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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Monday 26 April 2021

The House met in a hybrid proceeding.

1 pm

Prayers—read by the Lord Bishop of Rochester.

Death of a Member: Baroness O'Cathain

1.06 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of our very good and valued friend the noble Baroness, Lady O'Cathain—Detta O'Cathain—on 23 April. On behalf of the House, I extend our condolences to the noble Baroness's family and all her friends.

Retirement of a Member: Lord Denham

1.07 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of another good friend, the noble Lord, Lord Denham, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his long and much-valued service to the House.

Lord Ashton of Hyde (Con): My Lords, with the leave of the House, I want briefly to acknowledge what the Lord Speaker has just announced and pay tribute to my noble friend Lord Denham on the notification of his retirement from this House.

Lord Denham became a Member of this House in 1949 and has served with us for over 71 years. On his retirement, he was the longest-serving Member of the House. My noble friend had an admirable career, serving in the Governments of Harold Macmillan, Alec Douglas-Home, Ted Heath, Margaret Thatcher and John Major, and culminating in an impressive 12-year term as Government Chief Whip. He was devoted to this House, knew it backwards and served it well. I know your Lordships will join me in thanking him again for his long and distinguished service to the House and to the country.

Noble Lords: Hear, hear!

Arrangement of Business

Announcement

1.08 pm

The Lord Speaker (Lord Fowler): My Lords, some Members are here in the Chamber while others are participating remotely, but all Members will be treated equally. Oral Questions will now commence. Please can those asking supplementary questions keep them brief and confined to two points. I ask that Ministers' answers are also brief.

Industrial Strategy: Local Growth

Question

1.08 pm

Asked by ***Baroness Thornhill***

To ask Her Majesty's Government what assessment they have made of the Annual Report by the Industrial Strategy Council, published on 23 March, which recommended the development of local strategies to deliver sustainable local growth.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): The work of the Industrial Strategy Council to date has been pivotal for the success of the industrial strategy. As we begin to transition into our plan for growth, the work of the council, including reflections in its annual report, will be taken into account. We are working with local enterprise partnerships, mayoral combined authorities and other local partners to build on the priorities identified through local industrial strategies. We will also address new issues which have arisen since their publication.

Baroness Thornhill (LD): I thank the Minister for that reply. One wonders why, if it was so pivotal, the council is being disbanded. The report is critical of the Government's proposed approach to levelling up, which it argues is over-reliant on big infrastructure projects and centrally controlled pots of funding spread far too thinly over too short a time. Does the Minister agree with significant historical and international research that such a centralised approach rarely works? Can he confirm whether the forthcoming, much awaited devolution White Paper will provide an opportunity to reverse this trend and provide a far more effective way forward?

Lord Callanan (Con): We will continue to work on the levelling-up agenda, building on the strength of many places. We encourage those places to consider key sectors, assets and clusters that they want to support to foster their long-term growth ambitions, building on the strong evidence base and the brilliant work done to date by many places across the country.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, following on from that question, can I ask the Minister to set out the ways in which the innovation, productivity and wealth-creation capacity of sectors of the economy that are not the direct responsibility of BEIS, such as the creative industries, will be engaged at a local level in the delivery of the plan for growth?

Lord Callanan (Con): I know that the noble Lord has been a long-term champion of the creative industries, and I agree with him. We recognise the importance of the creative sectors. In *Build Back Better: Our Plan for Growth*, creative industries are highlighted as one of the sectors that we expect to shape the UK's economic

[Lord Callanan]
future. Upgrading and creating new cultural and creative spaces represents a core element of the £4.8 billion levelling-up fund.

Lord Goddard of Stockport (LD): The Industrial Strategy Council's annual report points out that the Government's plans

"are not yet a practical roadmap for delivering Net Zero, with several areas at present lacking the required scale to make progress at the required speed".

Housing retrofit is one such area. Will the Government accept the recommendation of the House of Commons Environmental Audit Committee's recent report on energy efficiency to open up the proposed £3.8 billion social housing upgrades? It is estimated that green home upgrades could support 77,000 jobs across the north alone. That is levelling up.

Lord Callanan (Con): The noble Lord makes a good point. The £62 million social housing decarbonisation fund demonstrator is currently delivering 19 projects across England and Scotland. In the autumn 2020 spending review we committed a further £60 million towards funding the main elements of the social housing decarbonisation fund to ensure some early progress and, of course, we are still committed to the manifesto commitment of £3.8 billion for the funding total.

Lord Forsyth of Drumlean (Con) [V]: My Lords, the report by the Industrial Strategy Council, which was appointed by the Government and consists of a number of distinguished businesspeople, points out that, whether it is called an industrial strategy or a plan for growth, the basic premise is the same: a programme of supply-side policies to drive prosperity in and across the economy. Does my noble friend agree, and, if so, what are those supply-side policies?

Lord Callanan (Con): In the new plan for growth that the noble Lord refers to, we have decided that the Industrial Strategy Council in its current form will no longer be needed to monitor and evaluate the impact of the industrial strategy. The Prime Minister and the Chancellor have convened a build back better business council to act as a sounding board and to provide help, advice and support on the way forward.

Lord Aberdare (CB): My Lords, the ISC report urges the Government to develop a comprehensive and ambitious labour market strategy, co-ordinated across government, employers and the education sector. What plans do the Government have for such an overarching strategy and for overseeing how their various skills-related initiatives mesh together to deliver a skilled and resilient workforce across the UK as needed by the plan for growth, and to close the future skills gap highlighted by the ISC?

Lord Callanan (Con): The noble Lord is right that skills are one of our key priorities for investment, along with infrastructure and innovation. The Prime Minister and the Cabinet Secretary have asked Sir Michael Barber to conduct a rapid review of government delivery, including in the skills system, to ensure that it remains focused, effective and efficient and to suggest how it could be strengthened.

Lord Bassam of Brighton (Lab) [V]: My Lords, the Industrial Strategy Council's most recent annual report suggested that, for levelling up to succeed, it needed to include consideration of devolution. How much thought have the Government given to further devolution in their industrial strategy? Will the Minister tell the House what progress has been made in convening the build back better business council and who will lead its work? Is it always the case that pivotal councils, such as the Industrial Strategy Council, get abolished?

Lord Callanan (Con): Of course it is not always the case. Many councils do good work. We think that the local Industrial Strategy Council did some good work, but we are building on that, extending and taking it forward. The Build Back Better Council, to which the noble Lord refers, will take forward that work.

Baroness Sheehan (LD): My Lords, why is the Industrial Strategy Council to be abolished? A number of other noble Lords have asked this question and I want to press the Minister on it. How do the Government intend to fill the gap that will be created to hold government Ministers to account on the plan for growth overall?

Lord Callanan (Con): Many of the elements of the work of the Industrial Strategy Council have been superseded. There are now new challenges—we had the Covid epidemic. The Government, of course, are still being held to account in this House and elsewhere. The purpose of the Build Back Better Council will be to provide help and advice on the way forward.

The Lord Bishop of Rochester: My Lords, although I was once a voluntary sector member of a regional assembly, I do not hanker after a return to that particular bit of structure. However, are Her Majesty's Government contemplating any new local structures as part of the response to the questions raised, or do they trust local authorities, executive mayors and existing bodies, such as the LEPs, to deliver on this agenda? I notice that the Minister did not mention local authorities in his original response.

Lord Callanan (Con): That was not a deliberate omission. Local authorities are still key to the development and delivery of these strategies and policies, along with the LEPs, the mayoral combined authorities and, of course, local businesses themselves that need to be involved in the way forward.

Lord Lucas (Con) [V]: My Lords, I refer to the paragraph from *Build Back Better* headed "Changing the way we invest in places". For a town such as Eastbourne, what will be the empowered local institution and with whom will it cohere and co-ordinate?

Lord Callanan (Con): I refer the noble Lord to the answer I just gave to the right reverend Prelate. We will work with local enterprise partnerships, mayoral combined authorities and other local partners. The key to that is local businesses in areas such as Eastbourne, and we will look at the geography and structure of these partnerships going forward.

The Earl of Clancarty (CB): My Lords, if developing skills across the country is to be part of the levelling-up agenda, will the Minister recognise the importance of design, which gets no mention at all in the *Build Back Better* plan? Does the Minister agree that education and design starting in schools will be crucial in developing creative ideas and innovation, one of the Government's three pillars of growth?

Lord Callanan (Con): I agree that design and innovation are going to be key and crucial. We have a history in this country of taking good design and innovation and then not developing them into viable products led by British businesses. That is something that we need to correct, and our forthcoming innovation strategy will address many of these issues.

Lord Clark of Windermere (Lab) [V]: My Lords, in the earlier report, the council said that we should keep the spotlight on places whose productivity levels and growth rates were well below the national average. I know that the Minister shares my view and agrees particularly with this recommendation. What are the Government are doing to try to bring this idea into reality?

Lord Callanan (Con): I agree with the noble Lord that productivity will be key to our success going forward. He and I come from part of the UK that needs to expand its productivity and key to that will be developing the skills agenda, which I set out in the previous answer.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked—a compliment to the Minister, who consistently manages to answer them all in the time allotted.

Folic Acid

Question

1.19 pm

Asked by ***Lord Rooker***

To ask Her Majesty's Government, further to the reply from Lord Bethell on 23 March (HL Deb, cols 717-20), whether they have reached a conclusion on the findings of their consultation on the proposal to add folic acid to flour which closed on 9 September 2019.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I thank the noble Lord, Lord Rooker, for keeping this issue live. Noble Lords will appreciate that we are in the pre-election period for the Welsh and Scottish parliamentary elections and, as this is a UK-wide consultation, we cannot make any policy announcements at this time. But I can advise that, since my last reply, Ministers have looked at this extremely closely and hope to discuss it promptly with the devolved Administrations after 6 May.

Lord Rooker (Lab): For my 16th Oral Question, may I ask about value for money? Why can the UK Government not use their own estimate in the impact statement for the consultation, which said:

"Preventing an NTD carries a lifetime benefit of up to £3m"

per person with spina bifida? It said that fortification presents

"a significant reduction in NTDs, possibly … equivalent to 150-200 NTDs per year".

This is every year, not a one-off, so the savings from fortification amount to hundreds of millions of pounds. The work in the United States on the CDC website confirms massive financial savings. Why are the Government so reluctant to save this money?

Lord Bethell (Con): My Lords, I would be glad to take the noble Lord's recommendation back to the department; he puts it extremely persuasively. As I said, we have looked at the substantial point closely and it is extremely persuasive, as the noble Lord rightly put it. We hope to come forward with recommendations as soon as the elections are over.

Baroness Thornton (Lab): I reinforce what my noble friend Lord Rooker said. I may be addressing this with my third or fourth Minister. I am not certain whether the noble Earl, Lord Howe, dealt with it when I was opposite, but he may have done, which would make the noble Lord my fourth Minister on this issue. It is even more irritating that it was research in the UK that led the United States and other parts of the world to adopt this policy. I think The Minister has run out of road on this one, and I would like to hear what the timetable to implement this policy is.

Lord Bethell (Con): I completely endorse the tribute of the noble Baroness to those who have worked on this policy. She is right: the science that has gone into this has been persuasive around the world. I thank those in industry who worked with us on our pilot, which proved extremely successful. We are in good shape when it comes to thinking through the implementation of such a policy. My hands are tied at the moment, because of purdah, but I hope to return and fulfil the noble Baroness's wishes.

Lord Dodds of Duncairn (DUP) [V]: I congratulate the noble Lord, Lord Rooker, and other noble Lords on their tireless work on this issue. As former co-chair of the all-party group on folic acid fortification of flour in the other place, I remember the campaign to bring about the consultation well. As the parent of a son born with a neural tube defect, I am keen to see the Government act as quickly as possible to prevent avoidable births of children with such a condition. For the sake of the unborn and their families, can the

[Lord Dodds of Duncairn]
Minister give a categoric guarantee that, after 6 May, when the elections are out the way, we will finally get definitive action and definite proposals?

Lord Bethell (Con): My Lords, I join the noble Lord in paying tribute to all those who have worked so hard, particularly the noble Lord, Lord Rooker, who has delivered a playbook campaign on this. Being on the receiving end, I pay tribute to the grace, persuasiveness and energy with which he has conducted that campaign. He is not the only one, and I pay tribute to the personal testimony of the noble Lord, Lord Dodds—what a moving story he has just told. All who have been involved in these sorts of conditions would have been touched by that. I cannot deliver the categoric guarantee that he asks for but, as I said, we are looking at it extremely carefully and I hope to return soon.

Baroness Wyld (Con): I join my noble friend in paying tribute to the noble Lord, Lord Rooker, for his campaign. I urge him to keep up the pace. While the Government are looking at that, we surely need more creative public information campaigns to raise awareness of the importance of folic acid, particularly when communications around health have, understandably, focused on the pandemic. What work have the Government done with HCPs, in practice, to make sure that women are fully informed?

Lord Bethell (Con): My noble friend is right: with half of pregnancies unplanned or unexpected, it is entirely right that we should seek to raise issues such as folic acid. The Government are committed to the preventive agenda, and folic acid is just one among many examples where we hope to mobilise public interest in looking after their own health to avoid these kinds of conditions. Her point is extremely well made.

Baroness Jolly (LD) [V]: My Lords, the department's website states:

"More than 60 countries worldwide now add folic acid to their flour, including Australia, Canada and the US."

It goes on to say:

"In Australia, neural tube defects fell 14%".

This would save 400 babies a year in the UK. The department has spent the last year making Covid-related decisions in our best interests. Given the Minister's comments, can we expect an announcement by the end of June?

Lord Bethell (Con): The noble Baroness puts the statistics persuasively. The numbers I have are slightly different, but her gist is right. I hope to return after purdah to revisit this important subject.

Lord Moynihan (Con) [V]: As the noble Baroness, Lady Jolly, just said, does the Minister agree that it is high time that we followed Australia, which mandated the addition of folic acid to wheat flour for making bread? As long ago as 1988, folic acid fortification of all enriched grain product flour was fully implemented in the United States and Canada. It is time to say yes to the long-running campaign of the noble Lord, Lord Rooker; it should be a departmental priority on 7 May.

Lord Bethell (Con): I reassure the noble Lord and others who have pressed this point that it is a departmental priority. There has of course been a pandemic and that has slowed things down. I cannot avoid that fact, but we are very much returning to the prevention agenda in the round and the issue of folic acid in particular.

Baroness Hayman (CB) [V]: My Lords, the Minister will understand the frustration in the House at the repeated delays in implementing a policy that has the opportunity substantially to reduce the scale of suffering that goes on, because of our failure to implement the implications of research that, I remember and as has been said, showed the benefits of fortification in the 1980s. It is desperately dispiriting to know that that research has been taken up by other countries, but not the UK. I press the Minister and suggest that it would be extremely helpful if the meetings that he has said need to take place with the devolved Administrations could be arranged now. Perhaps he could write to the noble Lord, Lord Rooker, copying the letter to other noble Lords, to tell us exactly when the meetings that he has described are scheduled.

Lord Bethell (Con): I hear the frustration loud and clear and reassure the noble Baroness that we are working on this at pace.

Lord Rennard (LD): My Lords, in response to numerous questions and debates on this subject over the years, no Minister has ever produced a satisfactory explanation of why we do not add folic acid to flour. Would it have made any difference if the folic acid suppliers had had the Prime Minister's mobile phone number?

Lord Bethell (Con): No.

Baroness Altmann (Con): My Lords, I too congratulate the noble Lord, Lord Rooker, on his relentless campaigning on this issue and join others in encouraging my noble friend to, as soon as possible, ensure that manufacturers are mandated to add folic acid, so that we can prevent the misery and heartache of dealing with neural tube defects. I also ask my noble friend whether we can make sure that this applies to all kinds of flour, including gluten-free flour, for those mothers-to-be who are not able to have normal bread.

Lord Bethell (Con): My Lords, I understand that considerable efforts have gone into ensuring that folic acid is put into flours of all kinds, and I pay tribute to the industry for trying to deliver a comprehensive service. I am happy to write to the noble Baroness to confirm that.

Lord McColl of Dulwich (Con): My Lords, as fluoride has been added to drinking water to reduce dental caries, surely the Minister agrees that preventing spina

bifida is more important, as a former colleague of mine, Professor Richard Smithells, pointed out nearly 60 years ago. Is it not time to act?

Lord Bethell (Con): My Lords, I take on board the point that it is time to act. That is why we are working hard on the matter. As I said, I hope to return to the House on this soon.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked; congratulations to the Minister. We now move to the third Oral Question.

Natural Habitats: Infrastructure Projects

Question

1.30 pm

Asked by ***Lord Moylan***

To ask Her Majesty's Government what plans they have to review the legislation that implemented the European Union Habitats Directive in regard to the protection of natural habitats during the construction of major infrastructure projects.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, protecting and improving the environment while delivering vital infrastructure is a top government priority. This includes the development of a more strategic approach to the protection of habitats and species, allowing for more dynamic and pragmatic planning while benefiting biodiversity. The Environment Bill will provide a statutory basis for species conservation and protected site strategies to encourage the design and delivery of broadly based solutions, in partnership with planning authorities, local communities and others.

Lord Moylan (Con): My Lords, I declare my interests as shown in the register. This Question is not intended to provoke a binary debate between construction versus wildlife but it is an opportunity to consider the delay, risk and cost imposed on nationally significant infrastructure projects by what has become an intricate, bureaucratic and box-ticking regime. Now that we are free of the EU, will my noble friend at least consider using the forthcoming Bill to amend the definition of what counts as an IROPI—an imperative reason of overriding public interest—in the Conservation of Habitats and Species Regulations 2017 to include critical national infrastructure?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the regulations do not currently define which projects count as IROPI. However, nationally significant infrastructure projects will most likely always meet the public interest test, providing the project meets the environmental safeguards that no feasible alternatives exist for delivering it without impacting upon a protected site and that the necessary compensatory measures from any damage to habitats or wildlife have been taken. If my noble friend has any particular example he is concerned about, I would be very happy to meet him to discuss it, including the scope for clarifying whatever guidance we have on this.

Baroness Neville-Rolfe (Con): My Lords, may I take this opportunity to express my regret at the death of my noble friend Lady O'Cathain, who, with her years of experience, would have contributed so perceptively to this complex matter? In general, I support the thrust of my noble friend Lord Moylan's Question. Now that we have left the EU, can we interpret the provisions of the directive in a less batty fashion, and more in accordance with common sense?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the Government are looking for opportunities to break down the binary choice that my noble friend Lord Moylan hinted at in his question, and we are finding a number of ways in which we can provide a simplification, while maintaining standards. Bat licensing is a good example; Natural England is developing a new streamlined bat licensing process which involves accrediting and assessing an ecologist's competence in undertaking survey work. By using that system, developers will benefit from a more streamlined licensing process for their project, and licence applications no longer require up-front assessment. We believe that this will save developers £2.6 million per year, £13 million and 40,000 business days over five years, and on wider rollout, an estimated 90% of bat licence applications could be assessed in this way. There are many other examples of that kind of approach working.

Baroness Jones of Whitchurch (Lab) [V]: My Lords, what enforcement powers will the office for environmental protection have against government departments which are judged to have breached our laws when it is established via the Environment Bill? Is the Minister confident that these powers will ensure parity with the environmental protection we enjoyed while we were a member of the EU?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, we will set legally binding targets through the Environment Bill and an environmental improvement plan, which will be reviewed every five years. The Government will have to report on progress towards achieving those targets every year. The OEP will hold the Government to account on progress and every year can recommend how we can make better progress, to which the Government must respond. The OEP will have the ability, if necessary, to take the Government to court, although of course we hope that that will be unnecessary. In many respects, the scrutiny that this Government and future Governments can expect to receive will exceed greatly the scrutiny that existed before we left the European Union.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, habitat loss comes in many forms, and often because of human activity, as in the loss of

[Baroness Bakewell of Hardington Mandeville] ancient woodland due to the construction of HS2. However, it can also occur because of climate change, as in the large landslide on the Jurassic Coast between Seatown and Eype in Dorset. Does the Minister acknowledge that this may require the intervention of infrastructure to provide protection for the remaining coastline?

Lord Goldsmith of Richmond Park (Con) [V]: There will be moments when such interventions are of course justified, and there will be others when nature-based solutions might be better applied to the kind of problems that the noble Baroness has cited. We know, for example, that flood prevention can be achieved much more effectively and cheaply in some circumstances by planting trees rather than building concrete defences, and the same is true of a range of other problems that the Government are required to address.

Lord Robathan (Con): I know that my noble friend the Minister will be aware of the bats and newts conservation Bill 2008, which was my Private Member's Bill in the Commons on exactly this issue. I am ridiculously pleased when I see bats, or, indeed, newts, and I certainly like newts as much as Ken Livingstone does—I am currently having two newt ponds built on my farm in Leicestershire, helped by the Leicestershire and Rutland Wildlife Trust. Great crested newts are not uncommon in this country; indeed, they are pretty common. They may not be common in Spain or Greece, but that is another matter. We should not be spending millions on an industry of ecologists who will admit that newts, for instance, can travel hundreds of yards each night. Will my noble friend listen to the pleas from this side and review the absurd EU habitats directive, bringing some common sense to bear on this issue?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I too share my noble friend's fascination with newts, but perhaps not quite to the extent that Ken Livingstone does. I mentioned in an answer to a previous question that we are streamlining the process, and that is true across the board, in relation to both bats and great crested newts. District level licensing, for instance, has reduced the average time to issue a licence to 23 days compared to 101 days previously. The estimated national annual time saving is around 2,500 weeks. Schemes are now available in over 150 local authorities, and in March, the thousandth pond was created in Natural England-led schemes. Early monitoring data tells us that 34% of new ponds being colonised are colonised in the first year, which is double the normal rate, so we have achieved better environmental outcomes—better newt outcomes—while at the same time streamlining and speeding up the process of development.

Baroness Fox of Buckley (Non-Afl): My Lords, one clear lesson of the success of the UK's vaccine development is surely that the removal of overly bureaucratic and risk-averse regulations frees up creativity and speeds up innovation. In that context, and in light of the Government's commendable priority of levelling up and building back better, will the Minister look at how we can cut the expensive, cumbersome red tape created by the habitats directive for infrastructure and construction projects? Will he look at more efficient and flexible means of conservation, without creating barriers to human development, job creation and productive industrial growth, which are more important than newts in my opinion?

Lord Goldsmith of Richmond Park (Con) [V]: I do not think, and the Government, likewise, do not believe, that there is a binary choice between biodiversity and human development; our challenge is to reconcile the two, as we must. In the last 20 to 30 years we have seen dramatic biodiversity collapse in this country of all types of species, from insects to predators. This Government have announced their high ambitions for the environment, including protecting 30% of our land and seas. However, where we have an opportunity to simplify and improve the rules protecting wildlife and habitats, as the noble Baroness suggests, then yes of course we should explore that, and indeed we are.

Lord Jones of Cheltenham (LD) [V]: My Lords, I was a member of the Select Committee on HS2—Euston to West Midlands; natural habitats are a very big issue with the project. Will the Minister make sure that HS2 is completely open about its activities, to reassure people living near the line's route? In particular, will it publish unredacted results of all tests carried out near and under the mid-Chilterns aquifer?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I cannot unilaterally commit HS2 to doing so, but it should. I will convey that message back to colleagues in Government. HS2 is a nature-positive programme, which has been overlooked too much by some of its opponents. The amount of land being planted with trees, for instance, greatly exceeds the amount of land that will be damaged by the process, and HS2 would do well to tell its story more effectively than it has been doing.

Baroness McIntosh of Pickering (Con): My Lords, even though we have left the European Union, can the Minister confirm that we will still be bound by the Council of Europe's Berne convention, which was the base of the EU habitats, but that the Government will take a more sensible and pragmatic approach under that convention?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the Government are completely committed to ensuring that our environmental protections are not only maintained, but enhanced. We have said so at every opportunity. EU exit gives us the opportunity to improve our existing domestic and legacy EU laws to support those high environmental ambitions and, where appropriate, we should keep all those regulations under review, which we do.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed.

Creative Industries: Covid-19

Question

1.41 pm

Asked by ***Baroness Bonham-Carter of Yarnbury***

To ask Her Majesty's Government what assessment they have made of the impact of COVID-19 on the levelling up agenda in relation to the creative industries sector.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, our creative industries are a global success story, growing at four times the UK average before the pandemic struck. While the pandemic has had a heavy impact, particularly on audience-facing subsectors, the Government have provided them with unprecedented levels of support through the £1.57 billion cultural recovery fund and the £500 million TV and film production restart scheme. Both these schemes have supported businesses across the UK and will help to ensure that the sector can return to growth as soon as public health conditions permit.

Baroness Bonham-Carter of Yarnbury (LD): I thank the Minister for her reply. The Budget included the levelling-up fund, which drew attention to the importance of the creative sector in this endeavour, so why are the Government so resistant to working with the industry to create a scheme for insurance cover for festivals and live events? Without this, and as long as the threat of the pandemic continues, events that are so important to local economies and local jobs will not happen this summer. Does the Minister agree that in preventing such an insurance scheme the Government are taking a backwards step in their bid to level up the country?

Baroness Barran (Con): The Government absolutely do not accept that we are taking any backwards step, either in support of the creative industries or in relation to levelling up. We have offered substantial practical help through setting out a very clear road map and identifying an events research programme to get those events going. We are aware of the wider concerns about securing indemnity for live events and are continuing to explore what further support we can offer.

Lord Wigley (PC) [V]: My Lords, I draw attention to my registered interests. Many creative industry venues, which are important dimensions in the tourist economy, have been devastated by Covid. Can the Minister confirm that the levelling-up fund may consider projects aimed at making these venues more secure against Covid while maintaining their audience capacity and giving audiences the confidence that they need to attend such venues, and that it will be in order for local authorities throughout the UK to submit applications to the fund in support of such projects?

Baroness Barran (Con): The levelling-up fund has very explicitly focused on the importance of cultural and creative spaces in regenerating those areas and includes new and upgraded community hubs of the very type to which the noble Lord refers.

Lord Hunt of Wirral (Con): I declare my interest as a former member of the Advisory Committee on Pop Festivals and my other interests as set out in the register. As the Minister knows, festivals are often a major foundation of artistic activity outside our great cities, but many of those planned for this summer are already being cancelled because of uncertainty over Covid. Do Her Majesty's Government have plans to assist?

Baroness Barran (Con): The Government recognise the importance of the live music sector more broadly, and music festivals in particular, which is why more than £34 million from our cultural recovery fund has supported festivals, including Boomtown, Shambala, Glastonbury and Deer Shed. As I said in response to the noble Baroness, Lady Bonham-Carter, we are aware of the wider concerns around indemnity for live events and are trying to understand the market failure and how it impacts on different forms of live events.

