabinet, the Minister has adopted the Whig theory of history that we are all merely actors who are acting out a script written for us by some other power. There is nothing regressive about my remark; there is perhaps something human about it. I want more politics on a human scale; I want it to be safe, secure and accessible to all, and I want it to affirm our sense of community and build on what we share.

[Sir John Hayes]

For all those reasons, I seek extremely profound reassurances from the Minister—of the kind that he has offered previously, in the spirit that I recommended a few moments ago—that my constituents, particularly the most vulnerable, will not be disadvantaged by the legislation. The hon. Member for Stockton North alluded to geography. Well, some people in rural areas such as South Holland and The Deepings are not yet "online", and I am sure that that applies to constituencies represented by Members on both sides of the Committee. I do not want those people to be at a disadvantage.

The Minister is right that during the pandemic we had to make do, and that did have some beneficial effects: it forced us to think about how we could perhaps do things more efficiently. In the end, however, I was desperate to get back to the business of meeting my constituents face to face, and of debating and engaging in person with colleagues in Parliament. I am sure that that applies to most right hon. and hon. Members in this House. Let us not hurtle down the road to moving everything online, only to look back in years to come and think, "My goodness! What have we done and what have we lost?"

Andy Slaughter (Hammersmith) (Lab): I shall be brief. I felt half invited by the Minister to respond, but I will not tell a whole war story from the courts, as we used to do on the Justice Committee. I commiserate with him for his treatment by the Royal Courts of Justice; it is nothing personal that the windows are being shut in his face.

I will shock the Committee again: I agree with the right hon. Member for South Holland and The Deepings. I am afraid that I am one of those people who still carries large amounts of paper around and cannot quite manage otherwise. That is possibly why it is good that I am not a practitioner any longer: the courts have adapted quite well to new technology—practitioners, the judiciary and the senior judiciary in particular are extremely adroit in that respect. I agree entirely with my hon. Friend the Member for Stockton North that we have in common with the Government the intention to ensure that things are done as efficiently, quickly and economically as possible. I entirely agree that new technology has a big role to play in all that.

The Committee may hear a "but" coming. The "but" is that there are several ways, but two in particular, in which we must be very wary. First, there is the issue of access. We have all had to learn to deal with new technology, and an example of that is how we advanced our ability to do so under the stresses of covid. Zooming is as common to us now as face-to-face meetings.

Sir John Hayes: It is a mark of both the sense and sensibility of the scrutiny of the Committee that the hon. Gentleman should be defending the Minister and the Government's position from my mild but profound attack. It is a good Committee where that kind of communion, if I may put it that way, can be enjoyed.

Andy Slaughter: I am going to impress the right hon. Gentleman even more in a moment by making a 180° turn and joining his critique of the Minister.

There may well be times when Zooming is more efficient and appropriate, but there will be many times when face-to-face meetings are more appropriate, including meetings with constituents. During the long debates that we had on the Legal Aid, Sentencing and Punishment of Offenders Act 2012, I cautioned many times that it moved too quickly to exclude people from the system in the name of efficiency. There is a danger that we will do that here.

The Minister fairly said that we must proceed with caution and be aware of some people's digital limitations. It is easy to say that, but it is more difficult to ensure that it happens, because the same people who struggle with matters online are those who cannot make their voices heard, and they just disappear from the system. We have excluded people even though it was not intentional.

A second important category—coroners—was touched on. I will not say much now because I expect that we shall come on to the plans to move those online when we come to that section. The Minister will remember that Mr Rebello, senior coroner for the Liverpool and Wirral coroner area and secretary of the Coroners Society, said that he liked to have everybody in the room. He was not saying that for its own sake, but because there are times, when evidence is being heard or judicial decisions are being made rather than in administrative hearings, when it is important for people to be present. Although doing things remotely may have been the best that we could do during covid, that will not always be the case.

I simply caution that if justice is to be properly done, we should be cautious before we throw out the methods that have served us not just for decades but for centuries in assessing the quality of evidence, in advocacy and in ensuring that we get to the best result we can in every case. I hope that we will be as modern and efficient as we can, and use as much technology as we can, but not at the price of excluding people or of not seeing justice done.

Alex Cunningham: I appreciate the Minister's sharing information about his past career; it is fascinating to find out what people have done in their previous lives. Perhaps one angle of his business could have been encouraging people to move to the north where, instead of buying a share in a house for £150,000, they could buy a lovely three-bedroom semi-detached house in Stockton; have access to our wonderful newly opened Globe theatre; and be 30 minutes from the Yorkshire moors, 40 minutes from the Yorkshire dales and only an hour from the Northumberland coast.

James Cartlidge: Very quickly, because it is incredibly relevant, I assure the hon. Gentleman that our business was entirely national. The reason that it was able to operate nationally, in every part of the country, is because it operated online.

Alex Cunningham: That is why we welcome the way that we can move forward, even in the world of justice. We can move online as much as possible, but the Minister knows how much we have been pressing on the issue of safeguards.

The right hon. Member for South Holland and The Deepings was concerned that some people in his area, as in other areas of the country, might not have access.

When he talked about face-to-face meetings and the importance of community, it struck me that he said that he did not want us to underestimate how important that is and to undermine those personal relationships. I have maintained throughout my contributions to the Committee that we do not want justice to be undermined as a result of moving online.

The Minister spoke about the Scottish experience. It did keep it going, but for those who had access to systems. He acknowledged the need for appropriate support and recognised that more detail must be provided. We look forward to seeing that detail in future.

My real concern is that some of the language in the Bill is a little on the soft side. I would rather see it more clearly defined and nailed down, to ensure that the people who are most likely to be excluded from digital services are given all the support they need, which might even mean providing them with the data that they require to use the systems that are available to them.

In the light of the debate, however, I do not intend to press any of the amendments to the vote, but I say again that some of the language is soft. We need that detail and I hope that there will be no devils in it. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

11.16 am

Adjourned till this day at Two o'clock.