Viscount Colville of Culross (CB): I declare an interest as a freelance TV producer making content for Netflix and the Sony Channel. Organisations representing freelancers have called for a freelance commissioner to be established, as many are not covered by the Small Business Commissioner. During the past year, 45% of freelancers have fallen into debt or used up their savings. Millions of others in the creative industries are struggling to find work. Does the Minister agree that it is essential to set up a commissioner dedicated to supporting employment rights and employment obligations for freelancers?

Baroness Barran (Con): I agree with the noble Viscount that freelancers are a critical part of our creative industries and that we should explore many ways of ensuring their success in future. That is why we recently extended the pan-economy self-employment income support scheme with individuals now able to qualify for grants based on their 2019-29 tax return, meaning that more than 600,000 self-employed individuals will be newly eligible for the scheme.

Lord Bassam of Brighton (Lab) [V]: My Lords, I draw attention to my interests in the register, which include my membership of two trusts involved in cultural activities. In many of our most deprived communities, the cultural industries have taken a severe hit. Given that they are closely aligned with the hospitality sector, what plans do the Government have to develop a national plan to help the hard-pressed cultural sector recover as we emerge from lockdown? Can the Minister say some more about the support the Government are likely to give to freelancers, who have been frozen out of many of the schemes supporting workers in the cultural sector?

Baroness Barran (Con): I just commented on the expansion of the scheme, which we think will include many new freelancers who are self-employed. The Government share the noble Lord's concerns about support for our deprived communities and see cultural assets as critical in their revival. That is why more than

[Baroness Barran]
two-thirds of the Culture Recovery Fund has been spent outside London and why we have a major series of funds, including the levelling-up fund, the community renewal fund and, in future, the shared prosperity fund, all of which have a creative industries strand within them.

Lord Clement-Jones (LD): My Lords, a number of groups in the creative industries are falling between the cracks in government support. For example, recent BECTU figures show that the overall number of black and minority-ethnic workers employed in the theatre industry has fallen by 19% over the last year, compared with a 3% overall reduction in the number of white workers. Does the Minister agree that levelling up must be about disadvantaged groups as well as geography? What can the levelling-up fund do for the creative industries in this respect?

Baroness Barran (Con): The noble Lord is right to raise these points. Absolutely, levelling up should cut across a number of axes, including the one the noble Lord raises. We are working to improve this area. At Budget the Chancellor announced a new approach to apprenticeships in the creative industries, with £7 million of pilot funding to test flexi-job apprenticeships that might suit better the working practices of the creative industries. Over 1,300 creative industry placements are now available via the Department for Work and Pensions Kickstart scheme.

Lord Vaizey of Didcot (Con): My Lords, I recognise the substantial support the Government have given the creative industries and pay tribute to my noble friend the Minister and her officials for all their hard work. When she mentioned apprentices, it reminded me that the BBC has announced that it will employ 1,000 apprentices. Will she join me in recognising the crucial role the BBC and other public service broadcasters play in levelling up, given their increased regional presence? For example, the BBC now makes 60% of its programmes outside London.

Baroness Barran (Con): As my noble friend is well aware, the BBC is operationally and editorially independent from government, but I share his warm welcome for the BBC's recent announcement that it plans to move 60% of network TV commissioning spend and 50% of network radio and music spend outside London.

Baroness Prashar (CB) [V]: Does the Minister agree that, while levelling-up action must give priority to investment in creative and cultural enterprises across all regions, investment in arts and humanities education is equally important and crucial for innovation and creativity? This aspect is not often valued. What are the Government doing to ensure that this significant area is not overlooked?

Baroness Barran (Con): The noble Baroness makes a good point. She will be aware that much of the work we are doing today stems from the creative industries sector deal, which includes an important plank focusing on skills, just as the noble Baroness suggests.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed, and this brings Question Time to an end.

1.51 pm

Sitting suspended.

Commonwealth War Graves Commission: Historical Inequalities Report

Statement

The following Statement was made in the House of Commons on Thursday 22 April.

"With permission, Mr Speaker, I would like to make a Statement on the special committee review into the historical actions of the Commonwealth War Graves Commission, when it was the Imperial War Graves Commission and subsequently.

I start by placing on the record my thanks and gratitude to the committee that compiled this comprehensive report, especially its chair, Sir Tim Hitchens, and contributing academics Dr George Hay, Dr John Burke and Professor Michèle Barrett. I am also grateful to the right honourable Member for Tottenham (Mr Lammy) who, alongside the makers of the Channel 4 documentary on this subject, provided the impetus for the establishment of the independent committee.

Today the committee's findings are published. They make for sober reading. The First World War was a horrendous loss of life. People of all class and race from all nations suffered a great tragedy, which we rightly remember every year on Remembrance Sunday. Just over 100 years ago, what emerged from that atrocity was a belief by the survivors that all those who lost their lives deserved to be commemorated.

When the Imperial War Graves Commission was established, its founding principle was the equality of treatment in death. Whatever an individual's rank in social or military life and whatever their religion, they would be commemorated identically. Unfortunately, the work of this report shows that it fell short in delivering on that principle. The IWGC relied on others to seek out the bodies of the dead, and where it could not find them, it worked with the offices of state to produce lists of those who did not return and remained unaccounted for.

Given the pressures and confusion spun by such a war, in many ways it is hardly surprising that mistakes were made at both stages. What is surprising and disappointing, however, is the number of mistakes—the number of casualties commemorated unequally, the number commemorated without names, and the number otherwise entirely unaccounted for. That is not excusable. In some circumstances, there was little the IWGC could do. With neither bodies nor names, general memorials were the only way in which some groups might be commemorated at the time.

None the less, there are examples where the organisation also deliberately overlooked the evidence that might have allowed it to find those names. In others, commission officials in the 1920s were happy to work with local

administrations on projects across the empire that ran contrary to the principles of equality in death. Elsewhere, it is clear that commission officials pursued agendas and sought evidence or support locally to endorse 67 courses of action that jeopardised those same principles. In the small number of cases where commission officials had greater say in the recovery and marking of graves, overarching imperial ideology connected to racial and religious differences was used to divide the dead and treat them unequally in ways that were impossible in Europe.

The report concludes that post-World War 1, in parts of Africa, the Middle East and India, the commission often compromised its principles and failed to commemorate the war dead equally. Unlike their European counterparts, the graves of up to 54,000 mostly Indian, east African, west African, Egyptian and Somali casualties were not marked by individual headstones. Some were remembered through inscriptions on memorials. The names of others were only recorded in registers, rather than memorialised in stone. A further 116,000 personnel, mostly east African and Egyptian, were not named or possibly not commemorated at all.

There can be no doubt that prejudice played a part in some of the commission's decisions. In some cases, the IWGC assumed that the communities of forgotten personnel would not recognise or value individual forms of commemoration. In other cases, it was simply not provided with the names or burial locations.

On behalf of the Commonwealth War Graves Commission and the Government of the time and today, I want to apologise for the failures to live up to the founding principles all those years ago and express deep regret that it has taken so long to rectify the situation. While we cannot change the past, we can make amends and take action.

As part of that, the commission has accepted all the recommendations of the special committee. In the interests of time I will group these into three themes. First, the commission will geographically and chronologically extend the search in the historical record for inequalities in commemoration and act on what is found. Secondly, the commission will renew its commitment to equality in commemoration through the building of physical or digital commemorative structures. Finally, the commission will use its own online presence and wider education activities to reach out to all the communities of the former British Empire touched by the two world wars to make sure that their hidden history is brought to life. Over the coming six months, the commission will be assembling a global and diverse community of external experts who can help make that happen.

There is also more the Government specifically can do. The Ministry of Defence I lead will be determinedly proactive in standing for the values of equality, supporting diversity and investing in all our people. There is always more to be done, and that is why I welcome the Wigston review into inappropriate behaviours and recently took the rare decision to let service personnel give evidence as part of the inquiry into women in the armed forces led by my honourable friend the Member for Wrexham (Sarah Atherton) through the Defence Committee.

Furthermore, to honour the contribution to our Armed Forces by our friends from the Commonwealth and Nepal, the Home Secretary and I will shortly be launching a public consultation on proposals to remove the visa settlement fees for non-UK service personnel who choose to settle in the UK.

The historical failings identified in the report must be acknowledged and acted upon, and they will be. However, recognising the mistakes of the past should not diminish the Commonwealth War Graves Commission's ground-breaking achievements today. The recommendations of the special committee should be welcomed by us all. They are not just an opportunity for the commission to complete its task and right historical wrongs; they point out what an amazing thing it is to serve our country and our allies.

The amazing thing I know from being a soldier is the relationships that are forged on operations. True soldiers are agnostic to class, race and gender, because the bond that holds us together is a bond forged in war. When on operations, we share the risk, share the sorrow and rely on each other to get through the toughest of times. The friendships I made in my service are still strong.

It was those common bonds that lay behind the Imperial War Graves Commission's principles, and it is truly sad that on the occasions identified by the report those principles were not followed. I feel it is my duty as a former soldier to do right by those who gave their lives in the First World War across the Commonwealth and to take what necessary steps we can to rectify the situation. The publication of this report is the beginning, not the end, and I look forward to working with my colleagues across the House to ensure that the CWGC receives the support and resources it needs to take forward this important piece of work."

2.01 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I thank the Secretary of State for his apology on behalf of both the Government of the time and the commission. This is an important moment for the commission and the country in coming to terms with past injustices and dedicating ourselves to future action. The report is a credit to the commission of today, but its content is a great discredit to the commission and the Britain of a century ago.

It is estimated that up to 54,000 casualties—predominantly Indian, east African, west African, Egyptian and Somali personnel—were commemorated unequally. As many as 350,000 were not commemorated by name or not commemorated at all. The report found that the failure to memorialise these casualties adequately was rooted in

"the entrenched prejudices, preconceptions and pervasive racism of contemporary imperial attitudes."

Today, belatedly, we aim to commemorate in full the sacrifice of the many thousands who died for our country in the First World War and have not yet been fully honoured. We will remember them.

In response to the report's recommendations, I want to ask a few questions. Does the commission have sufficient resources to undertake the next stages of the work and continue the search for these men and

[Lord Tunnicliffe]
women? What role will transparency play in order for today's commission to be up front about former mistakes? How will Britain's embassy staff, including our defence attachés, communicate this public apology widely? When can we expect the completion of the investigation into the way in which the commission commemorated the dead from these countries during the Second World War? No apology can atone for the injustice, indignity and suffering set out in this report. While we need an apology today, we need continued action tomorrow.

Baroness Smith of Newnham (LD): My Lords, like the noble Lord, Lord Tunnicliffe, I have a few questions.

This report is clearly very serious and raises issues that need to be explored, perhaps in a wider context. The work of the Commonwealth War Graves Commission in the 2020s is hugely important and valuable. I have visited certain Commonwealth war graves that are exclusively linked to World War II in Europe, so I suspect that the memorialisation I saw was a fairly accurate reflection of what had happened. However, if the intention of the Commonwealth War Graves Commission is to reflect everybody's contribution equally, regardless of rank, nationality or faith, it is absolutely crucial that the war graves actually do that. In particular, if one visits war graves and assumes that what one is seeing gives a full picture of the loss of life that was incurred during the First or Second World War but we then find that that is not the case, it is a problem not just for those who were lost and their families but for everybody seeking to understand the contribution made, particularly in the First World War, by citizens of the Empire.

There is often a tendency to talk about the United Kingdom, or Britain, winning the war; that is, a tendency to talk about British history as if it is about servicemen—it was essentially men in those days—who came from the United Kingdom or mainland Britain losing their lives. However, many hundreds of thousands from across the Empire and the countries that are now part of the Commonwealth gave their lives. It is crucial that they are remembered.

Like the noble Lord, Lord Tunnicliffe, I welcome the Secretary of State's apology and this report. However, I also want to know what the Government are planning to do to ensure that the Commonwealth War Graves Commission has the resources to try to rectify some of these inequalities. It goes beyond simply saying, "Have we managed to identify people or are we just going to put up another plaque saying 'Plus 10,000 others, identities unknown'?" Will the Government help the commission to look for ways of being more creative about how we understand the past, how we acknowledge the gaps in our history and our understanding of history, and how we understand the debt that we owe to so many Commonwealth countries?

The reasons why so many people were not named and not commemorated are particularly shocking. As the noble Lord, Lord Tunnicliffe, pointed out, when you get into the depths of the report, it is not 54,000 or 170,000: it is potentially another 350,000 people. If we did not know who they were—if people had been buried in mass graves, for example—that is one thing, but if there was simply a sense that, somehow, some lives mattered less, that is another. Perhaps that was the view 100 years ago but it absolutely should not be the view now.

We need to look for ways to ensure that history, as it is taught in 2021, can be understood in its global context. Can the Minister tell us what the MoD plans to do? There are 10 recommendations, including going beyond statues and stone memorials to film and other things. Have the Government begun to think about how we can look again at our history and ensure that we pay honour to all those who gave their lives, regardless of their creed, colour, country of origin or rank in society? All those lives—all the fallen—matter equally.

Viscount Younger of Leckie (Con): My Lords, I am standing in for my noble friend Lady Goldie, who is busy with the next piece of business; as noble Lords can imagine, it is taking up quite a bit of time. I am very pleased to answer the questions raised by the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Smith. I acknowledge and note that they both accepted the apology that the Government have made. They are both right; this is an important report which makes for sober reading. The report of the Commonwealth War Graves Commission special committee makes clear that in the aftermath of World War 1, in certain parts of the world, the Imperial War Graves Commission failed to live up to its core founding principle of equality in death for all, as was mentioned earlier, regardless of status, religious belief or ethnicity. Moreover, while the IWGC itself was at fault, the British Government at that time, together with colonial Administrations, also failed in their duties and were complicit in the decision-making that led to the outcome described in the report.

Both the noble Baroness and the noble Lord mentioned the numbers involved. It is worth my reflecting as well that a further 45,000 to 54,000 casualties, predominantly Indian, east African, west African, Egyptian and Somali personnel, were commemorated unequally, usually in registers or collectively on memorials but not by individual name. At least a further 116,000 casualties—and potentially as many as 350,000—predominantly but not exclusively east African and Egyptian personnel, were not commemorated by name or possibly not commemorated at all. This is sobering and absolutely needs to be addressed, as both the noble Lord and the noble Baroness said. As she also said, we must remember all those who fell fighting for our country in World War 1.

The noble Lord, Lord Tunnicliffe, asked about funding. I reassure him that the £52 million per year given by the UK Government via the MoD to the CWGC is in place. The Secretary of State will keep a very close eye on funding; if further funding is required, he will look at that with great care. On the role of transparency, which the noble Lord raised, I reassure him that there is a programme for regular reporting, as the Secretary of State for Defence outlined the other day when he made the Statement in the Commons. There will be quarterly updates to Parliament on progress and, as the chair of the commissioners, he will hold the CWGC to account on delivery.

As we may come on to later, many of the 10 recommendations laid out have specific timelines. This is an important piece of work; each of the 10 recommendations—all of which the Government have accepted, by the way—are rolled out with sunsets and timelines for work to be completed. I do not have an answer to the question on communication and embassy staff, but it is important. I am absolutely certain that those from our country who are based in countries where there is much work to be done, including in Egypt, Sierra Leone, west Africa and Nigeria, will be called on to help with this work and complete the investigations.

The noble Baroness, Lady Smith, spoke about the wider context and she is absolutely right. Going back to the point about equality in death for all, it is important that we remember each individual. This will be done through addressing the 10 recommendations, where there will be openness towards creativity; communities should engage in the areas that we want to look at, and countries themselves should engage with the war graves commission and the special committee to see what can be done to honour those who have fallen in defence of their country. That could be in the form of a physical memorial or—we are looking at this very carefully—a digital means. It is important to say this, and to be sure that we identify these means. One further thing is that certainly schools need to be included in this. Young people must recognise the importance of remembering their ancestors who have fallen in battle.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): We now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

2.14 pm

Lord Pickles (Con) [V]: My Lords, I would like to address an equal injustice. It is over 100 years since the death of Lieutenant Walter Tull. He is remembered with great affection by professional footballers and with enormous pride locally in Northamptonshire; he is also now a renowned figure throughout the Commonwealth. He broke through prejudice and precedent by becoming the first person of colour to command white troops. Such was his leadership and gallantry that Lieutenant Tull was recommended for a Military Cross. Through a combination of precedent and racial prejudice, he was denied that award. Will my noble friend address this ancient wrong with a view to awarding Lieutenant Tull a posthumous and well-deserved Military Cross?

Viscount Younger of Leckie (Con): I have taken note of my noble friend's comments. The actions of Walter Tull in the First World War were no doubt very brave, and the Government have received many representations requesting that he be awarded an honour for his bravery along the lines of what my noble friend has said. However, it is a general principle of our national honours and awards system not to make retrospective awards. This policy dates back to the end of the First World War, when in 1919 an army order was published stating that no further awards would be given for services in that war. That principle remains in force today.

Lord Singh of Wimbledon (CB) [V]: My Lords, only after my comparatively recent criticism on radio that millions of Hindus, Muslims and Sikhs had fought and died in the two world wars was it agreed by the Blair Government to invite other faiths to join Christians and Jews at the Cenotaph observance. Ignorance and prejudice pervade all societies. Does the Minister agree that, rather than showing periodic righteous indignation when racism hits the headlines, the Government and faith leaders should lead in ensuring that the dignity and equality of all human beings is made central to the teachings of both history and religion?

Viscount Younger of Leckie (Con): I certainly agree with the noble Lord, who makes an extremely good point. As we have said, it is important that we roll out solutions to the 10 recommendations. We must put right the wrongs from these historic failings.

The Lord Bishop of Rochester: My Lords, I associate myself with the comments just made by the noble Lord, Lord Singh. Like many others, I have stood in places such as the Menin Gate and been overawed by the reading of the names there. In seeing the names of the fallen from many parts of the then Empire, I had assumed that all such were indeed properly commemorated. I know now of course that I and many others were wrong in that assumption. I have present and past diocesan connections with Papua New Guinea, Zimbabwe and Tanzania. I have also visited memorials and cemeteries in those places where I have seen the names of some local nationals. I am now asking myself how many names were not there when I visited those places. Is the Minister able to give me confidence to assure my colleagues in those places that their fallen compatriots will be as fully commemorated as possible, as soon as possible? Is there anything they can do to help this process?

Viscount Younger of Leckie (Con): Indeed, one of the points made in the recommendations concerned looking at the evidence and having flexibility in the evidence criteria used. All new proposed commemorations must meet certain specific criteria, but the commission has for some time been working on new policies concerning the evidence required to prove status, allowing for flexibility where it is known that documentation is wanting, for example. It is very important to bear this in mind because we want to use every opportunity and every evidence that we can find to commemorate those who have fallen.

Lord Griffiths of Burry Port (Lab): My Lords, I received the report we are discussing with great sadness and echo some of the disappointment—to say the very least—at its findings, but I want to move in a slightly different direction. I have visited a war cemetery in Kariokor in the outskirts of Nairobi, and found that all the graves of those who had fought in the Second World War were appropriately commemorated. Similarly, the 40,000 carriers and porters who were essential to

[Lord Griffiths of Burry Port]
the supplying of the troops are commemorated adequately in a scattering of cemeteries, from Mombasa up to the ridge in the highlands of Kenya.

I have also visited cemeteries in Karen and Asmara in Eritrea. It was most touching to see that the fallen in February and March 1941 saw Indians, Sikhs, Muslims, British Christians and whoever buried in the same yard and, as it says in the record, "According to the rites and ceremonies of their particular religion". Could it be that this was general practice, the improvement that had been made by the time of the Second World War? Could the Minister give us some indication of when that picture will be fleshed out, so that we have a more adequate understanding of the process?

Viscount Younger of Leckie (Con): The noble Lord makes a very good point in focusing particularly on the Second World War. Of course the report focuses only on the First World War. I reassure him that, as the rollout of these recommendations continues—and we are making sure that we do roll them out—we will be looking at the Second World War later as part of an expanded plan, but that is some way down the line. The noble Lord is right: in the First World War, those who perhaps were not honoured were indeed combatants or perhaps carriers, those who carried the supplies that were needed to support the troops engaged in fighting. It is those individuals in the First World War who we want to focus on.

Baroness Benjamin (LD): My Lords, two of my uncles died fighting for Britain. It is scandalous that it took a Channel 4 documentary to draw attention to the blatant failure to commemorate the brave, loyal black and Asian soldiers who lost their lives fighting for Britain in World War I. Shamefully, films, television programmes and history books on both world wars have also neglected to portray this massive contribution accurately. Can the Minister assure us that this new determination to right wrongs and recognise the contribution of black and Asian soldiers, and to show them the respect and dignity that they deserve, will be robust and thorough, so that our children and future generations learn our true and accurate history?

Viscount Younger of Leckie (Con): Indeed. The noble Baroness makes several passionate points there, and she is absolutely right. I take this opportunity to pay my tribute to David Lammy, whose programme it was, linked with the history professor Michèle Barrett, that led to the setting up of the special committee with 14 members. I also reassure the noble Baroness that, as I said earlier, 10 recommendations have come out of that special committee and we have pledged to take them all forward. I hope that reassures her.

Baroness Nicholson of Winterbourne (Con): As honorary war graves commissioner for Iraq, I welcome the report, which has shone a spotlight on the Commonwealth War Graves Commission's wonderful work. I am naturally particularly concerned that, despite the difficulties of working even in today's Iraq, the war graves commission should be tasked and supported in its efforts to ensure that all the war graves in Iraq are properly recognised. I had the honour of visiting a number of these war graves, particularly the enormous ones in al-Amarah and Basra, which arrived because of the battles of Ctesiphon and Kut and the defence of Shatt al-Arab, and there is no doubt that those graves need further attention. Could the war graves commission be encouraged to do more in Iraq, with all the wonderful work that it has already done?

Viscount Younger of Leckie (Con): My noble friend is right to raise that issue. Our current policy in Iraq is to clear and secure our sites when it is safe and practical to do so as we await an opportunity for a more sustainable return. The Commonwealth War Graves Commission will slowly and steadily begin to rehabilitate the sites in Basra and al-Amarah, as my noble friend has mentioned, as it has done in other parts of the country such as Kut and Habbaniya. We reassure those connected to all the Commonwealth casualties buried and commemorated across all our sites in Iraq that our commitment to the fallen remains in perpetuity, and when we are able to we will restore them to a standard befitting the sacrifice of all those who lie there.

Lord Woolley of Woodford (CB) [V]: My Lords, I welcome the apology by the Government. In life, hundreds of thousands of African and Asian soldiers, many of whom were coerced into the British Army, were treated with little or no respect during the Great War. In death, those brave soldiers were treated with utter contempt. Professor Michèle Barrett, who worked with David Lammy on uncovering this monumental scandal, found documentation from the Imperial War Graves Commission in 1920 stating that

"Most of the natives"

—Africans—

"who have died are of a semi-savage nature and do not attach any sentiment to the graves of their dead."

"Shocking", "appalling" and "shameful" are just a few of the adjectives that you would put to that statement. You can see why our British history and curriculum need to be honestly reviewed and revamped.

What is also shocking is that it is a clear fact that in 2010, nearly 100 years later, with officials in full knowledge of the facts, nothing was done. We need to know why. Given the Windrush scandal and the outrage following the Sewell report, trust from black, Asian and minority-ethnic communities desperately needs rebuilding. Will the Minister therefore agree to meet me, along with senior Army officials, the Commonwealth War Graves Commission and interested parties, to find a proportionate and decent response to put right this monstrous wrong?

Viscount Younger of Leckie (Con): The noble Lord makes some very important points and I agree with him. The words "appalling" and "shameful" came from the noble Lord, and I totally agree with that. As he alluded to, we are of course looking at what happened a long time ago, over 100 years ago, under the old IWGC, but now we have the Commonwealth War Graves Commission. He is absolutely right, and I will certainly pass on to the MoD and my noble friend

Lady Goldie his request for a meeting. I think it is appropriate to say that, even though it is over 100 years ago, good praise needs to be given to the Commonwealth War Graves Commission now, along with the Government —linking into DCMS, I should say—when it comes to looking really seriously at these past injustices and putting them right.

Lord Boateng (Lab) [V]: My Lords, Regimental Sergeant-Major Alhaji Grunshi, DCM, MM, of the Gold Coast Regiment, fired the first shot in World War I. His name is important and it is remembered. He lived—but many of his fellow regimental soldiers died and were buried in known graves on the Gold Coast. Their names in those cemeteries were obliterated in an appalling act of imperial racism, on the basis that to do otherwise would be

"a waste of public money"

and not "appreciated" by the native tribes. Direct descendants of those native tribes—and I am one of them—now sit on both sides of your Lordships' House. This House is entitled, as are the descendants of those who fell in the First World War on the Gold Coast, in west Africa and throughout the Commonwealth, to a categorical assurance from this Government that money will be found to conduct the research and erect headstones on those graves that are known on the Gold Coast. We want not a promise to look at it with favour but a categorical assurance that it will be done. Without that, frankly, apologies do not count for much—or would that too be regarded as a potential waste of public money?

Viscount Younger of Leckie (Con): I was very moved by what I heard from the noble Lord. He is absolutely right to point to the people who have died and the person who fired the first shot of the war on the Gold Coast, who I think lived. That is indelibly on my mind. I reassure him that it is not just the Gold Coast but other parts outside Europe, all over the world. I mentioned some earlier: Mesopotamia, east Africa, west Africa, and so on. I could go on. It is very important that we look at each of these areas. Recommendation 4—which we have agreed with—in the special report is to establish a consultative committee. What is very important, and perhaps is the best reassurance I can give the noble Lord, is that we should be liaising with the local communities out in the Gold Coast to work out what we should do, how we should it and by when. This consultative committee has been pledged to be set up within the next six months.

Lord Chidgey (LD) [V]: My Lords, I declare an interest as a descendant of an Army officer who was at one time seconded to the King's African Rifles. During World War I the regiment suffered over 5,000 casualties, with a further 3,000 dying from disease—more than 20% of the complement. It is thought that the regiment was supported in the First World War by some 400,000 native porters of the Carrier Corps. The information on the number who lost their lives and on their burial places is apparently unknown. In the commission's search for historical inequalities will the Government press for the inclusion of the King's African Rifles, together with the Carrier Corps, particularly at local village level? Will they prioritise engaging with the King's African Rifles & East African Forces Association, whose regimental historian said:

"No regiment has ever been more intimately connected with the territory through which it marched and fought, or with the peoples from which it was recruited"?

Viscount Younger of Leckie (Con): Again, the numbers are sobering—I have picked up the figures of 5,000 and 3,000. I have taken very seriously what the noble Lord has said. One of the 10 recommendations is on the importance of engagement and education. The commission will develop a broader and more far-reaching range of relationships, working in partnership on projects, including, I would like to think, on the King's African Rifles, to remember the sacrifices of all those who served and died in the First World War.

Baroness Fookes (Con) [V]: My Lords, I served for 10 years, some years ago now, on the Commonwealth War Graves Commission and I am deeply shocked—indeed, scandalised—that I was totally unaware of this petition. I believed the mantra that everybody was treated equally in death. I ask my noble friend: has any estimate been made of the cost of giving full restitution? I suspect it will be pretty heavy and I do not want to see this fall away as time goes on.

Viscount Younger of Leckie (Con): I alluded to this point earlier during the Statement. I reassure my noble friend that the UK currently contributes £52 million of the overall budget of £66 million a year. This new piece of work we have pledged to do is very important and the Secretary of State has not ruled out additional funding if it were to be required in the future.

Lord Ramsbotham (CB) [V]: My Lords, I declare two interests. First, I once had the honour and pleasure of serving with the King's African Rifles and, secondly, as Adjutant-General I was an ex officio member of the council of the Commonwealth War Graves Commission. When I was Chief Inspector of Prisons, I once noted in the chapel of a prison on the Isle of Wight a memorial to four people killed in the Great War. They were identified only by their prison numbers. In accordance with the motto of the Commonwealth War Graves Commission—

"I will make you a name"—

I set about discovering their names, which I succeeded in doing. Will the Minister please assure me that these forgotten casualties will soon, like them, be made names?

Viscount Younger of Leckie (Con): Indeed, and so they should be. I am sure that this is an important part of the ongoing work. One thing is very clear and it is the first recommendation of the report—which we have accepted, as we have accepted them all—that there is ongoing commitment to search for those who fell and to recognise the dead and find the names of those who died.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the time allowed for this business has now elapsed. I apologise to the five noble Lords whom I have not been able to call.

2.35 pm

Sitting suspended.

Arrangement of Business
Announcement

2.40 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the Hybrid Sitting of the House will resume. I ask Members to respect social distancing.

Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) (Amendment) Regulations 2021

Civil Proceedings Fees (Amendment) Order 2021
Motions to Approve

2.41 pm

Moved by ***Viscount Younger of Leckie***

That the Regulations and Order laid before the House on 8 and 22 March be approved.

Relevant document: 51st Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 19 April.

Viscount Younger of Leckie (Con): My Lords, on behalf of my noble friend Lord Wolfson of Tredegar and with the leave of the House, I beg to move the two Motions standing in his name on the Order Paper en bloc.

Motions agreed.

Single Use Carrier Bags Charges (England) (Amendment) Order 2021
Motion to Approve

2.42 pm

Moved by ***Viscount Younger of Leckie***

That the draft Order laid before the House on 4 March be approved.

Relevant document: 46th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument). Considered in Grand Committee on 19 April.

Viscount Younger of Leckie (Con): On behalf of my noble friend Lord Goldsmith of Richmond Park I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

British Library Board (Power to Borrow) Bill
Third Reading

2.43 pm

Motion

Moved by ***Lord Vaizey of Didcot***

That the Bill do now pass.

Lord Vaizey of Didcot (Con): My Lords, this is a small and perfectly formed Bill, which attracted very little controversy and corrects a long-standing anomaly in the ability of the British Library to fund itself. It has been ignored by the mainstream press but, such was the obsequious nature with which I approached these proceedings and the praise I lavished on so many of your Lordships, it received a full write-up in *Private Eye*. I beg to move.

Bill passed.

Education and Training (Welfare of Children) Bill
Third Reading

2.44 pm

Motion

Moved by ***Baroness Blower***

That the Bill do now pass.

Baroness Blower (Lab): My Lords, I offer my thanks to the Minister for her help in securing the passage of the Bill. I also thank all noble Lords who spoke on this small but equally perfectly formed Bill, which is important although it covers very few words. I beg to move.

Bill passed.

Overseas Operations (Service Personnel and Veterans) Bill
Commons Reasons and Amendments

2.46 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): We now come to the consideration of Commons reasons and amendments on the Overseas Operations (Service Personnel and Veterans) Bill. I will call Members to speak in the order listed. When there are no counterpropositions, as for Motions C and D, the only speakers are those listed, who may be in the Chamber or remote. When there are counterpropositions, any Member in the Chamber may speak subject to usual seating arrangements and the capacity of the Chamber. Any Members intending to do so should email the clerk or indicate when asked. Members not intending to speak should make room for those who are. All

speakers will be called by the Chair. Short questions of elucidation after the Minister's response are discouraged. A Member wishing to ask such a question must email the clerk.

Leave should be given to withdraw Motions and when putting the question, I will collect voices in the Chamber only. When there is no counterproposition, the Minister's Motion may not be opposed. If a Member taking part remotely wants their voice accounted for if the question is put, they must make this clear when speaking on the group. Noble Lords following the proceedings remotely, but not speaking, may submit their voice—content or not content—to the collection of voices by emailing the clerk during the debate. Members cannot vote by email; the way to vote will be via the remote voting system. We will now begin.

Motion A

Moved by ***Baroness Goldie***

That this House do not insist on its Amendment 1 and do agree with the Commons in their Amendments 1A to 1Q in lieu.

1A: Page 4, line 19, at end insert—

"(5A) An offence is not a "relevant offence" if it is an excluded offence by virtue of Part 3A of Schedule 1."

1B: Page 4, line 20, leave out subsections (6) to (8)

1C: Page 11, line 9, at end insert ", 31A and 31B"

1D: Page 11, line 18, at end insert—

"3A An offence under section 1(1) of the Genocide Act 1969 (genocide)."

1E: Page 12, line 7, after "Schedule" insert "or paragraphs 31A and 31B"

1F: Page 12, line 39, leave out "of committing—" and insert "on account of an act constituting—

(za) genocide as defined in article 6,"

1G: Page 12, line 40, leave out "within article 7.1(g)" and insert "as defined in article 7"

1H: Page 12, line 40, at end insert— "(aa) torture within—

(i) article 8.2(a)(ii)-1 (which relates to grave breaches of the Geneva Conventions of 12 August 1949), or

(ii) article 8.2(c)(i)-4 (which relates to armed conflicts not of an international character), or"

1J: Page 13, line 13, leave out "of committing—" and insert "on account of an act constituting—

(za) genocide as defined in article 6,"

1K: Page 13, line 14, leave out "within article 7.1(g)" and insert "as defined in article 7"

1L: Page 13, line 14, at end insert— "

(aa) torture within—

(i) article 8.2(a)(ii)-1 (which relates to grave breaches of the Geneva Conventions of 12 August 1949), or

(ii) article 8.2(c)(i)-4 (which relates to armed conflicts not of an international character), or"

1M: Page 14, line 6, leave out "of committing—" and insert "on account of an act constituting—

(za) genocide as defined in article 6,"

1N: Page 14, line 8, leave out "within article 7.1(g)" and insert "as defined in article 7"

1P: Page 14, line 8, at end insert— "

(aa)torture within—

(i) article 8.2(a)(ii)-1 (which relates to grave breaches of the Geneva Conventions of 12 August 1949), or

(ii) article 8.2(c)(i)-4 (which relates to armed conflicts not of an international character), or"

1Q: Page 14, line 34, at end insert—

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, in proposing their amendments in lieu, the Government have listened to the very real concerns expressed by many in both Houses. I wholeheartedly concur with the thanks expressed by the Minister for Defence People and Veterans in the other place last week to my friend—I call him my "friend" in the most healthy and familial sense of the word—the noble Lord, Lord Robertson, for his constructive approach to this issue.

The Government have recognised the strength of concern that, by excluding only sexual offences and not other serious offences, the Bill risks damaging not only the UK's reputation for upholding international humanitarian and human rights law, including the United Nations convention against torture, but also the reputation of our Armed Forces.

While the other place rejected the amendment proposed by the noble Lord, Lord Robertson, they accepted the Government's amendments in lieu to add genocide, crimes against humanity and torture to the excluded offences in Schedule 1, and to remove the delegated power in Clause 6(6), which allows the Secretary of State to amend Schedule 1.

Although we can be absolutely reassured that our Armed Forces would never resort to acts of genocide or crimes against humanity, and that it would be extremely unlikely for individual members of the services to be charged with such offences, the Government accepted, with the support of the other place, that not explicitly excluding these offences from the Bill was a clear omission that needed to be rectified. In addition, the Government recognised, with the support of the other place, that, to prevent any further perceived damage to the UK's reputation in respect of our ongoing commitment to upholding the rule of law and our international obligations—particularly the United Nations convention against torture—torture offences should also be added to the list of excluded offences in Schedule 1.

Although the Government were not supportive of excluding further offences at that stage, they have continued to reflect on the very real concerns in both Houses that all offences that fall within the jurisdiction of the International Criminal Court, including war crimes, should be excluded from the measures in Part 1. I can confirm to the House that the Government will therefore table an amendment in lieu of Motion A1 in the name of the noble Lord, Lord Robertson, to exclude war crimes also.

I am also aware that many continue to have concerns that the International Criminal Court can step in to investigate and prosecute United Kingdom Armed Forces personnel. I am happy to reassure on the perceived risk of ICC intervention. I invite your Lordships to consider the criteria that might surround an allegation that the complainant maintains is a war crime. The prosecutor would have to consider the case evidence

[Baroness Goldie]
referred by the service police and if, in the opinion of the prosecutor, the evidence was sufficient to indicate that a war crime had been committed and that there was a reasonable prospect of conviction, the prosecutor would consider the public interest in the case being prosecuted, including whether the accused was fit to stand trial. With the strong likelihood that a prosecutor would determine that the case should be prosecuted, subject to the consent of the Attorney-General, this could all proceed well within five years.

However, if, for some reason, the allegation did not arise until after five years but sufficient evidence still existed that a war crime had been committed, the prosecutor could still determine that the public interest in prosecuting such a serious offence would rebut the measures in Part 1 of the Bill. A prosecution would therefore proceed, again subject to the consent of the Attorney-General.

It is important to be clear that there are already many instances where a prosecutor could exercise discretion not to prosecute a case and the ICC would not intervene—for example, if the evidence was not deemed sufficient because it was not robust, or the recollections of the witnesses were unclear or in conflict with each other. In such circumstances, the prosecutor might likely conclude, understandably, that there was not a justiciable case, and the case would not proceed to prosecution. In this case, the prosecutor would not have to consider the public interest or the Bill's measures. However, in this circumstance, although the International Criminal Court could theoretically seek to intervene, it is inconceivable to me that it would.

Similarly, if the prosecutor exercising the discretion he or she has under the existing prosecutorial guidance took the view that the accused was not fit to stand trial, and that a prosecution was not sustainable or not in the public interest for some other valid reason, I think it again inconceivable that the ICC would intervene. As such, we have to be very careful with the distinction between "could" and "would". I am illustrating how, if a prosecutor decides for valid reasons not to prosecute, there is no reasonable basis to conclude that the ICC would consider that the UK is unwilling or unable to prosecute a particular case and would then intervene.

Furthermore, I also make clear that, in accordance with the International Criminal Court's procedures, a preliminary examination would first need to be initiated by the Office of the Prosecutor to decide whether it would be necessary for the ICC to seek to intervene in a state investigation or prosecution. In practice, if the Office of the Prosecutor were to raise issues with us, this would trigger a long and detailed preliminary examination of the situation, within which we would be consulted each step of the way. This would mean that we would have many opportunities to prevent UK service personnel being prosecuted at the International Criminal Court. We are confident that we would be able to show that the UK national system is both willing and able to conduct investigations and prosecutions, thus excluding the ICC's jurisdiction over UK service personnel.

I have given that rather lengthy analysis and explanation because I seek to provide further reassurance to your Lordships on this particular issue. I believe that Commons Amendments 1A to 1Q go a very long way to addressing the concerns of this House in respect of relevant offences. I therefore urge that the House agrees to them, in lieu of Lords Amendment 1. I can confirm that the Government will not oppose Amendments 1R to 1U in the name of the noble Lord, Lord Robertson, noting that they will table a further amendment in lieu tomorrow. I beg to move.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Robertson of Port Ellen***

Leave out "1A to 1Q in lieu" and insert "1A to 1G, 1J, 1K, 1M and 1N, do agree with the Commons in their Amendment 1Q and do propose Amendment 1R as an amendment thereto, and do disagree with the Commons in their Amendments 1H, 1L and 1P and do propose Amendments 1S to 1U in lieu thereof—

1R: In paragraph 31B(1), leave out from "1957" to end of sub-paragraph (3) and insert "(grave breaches of the Geneva Conventions) is an excluded offence."

1S: Schedule 1, page 12, line 41, leave out from "crime" to end of line 2 on page 13, and insert "as defined in article 8.2"

1T: Schedule 1, page 13, line 15, leave out from "crime" to end of line 18 and insert "as defined in article 8.2"

1U: Schedule 1, page 14, line 9, leave out from "crime" to end of line 12 and insert "as defined in article 8.2""

Lord Robertson of Port Ellen (Lab) [V]: My Lords, I welcome the Minister's opening statement today. I, and many others, have a genuine sense of relief that the voice of this Chamber last week, so overwhelmingly expressed in the debate that took place, has been listened to with such clarity. There was a feeling then, before the Bill was amended, that it would have produced a situation that is profoundly embarrassing to the nation we live in, is unhelpful to the troops we send abroad and generally does no good for anyone at all.

The Government have now recognised the strength of the argument. By including genocide, torture and crimes against humanity in the excluded areas of the presumption against prosecution, they have rescued their own reputation. Of course, until today, they had excluded war crimes from those exclusions; at that point, we faced the ludicrous contradiction that meant that we would have seen a presumption against prosecution for some of the most heinous crimes that come under the definition of war crimes yet no limitation for torture or genocide—in contradiction, therefore, to international humanitarian law, which recognises no form of limitation of time or jurisdiction on such crimes. This is why I tabled the amendment that would include war crimes in those exclusions: so that there would not be a presumption against prosecution for some of the most terrible crimes that still could be committed—though they are unlikely to be—by British troops.

The Government listened to the chorus of criticism that took place. Why was it so widespread and deep? Why did so many of the military veterans of senior rank in this House vote for the amendment last week? It was principally because they believed that the reputation of our Armed Forces would be damaged by singling them out for what the Law Society called a "quasi-statute

of limitations". Importantly, it was also because, had we passed the Bill unamended, our troops would have been subject to the jurisdiction of the International Criminal Court.

At the weekend, the chief prosecutor of the ICC, Fatou Bensouda, wrote to the right honourable David Davis on this very subject. She repeated what she had said previously:

"If the effect of applying a statutory presumption was to impede further investigations and prosecution of the Rome statute crimes allegedly committed by British service members in Iraq—because such allegations would not overcome the statutory presumption—the result would be to render such cases admissible before the ICC."

3 pm

She made it clear that, even if there were to be any finessing of the definitions in Article 8.2 of the Rome statute,

"*any* gap between the scope of coverage in the excludable offences under the proposed legislation and conduct which might otherwise constitute a crime within the jurisdiction of the Court would risk the persistence of the prospect I articulated earlier, that of rendering relevant cases concerning such conduct admissible before the ICC."

I therefore genuinely welcome the Minister, who has listened at all times to reasoned arguments, telling the House that the Government would accept Amendment 1 and the thrust of it when it comes to tidying up in the other place because she accepts the validity of the argument. She made the argument strongly that our troops would not, in normal circumstances, ever come near the International Criminal Court.

When I was Defence Secretary in 1997, Robin Cook and I had some lengthy discussions on whether this country should sign up to the International Criminal Court. At that time, we had no doubts because the ICC was set up to deal with some of the most grievous breaches of the laws of war in the world today. However, because of the integrity of the UK's robust legal system, we felt that there was no possibility whatever that any case or allegation made against British troops would end up in the International Criminal Court. I have held that view right up to today, and I am therefore glad that we are now ensuring that that is unlikely to be the prospect.

There was a chorus of this view and that, at the end of the day, the Government have accepted that argument. As I have said, I believe it will protect the good name of British forces serving overseas and the reputation of this country and our legal system. I am, therefore, delighted that the Government will not oppose this amendment at the end of this debate. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the following Members in the Chamber have indicated that they wish to speak: the noble Lords, Lord Campbell of Pittenweem, Lord Anderson of Ipswich and Lord Lansley. I call the noble Lord, Lord Campbell of Pittenweem.

Lord Campbell of Pittenweem (LD): My Lords, I begin by congratulating my noble friend Lord Robertson of Port Ellen on leading the opposition to the original proposals contained in the Bill. He did so with great skill and persuasion. At the same time, I thank the Minister, who clearly listened avidly throughout the proceedings in connection with these matters. I think it is fair to say that she did not always give the impression of being enthusiastically in favour of the provisions of the Bill. The noble Baroness was brought up in the Roman law traditions of Scots law. In those circumstances, the expression "pacta sunt servanda"—promises have to be kept—will come as no surprise. I suggest that this remark should be reproduced above the desk of every policymaker in government. I am at some pains to understand who in the Government endorses proposals which are, prima facie, contrary to law. I say that not only in relation to the topics the House is discussing today but also drawing your Lordships' attention to Part 5 of the internal market Bill in which this House and the other place were encouraged by the Government to create circumstances in which the Government could break the law without any adverse reaction. It seems to me that there is a unit of opinion—or, perhaps, some powerful policymaker—somewhere in the Government which does not appear to have sufficient understanding of the important fact that, for a country which argues as frequently as it can for the rules-based system, our ability to do so is substantially undermined if we are not shown to be adhering to that very system. If you want to preserve your reputation, you cannot play ducks and drakes with the law.

The Government may have been saved the consequences of the original provisions, but it is important to remember that, as the Minister and the noble Lord, Lord Robertson, made clear, they had excited the concerned interest of the United Nations and the International Criminal Court. The UK is a permanent member of the Security Council of the United Nations. How embarrassing would it be if it was thought that this country had departed from the provisions of the United Nations charter and conventions made under and in respect of it? As the noble Lord, Lord Robertson, pointed out, there was a discussion about whether the United Kingdom should join the International Criminal Court—I remember it. The balance of opinion was that it should and, if my recollection is correct, the United Kingdom was a founder member. How equally embarrassing it would be if, as a former original member of the International Criminal Court, the United Kingdom had to be brought before it.

There is a benevolent outcome in this matter, but it will take some time. We may have saved the Government from the consequences of the original provisions, but we will not save ourselves from damage to the reputation of this country. We should be very sure that, from now on, we will do everything in our power to make certain that that reputation is justified and, in particular, that our legitimate claim that we embrace the rules-based system on all occasions can be shown to be endorsed, not just in principle, but in practice as well.

Lord Anderson of Ipswich (CB): It is a pleasure to follow the noble Lord, who speaks with such great authority in this area. I spoke about war crimes at Second Reading and again in Committee, and supported, though did not sign, the amendment in the name of the noble Lord, Lord Robertson, that was carried on Report. I came in today because I thought it was important to emphasise that the omission of war crimes from the list of exclusions, which I understand

[Lord Anderson of Ipswich]
to have been the Government's position until just now, was not some minor footnote to the noble Lord's amendment. It tore the heart out of it because it destroyed its objective of protecting our troops from prosecution in the ICC. For that reason, I was delighted to hear just a few minutes ago that the Government have finally agreed not to oppose Motion A1.

It was of course right in principle to exclude genocide and crimes against humanity from the presumption against prosecution, but the practical implications of doing that were, frankly, negligible. After all, the crime of genocide requires,

"intent to destroy, in whole or in part, a national, ethnical, racial or religious group."

Crimes against humanity qualify as such only when they are

"part of a widespread or systematic attack directed against any civilian population".

Not even in the extravagant imagination of Mr Phil Shiner could British forces be accused of these most serious of crimes. Of course, the original concession also extended to torture. That could have practical effects because British servicemen are, unfortunately, sometimes accused of that crime. It is right that the presumption against prosecution should not apply after five years to that very serious crime.

However, torture is only one war crime among the dozens listed in Article 8(2) of the Rome statute. Let me remind noble Lords of just some of the others: wilful killing; inhuman treatment; causing great suffering; the destruction and taking of property; unlawful confinement; attacking civilians; excessive incidental death, injury or damage; attacking undefended places; killing or wounding a person hors de combat; and outrages upon personal dignity.

In contrast to genocide and crimes against humanity, it is, I am afraid, quite possible to imagine such crimes being alleged—perhaps credibly—against British service personnel. The noble Lord, Lord Robertson, mentioned the letter sent last Friday from the ICC chief prosecutor to David Davis MP, in which she said:

"Some of the most serious cases pending before the competent investigating and prosecuting authorities in the UK, including those examining pattern evidence and command responsibility, concern such alleged crimes."

If this Bill were to result in a decision not to prosecute after five years had passed, this latest letter puts it beyond doubt that such cases would be considered admissible before the ICC on the basis that the UK was unable or unwilling to prosecute. I respectfully suggest to the Minister that prosecutors could well take on cases of this kind that were deemed sufficiently strong, not least because the prosecution of British service personnel would be a firm warning to other states within the jurisdiction of the ICC that might be toying with the idea of following the dismal international lead set by the original version of this Bill.

For these reasons, I congratulate the noble Lord, Lord Robertson, and his supporters on holding their ground, the Minister on her efforts and the Government on finally agreeing to do the right thing.

Lord Lansley (Con): My Lords, I am pleased to follow the noble Lords, Lord Anderson and Lord Campbell of Pittenweem. I, too, thank the noble Lord, Lord Robertson of Port Ellen, for bringing forward his amendment both on Report and now. I also thank my noble friend for the way in which she has responded. As she will recall, I did not participate on Report but I listened with care; we had subsequent conversations about this. I read with great interest the contributions made by a number of my former colleagues in the other place when our amendments were considered there last week.

First, while I agree with my noble friend and welcome the concessions that the Government have made, it is important for us to understand the nature of this further substantial shift. I am grateful to the noble Lord, Lord Anderson, who, in quoting part of Article 8(2) of the ICC statute, illustrated the wide range of potential crimes listed there. This gives rise to the concern that the chance of a vexatious allegation in relation to such a wide range of potential crimes is far greater than it is for crimes of genocide and crimes against humanity. However, as my right honourable friend Jeremy Wright, the former Attorney-General, helpfully said in the debate last Wednesday in the other place, by virtue of the exclusions that the Government have introduced, there is an increasing inconsistency as to which offences are relevant and which are excluded.

The truth of the matter is this: if we could be certain that the decisions made by prosecuting authorities on a relevant offence would exclude the potential of a further prosecution by the International Criminal Court—and that the decisions made by UK prosecutors would be sufficient for everybody's acceptance—the UK would be able and willing to undertake a prosecution, even of a relevant offence, and this would be accepted by the ICC; my noble friend the Minister made this point in introducing the debate. The court could then proceed only if we were unable and unwilling, which we evidently would not be. I fear that there is uncertainty about this.

We have to balance, on the one hand, the uncertainty about exposing our potential servicepeople to the International Criminal Court—especially after the five-year period—against, on the other hand, not being able to reassure them that these offences have been brought within the scope of relevant offences for the higher prosecution threshold. The iteration between this House and the other House has helped enormously to understand that there is a balance to be struck.

3.15 pm

As Jeremy Wright mentioned in the other place, for reasons not least of consistency, it is important now to bring war crimes within the list of excluded offences to give us that sense of consistency. It is equally important to reassure our service personnel by demonstrating that we are absolutely willing to investigate but will not allow vexatious allegations to proceed. We have attempted to do this in the past, for example where the Iraqi Historic Allegations Team, to which Jeremy Wright referred, was concerned. If we do not give our service personnel that reassurance, they will feel that these exchanges have led to a lesser reassurance on their part than they originally expected when the Bill was introduced.

That said, I very much welcome what my noble friend had to say. I will be glad to support her.

Lord Houghton of Richmond (CB): My Lords, it may be presumptuous of me spontaneously to offer, on behalf of all gallant Lords, a sincere thank you to the Minister for the good news she has brought today. I can probably extend that to all those who are involved on operations, who are in command of those on operations or who train them beforehand. Frankly, the idea that we might have sent soldiers, sailors and airmen to depart on operations with even an inkling that, in certain circumstances, they might have enjoyed some sort of exemption from prosecution for war crimes is fundamentally opposed to what makes us what we are and gives our Armed Forces moral authority. It is absolutely fundamental to our sense of service. The concession in the other place that the Minister has reported is fundamental to our ability to retain the moral authority of that service.

Baroness Smith of Newnham (LD): My Lords, like noble and gallant and noble and learned Lords, I welcome the Minister's further concession. One of the most welcome things in the final stages of this Bill is that we are gradually beginning to see its most egregious bits removed. We have lost Clause 12; this was most welcome. A very welcome amendment was tabled in the Commons, although it did not go far enough. However, it began to pave the way for the amendment brought again by the noble Lord, Lord Robertson, which the Minister has agreed to accept. This is extremely welcome.

I will not rehearse the arguments made by other noble Lords about the International Criminal Court. I merely want to say that we on these Benches support Amendment A1 in the name of the noble Lord, Lord Robertson. We also look forward to the government amendment in lieu and to seeing that war crimes—as well as genocide, torture and crimes against humanity—are excluded from the presumption against prosecution. This will tidy up the Bill in a most welcome way and, hopefully, will lead us to a piece of legislation that does what we need it to do and what our service personnel and veterans need it to do.

Lord Tunnicliffe (Lab) [V]: My Lords, following the overwhelming defeat in this House a couple of weeks ago, the Government's decision to accept parts of the amendment of the noble Lord, Lord Robertson, to exclude torture, genocide and crimes against humanity from the presumption against prosecution was a welcome step forward. This was testament to the efforts of the noble Lord and the vast coalition of supporters inside and outside this House. I pay tribute to them all today.

We should not forget that these serious offences are illegal and immoral. Under all circumstances, they must be investigated, and if there are grounds for the allegations, there must be prosecutions and punishment. Not including them in Schedule 1 from the beginning was a mistake, and one that could have led to British personnel and veterans being dragged before the ICC, as the ICC's chief prosecutor herself said. Now, she has written another letter about the current government concessions, saying:

"I remain concerned that many war crimes within the Court's jurisdiction would still be subject to the envisaged statutory presumption … any gap between the scope of coverage in the excludable offences under the proposed legislation and conduct which might otherwise constitute a crime within the jurisdiction of the Court would risk the persistence of … rendering relevant cases concerning such conduct admissible before the ICC."

Therefore, it was clear that there remained a serious problem and that the Government were still picking and choosing some crimes that are covered by the Geneva conventions.

We still believe that war crimes must be excluded and strongly support Motion A1 to exclude everything covered by Article 8.2 of the Rome treaty. We are therefore delighted with the Minister's speech. Essentially, I believe the Government accept the essence of Motion A1, and we will see that in the new amendment from the Commons. I thank the Minister for her efforts and her willingness to talk to many interested parties. We have got to the right place.

It might be useful to lay out what I expect to happen now. As I understand it, Motion A1 will be pressed by the noble Lord, Lord Robertson, and the Government will accept it on the voices. It will then go back to the Commons, and an amendment in lieu will be moved by the Government. It will have substantially the same effect as Motion A1, and it will be approved in the Commons. The new amendment will then be returned to us, where we will unreservedly welcome and approve it. That will be a happy outcome to this complex debate.

I join other Members in celebrating that there have been a variety of speeches looking at this subject in this session, in previous sessions and outside the House. I accept that getting the balance right is a matter of some subtlety, but I believe we have got to the right place, and I look forward to the amendment in lieu coming back to us.

Baroness Goldie (Con): My Lords, first, I thank all noble Lords for their contributions. Again, I thank and pay tribute to the noble Lord, Lord Robertson, for his assiduous attention and perseverance in respect of this issue. I endeavoured to engage widely, and I thank noble Lords for the recognition of that engagement. I was anxious to do my level best to understand where the concerns really lay.

I thank noble Lords for the welcome they have extended to the Government's change of position on this. As indicated by the last speaker, the noble Lord, Lord Tunnicliffe, I welcome the recognition that there was a balance to be struck. I now detect, quite clearly, I think, that your Lordships are seeing the Bill reach a shape whereby it is a positive advance, providing clarity and greater certainty to our Armed Forces personnel. As I said in my opening speech, the Government will not oppose the amendment of the noble Lord, Lord Robertson, and they will table an amendment in lieu to ensure drafting accuracy.

Lord Robertson of Port Ellen (Lab) [V]: I am delighted with what the Government have said and with the support that has been given to this amendment in this House. We are doing absolutely the right thing by our troops. The noble and gallant Lord, Lord Houghton, makes the strong point, which I have heard from

[Lord Robertson of Port Ellen]
a number of military officers, that to have left any vestige of possibility that our troops might have appeared before the International Criminal Court would have been a disgrace, entirely wrong and very damaging to the morale of those who are still deployed to defend this country and its interests.

The offences under Article 8.2 of the Rome statute are protected in international law as being without limit of time. To have invoked any presumption against prosecution for those offences would have been to be in breach of international law and international humanitarian law. If that had happened, it would have been a stain on our country, or, as one of the senior military representatives said, a national embarrassment.

This country has also been saved from the use of this legislation by every dictator and warlord in the world, who would have used it as a precedent for their own illegal actions. Even in the last few weeks, we have seen a number of countries subject to the ICC jurisdiction praying in aid this draft of the legislation. We have been saved from that as well.

I, of course, admire and respect those who serve in our name in conflicts overseas. They do so bravely, tenaciously and professionally. As Defence Secretary and then Secretary-General of NATO, I often had to make decisions about the deployment of these individuals and place them in harm's way. These were never easy decisions to make, but I was comforted by the fact that our Armed Forces always act within the law. To single them out as being somehow above these laws would have done a disservice to them and to their purpose.

I thank the Minister for her consideration and for listening, the Secretary of State, who listened to the voices that have come from such a wide range of opinion, and all those who have helped in this particular argument. I look forward to seeing, before they are tabled, the drafting amendments that the Minister promises will be brought forward for the amendment in lieu in the other place. As a matter of form, I beg to move Motion A1.

Motion A1 agreed.

Motion B

Moved by ***Baroness Goldie***

That this House do not insist on its Amendment 2 to which the Commons have disagreed for their Reason 2A.

2A: Because it would not be appropriate to restrict the investigation of alleged offences as proposed in the Lords Amendment.

Baroness Goldie (Con): My Lords, it is the Government's view that the timescales included in the amendment are operationally unrealistic, do not take account of the nature of investigations on overseas operations and could put us in breach of our international obligations under the European Convention on Human Rights to effectively investigate serious crimes. Where the service police have reason to believe that an offence may have been committed, they have a legal duty to investigate it. Artificial timelines and restrictions placed on them in respect of the conduct of investigations would clearly prevent them carrying out effective investigations and would impinge on their statutory independence.

3.30 pm

Subsection (2) seeks to include a requirement for referral of investigations to the Service Prosecuting Authority and sets an arbitrary timeline for this. However, a referral threshold—the evidence sufficiency test—already exists in the Armed Forces Act 2006. Furthermore, there is a statutory obligation in Section 116(4A) of that Act on the service police to consult the Service Prosecuting Authority before deciding not to refer certain serious cases.

Closing down or restricting the investigative timeline —as subsection (3) appears to do—raises the risk of contravening our ECHR obligation to effectively investigate allegations of serious crimes, as I have already said. It also presents the very serious risk that the ICC would determine that we are unwilling or unable to properly investigate alleged offences on overseas operations.

An effective investigation is one that has the flexibility to be led by the evidence wherever it goes, on a case-by-case basis, not one that must be carried out under the shadow of arbitrary timescales. Following that course, if investigations are curtailed in this way, we may fail to exonerate our own forces or provide much-needed closure to the families of deceased personnel. Also, the Government remain strongly of the view that it would be premature to propose any changes to the investigative process while Sir Richard Henriques's review of investigative processes in relation to overseas operations is still in progress. I beg to move.

Motion B1 (as an amendment to Motion B)

Moved by ***Lord Thomas of Gresford***

At end insert "but do propose Amendment 2B in lieu—

2B: After Clause 7, insert the following new Clause—

"Investigation of allegations related to overseas operations

(1) In deciding whether to commence criminal proceedings for allegations against a member of Her Majesty's Forces arising out of overseas operations, the relevant prosecutor must take into account whether the investigation has been timely and comprehensively conducted.

(2) Where an investigator of allegations arising out of overseas operations is satisfied that there is sufficient evidence of criminal conduct to continue the investigation, the investigator must within 21 days refer the investigation to the Service Prosecuting Authority with any initial findings and accompanying case papers.

(3) An investigation may not proceed after the period of 6 months beginning with the day on which the allegation was first reported without the reference required in subsection (2).

(4) On receiving a referral under subsection (2), the Service Prosecuting Authority must either—

(a) order the investigation to cease if it considers it unlikely that charges will be brought, or

(b) give appropriate advice and directions to the investigator about avenues of inquiry to pursue and not pursue.

(5) On the conclusion of the investigation, the investigator must send a final report with accompanying case papers to the Service Prosecuting Authority for the consideration of criminal proceedings.

(6) After receipt of the final report, the facts and circumstances of the allegations may not be further investigated or reinvestigated without the direction of the Director of Service Prosecutions acting on the ground that there is new compelling evidence or information.

(7) For the purposes of this section—

"case papers" includes summaries of interviews or other accounts given by the suspect, previous convictions and disciplinary record, available witness statements, scenes of crime photographs, CCTV recordings, medical and forensic science reports;

"investigator" means a member of the service police or a civil police force.""

Lord Thomas of Gresford (LD) [V]: My Lords, I would like to quote some wise words on this Bill with which I entirely agree:

"those who commit criminal acts … must face justice and must expect to be called to account. However, that should be done without undue delay: periods of delay stretching over years are simply not acceptable."—[*Official Report*, 20/1/21; col. 1170.]

That was the opening statement at Second Reading of the noble Baroness, Lady Goldie. A moment ago, as I understood it, she suggested that the current status quo was perfectly flexible and reasonable and that there should be no change. I do not agree. She has considered this Bill with remarkable fortitude and dealt trenchantly with her colleagues on some of these issues. I admire her very much for that. Having been present in person on the only occasion that a conviction of a war crime has been recorded in a British court, I am relieved that war crimes have now been removed from the presumption against prosecution. Clearly under her influence the Government can think again. I thank her. I also thank the noble Lord, Lord Robertson of Port Ellen, for his leadership on this.

No one has suggested throughout the whole passage of the Bill that there has been unacceptable delay by the Service Prosecuting Authority or the office of the Director of Service Prosecutions in bringing prosecutions, and nor has there been any complaint of delay in the listing of cases for trial or in the time taken in the courts martial process.

I referred at previous stages to the difficulties faced in investigations in theatre: the fact that investigations by victims in a hostile country may be made late, the likelihood of a lack of co-operation, the need for security for the investigators themselves, the problems of language and culture and, importantly, the lack of the range of forensic scientific facilities which would be readily available to investigators of domestic crime within the UK. All these pose considerable difficulties. However, the Bill still does not directly address the problem of delayed, shoddy and repeated investigations, which has very much been the concern of many members of the Armed Forces.

The Bill still introduces the novel idea of a presumption against prosecution for murder and for lesser charges to terminate proceedings arbitrarily; that has thankfully been truncated today but is still just about hanging in there on the serious offences of murder and likewise. This anomaly—this presumption against prosecution—may be the subject of law lectures in future, perhaps for a lengthy period until it is reversed, as I am convinced it will be, but will the presumption of prosecution still in this Bill be extended to other categories of public servants? Will there be a presumption against the prosecution of policemen after a number of years, or soldiers who have served in Northern Ireland? We have recently seen senior police officers tried for decisions made, under stress, more than 30 years ago. Have the memories of witnesses to those tragic events faded? Should retired police officers have the threat of prosecution held over them? Today a trial starts in Northern Ireland dealing with the events of 50 years ago. When the promised Bill to protect veterans of Northern Ireland operations is produced, will there be a presumption against prosecution in that? If so, I predict serious riots in Derry.

I return to my amendment, which sets out a practical and principled way of monitoring investigations and stopping them if, in the opinion of the Director of Service Prosecutions, there is insufficient evidence and no prospect of further investigations succeeding. Only if there is new and compelling evidence which satisfies the DSP could such investigations be resumed. It would not be, as at present, at the inclination or judgment of the investigator himself.

I am aware that the government response to my amendments in both this House and the other place, as we heard just now, has been to argue that its time limits are too restrictive. However, flexibility is built into the system I propose: no arbitrary cut-off applicable to all, regardless of the circumstances, but with each case considered individually on its merits. The insertion of time limits to control and monitor the investigation is precisely the point.

The alternative argument advanced by the Government is that Sir Richard Henriques is carrying out a review of the process of investigations. If that is so, it is not I who am premature with my amendment but the Government, who are pushing this Bill forward before he has reported. I know Sir Richard well from the days of my youth when I trespassed on the northern circuit; he is a judge of outstanding ability and integrity. If I were assured that my amendment and the speeches on it would be put before him, and that he could report in time for the Armed Forces Bill—the Second Reading of which we expect in this House perhaps in June—it would materially affect my decision as to whether to press this Motion. I beg to move, but look forward very much to the reply of the noble Baroness.

Lord Tunnicliffe (Lab) [V]: My Lords, we continue to accept and recognise the problem of baseless allegations and legal claims arising from Iraq and Afghanistan under both Labour and Conservative Governments. But the Bill, unamended, just does not do what was promised—that is, to protect British personnel serving overseas from vexatious legal claims and shoddy investigations. This is the gaping hole in this Bill, and it could be neatly fixed in the way that was proposed by the noble Lord, Lord Thomas.

I remind the Minister that the conditions set on investigations in the amendment are not arbitrary, nor are they time limited. The proposal ensures timely, not time-limited, investigations. This is not unrealistic, because it has been tried and tested in civilian law, and that is one of the reasons why the former Judge Advocate-General is so keen on such a proposal. We have worked hard with the Government and across the

[Lord Tunnicliffe]
House to try to build a consensus on this. While we believe this has been achieved with colleagues from all sides, the Government remain extremely resistant to proposals, so we are forced to recognise the restraints and realities of ping-pong. Therefore, we support the calls by the noble Lord, Lord Thomas, for the amendment to be referred to Sir Richard Henriques, and reported on in time for it to be considered in the Armed Forces Bill, to ensure that we return to the issue.

Baroness Goldie (Con): I thank the noble Lord, Lord Thomas of Gresford, for his Motion B1. He referred to my remarks at Second Reading relating to trying to address protracted and repeated investigations, and I stand by these remarks which, within the context of the Bill, seek to provide greater clarity and certainty to our Armed Forces personnel, but not by imposing artificial time limits on investigatory processes. That is implicit within the noble Lord's amendment.

I accept that the noble Lord, Lord Thomas of Gresford, is well intentioned. He suggests that his amendment should be referred to Sir Richard Henriques, and the Government certainly have no objection to that. Indeed, Sir Richard Henriques may already have been closely following debates in this Chamber on the Bill. The noble Lord's amendment may be a fruitful subject on which Sir Richard may wish to reflect. I cannot commit, of course, to saying that the report from Sir Richard will be concurrent with the Armed Forces Bill. Its Second Reading may reach this Chamber in June, and I understand that Sir Richard hopes to produce his report in the early summer. Again, while we will all be very interested in learning what Sir Richard has to say, the noble Lord, Lord Thomas of Gresford, will understand that I cannot commit the Government to whatever he may produce in his ultimate report. I certainly believe in having a wide field of material available for consideration of complex issues. If that reassures the noble Lord, Lord Thomas of Gresford, I hope he will be minded not to move Motion B1 to a division.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): I have received no requests to ask any short questions of elucidation, and accordingly call the noble Lord, Lord Thomas of Gresford.

Lord Thomas of Gresford (LD) [V]: My Lords, I am grateful to the noble Baroness, Lady Goldie, for that reply. I note that she is prepared to refer this issue to Sir Richard Henriques. It would be sensible to see what he has to say. I am sure that he will take on board all the submissions that have been made, and will produce a way forward to ensure that delays are monitored and controlled, and not left to hang about for ever, as has happened in the past. On that basis, I beg leave to withdraw Motion B1.

Motion B1 withdrawn.

Motion B agreed.

Motions C and D

Moved by ***Baroness Goldie***

That this House do agree with the Commons in their Amendment 3A.

3A: Title, line 1, leave out from "proceedings" to "in" in line 2.

That this House do not insist on its Amendment 4 to which the Commons have disagreed for their Reason 4A.

4A: Because the limitation periods proposed in Part 2 of the Bill allow reasonable time for the bringing of claims, and it would be incompatible with the European Convention on Human Rights for different periods to apply in respect of different types of claimant.

Baroness Goldie (Con): My Lords, I beg to move Motions C and D.

Amendment 3A in Motion C is simply a consequential amendment to the title of the Bill as a result of moving the duty to consider derogation provision.

Commons Reason 4A in Motion D reflects the representations I made to this House previously, that the absolute limitation periods proposed in Part 2 of the Bill allow reasonable time for the bringing of claims, and that it is incompatible with our obligations under the European Convention on Human Rights for different periods to apply in respect of different types of claimant.

3.45 pm

As previously stated, we consider that six years is a reasonable and sufficient period to bring a claim, while also providing much-needed legal certainty. We also consider that a six-year absolute time limit is compatible with our ECHR obligations. Importantly, an absolute time limit of six years for bringing claims already has precedent in English and Welsh law. Section 2 of the Limitation Act 1980 has an absolute six-year time limit for bringing claims for intentional torts. In Stubbings v UK, the European Court of Human Rights confirmed that this absolute time limit is compatible with the UK's ECHR obligations.

The figures previously cited, which indicate that around 94% of claims from service personnel and veterans arising from operations in Iraq and Afghanistan were brought within six years of the date of the incident or the date of knowledge, are important. They show that, even when there was no longstop in place, the vast majority of claims from service personnel and veterans were brought in a timely manner, and would not have been timed out by the measures in this Bill. It can be reasonably assumed that in the future claims would be brought forward sooner to avoid being timed out by the longstops. As a responsible employer, the MoD will communicate with and educate its people at relevant points of their careers so that they are aware of the impact of these new provisions when Armed Forces personnel are being considered for deployment on overseas operations.

Finally, the incentive to bring claims in a timely manner is very much in the interests of claimants, as it is much more likely that the facts of the situation can be determined more accurately, thus offering a greater chance to achieve justice. Moving on to the other part of the Reason, and as I have previously stated, Lords Amendment 4 renders the longstop measures in Part 2 of this Bill incompatible with our obligations under the European Convention on Human Rights. This is because in disapplying the longstops to claims by service personnel connected with overseas operations, we would be discriminating, with no justifiable reason,

against non-service personnel who also bring claims connected with overseas operations. It is also our view that personnel deployed on overseas operations are not in an analogous situation with those who are not so deployed. We therefore consider that the difference in treatmentbetween their claims is justified. This is because the circumstances in which claims connected with overseas operations arise are specific and unusual. Additionally, all the difficulties that arise in claims connected with historic overseas operations relating to the lack of accurate contemporaneous records and increased reliance on the fading memories of personnel do not arise in the same way with claims not connected with historic overseas operations.

Lord Thomas of Gresford (LD) [V]: My Lords, I have nothing to say on Motion C, which is purely technical.

The original amendment behind Motion D proposed that the ordinary rules of the Limitation Act should continue to apply to members of Her Majesty's Forces serving in overseas operations. The Government's objection is that this is discriminatory and contrary to the European Convention on Human Rights. Of course, the whole Bill is discriminatory, not least on the criminal side. It discriminates between personnel serving in overseas operations and personnel serving within the United Kingdom who do not have the protection of the so-called presumption against prosecution, for example, nor the protection against civil suit which these provisions seek to give.

Discrimination is not the problem here, the real issue is discretion: the discretion of a judge, in appropriate circumstances where it is equitable to do so, to extend or disregard the limitation period in actions in tort or, for example, for unlawful detention, or for breach of the articles of the human rights convention—for example, torture—or, in the case of our troops, for negligence, either in the provision of equipment or in training. The law has recognised over the centuries that the imposition of an absolute cut-off may in the circumstances of a particular case be entirely unjust.

Our system has operated quite successfully in cases arising out of operations in Iraq and Afghanistan. Vexatious claims or claims which were so delayed as to make it impossible to try the issues fairly have been struck out in their hundreds. That is the system that we have got, and it is a system that works.

Your Lordships will recall that, at Report, I argued that the clauses which created a blank wall for all litigants, whether foreign nationals, civilian victims or members of the Armed Forces, should be removed from the Bill and that the tried and trusted system that we have—allowing judges to do their job in the particular circumstances of the case—should continue. The Government persist in removing the judges' discretion, even in the narrow class of service personnel on overseas operations. We shall see how this works out, but I expect that veterans' organisations will be clamouring at the door of the Ministry of Defence to reverse the decision as soon as possible.

Lord Tunnicliffe (Lab) [V]: My Lords, we are very disappointed that the Government have rejected our amendment to Part 2 of the Bill. We still believe that it is simply wrong for those who put their life on the line serving Britain overseas to have less access to compensation and justice than the UK civilians whom they defend, or indeed than their colleagues whose service is largely UK based. The amendment was designed to ensure that claims by troops or former service personnel were not blocked in all circumstances after six years, as they would otherwise be under the Bill.

This provision also directly breaches the Armed Forces covenant, as the director-general of the Royal British Legion confirmed. He argued: "I think it"—by implication, the Bill—

"is protecting the MOD, rather than the service personnel".—[*Official Report*, Commons, Overseas Operations (Service Personnel and Veterans) Bill Committee, 8/10/20; col. 86.]

While our concerns have not gone away, we recognise that the Government have shown absolutely no desire to change this, so we will not ask the other place to think again with another vote. However, we strongly urge the Government to think further on this matter, and we will return to it as soon as possible.

For now, I want to thank colleagues for their unwavering support for our amendment, especially the noble and gallant Lords, Lord Stirrup and Lord Boyce. Having created such a widely based coalition against this part of the Bill, the Government should think long and hard and use the opportunity of the Armed Forces Bill to correct this deeply unwise feature of this one.

Baroness Goldie (Con): My Lords, I thank both the noble Lord, Lord Thomas of Gresford, and the noble Lord, Lord Tunnicliffe, for their contributions. I think that what emerges is a simple divergence of opinion. I say to both noble Lords that the problem with Amendment 4 is discrimination between different personnel engaged in the same activity on which the Bill is predicated, an overseas operation. These differences of opinion are unlikely to be reconciled, but I thank the noble Lords for their contributions.

Motions C and D agreed.

Motion E

Moved by ***Baroness Goldie***

That this House do not insist on its Amendment 5 to which the Commons have disagreed for their Reason 5A.

5A: Because it is not necessary, and would not be practicable, to define a legally binding standard of care in relation to the matters referred to in the Lords Amendment.

Baroness Goldie (Con): My Lords, I have said before, and I say again, that the MoD takes seriously its duty of care for service personnel and veterans. There already exists a comprehensive range of legal, pastoral, welfare and mental health support for them. I have previously spoken at length to your Lordships about the nature of this support and do not propose to repeat my comments in full, but I wish to highlight a couple of the key points.

[Baroness Goldie]

First, service personnel are entitled to receive legal support where they face criminal allegations or civil claims that relate to actions taken during their service and where they were performing their duties. Legal advice and support is also available whenever people are required to give evidence at inquests and inquiries and in litigation.

Secondly, a range of welfare support and mental health support is routinely offered to all our people. The potential impact of operations on a service person's mental health is well recognised, and policies and procedures are in place to help manage and mitigate these impacts as far as possible. Additionally, the Office for Veterans' Affairs works closely with the MoD and departments across government, the devolved Administrations, charities and academia to ensure the needs of veterans are met.

As your Lordships would have noted from the Secretary of State's Written Ministerial Statement, significant progress has been made to ensure that our service personnel and veterans have access to a comprehensive package of legal, pastoral and mental health support. We therefore believe that it is unnecessary to establish a statutory duty of care.

Not only is Amendment 5 unnecessary but it could result in unintended and undesirable consequences. Whether an individual wants or needs pastoral, welfare and mental health support is a personal issue. A duty of care "standard" could, if not carefully drafted, end up as a one-size-fits-all approach, not being flexible enough to cope with the needs and wishes of individuals as they arise and are identified. It could even engender an approach whereby support is provided only in accordance with the "standard", which may leave personnel without the right support at the right time for them.

We are also deeply concerned about the potentially negative effect of the amendment if it is included in this legislation. It is clear that it is likely to lead to an increase in litigation, which will mean more of our people being subject to potentially lengthy and stressful court proceedings. That is profoundly undesirable and contrary to the objectives of this Bill. I think that many of your Lordships will recognise that pastoral and moral duties are extremely difficult adequately to define, and there is a real risk that attempting to do so will lead to more, rather than less, litigation and greater uncertainty.

We are also concerned that, as investigations and allegations arise and often occur in the operational theatre during conflict, involving the commanding officer, the Royal Military Police and service personnel, the amendment may have unintended consequences which impact on the operational theatre and, again, lead to an increase in litigation. That is not some draconian concoction or lurid speculation; it is the simple practical fact of introducing a legal standard which, despite the efforts to exclude from the doctrine of combat immunity, could well encroach into the operational theatre.

The MoD is clear about its responsibilities to provide the right support to our personnel, both serving and veterans, and to seek to improve and build on this wherever necessary. Setting a standard for a duty of care in this Bill is neither necessary nor desirable. I urge the noble Lord not to press his amendment. I beg to move.

4 pm

Motion E1 (as an amendment to Motion E)

Moved by ***Lord Dannatt***

As an amendment to Motion E, at end insert "but do propose Amendment 5B in lieu—

5B: After Clause 12, insert the following new Clause—

"Duty of care to service personnel

(1) The Secretary of State must establish a duty of care standard in relation to legal, pastoral and mental health support provided to service personnel involved in investigations or litigation arising from overseas operations, as defined in subsection (6) of section 1.

(2) The Secretary of State must lay a copy of this standard before Parliament within six months of the date on which this Act is passed.

(3) The Secretary of State must thereafter in each calendar year—

(a) prepare a duty of care update, and

(b) include the update in the Armed Forces Covenant annual report when it is laid before Parliament.

(4) The duty of care update is a review about the continuous process and improvement to meet the duty of care standard established in subsection (1), in particular in relation to incidents arising from overseas operations of—

(a) litigation and investigations brought against service personnel for allegations of criminal misconduct and wrongdoing;

(b) judicial reviews and inquiries into allegations of misconduct by service personnel;

(c) such other related fields as the Secretary of State may determine.

(5) In subsection (1) "service personnel" means—

(a) members of the regular forces and the reserve forces;

(b) members of British overseas territory forces who are subject to service law;

(c) former members of any of Her Majesty's forces who are ordinarily resident in the United Kingdom; and

(d) where relevant, family members of any person meeting the definition within paragraph (a), (b) or (c).

(6) In subsection (1) "duty of care" means both the legal and moral obligation of the Ministry of Defence to ensure the wellbeing of service personnel.

(7) None of the provisions of this section may be used to alter the principle of combat immunity.""

Lord Dannatt (CB) [V]: My Lords, it is with predictable disappointment, but no less determination, that I return to commending to your Lordships the amendment in my name to establish a duty of care standard. I draw your Lordships' attention to the fact that in Committee and on Report this amendment stood in the names of the noble and gallant Lords, Lord Boyce and Lord Stirrup, thus reflecting support from former Chiefs of Staff of all three armed services.

It is fair to say that this overseas operations Bill has had something of a troubled passage through Parliament. It is extraordinary to note that the Minister piloting the Bill in the other place has now left his appointment as the Minister for Defence People and Veterans. What that says about smooth, joined-up government is a matter for speculation.

Notwithstanding the welcome concessions made by the Government this afternoon pertaining to our obligations under international law and Britain's reputation as an upholder of a rules-based international community, the Bill is also about the wider interests of the people Mr Mercer in the other place sought to champion—namely, our defence people and veterans. The serving and veteran communities have been looking to the Bill to provide better protection from repeated, extended and vexatious investigations and possible prosecutions following their service overseas on deployed operations.

No one suggests for a moment that anyone is above the law. Indeed, soldiers take up arms only to protect the law, but when this new Bill passes into law it will singularly fail to provide the protection that serving and veteran members of the Armed Forces believe it should provide. For this reason, the duty of care standard amendment has been tabled to improve this Bill and enable it to achieve one of its original objectives. That it has been consistently opposed by government Ministers and the government majority in the other place is both puzzling and disappointing.

If the Government argue that the Bill as drafted would give serving and veteran members of the Armed Forces the protection that they seek and do not accept my amendment, will they commit to issuing a clear statement down the chain of command and out to the various veterans' organisations as to how the Bill benefits and protects them? Those who are serving or have served have the right to believe that their employer will protect their interests. The Government have brought forward or implied various reasons why they will not support this duty of care standard amendment. It has been suggested that such an amendment is not necessary, in which case I repeat my request for a clear statement of benefit to be briefed to serving and veteran members of the Armed Forces.

It has been suggested that setting out a duty of care standard will invite further litigation from Armed Forces personnel. As I have argued previously, this is an empty argument, as in the amendment the Ministry of Defence has the opportunity to draw up its own statement of a duty of care standard, then act within it. That sounds to me like sensible, good practice to me—not something to be fearful of.

It has also been suggested to me that setting out a duty of care standard would create an unfortunate precedent. That argument misses the point as well. The inclusion of an Armed Forces covenant in the Armed Forces Act 2011 illustrates that the Armed Forces are acknowledged to be in a different category of employment from civilian occupations. The Armed Forces covenant was crafted and designed to recognise and protect that difference, so the argument of creating a precedent is also an empty one. The Armed Forces are in an employment category of their own.

Finally, I believe I have every right to be fearful. If the Government are failing to protect their employees from repeated, extended and vexatious investigations arising from overseas operations, what chance do Northern Ireland veterans have of gaining similar protection? I am not holding my breath, despite often-repeated statements that legislation would be introduced to address that problem too. I beg to move Motion E1 as an amendment to Motion E.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I have not received any requests from unlisted speakers. Does anyone in the Chamber wish to speak? No. I call the noble Baroness, Lady Smith of Newnham.

Baroness Smith of Newnham (LD): My Lords, this amendment from the noble Lord, Lord Dannatt, raises an important issue. Although we did indeed receive the Written Ministerial Statement, it did not go far enough. It is absolutely clear that the Government wish to make commitments to service men and women—the Bill was intended to do so—yet, when we get down to the details and requests to support the Armed Forces covenant and to ensure that the rights of service men and women and veterans are respected, the detail seems to disappear.

This amendment from the noble Lord, Lord Dannatt, perhaps does not go far enough. Such a duty of care should arguably be for all service personnel, whether overseas or at home, and for all activities. Had the noble Lord tabled such an amendment, he would almost certainly have been told it was out of scope of the Bill. Therefore, this is in many ways a modest amendment but a very important one. If the purpose of the Bill, as the Minister has pointed out—and pointed out so many times in the earlier stages of the Bill—is to stop vexatious claims, investigations and so on that are deleterious to the health and well-being of service personnel and veterans, the least the MoD can do is to commit to supporting service personnel and veterans going through the difficulties of investigations and prosecutions.

It is a limited but very important amendment. I am sure the Minister has been listening, because she has done a fantastic job of listening to us over many hours of debate. But if she has been listening, she has not yet yielded any ground whatever. Might she feel able to move at all? Otherwise, I suspect I will follow the noble Lord, Lord Dannatt, through the virtual Lobby to support this amendment.

Lord Tunnicliffe (Lab) [V]: My Lords, we remain four-square behind the important amendment from the noble Lord, Lord Dannatt, to provide a duty of care standard for personnel and veterans who face investigations and litigations. It remains unclear why the Government will not accept this limited proposal. If it is simply because they fear being sued for not fulfilling their responsibilities, I simply say to the Minister that all the Government need to do is to make sure their duty is fulfilled in the first place.

It has been suggested that it is unreasonable to single out the Armed Forces for this protection but, as the noble Baroness just pointed out, the covenant shows that the law recognises that being a soldier or serviceman in a combat situation is special and different. In no other job can you require somebody to go into a potentially lethal situation and, in the final analysis, die for their country. This amendment recognises that there needs to be something special when people have

[Lord Tunnicliffe]
worked under conditions that those of us who have never been in that level of tension, responsibility and fear probably cannot understand. We can at least partly understand how difficult it must be. Surely, there should be a reciprocal movement by government, the command and the MoD to support those in such danger when they come under the aegis of the law and have the difficult job of defending themselves. This amendment merely makes sure that they are properly looked after and that anybody making decisions about how they are looked after recognises that, at the end of the day, there is hard legislation.

Since we last debated this amendment in this House, we have had a change of Minister for Defence People and Veterans—the ministerial lead for this legislation. While there are certainly mixed opinions about him, no one can fault Johnny Mercer's passion or sense of mission. His resignation letter to the Prime Minister lays bare the failings of the Government on veterans' concerns by saying that

"we continue to say all the right things"

yet

"fail to match that with what we deliver".

Clearly, there is an issue and we believe that having this duty of care on the face of the Bill will allow the Government to deliver while being reminded how Ministers come and go but statutory protection remains in place. We have heard how troops and their families who have been through the trauma of these long-running investigations have felt cut adrift from the Ministry of Defence. When Major Campbell was asked what support the MoD gave him, he replied simply: "There was none".

We believe that the Government should think long and hard about this amendment. It is an unlikely coalition of three former Chiefs of Staff of their respective parts of the Armed Forces, politicians from around this Chamber, and many outside, who recognise the value of looking after our troops when they are in difficult times. This has to change and we believe that legislative change is the right way. We therefore support the noble Lord, Lord Dannatt, in asking the Government to think again. If the noble Lord feels that he has had an unsatisfactory response and wishes to divide the House, we will support him.

Baroness Goldie (Con): I thank the noble Lord, Lord Dannatt, the noble Baroness, Lady Smith, and the noble Lord, Lord Tunnicliffe, for their contributions. I realise that this is an important debate. It is an issue which, as I have recognised in previous contributions, elicits very strong and sincerely held views and feelings.

The noble Lord, Lord Dannatt, referred to my former ministerial colleague, Johnny Mercer. I pay tribute to him and recognise his commitment to veterans, as I pay tribute to his successor, my honourable friend Leo Docherty, himself a former soldier, who has a deep and abiding interest in veterans.

I listened carefully to the contributions across the Chamber. What I have not heard in response to my attempt to describe the wide range of support which is offered to our Armed Forces personnel and veterans—through a range of directly provided services, likely to be the case, for example, with serving personnel; or in conjunction and co-operation with veterans' charities; or through consultation with the devolved Administrations, many of whom are responsible for delivering the essential services and support which our veterans require; or through the Armed Forces Covenant and how we propose to develop that further in the Armed Forces Bill—is a detailed indication of where the MoD is falling short. I certainly feel it would be helpful to have greater clarity about what noble Lords think are the deficiencies of the MoD in this context.

I have also not heard a response to the Government's legitimate concerns about the unintended consequences and the potential legal implications of creating a statutory duty of care. As I pointed out, this has to exist alongside the common-law doctrine of combat immunity and the very real concerns that this well-intended amendment could stray into and inhibit activity in the operational theatre. None of the contributions addressed these legal concerns or provided any alternative legal view. If one is available, it would be helpful to the discussion to hear what it is.

4.15 pm

The noble Lord, Lord Dannatt, made an important point about being sure that our Armed Forces personnel understand what this Bill means for them when it is passed. I acknowledge the significance of that observation. It is very important that there is an information and education process. I will certainly take that back and will attempt to reassure the noble Lord as to how we might make progress with that.

I have paid tribute to the noble Lord, Lord Dannatt, because his interest in this has been enduring and his pursuit of his objective resolute and determined, but I am afraid that the Government are not persuaded by his arguments. I therefore ask the noble Lord to withdraw his Motion.

Lord Dannatt (CB) [V]: My Lords, first, I thank the Minister for her thoughtful and measured response to this short debate. She made a number of entirely legitimate and fair points. She asked whether there could be a statement of detail on the concerns that a duty of care standard would meet, but I do not think that this Chamber is the place to get into a detailed drafting session. The purpose of the amendment is a purpose in principle to establish the desirability of a statement on a duty of care standard; this should stand on its own.

Going beyond that, the drafting of the amendment is such that the initiative remains with the Ministry of Defence to draft the duty of care standard in the way that it wishes. This also addresses the legal question that the Minister posed. The answer is that, if the Ministry of Defence draws up its duty of care standard in a careful and thoughtful way then continues to operate within it, the unintended consequences of serving or former servicepeople litigating against the Ministry of Defence represent an empty argument, as I argued before.

However, I am grateful to the Minister for picking up the point that, if there are beneficial aspects to the Bill, they are extracted and put in an information format so that they can be briefed down the chain of

command, as I asked, and to veterans' organisations. As much as I welcome that move, why would the Ministry of Defence not do that at the conclusion of the Bill? Anyway, I am glad that the concession has been made and that that will happen.

Nevertheless, I believe that the case for setting out a clear duty of care standard remains extremely strong. There have been several references to the former Minister for Defence People and Veterans; as I understand it, he is currently sitting in the public gallery of a court in Belfast to show solidarity with two former servicemen who are being tried some 40 or 50 years after events took place. I salute Mr Mercer for doing that and continuing to champion veterans' causes. Veterans look to him for leadership; they also look to a number of us former service chiefs for leadership.

I rise to that challenge to continue to provide leadership to the veteran community. I am therefore disappointed that the Government do not accept the need for the setting out of a detailed duty of care standard. I continue to press this issue, and therefore wish once again to test the opinion of the House and divide on this matter.

4.20 pm

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Motion E1 agreed.

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The Bill was returned to the Commons with amendments.

4.32 pm

Sitting suspended.

National Health Service (Charges and Pharmaceutical and Local Pharmaceutical Services) (Coronavirus) (Amendment) Regulations 2021

Motion to Regret

5.41 pm

Moved by ***Lord Hunt of Kings Heath***

That this House regrets that the National Health Service (Charges and Pharmaceutical and Local Pharmaceutical Services) (Coronavirus) (Amendment) Regulations 2021 (SI 2021/169) do not address the underlying funding problems faced by the pharmaceutical sector, which may affect the capacity of local pharmaceutical services to respond to future emergencies.

Relevant document: 47th Report from the Secondary Legislation Scrutiny Committee

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I welcome and support this statutory instrument. In fact, it is an excellent example of the contribution and innovation that community pharmacies make. Disappointingly, this has not always been recognised by the NHS, nor financially supported by the Government. As the Pharmaceutical Services Negotiating Committee has pointed out, community pharmacies have remained open throughout the Covid-19 pandemic; they have adapted to provide services in a Covid-secure way for their local communities, and they are offering face-to-face advice and healthcare on a walk-in basis. As well as delivering more than 1 billion prescription items a year, they have delivered healthcare advice at the rate of more than 48 million consultations a year. They have been a buffer for the NHS, helping their local communities and reducing pressure on other NHS healthcare providers.

The PSNC audit earlier this year, to be published this week, is fascinating. It says that 1.1 million informal consultations are taking place in community pharmacies in England every week. That comes to more than 58 million consultations a year. Every week, pharmacies provide advice on symptoms to more than 730,000 people. Nearly 38 million people per year—76% of pharmacy advice consultations—are people who have self-referred into the community, and 8.6% of those people seeking such advice said that they had been unable to access another part of the healthcare system. One in four informal consultations in pharmacies also involves advice and support relating to Covid-19. That means that 270,000 patients every week are seeking advice from pharmacies on Covid. Pharmacies giving advice save more than 2 million GP appointments every month, or 24 million every year. An additional 70,000 people would go to A&E or an NHS walk-in centre every week if they could not get advice from their local pharmacy.

Pharmacies, therefore, make a huge contribution. They can also make a contribution to the national Covid-19 vaccination effort. Some community pharmacies are already doing so, but all of this impressive work is at risk if they are not given adequate financial support. They cannot be expected to subsidise the NHS.

Work by the Company Chemists' Association has shown that the community pharmacy sector is facing a real-terms cut in funding of more than 25% during the period 2014 to 2024. In 2016-17, funding for pharmacies was cut by more than £200 million a year, and, as a direct consequence, community pharmacies of all sizes have closed. We are now two years into the current five-year community pharmacy contractual framework, which was due for an annual review last year but which did not take place due to Covid. So the sector has been left, after those cuts, with a flat funding position for five years in a row, when the cost of service delivery continues to rise and the NHS prescribes more medicines year after year. We know that the additional cost of providing Covid-safe care has been significant. The sector has spent more than £400 million extra—out-of-pocket expenses—to sustain the service. The Government have provided some extra funding, but this falls way short of covering the full costs incurred.

The systematic underfunding of the community pharmacy sector, combined with the pressures to which I have referred, is putting many pharmacy businesses in a critical position. Many pharmacy owners are having to reduce services, opening hours or staff levels to cut down on costs. Large pharmacy chains have also announced significant cost-cutting and reorganisation measures over the past year. A study of independent community pharmacies found that 28% to 38% were in financial deficit already, and that this would rise to 64% to 85% without a funding uplift.

Already, we have also seen more than 400 net closures of pharmacies since funding cuts were introduced in 2016; 327 of them have been in the 30% most deprived areas. This has a knock-on effect on local high streets and potentially contributes to growing health inequalities. It is surely counterintuitive that we should have pharmacies closing in the middle of a pandemic—but without funding support, we expect more closures, which means more communities losing their primary link to the NHS.

[Lord Hunt of Kings Heath]

The Government did provide £370 million in emergency funding loans to help pharmacies to stay open during the pandemic, in 2020. As I have explained, that money has been spent on covering the more than £400 million of NHS costs. Cash-flow modelling suggests many pharmacies cannot afford to pay back these emergency moneys. In summer 2020, HM Treasury made an initial offer on reimbursing pharmacy costs throughout the pandemic, but this was very constrained. Will the Minister tell us today whether the Government will write off the £370 million in advance payments that were made to pharmacies at the beginning of the crisis? I hope that he can bring a positive message. This would go some way to bridging the cost gap. Importantly, any shift to claw back this advance money from an already underfunded network will lead to further financial difficulties and potential closures.

I opened by describing some of the fantastic work done by community pharmacies. They are a critical part of the NHS and they have much more to offer to benefit patients, local communities and local healthcare systems. They are working with local GPs to roll out referrals from general practice, so that patients can get quick and convenient access to advice on minor illness, but they could do so much more. Over the coming months and years, pharmacies could really help on prevention, on levelling-up health inequalities, on identifying people with undiagnosed high blood pressure and other cardiovascular diseases, and on helping to tackle obesity and other health factors that have contributed to the UK Covid-19 death rate. They could provide enhanced community and public healthcare. I have already said that they could boost our vaccination effort and provide a first port of call to support GPs to return to pre-Covid activities. The new community pharmacy consultation service has the potential to enable pharmacies to meet the currently unmet need in urgent care, but it is currently failing due to a lack of engagement by, and referrals from, GPs and NHS 111.

It is very important that, in addition to providing financial support to the sector, the NHS trusts patients to know when their pharmacy is the right place for them to receive their care. Patients should be allowed to choose pharmacy as a place to receive their urgent NHS care. Part of the problem is that community pharmacy does not have a place around the table when it comes to the decision-making bodies at local level. I give notice to the Minister that I expect the NHS Bill, which we will see in the next Session, to put this right. We argued when the Bill went through that removing pharmacy from the boards of CCGs was a mistake. My goodness me, it has been a mistake.

Surely we should all come together to unlock the potential of community pharmacies and help the NHS get back on its feet as quickly as possible. I come back to funding: the current funding envelope for the community pharmacy network is unsustainable. We need to do better. The NHS could learn and benefit hugely from the pharmaceutical sector. I hope that this debate will encourage the Minister to take a much more positive look at what the sector can provide. I beg to move.

5.50 pm

Baroness Barker (LD): My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for introducing this debate. It is a most timely and important one. As I sat down to prepare my speech for today, I thought back to a year ago, and two places. One was the relatively affluent suburb of south London where I live. It is very fortunate. It has a major teaching hospital, a number of excellent primary care facilities and, if anything, an oversupply of pharmacies, both chain and independent. Contrast that to a small place up in Lancashire, where there is a district general hospital but where the GP services have not had any permanent staff for the whole population of a small town in over 15 years. The high street chain pharmacies there have bailed out and just one or two community pharmacies remain, and they are struggling.

From watching people at that time when it was not possible either to go to hospital or to a GP, I saw people visiting their local pharmacy services and relying on them. In south London they were very well served; up in Lancashire they were not. That is the important thing for the Government to recognise. We are talking about a sector that is both a key part of the front-line delivery of healthcare services but also, in part, part of the retail sector, which we know was under severe stress even before the events of the last year. It behoves the Government to take a strategic view of services for the public and to begin to work out exactly how we make sure that the population as a whole has access to this most important of services.

I am no Pollyanna about the pandemic. I do not take the view that there are any great silver linings. It was terrible. However, the pandemic has highlighted those things that are contributing factors to health inequalities as well as new ways of working for the NHS which we need to—and have shown in the last year that sometimes we can—adapt and accelerate at pace.

The important thing to understand is the unique role of high street pharmacies. They are not on the web. They are physical presences where people can go as a walk-in and talk to trained professionals. That, I believe, makes pharmacies a very significant part of the overall pattern of health provision, which I think may change. I think the way in which people will access GP services in future may change. However, we have to have some consistency and some understanding on the part of the public, who, by now, after a year, are very well versed in understanding how we best use the resources of the NHS and do not waste them but who really want to be sure that they can use pharmacy services and can rely on them to be there.

The all-party parliamentary group held an inquiry in 2020. We have known since 2016 that we have lost about 400 pharmacies, disproportionately in those poorest communities. In 2020 we found that the cost of staying open and offering services when other NHS services were under the cosh has had a disproportionate effect on pharmacies. Some 95% of independent pharmacies believe that they are under financial pressure. We really should not allow that to continue.

I also want to talk about the distinction between community pharmacies and the chains. Chain pharmacies have a difference that arises from their ability to operate at scale and that is very valuable. It is now the case that

the majority of people with eye problems go to their opticians. I know that in this last year GPs were signposting people to go to opticians if they had minor eye problems; so, too, with audiology services and other services which are primarily being done in pharmacies rather than in the NHS. If that works effectively and efficiently for people, we should make sure that it remains.

I am the co-chair of the All-Party Parliamentary Group on Sexual and Reproductive Health. One of the biggest changes that we have witnessed during the pandemic is the change to telemedicine for women seeking abortion and access to contraceptive services. Data that has been subject to two different reviews—in Scotland and England—shows that that move has been extremely beneficial to patients. It has cut waiting times. It has enabled women to be seen much more quickly than they would otherwise have been. It has beneficial health outcomes. I know the Government are in the middle of a consultation but I hope that they will make that move permanent simply because it is in the best interests of the health of women and girls. I also hope that the Government will come through on the suggestion that we should make access to contraception much easier and allow young women to go to pharmacists and for that to be the primary route for accessing oral contraception but that the oral contraception should be free. We should not be cost shifting as we do that.

I want to make one other point. It has always seemed to me that one of the biggest barriers to integrated healthcare care at whatever level—acute, primary, community—is that of information and data sharing. I believe that if we are to make more progress on that—as I think has been hinted at or has been mentioned in passing in the White Paper—we need to come back to how data is shared responsibly across different providers so that we can enable people to have access to services without any leaking of their private data. I believe it is safer for people to have their data shared with NHS-approved pharmacists than it would be for them to seek other services on the web from unlicensed providers.

I want to echo the views of the noble Lord, Lord Hunt of Kings Heath: pharmacies have played a tremendous role this last year, but they cannot sustain it and continue to provide the services that they have. If we imagine that, this time next year, the NHS is again having to deliver a vaccination programme on the scale that it is now, it is impossible to think that pharmacies could continue to bring up the slack. So in the meantime, I back the noble Lord, Lord Hunt, in his request that pharmacies are not asked to return the £370 million that was put in on an emergency basis, and that, secondly, as a matter of urgency, we have a plan for integrating pharmacy services in a clear and thought-out way, proactively taking part in prevention and also enabling people to deliver emergency front-line telemedicine services to people who need acute access.

6 pm

Baroness McIntosh of Pickering (Con): My Lords, I start by declaring my interest with the Dispensing Doctors' Association, as in the register of Members' interests.

I welcome the regulations before us this afternoon; the instrument makes a permanent change to broaden the existing arrangements for the supply of prescription items for pandemic disease or in other serious emergencies. As indicated by the Secondary Legislation Scrutiny Committee, there really are no downsides to this. The instrument

"allows specified medicines to be issued free of charge either on prescription or in response to a patient group direction (PGD), a pandemic treatment protocol (PTP) or serious shortage protocol (SSP) authorised by the Department for Health and Social Care."

I welcome the opportunity to discuss the regulations before us. I also pay tribute to the role that community pharmacies have played in this regard—both generally and particularly during the pandemic. I would link to the role of community pharmacies the particular role that dispensing doctors have played. I once again ask my noble friend the Minister if, in the course of the afternoon, we could focus particularly on delivering medical care and pharmaceuticals in a rural setting, and ensuring that all aspects of rural life, including health policy, are delivered in a way which has clearly been rural-proofed.

I am delighted to join the noble Lord, Lord Hunt, and the noble Baroness, Lady Barker, in paying tribute to the role that community pharmacies play. But I would also like to pause for a moment and set out, as is referred to in the Explanatory Memorandum, the role that dispensing doctors have played. This is something of a lifelong interest for me because my late father was a dispensing doctor and my brother is a retired dispensing doctor. Dispensing doctors exist in rural areas because a pharmacy is not commercially viable. They date back to the time of Lloyd George and the National Insurance Act 1911.

It is important to appreciate that the income from dispensing cross-subsidises the medical service. Dispensing doctors do not have access to EPS—electronic prescription services—for their dispensing patients, over a decade since the system was introduced. That would seem to be a sign that perhaps rural-proofing in England is not working as well as it is in Wales, where they will be included for dispensing patients. Pharmaceutical needs assessment can place a dispensary under threat if a pharmacy application is made, unlike in Wales, where dispensing doctors are a full part of the pharmaceutical service, thanks to the Welsh department listening to the actions requested by the Dispensing Doctors' Association.

Dispensing doctors are buying drugs in the same marketplace as pharmacies, yet their system of reimbursement and fees are different from community pharmacy. Despite this, as I understand it, NHS England and the department exclude dispensing doctors—in particular the DDA—from discussions on these matters. I ask my noble friend: why is that the case? The noble Lord, Lord Hunt, also mentioned that community pharmacies are excluded from these decisions as well. It strikes me that, immediately, the DDA, representing dispensing doctors and community pharmacies, should be at the table when these matters are discussed.

Most dispensing practices have vaccinated their patients against Covid as there is no scope for large centres in remote and rural communities. It is extremely difficult in areas such as sparsely populated parts of

[Baroness McIntosh of Pickering]
north Yorkshire for patients to access any such urban remote centre. Also, a lack of rural proofing harms rural communities. Primary care networks are being set up yet most dispensing practices are, in effect, their own primary care network given the large practice areas and dispersed populations that they serve.

As I mentioned previously, dispensing doctors are NHS GPs who are permitted to dispense medicines in designated rural areas where a community pharmacy is not economically viable. As I also said previously, dispensing practices use any profits that they make from the purchase of the drugs that they dispense to cross-subsidise the provision of the medical practice. That is often overlooked. There has never been any formal acknowledgement of this in England, although I understand that Scottish officials have done so before the Scottish Parliament.

In making the specific request to have regard the role of dispensing practices as well as community pharmacies in the dispensing of drugs under the regulations before us this afternoon, may I make a more general request to my noble friend that his department practise proper rural proofing? This will ensure that the work of, and reimbursement of, dispensing doctors in dispensing to their patients—often in rural, remote and sparsely populated areas—is properly addressed in the terms I have set out.

In that regard, I shall support the Motion to Regret before us this afternoon if the noble Lord, Lord Hunt, presses it to a vote. I hope that my noble friend the Minister will look sympathetically on the arguments I have made in favour of dispensing doctors specifically and the rural proofing of health policy more generally.

6.07 pm

Baroness Wheatcroft (CB) [V]: My Lords, as others have said, community pharmacies make a huge contribution to life in the UK. I support this narrow statutory instrument but I deplore the position in which so many pharmacies have been left.

Let us look at what community pharmacies do and what they could do. They already take a huge weight off GPs and the accident and emergency services, effectively providing a triage service in many cases but often dealing with the problem all the way through. They provide emergency out-of-hours services, particularly for those who are terminally ill and need special medication, perhaps at night when other services are shut. They provide screening services, which are essential if we are to keep our population on the right side of healthy. They deal with minor ailments. They provide obesity management, which we all know is absolutely crucial for the future. They also provide phlebotomy, taking quite a lot of the effort of blood tests out of hospitals, which are so overstretched at the moment. They can provide stop smoking clinics; again, these are essential for modern life, where we need to kill tobacco before it kills people.

As we have seen in the past 18 months, pharmacies can also provide vaccination services. This is going to be increasingly important because it appears that vaccination is going to be not a matter of getting through this particular Covid epidemic but an annual event. We will need all the vaccinators we can find. How much more could our community pharmacies do?

If ever we are to see the combination of health and social care that has long been seen as the holy grail for a healthy, comfortable and happy society, community pharmacies must be a crucial part of it. They can straddle the ground where local government and the NHS meet. They can broker understanding and they can broker solutions, to make it sensible, convenient and comfortable for people to live in the community, rather than being sidelined in homes. But what is happening to those pharmacies? The EY report published last September, commissioned by the National Pharmacy Association, found that the current network in England is

"unsustainable under the current financial framework".

EY projected that by 2024, 72% of pharmacies will be in deficit, with an overall shortfall to the sector of £43,000 on average to each pharmacy and concluded that no industry is sustainable with so many operators in default. Already 28% to 30% are in default and, according to the survey, 52% are planning to sell their businesses. If the businesses are in deficit, there will not be people queueing up to buy them, yet a hit of 52% to our network of community pharmacies would be completely disastrous. The National Pharmacy Association, which commissioned the survey, called on the Government to take a "public interest focused safeguards" approach against the pharmacy network collapsing. Can the Minister commit to re-examining the funding model with that public interest safeguard central to the thinking?

Pharmacists undergo long training and bring vast medical expertise to their dispensing role, but they dispense far more than just medicines. They are there to provide advice and they offer humanity. For many elderly people, the visit to the pharmacy is one of the major points of contact with human beings during their week. They provide centres for communities. In many cases, they are core to the continued survival of a viable high street.

We have seen so many shops closing due to Covid and not reopening. The trend was already under way with internet shopping, but it has been exacerbated by the virus. In many cases, however, the community pharmacy continues to draw people into an area and therefore provide footfall to sustain the other shops and cafés which bring life to an area. They do not have the type of footfall that appeals to the major chains. In many cases, the major chains have a business model that depends on large sales of make-up, toiletries, photographic equipment—you name it. That is what keeps them trading, while the pharmacy just draws a few extra customers into the business. However, the pharmacies that are hubs to so many communities have only minor add-on sales. They are at the heart of the communities because they provide an essential service to the people who live locally. If those streets are to survive, they need the pharmacies to survive.

Therefore, while I support this statutory instrument, I also support the call from the noble Lord, Lord Hunt, for the Government to re-examine the funding and to make a short-term £350 million improvement to the way these pharmacies survive; otherwise they

will simply die in front of us, and we cannot afford to see that happen. Already, the Government have indicated that they would prefer to use a firm such as Greensill to provide these pharmacies with the speedy payments that they need, rather than speeding up the payment itself. So many pharmacies had to opt to use that service because they needed the cash flow immediately and could not wait for the Government to pay their bills. Those who have tried to sign up since the middle of March have been unable to. Therefore, my final question not the Minister is: can he undertake to ensure that the Government pay pharmacies promptly for the service that they provide, so that they do not have to resort to external factors to get their money on time?

6.15 pm

Baroness Brinton (LD) [V]: My Lords, I thank the noble Lord, Lord Hunt, for tabling this regret Motion. I echo his opening remarks about supporting the principles set out in the regulations, but proper resources are needed.

We on these Benches thank the All-Party Pharmacy Group, the Company Chemists' Association, the Pharmaceutical Services Negotiating Committee and the Library for their excellent briefings. I personally want to thank my local community pharmacy for the wise advice that it provides for my community and its ability to provide excellent services over the last 14 months, since the start of the pandemic.

A bit of housekeeping first: I note with regret that this instrument breaches the 21-day rule and its provisions came into force on 1 March 2021. The noble Baroness, Lady Thornton, and I often say to the Minister: when will this urgency rule change? I understand that there are some issues about really urgent statutory instruments coming in on time, but this one should have been advertised in advance and ready for us to debate before it came into effect. Is it so inconceivable to think that, a year into the pandemic, we might have wanted to plan for a place to redistribute new medicines urgently? The Government are far too reactive, and they really need to plan. So how have the Government been working with pharmacies throughout the last year on this issue?

It is interesting to note that the Explanatory Memorandum says that the 2021 regulations also make changes to existing legislation on the obligations of different types of pharmacy. As a result, certain types of providers of community pharmacy services will be required to provide a home delivery option for patients with specific prescription items in a pandemic situation free of charge. We have heard from a lot of community pharmacies that are struggling financially, and they may not have the ability or finances to set up a delivery system of that kind. So how are the Government working with pharmacies to ensure that they have the proper resources to deliver medicines to vulnerable patients?

I believe we all recognise that community pharmacies play a vital role in their local areas—often extremely local—which gives them the ability to reach right into the communities, something that is much harder for many other healthcare providers to do. Whether they are in a town centre, a member of a large pharmacy chain or a family-owned pharmacy at the heart of their village or ward community, our pharmacies are an essential tool in reaching everyone. However, we need to note that since 2016 we have lost 400 pharmacies —perhaps not surprisingly, disproportionately from the poorest communities with the largest health inequalities, as my noble friend Lady Barker so movingly described. Thinking about the Government's focus on health inequalities, community pharmacies in those areas absolutely need the right resources.

The All-Party Pharmacy Group ran an inquiry last November that included a survey of just over 1,600 pharmacy professionals in England and called for written and oral evidence. It found that the cost of staying open throughout the pandemic and offering services when other NHS services were reduced or halted resulted in staff burnout and rising debts. We hear a lot about nurses, doctors and front-line hospital staff but we need to recognise that other healthcare professionals have faced that same burnout.

Nearly half of pharmacy contractors think that their pharmacy is at risk of closing within the year. More than nine out of 10 feel that their place of work is under financial pressure, and over nine out of 10 feel that the Government do not appreciate the role of pharmacies in front-line healthcare. Pharmacies dispense 1 billion prescriptions a year and gave more than 2 million flu vaccinations last winter. Pharmacists are highly trained healthcare professionals, and their pharmacies are the front door of the NHS for many people who may be too scared or just do not know where to take their health issue.

Pharmacists deliver advice via 48 million consultations a year, taking vital pressure off our GP surgeries, urgent care centres and accident and emergency services, as outlined by the noble Baroness, Lady Wheatcroft. They have also moved with the digital times with a confidence and ease that some other parts of the NHS might perhaps envy—for example, with electronic prescriptions sent from surgery to pharmacy and digital notifications letting the patient know when they can collect their prescriptions. During lockdown, they have worked with volunteers to deliver prescriptions to people who cannot leave home, whether they are shielding, self-isolating or quarantining. More importantly, their Pinnacle database was used by the NHS to record Covid vaccines delivered, and then linked back to NHS records. It is very welcome that our pharmacists had an effective system, and that the Government, for once, recognised that it would be faster and more effective to use an existing system. I hope that joint working is symbolic of the esteem in which the Government and the NHS hold our pharmacies.

They have done all this without complaining, repeatedly finding ways to make things happen, especially in the last year, and we know that they are trusted by their customers. However, overwhelming financial pressures are causing them serious concern. As we have heard, many pharmacies are being pushed to the brink of closure. An EY report published last September made it absolutely plain that the community pharmacy network is unsustainable under the current financial framework,

[Baroness Brinton]
predicting that, without any change, 72% of pharmacies will be in deficit by 2024, with a network-wide deficit of just under £500 million.

These financial projections were based on figures that predated the pandemic, which has undoubtedly put further pressure on pharmacies. This extra pressure means that nearly half our community pharmacists believe that their pharmacy is at risk of closing within the year. The problem is that the regulations take no account of these circumstances. Can the Minister tell us when the Government and the NHS will consult with pharmacists so that they have a clear picture of what is happening? When will the Government and the NHS turn that into urgent recommendations for structural financial change? Enhanced resources would make sure that pharmacies are able to be at the heart of any health reforms that the Government wish to announce following their White Paper. Will the Government look specifically at providing resources for training pharmacists to deliver the new community health services that Ministers refer to so frequently?

At this difficult time, pharmacies are also being asked to pay back the advanced funding provided by the Government to help deal with the extra demands relating to Covid-19, but we know that much of this funding did not even cover the extra costs that pharmacies have had to bear. With their other financial problems, as already outlined, plus extra costs not supported by government, many pharmacists will not even be able to make these repayments. If the Government do not relax the repayment timing—or, better still, turn these loans into grants—forcing repayments now may force pharmacies into closure. That would be catastrophic, and a heavy burden for any Government to bear, especially one that has dished out billions of non-repayable grants to many other small businesses, which is what most of our community pharmacies are.

The pharmacy sector is willing and able to step up and help transform health services. The Company Chemists' Association said on publication today of the Government's White Paper:

"We hope the proposed changes in this White Paper will create an environment that allows the community pharmacy sector to do more to help relieve pressure within the rest of the NHS. With waiting times for hospital treatment at their highest for ten years, community pharmacies are needed now more than ever to provide patients with clinical care, close to home."

It went on:

"However, to deliver on this, pharmacies need fair funding for both the services they currently provide and for any additional workload they are ready and willing to deliver."

Along with the noble Lord, Lord Hunt, I welcome the principles behind these regulations but, without appropriate support and resources, the Government are setting our pharmacies up to fail—something no one in Parliament or government wants to happen. I look forward to the Minister's response.

6.25 pm

Baroness Thornton (Lab): Like my noble friend Lord Hunt, I welcome the purpose of the 2021 regulations, as community pharmacies are contracted and commissioned in England under the national community pharmacy contractual framework, which sets out the services that need to be provided, how quality is assured and other expectations, such as safety.

As has been said, the CPCF is negotiated nationally between NHS England and NHS Improvement, the Department of Health and Social Care, and the Pharmaceutical Services Negotiating Committee. As has also been said, the latest CPCF runs from 2019-20 to 2023-24, but it has not been able to be reviewed, due to Covid. It makes it easier for pharmacies to dispense certain medicines under specific circumstances. If those medications to help treat coronavirus outside hospitals are found, the regulations aim to allow them to be dispensed in such a way as to maximise take-up—this must be the right thing to do.

Community pharmacies makes up one of the four pillars of our primary care system in England, along with general practice, optical services and dentistry. They must often feel that they are the poor relation—the wonky leg on this particular table, perhaps. I will not list all the contributions that they make to our primary healthcare system because that has been adequately covered by many speakers—in fact, all of them, in different ways—in this debate. They are an important feature and fixture on our high streets, in our rural communities and, often, in our supermarkets.

When Covid struck, community pharmacies did not close; they stayed open and served their communities. They continued to deliver medication to people who could not leave their homes. They have been a huge asset to our NHS throughout this whole period; they have been vital. We depend on them at a local level, in both rural and inner-city communities; as people have said, their expertise saves hundreds of thousands of GP and hospital visits. Indeed, the Government have encouraged people to go to their pharmacy before they do anything else—quite rightly.

I support the housekeeping point made by the noble Baroness, Lady Brinton, about the instrument breaching the 21-day rule, with its provisions coming into place before that. The noble Lord knows that a bit of forward planning would be appreciated, but I do not deny it is clear that, because of the rollout of the vaccine, it was necessary to ensure that no one paid for their vaccine, or any treatment in another pandemic situation, to support the maximum take-up of treatment.

However, why would the Government underfund and behave in such a fashion as to undermine and put at risk these businesses? That is the basis for my noble friend's regret Motion. I have a further question about the uncertainty over the hub and spoke proposals that were in the recent MMD Act: does the Minister have an update on how implementation work is progressing and when we can expect the consultation process to commence?

I finish by asking three questions. Can the Minister advise the House when community pharmacies can expect a final decision on the reimbursement of their extra Covid costs? Like the noble Baroness, Lady Wheatcroft, I agree that the likes of Greensill are not an answer to this. Can the Minister explain why the NHS is refusing to increase investment in community pharmacies to support the NHS? Given the vital role they play, as everybody has acknowledged in this

debate, they need certainty about their ability to play their full part in tackling the Covid healthcare backlog, for example. Finally, would the Minister willing to meet me, my noble friend Lord Hunt, other noble Lords, and representatives of pharmacy associations, for instance the Company Chemists' Association, to discuss long-term funding for this sector?

6.30 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for tabling the Motion on this topic. I also take this opportunity to express our profound thanks to community pharmacies. The noble Lord, Lord Hunt, put it extremely well. They are an absolutely key part of our NHS family, and they have risen monumentally to the many challenges brought by this pandemic. Community pharmacies adapted early to working in a Covid-secure way. As has been noted earlier, they stayed open and continued to serve their communities by providing vital pharmaceutical services, typically one billion prescriptions per year. My noble friend Lady McIntosh put it very well; they absolutely stepped up when needed, including by opening on bank holidays, implementing a medicines delivery service and, more recently, as part of the Covid-19 vaccination programme and the lateral flow distribution service Pharmacy Collect.

Pharmacies are a trusted resource at the heart of our communities, an easily accessible part of the NHS, and are highly rated by the public. I am saddened by the Motion which expresses regret that the National Health Service (Charges and Pharmaceutical and Local Pharmaceutical Services)(Coronavirus)(Amendment) Regulations 2021 do not address the funding problems faced by community pharmacies. This statutory instrument amends existing legislation to ensure that if a treatment for Covid-19 or another pandemic disease is identified as suitable for use outside hospitals, it can be accessed easily and by as many people as possible without needing to pay a prescription charge or to go to a pharmacy. I assure the noble Baroness, Lady Brinton, that pharmacy contractors will be remunerated for the services in question. Fees for these services, as always, are subject to negotiations with the Pharmaceutical Services Negotiating Committee.

Noble Lord will recall, I hope, that in July 2019 a landmark five-year deal was agreed with the sector—the community pharmacy contractual framework. This deal commits almost £2.6 billion each year to community pharmacy. It is a joint vision of the Government, NHS England and the PSNC for how community pharmacy will support delivery of the NHS long-term plan. Over the period of the five-year deal, community pharmacy will be more integrated into the NHS, deliver more clinical services and become the first port of call for many minor illnesses. This will take pressure off other parts of the NHS, as has been noted by noble Lords. Good progress is already being made on this journey. For example, since 2019 NHS 111 has been able to refer patients to a community pharmacist for minor illness or for the urgent supply of a prescribed medicine. At the end of last year, we extended the service to GP surgeries, which can now also formally refer patients to community pharmacy for consultation. We are exploring extending this service to other parts of the NHS. We also recently introduced the discharge medicine service, enabling hospitals to refer discharged patients to a community pharmacist for support with their medicines. I expect more services to be introduced in the new financial year.

I am very well aware of the pressure that community pharmacists are under, like much of the NHS, particularly during the pandemic. Throughout the pandemic, the Government have worked with community pharmacy, putting in place a comprehensive package of support for the sector. Most community pharmacies have been able to access general Covid-19 business support, including business rate relief, and retail, leisure, and hospitality grants. We estimate that community pharmacies have had access to some £82 million in grants.

We have provided extra funding for bank holiday openings and the medicines delivery service for shielded patients and a contribution towards pharmacies adopting social distancing measures. We have provided personal protective equipment free of charge; this provision has just been extended to March 2022. We have also reimbursed community pharmacies for PPE purchased previously. We have provided non-monetary support, such as the removal of some administrative tasks, flexibility in opening hours, support through the pharmacy quality scheme for the sector's response to Covid-19 and the delayed start of new services.

Between April and July 2020, a total of £370 million in extra advance payments was made to support community pharmacies with cash-flow pressures due to Covid-19. These cash-flow pressures were caused by several issues, including a sharp increase in prescription items in March and April 2020, higher drug prices, delayed payments from the pharmacy quality scheme and extra Covid-19-related costs incurred by the sector.

Acting quickly and providing the sector with £370 million in extra advance payments helped alleviate immediate cash-flow concerns. It also gave the Government time to address the causes of the cash-flow pressures. I hear the calls from the noble Lord, Lord Hunt, for the Government to write off this money and for further financial support for this valued sector, but our healthcare system is under huge financial pressure. We do not have a limitless supply of funds, so I cannot make the commitments he asks for.

I reassure my noble friend Lady Wheatcroft that community pharmacies have been paid for the increased items they dispensed. Reimbursement prices have been increased to reflect higher drug prices, and payments have been made under the pharmacy quality scheme. However, the department is still in ongoing discussions with the PSNC. To reassure the noble Baroness, Lady Thornton, these will cover the reimbursement of Covid-19 costs incurred by community pharmacies. I reassure noble Lords that the Government will take a pragmatic approach. I expect any agreed Covid-19 funding to be deducted from the £370 million of advance payments to be recovered from community pharmacists.

As my noble friend Lady Wheatcroft put so well, in England the 11,192 community pharmacies have played and continue to play a vital role in the response to the pandemic. We need community pharmacies to be

[Lord Bethell]
financially sustainable to continue to do so, whether for everyday care or in emergencies. I am aware of concerns that the current funding is not enough. The department wants to work with the sector to look at this in more detail.

I have absolutely heard the concerns of the noble Lord, Lord Hunt, about pharmacy closures. I reassure noble Lords that we are monitoring the market very closely. Our data shows that, despite the number of pharmacies reducing since 2016, it must be recognised that there are still more pharmacies active today than there were 10 years ago. Proportionally, the closures reflect the spread of pharmacies across England, with closures tending to be where pharmacies have clustered. We monitor these closures closely. In the most recent 12 months we have data for, we saw that three-quarters of the closures were of pharmacies that were part of large chains. This data aligns with the consolidation announcements by those large chains before the Covid-19 pandemic.

Government data also shows that the increase in homeworking during the pandemic has led to a change in the pattern of pharmacy use, with more people making use of community pharmacies local to where they live. It is important that we protect this access to pharmaceutical services. Therefore, our pharmacy access scheme protects access in areas where there are fewer pharmacies and higher health needs so that no area is left without access to local, physical NHS pharmacy services.

We are about to begin negotiations with the PSNC over service developments for this financial year, having recently shared our proposals. They are confidential negotiations; I will update Parliament once they conclude.

The past year has been extraordinarily challenging for the NHS, including for community pharmacies. They have risen splendidly to the many challenges brought by the pandemic and have shown great resilience. We expect 2021-22 to be the year in which we recover from the pandemic and build on the work already achieved in the previous two years of the five-year deal. Our plans and proposals take the impact of Covid-19 on the sector into account, in terms of both the challenges and the opportunities the pandemic has presented.

In response to the questions from the noble Baroness, Lady Brinton, on the current negotiations, I reassure her that the upcoming negotiations between the department, supported by the NHS, and the PSNC are the opportunity for the sector to raise concerns and discuss what can realistically be achieved. When we talk about the funding of community pharmacy, it is important to recognise that Covid-19 is also an opportunity for it. I completely agree with the noble Baroness, Lady Barker, on the new ways of working. The pandemic has shown us the value of our incredibly highly skilled community pharmacy teams, and how they can contribute more and receive more funding as a result.

For instance, we commissioned community pharmacies to operate the medicine delivery service for shielded patients. This has been vital to help ensure that the vulnerable in our communities continue to receive their medicines safely. This has since been extended to people who are self-isolating. Another example is that we have delivered our biggest vaccination programme ever because of Covid-19; community pharmacies have vaccinated more people than ever before. Some 300 pharmacy-led Covid-19 vaccination sites are currently live and we are, of course, considering the important role that community pharmacy can play in future phases of the programme. In addition, community pharmacies are now offering a lateral flow distribution service, Pharmacy Collect, making those tests readily available at pharmacists across the country. It is proving extremely popular. These are examples of how community pharmacy is supporting the fight against Covid and how the Government are making better use of the clinical skills of pharmacists, while giving community pharmacies an opportunity to generate more income above the £2.6 billion per year in the five-year deal.

In conclusion, this Government completely understand the value of community pharmacies and this Minister most definitely does. With four children, I am utterly dependent on the Nashi Pharmacy on Westbourne Grove by day and the Bliss Pharmacy at Marble Arch by night. I pay personal tribute to the thoughtfulness and clinical insight of those important resources.

I understand the noble Lord wanting to use every opportunity to raise this important issue and to ensure that community pharmacies are adequately funded. This issue was debated in the House of Commons only last month. I can reassure noble Lords that the Government have heard the concerns expressed today. We are committed to working with the sector on a sustainable funding model for all community pharmacies. We are about to enter negotiations with the sector about what it can deliver this year. I hope that this reassurance is sufficient for the noble Lord to withdraw his Motion.

6.42 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, this has been a very good debate. I am grateful to all noble Lords, and the Minister, for their interesting contributions. Although this was essentially about the funding of community pharmacy, the huge contribution that it makes—and can make in the future—became very apparent in this debate. I hope that this is what will draw us together.

The noble Baroness, Lady Barker, drew an interesting distinction between provision in south London and that in south Lancashire. The irony is that it looks as though community pharmacies are most vulnerable in the most deprived areas and we really have to deal with this.

I was interested in what the noble Baroness, Lady McIntosh, had to say about dispensing doctors. When I was the Minister responsible for community pharmacy 20 years ago, we established a joint committee, between the PSNC and the BMA, of community pharmacists and dispensing doctors, to try to resolve some of the tensions. I am not sure whether we succeeded in doing that, but I echo the noble Baroness's comments about the role of dispensing doctors.

I also thought that the noble Baroness, Lady Wheatcroft, gave an interesting analysis of the financial challenge facing the sector. She and the noble Baroness,

Lady Brinton, referred to the EY report. What she said about the general impact that community pharmacy has on high streets was very important and we should not forget it.

We should also not forget what the noble Baroness, Lady Brinton, said about the unsustainable financial framework for many community pharmacies at the moment and the Government's consultation and recommendations for structural financial change. I also echo what she said about resources for training pharmacists in new services.

In her winding, my noble friend Lady Thornton made the important point that community pharmacies did not close; they carried on and were of huge benefit to us. That is why it is so frustrating that there are so many local examples of where the NHS does not see the potential of community pharmacy. I come back to what I said earlier about the need to ensure some kind of statutory provision for community pharmacy representation around board tables, at local level. You could say the same for opticians and dentists; all too often, they are neglected by the decision-making bodies. When we no doubt come to debate these matters on the Queen's Speech, in a couple of weeks, I hope we come back to the structure of the future NHS that the noble Lord wishes to bring us.

The noble Lord, Lord Bethell, chided me a little, I think, about using this SI as a way of raising general issues, but what are we to do? We have largely been deprived of Questions for Short Debate over the last year, and I am afraid that this SI is an excellent vehicle to raise more general issues. I have no problem whatever with the SI before us. I am grateful to the Minister for saying that he has heard my concerns and that there are discussions and negotiations going on, and that he will report back to us. But—and it is a big "but"—there is a tremendous risk that we will undermine the very fabric of community pharmacy unless we take action, which is what I urge on the Government. Having said that, I beg leave to withdraw my Motion.

Motion withdrawn.

House adjourned at 6.47 pm.

Grand Committee

Monday 26 April 2021

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.32 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for the following debate is one hour.

Whiplash Injury Regulations 2021

Considered in Grand Committee

2.33 pm

Moved by ***Lord Wolfson of Tredegar***

That the Grand Committee do consider the Whiplash Injury Regulations 2021.

Relevant document: 49th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument).

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I beg to move that the Grand Committee do consider the Whiplash Injury Regulations 2021 and the Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021.

These draft statutory instruments are key components of the Government's whiplash reforms. They will simplify the process of settling whiplash claims, provide certainty to claimants as to how much their claim is worth, and benefit society by enabling an average reduction in insurance premiums for ordinary motorists of around £35 per premium. I remind the Grand Committee that the Secondary Legislation Scrutiny Committee has drawn both of these important SIs to the attention of the House.

The House had a number of extensive debates on the merits of the Government's policy underpinning these SIs during the passage of the Civil Liability Act 2018—which I will refer to as "the Act"—so, with the limited time available to us today, my focus will be on the detail of these regulations rather than on rehearsing past policy debates.

The measures in Part 1 of the Act change the process for making whiplash claims by defining what constitutes a whiplash injury; introduce a fixed tariff of damages for pain, suffering and loss of amenity, or PSLA; provide for an uplift to be applied to the tariff amount in exceptional circumstances; and ban the practice of seeking or offering to settle a whiplash claim without first seeking appropriate medical evidence. In addition, we are increasing the small claims track limit in respect of road traffic accident-related personal injury claims from £1,000 to £5,000.

We had also previously committed to increasing the small claims limit for all other types of personal injury, including employers' and public liability claims, to £2,000. However, the Lord Chancellor has confirmed today, through a Written Ministerial Statement, which I have repeated, that the Government have listened to the views of Members of this House and others, and have decided both to limit this increase to £1,500 and to defer its implementation until April 2022. I hope the Committee will agree that this is a sensible and pragmatic decision, which will give stakeholders additional time to prepare.

The Whiplash Injury Regulations set out a tariff for the amount of damages payable for PSLA for a whiplash injury or injuries of up to two years and any minor psychological injury suffered at the same time. They allow the court to apply an uplift of up to 20% to the tariff amount in exceptional circumstances. Regarding the ban on pre-medical report offers to settle, they specify what constitutes appropriate medical evidence and the experts who may provide it. That will differ depending on whether the injuries include a non-whiplash element.

The purpose of the other statutory instrument is to give powers to the Financial Conduct Authority to enable it to monitor and enforce the ban on pre-medical offers to settle.

Let me now provide a little more detail on each regulation, starting with the tariff figures, which present a rising scale of fixed payments determined by injury duration, with damages reduced less at the top end to recognise more serious injuries. Where the prognosis exceeds two years—in serious cases, that is—claims fall outside the tariff.

We have reviewed and updated the previously published figures to account for inflation. We have also added a three-year future-proofing element to ensure that they do not move out of alignment with future inflationary pressures before the required statutory review in three years' time. That leads to an increase of about 11% over the figures previously provided to the House.

The reason for the uplift of up to 20% in exceptional circumstances is to balance the need for an effective tariff while also providing for judicial discretion. That 20% figure takes into account feedback received during consultation and in earlier debates, and reflects the position in similar jurisdictions such as Italy, which allow for an uplift of up to one-fifth.

During the passage of the Act we introduced, on the advice of the House, amendments to ensure that the views of the Lord Chief Justice were sought, we have undertaken this consultation, and we are grateful for his consideration of these matters. He was clear that the tariff figures

"demonstrate a material divergence in the levels of damages between those proposed and those which are generally currently awarded".

[Lord Wolfson of Tredegar]
He also acknowledged that the tariff figures were similar to those previously tabled before Parliament, when the Government's intent that the tariffs would be lower than the figures in the *Judicial College Guidelines* was made clear.

The Lord Chief Justice emphasised that the tariff was a

"narrowly defined statutory derogation from the principle of full compensation through an assessment of damages by the courts",

but considered that it was not appropriate for him to suggest a change. He made it clear that he understood the Government's principles underpinning the uplift, but expressed the view that he would prefer the judiciary to have greater discretion.

Following receipt of the Lord Chief Justice's response, further discussions with the legal advisers to the Joint Committee on Statutory Instruments led to a need to amend the tariff figures to distinguish between damages for claims for whiplash injuries alone and damages for claims for whiplash injuries and minor psychological injuries. We made the Lord Chief Justice aware of these re-presented figures and he was clear that his response, in substance, remained the same.

The Lord Chief Justice also considered that it would be beneficial to review the tariffs earlier than the statutory three years. We do not know now whether we will have enough data in a year's time to make an informed assessment, so I cannot commit to an early review, but we are open to the possibility. We must first make sure there is evidence available to undertake a meaningful review from which effective conclusions can be drawn. Having considered the points made by the Lord Chief Justice, we will not change our position on the tariff amounts or the judicial uplift of 20%, but we will undertake an analysis of the available data after a year with a view to considering whether an early review is appropriate.

Turning to the medical evidence, the regulations provide that in cases where a claimant lives, or is examined, in England or Wales they must obtain a fixed-cost medical report from an accredited medical expert selected via the MedCo portal. If there are other more serious injuries, the expert has to be listed on the General Medical Council's specialist register.

The other regulations, which relate to the Financial Conduct Authority, give powers to the FCA to enable it to take effective action to monitor and enforce compliance with the ban on seeking or making pre-medical offers to settle. The FCA is the regulator for insurers and claims management companies which may be involved in settling whiplash claims. These regulations therefore ensure that the FCA has the powers it needs to regulate Section 6 of the Act.

I emphasise that the measures in these regulations are necessary and important. They will provide certainty to whiplash claimants, create savings which will be passed on to consumers and enable the FCA effectively to regulate the ban on the offering and seeking of offers to settle whiplash and associated claims without appropriate medical evidence. I hope that on this basis the Committee will be able to support these measures. I therefore commend them to the Committee.

The Deputy Chairman of Committees (Lord Haskel) (Lab): The next speaker, the noble Baroness, Lady Primarolo, has withdrawn so I call the noble Lord, Lord Hunt.

2.42 pm

Lord Hunt of Wirral (Con): My Lords, I first declare my interests as a partner in the global law firm DAC Beachcroft, and as set out in the register. I support these regulations. The structure of a modest tariff for a modest injury is exactly what was anticipated when what is now the Civil Liability Act was debated in Parliament in 2018. I therefore agree with my noble friend the Minister that the tariff is set at the right level to reflect what these cases are really worth.

The *Judicial College Guidelines* do not tell us what hundreds of thousands of simple, low-value claims settle for outside court. The JCG also do not exercise any form of control. They simply record what other judges previously thought over the years and uprate for inflation. The number can go up but never slip back, as the guidelines themselves admit.

I will raise just one further point with the Minister, which I made to his predecessor during the passage of the Bill, about other minor injuries outside the tariff. The value of these other minor injuries is not the subject of any tariff so can he provide an assurance that, where they fall to be assessed alongside the tariff, their value will not suddenly become disproportionate to the main whiplash injury?

2.44 pm

Lord Etherton (CB) [V]: The digital portal for whiplash claims will be a completely new portal for small personal injury claims arising from traffic accidents where the pain, suffering and loss of amenity element is under £5,000 and all elements of the claim are less than £10,000. It is specifically designed to enable potential claimants to state their claim and avoid court proceedings without the assistance of legal advice, the idea being that the litigant will simply follow the instructions on the screen. It is likely that very large numbers of claims, running into hundreds of thousands, will be processed through the new whiplash portal.

As the Minister said, the 2018 Act provides for the tariff of damages to be reviewed every three years. He indicated that now, after a year, consideration will be given to whether there should be a review more often than every three years. My focus today is not on that review but rather on the absence of any provision for collecting data on the operation of the digital technology so far as the claimant is concerned and a review of how well it is working.

The whiplash portal and protocol are not part of the court's digitisation reform programme but arise out of a government policy initiative. I nevertheless urge the Government, as with court digitisation reforms such as the online civil money claims digital process for small money claims by litigants in person, to provide for litigants to record their satisfaction or otherwise with the procedural technology. This is particularly important in the case of the whiplash portal, not only because the litigant is expected to be

able to navigate the new digital technology without legal advice but because the technology has been developed not by HMCTS or the MoJ but by the Motor Insurers' Bureau.

I would, for the same reason, urge the Government to carry out a review of the operation of the new portal within nine months of its commencement, informed by the views expressed by the users of the portal.

2.46 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I declare my interests as set out in the register. It is a great pleasure to follow the noble and learned Lord, Lord Etherton, and I thank my noble friend Lord Wolfson of Tredegar for setting out the purpose of these regulations so clearly. Indeed, the Minister wrote to noble Lords in February of this year setting out the plans for whiplash reform. I strongly welcome the reform and these regulations.

I recognise, of course, that there are genuine whiplash claims, but it is known that there are many "creative" claims. The regulations will help deter them and, it is estimated, will result in savings of approximately £1.2 billion, and of £35 on average on motor insurance premiums, which insurers will pass on.

The provision of a tariff for damages payable for pain and suffering and loss of amenity is welcome. It is obviously central to require a minimum of medical evidence and a ban on settlement without medical evidence, and this is indeed provided for in the regulations. It also seems sensible to provide for a discretionary uplift of up to 20% for appropriate exceptional circumstances. The small claims track limit being raised from £1,000 to £5,000 is also very sensible.

The Association of British Insurers has mentioned that the reforms are very welcome, but it cautions that the potential for claimants to focus increasingly on additional minor injuries, as my noble friend Lord Hunt pointed out, may result in higher awards than the tariffs for whiplash. I hope that my noble friend will be able to say something about keeping ahead of the fray on these developments, which could dilute the beneficial effects of these very welcome reforms.

2.49 pm

Lord Hope of Craighead (CB) [V]: My Lords, I spoke in favour of what is now Section 3 of the Civil Liability Act 2018 when it was before the House three years ago—and I have not changed my mind. It seemed to me that the case for the whiplash injury regulations that we now have was compelling. It was far too easy for claims to be made that would not survive scrutiny if they were to be adjudicated on by a court. They would be accepted by insurers because it was so much cheaper for them simply to pay up. Human nature being what it is, not everyone abides by the rules. There was an abuse here that needed to be dealt with. A decision to proceed in this way was taken then, and what we are concerned with now is the content of these regulations.

There is no getting away from the fact that the figures listed in each of the columns in Regulation 2 are quite modest. Indeed, some people have described them as "derisory". We have them, however, in the columns before us, and I welcome very much the Minister's assurance that he accepts the Lord Chief Justice's recommendation that a review in the light of experience be undertaken in relatively early course, after one year's experience.

We note, of course, the opportunity for the court to increase the amounts payable by up to 20% in exceptional cases, and we should also note that Section 3(8) of the Act rightly provides that nothing in that section prevents a court awarding an appropriate amount for any other injuries the person may have sustained, which may well be the case in the ordinary road accident section. There is a risk, of course, that other kinds of minor injury will now take the place of whiplash claims. That will need to be carefully watched. For now, however, modest though the figures are, these regulations have my support.

2.51 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I welcome the introduction of the whiplash injury regulations, given the sheer volume of whiplash claims that were being made to exploit the system, rather than to support those who suffered genuine injury. I do hope that, rather than just being absorbed by the insurance industry, any savings will be passed back to insurance policyholders as a reduction in policy premiums, as they have been paying for many of these unscrupulous claims with increased policy premiums for decades.

My concern with the introduction of the official injury claims portal—a move to an online service that is very much the norm these days—is whether this will disfranchise many in society who would otherwise be eligible to make a successful claim. Can the Minister comment on how those who do not have online access or IT skills, as is still all too often the case for much of society, are to make their claims? Is there an alternative, paper version? In addition, can he outline to the House how these changes to claims are going to be advertised or otherwise communicated, together with any paper version availability?

2.52 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I welcome the reform of whiplash injuries compensation because, in many instances, the accumulated payments for whiplash injuries—which in many instances are very painful and have to be endured for a long time—have imposed a considerable level of premiums on ordinary insurance people.

These regulations are supported by the insurance industry, which has long campaigned on the need to tackle the UK's whiplash epidemic and has provided funding for the full technical development and build of the new portal through the motor insurers' premium. However, solicitors' associations have a lukewarm attitude towards the new regulations, contending that the methodology used for formulating the new tariff rates is fundamentally flawed and leads to a substantially greater reduction in damages payable to injured claimants than is justified. They also believe that the proposed tariff of damages is unfairly low, given the possible severity and duration of the injury sustained.

[Baroness Ritchie of Downpatrick]

Therefore, will the Minister and his colleagues consider publishing the correspondence and exchange of views with the judiciary, in the interests of transparency? There is a view that not all the information from the judiciary has been made available as part of the consultation process. Will he also indicate what steps will be taken to ensure that the tariff rates are increased to facilitate fairer damages to injured claimants? In this instance, I mean people who are deserving of this payment and have had to endure so much pain and suffering.

2.55 pm

Lord Thomas of Cwmgiedd (CB) [V]: As I said three years ago in Committee, I broadly welcome the tariff-based system. But today, as then, I wish to raise points in relation to advice, the proper operation of the new system, and the adequacy of the tariff.

I spent 20 minutes this morning watching the video of how this system is to work for unrepresented defendants. It is not easy, and the experience elsewhere has shown that it is difficult to devise a system whereby people can make claims online on something that is not very straightforward. I therefore wish to ask the Minister: what provision is being made to help unrepresented defendants understand the system, particularly those who are not as familiar with computers as Members of your Lordships' House? Secondly, what advice will be given when a person has to decide whether the offer made by the insurers is a fair one? That is not an easy question. Will it be the CAB or some other third-sector provider, and what funds are being provided to cover this additional cost of the third sector, bearing in mind the immense pressure on it?

It appears that, unusually, the system that has been made has been designed, as the noble and learned Lord, Lord Etherton, stated, by the potential defendants. It is clear that an independent review of the operation of the system itself, as distinct from the tariff, is needed, and I very much hope that a properly independent review can be set up within a year. There should be no difficulty with needing the requisite figures; we just want to know how this is dealing with unrepresented defendants. As to the review of the tariff, I hear what the Minister has said, but I very much hope that, whatever the timescale for the review, it will be independent and the evidence will be published.

2.57 pm

Lord Naseby (Con) [V]: My Lords, I support these regulations. The objectives are good and clear, although on reflection, perhaps it is a pity it has taken so long—four years—for action. It is good to see Her Majesty's Government working closely with the ABI, and it in turn with its members, and it is good to hear that everyone is organised for when the portal goes live on 31 May. I like the linkage between the Treasury, the FCA and the industry to assess whether policyholders have benefited from any savings made by insurers as a result of the Act.

However, I am deeply concerned about minor injuries claims. There is the potential here for a huge challenge of quasi-bogus claims from claims management companies and claimant lawyers. I say that because we already have evidence from earlier debates about what is happening in relation to credit lending, particularly payday lending and the backlash against the home-collected-credit format that has been with us for well over 100 years. These claims management companies manufacture complaints and use social media marketing techniques to farm spurious claims in large—in fact, huge—volumes. They end up at the Financial Ombudsman Service, which finds itself facing this mass dumping of claims and has to produce what it calls "mass settlements", which are then passed on in the cases that we have been debating elsewhere to the actual companies that are doing the lending. In this case, they will be dumped on the insurance companies. Can my noble friend therefore make sure that he is fully briefed on what has been happening in what is in effect an allied industry?

2.59 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the Treasury. The Civil Liability Act 2018 gave powers to the Financial Conduct Authority to enforce the ban on the making and requesting of offers to settle road traffic accident whiplash-related injury claims without a medical report, as set out in Sections 6 and 8 of the 2018 Act. The SI applies to England and Wales only and is a financial instrument for the purposes of Standing Orders of the House of Commons relating to public business.

As set out in Section 6 of the Act, all low-value RTA whiplash-related claims will need to be supported by a medical report provided by a MedCo-accredited medical expert, otherwise known as a ban on pre-medical offers. As the Explanatory Memorandum states:

"MedCo is a system for accrediting medical experts and for sourcing initial fixed cost soft tissue injury medical reports mandated by the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents."

The requirement to make sure that a medical report is completed before any RTA whiplash-related claim can be settled will provide more certainty regarding the costs of the settlement process and provide both parties with information on the severity of the injury and an accurate assessment of the treatment required and the duration of the injury, so as to be able to assess the position regarding the tariff and identify the compensation payable to settle the claim.

This SI will bring an end to the practice of pre-medical offers to settle, which can lead to unmeritorious minor or exaggerated claims being made by some claimants, including fraudulent claims by uninjured claimants. This will also reduce the risk of under-settlement, as the policy will ensure that claimants with genuine injuries are properly assessed by accredited medical experts—

Baroness Scott of Bybrook (Con): My Lord, can I ask you to finish now, please?

Lord Bhatia (Non-Afl) [V]: —and receive compensation appropriate to the level of pain and suffering they have endured.

The Deputy Chairman of Committees (Lord Haskel) (Lab): The noble Viscount, Lord Ridley, has withdrawn, so I call the noble Lord, Lord Bradshaw.

3.02 pm

Lord Bradshaw (LD) [V]: My Lords, I spent 12 years of my life on a police authority, and I saw the manufacturing of totally spurious claims from a large number of ill-motivated people. Some of them were criminal claims: people had actually manufactured crashed cars and claimed that whiplash had taken place, and it was extremely difficult to deal with them.

What the Government are proposing is necessary, and it is a pity that it has taken so long to bring it into effect. However, I share the reservations expressed by the noble Lord, Lord Naseby, that there is a claims industry in this country which is determined to find some way in which to make money. The money is made out of honest people who pay the premiums, who pay extra as a result. I warmly support what the Government are doing but I ask the Minister, as has the noble Lord, Lord Naseby, to reassure us that the Government are alive to the fact that the people making these claims will move to other areas and will seek to exploit them. A responsible Government should be alive to this fact and should take steps as soon as possible to crush any resurgence of claims from any other quarter.

3.05 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, tackling fraudulent whiplash claims to bring down motorists' insurance premiums is a welcome step. However, these efforts must not be at the expense of access to justice for genuine claimants. On balance, we in the Labour Party support the intention of the regulations. However, we are concerned that they may lack clarity and there should be proper support for the inevitable rise of litigants in person.

We have heard something of the background to today's regulations—the first proposal in the 2015 Autumn Statement and plans to introduce fixed tariffs for whiplash claims resulting from road traffic accidents. The Minister has explained that the regulations will increase the financial limit of claims managed though a small claim from £1,000 to £5,000 and introduce a new online portal managed by the Motor Insurers' Bureau to process claims. The Minister also explained that they will set the maximum damages for whiplash claims, although a court may apply a discretionary 20% uplift in exceptional circumstances. Moreover, children and vulnerable road users such as pedestrians, cyclists and horse-riders are excluded from the new regulations.

The plans have been welcomed by the Association of British Insurers, as it is right that there should be an effort to reduce the cost of whiplash claims to insurers, which is currently about £2 billion. I must say that the contribution of the noble Lord, Lord Bradshaw, given his time on his local police authority, was apposite and went to the heart of the problem that the regulations seek to address.

Like all other noble Lords who have spoken in the debate, I have been contacted by several interested bodies. They have sent in a number of questions, some of which I will run through. I am sure the Minister will be aware of their concerns, but I raise them nevertheless. For example, how will mixed claims, whereby whiplash has been sustained along with other injuries, be dealt with? Secondly, under exactly what circumstances may a judge apply the discretionary 20% uplift?

The noble and learned Lords, Lord Etherton and Lord Thomas, made a point about the new portal. First, we trust that the data can be securely transferred to the new portal, but will there be a proper analysis of the data within it so that a review of the new system can be undertaken from an informed point of view? A further question is how the Government propose to address inconsistency in the application of the regulations.

My final point has been made by pretty much all noble Lords speaking in today's debate. The Association of British Insurers has raised the concern that there may be an incentive for some people to claim for minor injuries and put them at a higher importance than whiplash injuries. That could limit the effects of the reform and lessen the benefits to honest premium-paying customers through the increase in minor injury claims.

In his introduction, the Minister that said he was open to the possibility of a review. When does he think it would be appropriate to review the new regulations?

3.09 pm

Lord Wolfson of Tredegar (Con): My Lords, I am grateful to all noble Lords who have taken part in the debate. Given the time constraints, rather than give a speech in response, I will try to deal with the various points put to me.

My noble friends Lord Hunt of Wirral, Lord Bourne of Aberystwyth and Lord Naseby made the point that there is a risk that the regulations could be subverted by other injuries suddenly becoming the main injury. As the noble and learned Lord, Lord Hope of Craighead, mentioned, Section 3(8) of the Act provides that, where a claimant suffers injuries in addition to a whiplash injury, the court is not prevented from awarding damages that reflect the combined effect of the injuries sustained. The courts will therefore need to determine how mixed injuries are addressed. We are confident that judicial expertise will address these matters on a case-by-case basis, but we will look vigilantly to ensure that the regulations are not undermined, whether by the claims management industry or otherwise, by people reordering their claims so that minor injuries become the main part of their claim.

The noble and learned Lord, Lord Etherton, asked about legal advice. The short point is that the online system has been designed with the claimant firmly at its heart. It is a modern, user-friendly, digital system. There is guidance in the system and digitally disadvantaged claimants who cannot use it can be assisted by a dedicated telephone support centre. We will review the data produced by the system and monitor it. We will discuss the operational performance of the portal on a regular basis with a user group that includes representatives of claimants and defendants, together with third-sector and consumer representatives.

My noble friend Lady Gardner of Parkes asked about passing on savings. The short point there is that the competitive nature of the motor insurance market will ensure that savings are passed on. As she is aware, the regulations provide that insurers have to provide data to the FCA so that it can see the savings being

[Lord Wolfson of Tredegar]
made. I do not want to repeat what I just said, but I assure her that we are very conscious of people who are not online and we want to make sure that they are not disfranchised.

The noble Baroness, Lady Ritchie of Downpatrick, asked about correspondence with the Lord Chief Justice. I hope I gave the Committee a fair summary of that correspondence. We do not plan formally to publish the letters received from the Lord Chief Justice. I venture to suggest that it would not be appropriate to commit to publishing the full correspondence without discussing it with the Lord Chief Justice. It is also important that these discussions can take place on a proper basis.

As to a review of the tariff system, I hope I set out in introducing the regulations that we will consider a review on the timescale that I indicated. I appreciate that the noble Baroness said that some solicitors think that the tariffs are too low. I am afraid that is a debate that we have had on a policy basis on a number of occasions and, for the reasons I set out, the Government are confident that these tariffs are appropriate and give proper compensation where injuries are properly sustained.

I hope that I have dealt with the point made by my noble friend Lord Bourne of Aberystwyth. I have already referred to the contribution from the noble and learned Lord, Lord Hope of Craighead. I very much welcome his support on this matter.

The noble Lord, Lord Bhatia, asked about medical reports. I assure the Committee that the online system is fully integrated with MedCo, so that once a liability decision has been received by the at-fault insurer, claimants can proceed through the system to obtain their report from an accredited medical expert. Importantly, if the at-fault insurer has accepted any portion of liability, it will also pay for that report. We have worked very closely with MedCo to ensure that reports are presented in an accessible, user-friendly format, while continuing to include all necessary information on the claimant's injury and prognosis. As I said, we will ensure that unrepresented claimants are fully supported through the process.

The noble and learned Lord, Lord Thomas of Cwmgiedd, asked a number of questions, first about the online system. The noble and learned Lord referred in particular to unrepresented defendants; I do not know whether he actually meant unrepresented claimants, whom I have already dealt with. So far as defendants are concerned, I assure the Committee that a full programme of webinars has been undertaken where professional users can learn more about the new process and ask questions. Information has been regularly disseminated through an e-shot programme and through social media channels such as LinkedIn and YouTube, and additional information pages will shortly be available on GOV.UK. Third-sector organisations have been taught about the new online service and, therefore, they will be able to signpost people to it. I am confident that, once the system is up and running, it will run well. I hope I have also dealt with the noble and learned Lord's points about the tariff and a review of the system; I have sought to make the government position clear on that, and also on the data point. If I have misunderstood his focus, as to defendants or claimants, I will perhaps write to him to set out the position in more detail.

The noble Lord, Lord Bradshaw, regretted that it had taken so long. I am very conscious that this debate precedes my involvement in it by some years. All I can say is that we have got here, and the regulations will be up and running shortly—better late than never. The important thing now is to make sure that they work properly and fairly, and that is certainly what we will do. I am absolutely alive to the fact that there is a claims management industry, and that it will shift its focus. We will be equally vigilant to ensure that the purpose of these regulations is not undermined.

I therefore welcome—if I may say—the support in principle for the aims of the regulations from the noble Lord, Lord Ponsonby of Shulbrede. He asked me six questions in a rat-a-tat way. Let me give equally speedy responses, because I understand that we are all limited for time. First, I hope I have dealt with mixed claims; that is a Section 3(8) issue. On the 20% uplift, all I really want to say is that the word used in the statute is "exceptional". I do not think it is appropriate for me to gloss that word, especially as we now have Pepper v Hart, so I will just say that it is an ordinary English word and falls to be interpreted in the normal way.

Thirdly, on the portal, I can assure the noble Lord that data is secure. I have already explained, I hope, the timing of the review. We will keep the question of its extent and timing under review, and we will look at it in a year's time, as I said. I am afraid I did not quite understand the point about an inconsistency in application; I appreciate it was not the noble Lord's point, but he was passing it on. The whole point here is that we have a tariff, so similar injuries really ought to be dealt with in a very similar way. If those who passed the question on to him are not satisfied with my answer, perhaps he will reformulate the question to me—and if he does, I am happy to provide a written response. But there should not be inconsistency, because we have a tariff. The fifth point was that there would be an incentive to claim that the minor injury is in fact the main one; I hope I have dealt with that already. The noble Lord's last substantive question was on the review, and I hope I have dealt with that as well.

I apologise for running through this at something of a pace, but I have only 10 minutes, of which I have about 15 seconds left. I hope that I have dealt with all contributions. I will check the *Official Report* and write if I have not, but otherwise I respectfully commend these regulations to the Committee.

Motion agreed.

Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021

Considered in Grand Committee

3.19 pm

Moved by ***Lord Wolfson of Tredegar***

That the Grand Committee do consider the Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021.

Relevant document: 51st Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

3.20 pm

Sitting suspended.

Forensic Science and the Criminal Justice System (S&T Committee Report)

Motion to Take Note

3.35 pm

Moved by ***Lord Patel***

That the Grand Committee takes note of the Report from the Science and Technology Committee *Forensic science and the criminal justice system: a blueprint for change* (3rd Report, Session 2017-19, HL Paper 333).

Lord Patel (CB) [V]: My Lords, it is a pleasure to move today's debate on the Science and Technology Committee report, *Forensic Science and the Criminal Justice System: A Blueprint for Change*. The committee is indebted to all those who provided written and oral evidence. We held 21 oral evidence sessions, with 50 witnesses, and received 103 written submissions; I thank all who participated. I also thank the committee members, our committee clerk Donna Davidson—who, I am delighted to see, is the Table Clerk for today's debate, and to whom goes the credit for a well-written report—our policy analyst Dr Daniel Rathbone, and our committee clerk Cerise Burnett-Stuart, who is, as always, an efficient organiser. We were also fortunate to have as our specialist adviser Professor Ruth Morgan, director of the UCL Centre for the Forensic Sciences, and professor of crime and forensic science. She is an internationally recognised expert in forensic science and its application in criminal justice systems. Her advice and knowledge contributed much to the report, and I thank her most sincerely. I am indebted to all those people.

I am also grateful, knowing her very busy schedule of legislation, to the Minister, the noble Baroness, Lady Williams of Trafford, for taking the debate today. She was kind enough to meet me and others to discuss the report following its publication. I shall say more about that later, and I thank her for listening.

Over the last 10 years there have been nine reports on forensic science and the criminal justice system, all intended to improve the service—yet adverse reports on virtually all aspects of the system continue to be made. Our report, based on the evidence we received, addresses the whole subject in a holistic way. A key aspect of it was the importance of addressing the whole forensic science system to identify the root causes of failures in the current system and to find best steps forward.

The delivery of justice depends on the integrity and accuracy of forensic science evidence and the trust that society has in it. The quality and delivery of forensic science in England and Wales is inadequate. We heard this repeatedly in our inquiry. In her 2019 annual report, the Forensic Science Regulator urged that the Government's focus should be on

"the protection of justice rather than the protection of historic or current policies."

One of the recurrent criticisms we heard was the lack of high-level leadership and oversight of forensic science from the Home Office and the Ministry of Justice. The strong evidence led us to recommend establishing a forensic science board, to deliver a new forensic science strategy and to take responsibility for it in England and Wales.

Budget cuts, reorganisations and exponential growth in the need for new services, such as digital evidence, have put forensic science providers under extreme pressures. The result is a forensic science market that is dysfunctional, and one which, if not properly regulated, will soon result in major forensic science providers going out of business, putting justice in jeopardy. The Government have an opportunity, following the recent much-welcomed legislation establishing the Office of the Forensic Science Regulator on a statutory basis, and with the pending appointment of a new regulator, to give the regulator resources and the function of regulating the market. I hope the Minister feels able to agree to this, but if she does not, can she say who should be responsible for regulating the market?

Structural and regulatory muddle continue to exacerbate the malaise, even now. There is no consistency in the way that the 43 police forces commission forensic services, with some doing so in-house and others contracting it out to unregulated private providers with no quality controls. Police forces also differ in which specialisms they outsource and which they keep in-house. This calls into question equitable access to evidence for defendants, and raises issues over the quality of the analysis undertaken and the evidence presented. It is urgent that the Forensic Science Regulator is given a number of statutory powers to bolster trust in the quality of forensic science provision. Will the Government use the opportunity provided by the appointment of a new regulator to give her or him these powers?

Fair access to justice for defendants is further hampered by cuts to legal aid. The defence needs to have an opportunity to commission its own forensic testing where the evidence is disputed. Further, the rapid growth of digital forensic evidence presents challenges to the criminal justice system. We were not presented with any evidence of any future strategy to deal with this. The Government have recently increased funding, but it still falls short of who will be responsible for developing a longer-term strategy.

Lack of resource and poor co-ordination of research and development in forensic science has resulted in concerns about the scientific validity of some of the forensic science evidence, particularly regarding its interpretation. It is vital that the failings identified by our report are recognised, otherwise public trust in forensic science will continue to be lost, threatening confidence in the justice system. Crimes may go unsolved, and it runs the risk of increasing the number of miscarriages of justice.

[Lord Patel]

Our report was published on 1 May 2019 and the Government responded to it in July 2019. The Government's response addressed only one part of the forensic science ecosystem, not the other key issues identified in the report. The proposals set out in the response are insufficient to address the systemic issues, and fall way short of addressing the core challenges or providing a path forward that will lead to reform across the whole of forensic science and enable the science to effectively assist the justice system.

Some things have changed since then, although not much for the better, and opportunities exist even now to address some of the failings identified in our report. Let me briefly say what has changed. One of the key pieces of good news, of course, is the establishment of the Office of the Forensic Science Regulator on a statutory basis. I thank the Minister for that. What the regulator lacks is the regulatory powers needed to drive the changes required to make the provision of forensic science in England and Wales world-class, as it once was.

There is also a need to address the level of resources required for the regulator to do his or her job. I hope the Minister can comment on that. Instead of the forensic science board recommended by the committee, the Criminal Justice Board has formed a forensic sub-group to address a forensic science reform programme to strengthen forensic science provision and address key risks and challenges. However, it is not clear how far it has progressed, what role the Government play in it and what responsibility they have for it. Despite further incidents such as a cyberattack on one of the providers of forensic services, the issue of fragility of the market is not being addressed.

The Government have put more money into the Transforming Forensics programme and launched its delivery arm, the Forensics Capability Network, but several police forces remain sceptical of its effectiveness, as evidenced by a request by the National Police Chiefs' Council for a review. Accreditation, meeting quality standards and training still remain issues, as does inequality in the availability of forensic services to defendants, as opposed to the prosecution. As I said, cuts to legal aid threaten the financial viability of those who provide legal aid to the defence. To date, there have been some positive conversations on funding for forensic science research and development, but very little progress is being made.

Before I conclude, I have three further questions for the Minster. Where in the Government does accountability lie for provision of quality forensic services to assist the justice system? Who will be responsible for regulating the market in forensic services? How will the Government ensure that the UK remains at the forefront of research and development and forensic science methodologies, including digital forensics, foundation research and, importantly, the interpretation of forensic materials?

I end with a quotation from one of our witnesses, Professor Claude Roux, director of the Centre for Forensic Science at the University of Technology, Sydney, and president of the International Association of Forensic Scientists. Referring to all aspects of forensic services in England and Wales, he said:

> "England and Wales held, essentially, the international benchmark. It was the 'Mecca' for forensic science … 30 years later",

due to "an ongoing national crisis", it

> "is more of an example not to follow."

That was not pleasant for the committee to hear. I beg to move and look forward to the Minister's response.

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, I remind the Committee that some Members are here in person, others are participating remotely but all Members will be treated equally. I ask Members in the Room to respect social distancing. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

3.49 pm

Baroness Warwick of Undercliffe (Lab): My Lords, it is an honour and a pleasure to follow the noble Lord, Lord Patel, and his comprehensive introduction to the debate. His speech got right to the heart of the dilemma the House faces in judging the adequacy of the Government's response to the committee's report and recommendations. After weighing all the evidence presented, the committee saw the need for systemic, root-and-branch reform across the whole of forensic science if it is to play an effective role in assisting the justice system. The Government have chosen not to take that strategic view. Rather, they have focused on just one element and only one part of the report: the creation of statutory powers for the regulator. Welcome though that is, unless there is an increase in the regulator's scope and powers, and unless there is a body responsible for driving and implementing strategy, I fear little will really change.

I joined the Science and Technology Committee only this year, so was not involved in the production of this excellent and hard-hitting report, but I have read it and much of the evidence. Its findings shocked me profoundly. I suspect that other Members of this House may, like me, have gained awareness of the role of forensic science in the criminal justice system largely from the limited coverage in the news media. I understood the received wisdom to be that we had a world-class system, but whatever confidence that had given me in the competence of the service, its scientific base and the reliability of its judgments was shattered by this report.

The main conclusion of the Select Committee is that the quality and delivery of forensic science in England and Wales is inadequate. It highlighted an absence of high-level leadership, a lack of funding and an insufficient level of research and development, which had all been exacerbated by the coalition Government's abolition of the government-owned Forensic Science Service in 2012. It further identified the need for the regulator's powers to be expanded and made statutory, as the coalition Government had promised.

It was particularly concerning to note that although there have been no fewer than nine reports on the state of forensic science in England and Wales, all raising similar concerns to those raised in the Science and

Technology Committee's report, very little, if anything, has been done. As the report says, the delivery of justice depends on the integrity and accuracy of the evidence available. The inadequacies of the service are clearly endangering that integrity, as well as undermining public confidence.

In their July 2019 response to the report, the Government acknowledged the inadequacies of the system and seemed to be largely positive about, and apparently supportive of, the committee's recommendations. So it was strange that the Government seemed reluctant to accept the structural changes proposed by the Select Committee, such as a forensic science board to oversee strategy and a national institute for forensic science to address the problems of under-resourcing in research and a lack of co-ordination.

The committee's report is robust in its criticism of the lack of co-operation and co-ordination between the Home Office and the Ministry of Justice. The Government agreed that there needed to be a joint approach, and said:

"Following the appearance of ministers from the two Departments before their Lordships, there has been much closer cooperation."

While this may be flattering to the immediate persuasiveness of your Lordships' committee, there is nothing to guarantee that this new spirit of co-operation will be maintained. Indeed, the lack of any action in the last two years does not suggest much has changed. Can the Minister tell the Committee how she proposes to ensure that collaboration continues, and how she will evaluate its effectiveness?

Similarly, in rejecting the recommendation for a national institute for forensic science, the Government rely on the two ministries

"developing an even stronger working relationship with UKRI … to … set strategic priorities for forensic science research and development".

I wonder whether the Minister agrees that this is rather a loose arrangement. It does not really seem any change from the current situation. In the last two years, some conversations have apparently been initiated with UKRI but there has been no formal recognition, so far, that forensic science requires dedicated funding, and no progress has been reported on the need for strategic oversight of research and development or identifying funding to enable it. Will the Minister acknowledge the very significant lack of funding—less than 0.1 % of UKRI spend over the last 10 years—and indicate how that will be resolved looking ahead?

I referred earlier to a change that the Government have agreed. In the last few months, they have been able at last to find parliamentary time for the Private Member's Bill introduced in the Commons by the Labour MP Darren Jones, which we debated in this House last month and which had its Third Reading just last Thursday. It had full government support and in part addresses the recommendations in the Select Committee's report in placing the regulator on a statutory footing and giving it powers to enforce a statutory code of practice. It is a great start but as the chair of the Select Committee said at Second Reading, while most welcome it was a missed opportunity to address the other issues identified by the committee and by the outgoing regulator, and highlighted today by the noble Lord, Lord Patel.

I hope that today's debate will prompt the Minister to go further; the delivery of justice requires it and the confidence of the public must be won back. Will the Minister keep these matters under close and regular review so that further changes can be brought in as necessary? I hope she will agree that this is the only way in which to avoid yet a further future report that reiterates the concerns of the nine previous ones, as well as the 10th one that we are debating today from the Science and Technology Committee.

3.55 pm

Baroness Walmsley (LD) [V]: My Lords, I was not a member of Science and Technology Committee when this report was written, although I am now. I am really sorry I missed it, because it was clearly a fascinating and important investigation. However, I have read the report, which was up to the committee's usual high standard of rigour and integrity, and the main impression I gained was that the forensic service in this country has become a shambles and, regrettably, has fallen a long way from its former high standard. The noble Lord, Lord Patel, called it, more politely, inadequate and dysfunctional. This is bad in itself, but it is a particular disaster given the fact that the science is moving so rapidly in new directions and the demand for the service is growing exponentially, particularly in relation to digital evidence.

High-quality forensic science is crucial for the operation of justice. It is important to the accused, both guilty and innocent; it is important to victims, both existing and potentially in future; it is important to the police, judges and advocates to enable them to do their job properly; it is important to juries who need confidence in the quality of the forensic evidence to allow them to be as sure as possible about their decisions; and it is important to the public on whose behalf the criminal justice system works. But it is clear that, for whatever reason, not usually the fault of those who work in the service, the service has let us all down over recent years and lost its former high reputation. The committee has done an excellent job in its report of getting to the bottom of what has gone wrong and proposing a comprehensive plan of what needs to be done to put it right.

Four aspects jumped out at me as I read the report. First, on leadership and resources, the committee led with this issue in its very first recommendation. I absolutely agree that the service needs strong leadership at arm's length from government. The committee recommended a forensic science board to take the lead in strategy, organisation and regulation. The Government instead proposed a less independent alternative—a steering group of the Criminal Justice Board jointly chaired by the Home Office and Ministry of Justice. That is hardly arm's length. Where is it? Does it exist? What has it done since the report in spring 2019? Do we have to wait another two years for action? Yes, we now have a statutory regulator, thanks to a Private Member's Bill, but this is no use without adequate powers and resources.

[Baroness Walmsley]

The committee listed five powers in its recommendation 12, all of them needed to enable the regulator to ensure the quality of provider organisations and individuals, and the ability to force them to improve or remove them from the service as necessary. It is outrageous that some providers are currently unregulated and some so-called expert witnesses not adequately qualified. The Government did not agree with these recommendations, but I believe that a regulator needs teeth, otherwise how can he or she do the job? It is nearly 10 years since the Government promised that the regulator would have such statutory powers, a time lapse which the committee described as embarrassing. Can the Minister assure us that the Government will take appropriate action so that it is no longer embarrassed?

On resources, following the disastrous cuts to legal aid, the committee heard that the defence sometimes lacks the ability to commission its own forensic testing where the evidence is disputed and, on the prosecution side, the police need adequate resources to build their case. Some police forces use their own labs, some put the work out to private providers and some a mixture of the two. But if you are going to put a public service out to the market, you have to show private providers that there is a stable business there in which they should invest. As the committee's evidence shows, the market is fragile and some providers may close down. The Government's response is to reform procurement policy. This sounds to me like saying, "If we don't like the price of butter, we can go to a different supermarket." Can the Minister tell us what it actually means apart from an attempt to get more for less?

Secondly, it is currently unclear where accountability lies in government. I echo the question from the noble Lord, Lord Patel: can the Minister say clearly where accountability lies now? Is it with the steering group or whichever department happens to be in the chair at the time? There is also a lack of co-ordination. The committee proposed that the new FSB should work with the regulator and the proposed national institute for forensic science to ensure standards, strategy and co-ordination. Can the Minister say how the Government's alternative structure will do that?

Thirdly, on research and forward planning, it is vital that there is a mechanism to look ahead and plan for investment in research into new forensic methods and, where appropriate, the use of artificial intelligence and automation and the practicality of how these can be integrated into the service. In the past, the development of and confidence in DNA evidence has allowed former miscarriages of justice to be corrected and unsolved crimes to be laid at the doors of the perpetrators at last. If resources are not put into the development of new forensic science, there will be more miscarriages of justice and unnecessarily unsolved crimes. Victims are always the ones to suffer for this but so does the whole of society. This is where the committee's recommendation 21 of a national institute for forensic science within UKRI comes into the picture. Without such an expert group to do the horizon-scanning and ensure the funding for the correct areas of research, the rogues will always be way ahead of the forces for good.

That brings me to staffing. The service does not just rely on new methods but on high-quality staff. Where are the planning and resources for staff training? Recommendation 13 and others cover this. The proposed forensic science board would have the responsibility, together with the College of Policing and the Chartered Society of Forensic Sciences, to develop a strategy for the ongoing training of all forensic science practitioners, including those who provide expert evidence in court, as well as providing CPD on forensic science for practising lawyers. Given the rise in digital crime, it is essential that more staff qualified in this area are recruited. What system do the Government propose for the staff planning and training function, and why is it better than the committee's recommendations?

Finally, on confidence, the noble Lord, Lord Patel, has outlined the delay and inadequacy of the government response. It makes me wonder whether this indicates a lack of interest on behalf of the Government or perhaps a lack of understanding of the role forensic science plays in building the confidence of the public in our criminal justice system. Does the Minister agree that a high reputation for forensic science can have a beneficial effect on the willingness of the public to co-operate with the police? It can also affect the prevalence of crime, deterring potential criminals as well as catching them. Police chiefs, in their evidence to the Committee, did not show that they have confidence in the Government's response to the report. If they do not have confidence in the system, who can?

4.03 pm

The Earl of Lindsay (Con) [V]: My Lords, I am very grateful to the noble Lord, Lord Patel, for introducing the report from the Science and Technology Committee on *Forensic Science and the Criminal Justice System*. This is an important report, which has not only shone a light on to some of the current failings and inadequacies of the use of forensic science within the criminal justice system but also makes important and much-needed recommendations for change and improvement. These recommendations are to be welcomed, and I very much hope that they will be carefully considered by all those working across this complex and multifaceted discipline. I recognise that some of the actions have been progressed since the publication of the report nearly two years ago, but it is particularly encouraging to note the successful progress of the Forensic Science Regulator Bill through both Houses, with just Royal Assent now awaited.

When enacted, the Forensic Science Regulator—the FSR—will gain long-overdue statutory powers. At this point, I declare an interest as the chair of the UK's national accreditation body, UKAS. UKAS is the sole national body recognised by government for the accreditation of organisations against nationally and internationally agreed standards. It is in this capacity that I especially note the committee's conclusions on the clear benefit of ensuring that the majority of forensic science providers are accredited to the appropriate international standards. Accreditation delivers assurance of the impartiality and competence of providers, which, I am sure we would all agree, is imperative within the criminal justice system.

I also welcome the recommendation that UKAS and the FSR work closely together to ensure that accreditation to relevant ISO standards is accessible and is progressed to ensure that the objectives of the FSR are realised. In fact, UKAS and the FSR have worked closely since the FSR role was first created. Together we have achieved consistent success in improving standards through the accreditation of forensic science providers in both the private sector and police forces, in line with the expectations of the FSR codes of practice and conduct.

As the FSR powers evolve, UKAS will continue to collaborate closely to deliver the vision of the FSR, focusing on clients with the required standards and, through the accreditation of forensic science providers, the demonstration of the appropriate competence of practitioners undertaking this critical work. In addition, UKAS and the FSR are able to share information through appropriate agreements, helping to support each other in their respective roles. The need for high-quality and reliable forensic services with sufficient capacity and capability to deliver the services required is a given. They are critical for a fair and functioning criminal justice system.

I therefore welcome and support the report's conclusions calling for the delivery of strategic and accountable leadership, reflecting all the main stakeholders, to set the vision, strategy and agenda for forensic science. This leadership, vision, strategy and agenda are needed now more than ever as the shape of forensic science evolves to accommodate new technologies and changes in the types of crime and evidence needing to be examined. The recommendation to focus on building capacity within the digital forensics market will likewise be imperative to keep pace with demand.

In conclusion, I thank the noble Lord, Lord Patel, and his committee for the expertise and foresight they have brought to this excellent report. I add my support to their conclusions and recommendations.

4.08 pm

Lord Mair (CB) [V]: My Lords, it was a privilege to have been a member of this House's Science and Technology Select Committee under the expert and excellent chairmanship of the noble Lord, Lord Patel. I congratulate him on his wise leadership.

Our report, published in May 2019, highlighted that this country was once regarded as world-leading in forensic science and seen as the international benchmark. But, regrettably, this is no longer the case—we are lagging behind other countries. This is principally because of an absence of high-level leadership, a lack of funding and an insufficient level of research and development. Our inquiry repeatedly heard that the forensic science system in England and Wales is not operating as it should; it is inadequate and in a state of crisis. We heard consistent evidence of the decline in forensic science, especially since the abolition of the highly respected Forensic Science Service in 2012.

The noble Lord, Lord Patel, outlined some of the principal recommendations of our report. One was the creation of a forensics science board to take responsibility for forensic science in England and Wales. Another was the creation of a national institute for forensic science to set strategic priorities for forensic science research and development, and to co-ordinate and direct research and funding. The Government decided not to implement either of these key recommendations, as noted by the noble Baroness, Lady Warwick. I will focus on two important areas affected by this decision: the market for provision of forensic services; and the research and development requirements, especially relating to digital forensic evidence.

On the market for provision of forensic services, the noble Lord, Lord Patel, rightly emphasised the urgency of giving the Forensic Science Regulator a number of statutory powers. The proposed establishment of the Office of the Forensic Science Regulator on a statutory basis is much welcomed. The noble Lord drew attention to our inquiry hearing evidence of a dysfunctional forensic science market. Our committee recommended that these statutory powers should include the means of regulating the market.

The effectiveness of forensic science for the criminal justice system depends critically on who provides it and how accessible it is. It must be good enough to be relied on by the courts, and it must be equally accessible to both the prosecution and the defence. Since the closure of the Government's Forensic Science Service in 2012, some types of forensic science analysis are increasingly undertaken by police forces in-house, particularly disciplines such as fingerprint analysis and digital forensics. Our inquiry heard that the forensic marketplace accounts for about 20% of service provision for law enforcement in forensic services by value, with the remaining 80% of forensic science work undertaken by in-house employees of police forces.

There has been a large reduction in spending on forensic science services. We heard that the £120 million spent on forensic science in 2008 was down to about £50 million in 2018. Significant reduction in spending on commercial providers of forensic science has contributed substantially to market fragility. We were told by a number of witnesses that the state of the forensic science market in England and Wales is unsustainable and in need of urgent reform. A number of private forensic science providers had gone into administration or been suspended, leading to significant fluctuations in the market and consequent problems for the criminal justice system. Dr Gillian Tully, until recently the Forensic Science Regulator, stated in her 2019 annual report that more needed to be done to stabilise the procurement and provision of forensic science services by police forces.

Procurement of forensic services from private providers is largely run by the 43 police forces and their police and crime commissioners in England and Wales. A distinctive feature of the forensic science market is that, in any given region, the police forces are essentially the sole customer. We heard evidence that commoditised procurement processes had led to a 30-40% erosion in pricing over six to seven years. Suppliers of forensic services were being forced to compete so heavily on price because the contracts were so big and came around so infrequently. The result was prices being reduced to unsustainably low levels. We all know the dangers of this: the level of scientific skills offered by

[Lord Mair]
private providers of forensic services is inevitably compromised if they are being driven down to very low prices.

In their response to our report, the Government acknowledged that there is a strong relationship between price and quality. The key question, therefore, is how to rectify the current situation. Our committee heard how, as an alternative procurement model, some police forces are now using a managed service model. In this model, for a fixed price a large provider contracts to provide police forces with all the forensic science services they need long term, for up to 10 years.

Although this provides long-term stability for a large provider, it leaves little opportunity for the smaller specialist providers, many of which are uniquely able to offer scientific analysis in important niche disciplines. Evidence we heard indicated that some important specialisms are dying out because they are no longer sustainable. This is worrying.

Our report concluded that the current procurement models for forensic science services will need to change substantially in order to stabilise the market. The evidence pointed to the need for a body to oversee the market and ensure continuity of high-quality service provision. Without this the criminal justice system will continue to be severely compromised.

Our committee recommended that the Forensic Science Regulator should urgently review the structure of the market for forensic science, and also review the procurement process for commissioning private sector providers alongside provision by police forces. The primary aim should be to determine a procurement model that balances price, quality and market sustainability. It is particularly important to ensure a level playing field between private and public sector providers of forensic science services, maintaining the capabilities of small providers in niche disciplines. Can the Minister give an assurance that the Forensic Science Regulator will be given the necessary statutory powers to achieve this, overseeing and regulating the market effectively, thus ensuring its stability and its quality?

The second and final area on which I shall comment is research and development, especially in relation to new technologies and the increasing importance of digital forensic evidence. Digital evidence is now a key component in many criminal trials. Digital forensic capabilities must therefore be available to both the prosecution and the defence. Our committee heard that around 80% of all crime cases have a digital element, whether it be CCTV, mobile phones and social media data, or cyberattacks. Interrogating and analysing digital evidence is becoming increasingly time consuming. The evidence was clear that very considerable investment was needed in the use of modern technology to handle, search and analyse digital content.

Digital forensics is a rapidly expanding field. Its increasing importance is clearly recognised in the comprehensive *Digital Forensic Science Strategy* published by the National Police Chiefs' Council in 2020. The value of artificial intelligence and machine learning to the criminal justice system cannot be overestimated. A modern mobile phone could have 1 terabyte of data on it, equivalent to many thousands of documents. Artificial intelligence and machine learning have vital roles to play in facial and speech recognition, and in identifying patterns of behaviour. There are enormous opportunities to apply artificial intelligence and machine learning technologies to streamline the handling, searching and analysis of digital forensic evidence. However, there are complexities, because human biases might be replicated by machine learning systems. This requires more research, particularly in the context of evidence for criminal trials.

A further pressing complexity is the rapid rise of deepfake technology. It is now possible to create digitally altered videos or soundtracks that make someone appear to have done or said something that they have not done or said. Deepfake videos and soundtracks are becoming easier to make and are dangerously difficult to identify as fakes. We are entering a world where it is no longer possible to believe all digital information. It is these very complexities that point to the urgent need for research in digital forensics.

Our report recommended that UKRI, working with the Ministry of Justice and the Home Office, should urgently and substantially increase the amount of funding allocated to forensic science, for both technological advances and foundational research. We emphasised the need to focus on digital forensic science evidence and the opportunities for understanding and developing further capabilities in artificial intelligence and machine learning. Can the Minister confirm that the Government recognise this vital need and will act accordingly?

In summary, there can be no question that proper delivery of justice depends on the integrity and accuracy of forensic science evidence, and the trust that society has in it. There are urgent changes needed to the system of procuring forensic science services to address market fragility, ensure stability and maintain high quality. There is also a need for more funding to be allocated to research and development in forensic science, especially in the rapidly changing area of digital forensics.

My final point is—

The Deputy Chairman of Committees (Lord Palmer of Childs Hill) (LD): I am sorry, I have to suspend the committee for five minutes for voting.

4.20 pm

Sitting suspended for a Division in the House.

4.25 pm

The Deputy Chairman of Committees (Lord Palmer of Childs Hill) (LD): We resume proceedings, and I am delighted to ask the noble Lord, Lord Mair, if he would benefit us by repeating the last couple of sentences or so of his remarks. Is the noble Lord, Lord Mair, there?

4.25 pm

Lord Mair (CB) [V]: I am indeed, thank you. I was just about to conclude. My final point is this: included in the title of our report were the words "a blueprint

for change". How much of the blueprint will really materialise? There are fears that only a few of our recommendations will be implemented. Substantial change is needed across the board if forensic science is to properly assist the criminal justice system. Full confidence in its provision needs to be restored.

4.26 pm

Lord Winston (Lab) [V]: My Lords, the noble Lord, Lord Patel, is to be warmly thanked for chairing the Science and Technology Select Committee so ably and for finally getting this Motion tabled. I declare that I was not a member of the committee when it produced its report, but I am now.

Forensic science in criminal justice is an extremely important topic and the recommendations of the committee are of grave concern. In this respect, it is regrettable that it has taken two years to debate this report. I suppose that one can at least say that not much has changed. We pride ourselves as a civilised society, at the heart of which is a stable democracy and a justice system which has rightly been internationally respected as a model. But it is obvious that major deficiencies have left some cruel results and great distress—or even worse—for a number of people, often entirely innocent citizens. The delay in doing something more about this is an underlying problem and it reflects extremely badly, in my view, on the Government.

I am going to address some of the issues that the noble Lord, Lord Mair, has already addressed, so I will illustrate my remarks in a slightly different way. I declare an interest as a member of the Centre for Data Ethics and Innovation. Last week, the conviction of Josephine Hamilton and others was quashed on appeal. This litigation involved evidence depending on an antiquated computer system and out-of-date software. Earlier, Mr Justice Fraser, in his written judgment, which extended to 313 pages, quashed the conviction of 39 sub-postmasters on the grounds that the commercial IT system, which was sold by Horizon and Fujitsu, was unfit for purpose, in spite of the Post Office's assertions to the contrary.

The software was based on a long-unsupported version of Windows NT4, first launched in 1996. In computer parlance that is not merely equivalent to the description of Chancery and Jarndyce in *Bleak House* by Dickens; it is closer to the Middle English of *The Friars Tale* by Geoffrey Chaucer. The software was, in spite of denial by the Post Office, subject to bugs, errors and defects. To compound the seriousness, Mr Justice Fraser pointed out:

> "To see a concern expressed … that, if a software bug in Horizon were to become widely known about, it might have a potential impact upon 'ongoing legal cases' where the integrity of Horizon Data was a central issue is a very concerning entry to read in a contemporaneous document"—

and I agree; it shows one of the problems with these commercial interests.

There is another problem apart from the commercial interests. Most reasonably educated people think of forensic evidence with the precision and scientific certainty often given in the media—in "Line of Duty", "Broadchurch", "The Fall", "True Detective"; even "The Night Of" and "Silent Witness". This has encouraged many people, including jurors, to consider some evidence not as circumstantial but as certain. This is certainly true of much biological evidence—for example DNA, to which I will return in a moment—and even to the gait of a person, the shape of a skull, the cause of a fire or the use of a partial fingerprint. In a sense, the importance of data and its analysis, as the noble Lord, Lord Mair, said, has now become increasingly central to the criminal justice system.

The increasing difficulty raised by the analysis of extensive data in criminal justice is well illustrated in the case of the Crown v Michael Richards, Robert Gold, Rodney Whiston-Dew and others. This commercial fraud involved over £200 million and had been initiated some 10 years earlier. It involved setting up projects promoting sham attempts at carbon sequestration overseas, a complex network of many wealthy investors, tax relief claims, offshore banking and extensive fraud involving the Inland Revenue.

During an earlier appeal heard by Sir Vivian Ramsey in 2013, the prosecution was stayed on the grounds of an abuse of process—partly because the prosecution had failed to comply with the duty of disclosure. There was a major difficulty. It is unnecessary to go into detail here, but the investigation and subsequent prosecution had required the seizure of 7 terabytes of information, 85 digital instruments and additional non-digital material, which took some years to analyse. After the devices were returned to the respondents, HMRC kept digital information on file and the respondents were then in a position to recreate the nature of their involvement.

Eventually it became clear to HMRC that the proprietary software needed to analyse all the digital information it had taken was served by FTW version 1.7 and it did not permit full optical character recognition. There were in all some 312,500 files, which were reviewed by people scrolling through thumbnail images. Subsequently, the information was migrated to a later version of FTW, version 3.4. This was equally unsatisfactory, because it required a lengthy process and there were continuing software problems. These deficiencies included, for example, the misplacement of attachments to emails.

In a subsequent hearing in the Court of Appeal Criminal Division chaired by Sir Brian Leveson in 2015, the earlier ruling was overturned. In some 33 pages, a very clearly expressed judgment was made by three judges. The appeal by the prosecution was allowed and the earlier stay was lifted. The case finally went to trial two years later, more than 10 years after HMRC had started its investigation. The key defendants were given lengthy prison sentences. The trial before Mr Justice Edis with the presentation of those data took 10 months, and it is notable that early in the trial one juror found that she was pregnant. She was finally delivered of a baby girl, Evie, before the trial finished.

Now, how much did this process cost? How much of the defrauded money was recovered? Perhaps the Minister might inform the Committee after this debate or perhaps write to me separately. With the increase in litigation involving commercial crime, as the noble Lord, Lord Mair, said, and organised crime, such as

[Lord Winston]
trafficking or illegal use of the internet, serious investment in digital technology and constant refurbishment of hardware and software are crucial, and the need for effective machine learning and artificial intelligence, as he has maintained very clearly, is essential.

I am just a doctor; I am not a lawyer—as my imperfect description of that last case will confirm. But I did promise to return to biology and DNA before I conclude. The excellent report from the Select Committee has detailed the inadequate provision for properly set up forensic laboratories, the questionable qualifications and training of many technical staff, and the expense and problems arising when commercial companies tender for contracts with the police. One example of problems that may arise is well illustrated by the Randox débacle.

Randox Testing Services advertises on the web, as I checked this afternoon, for workplace testing, medical-legal testing and Covid-19 antibodies and PCR. I have not yet been able to find out how much it charges for this, but its website claims that it has undertaken 17% of the Government's national Covid testing. Apparently, the police used to outsource most of their toxicology testing to it, and it is claimed that some dishonest employees in its laboratories fabricated evidence of alcohol usage and 10,500 cases, mainly involving drink-driving, are being reanalysed. The cost and delays involved in this are considerable, and this investigation is still going on two years later. Retesting is apparently taking a long time because, we are told, there is a chronic shortage of scientific expertise and accredited laboratories, leading to delays in providing toxicology analysis in unrelated cases of sexual offence and rape. This is just one example of the Select Committee's concern about outsourced laboratory testing in inadequately supervised commercial laboratories.

I conclude on the subject of DNA. In 1988, my own lab was refining PCR, the polymerase chain reaction, then an entirely new process, to test human embryos for possible sex-linked diseases and for any one of a number of 6,000 genetic diseases that cause serious or usually fatal disease in children and young people. It required exquisite care in dealing with the DNA from just one or two human cells. Indeed, many colleagues told me that this would be quite impossible; it is now used worldwide. All DNA of that kind, whether medical or forensic, requires—[*Inaudible*]—months if not years in our methods and redesign of at least one laboratory.

The problem of contamination is serious; it is also true of advanced spectroscopy, for example, when one is looking at chemical analysis of toxicological samples. With DNA, a tiny tube about 1 centimetre high can be contaminated by somebody touching apparatus nearby or coughing 30 metres away from the tube. We do not know how long DNA—a stable molecule, apparently—will survive on a given surface or how long it may be contaminated on a swab. DNA analysis has now become sophisticated and automated, but mistakes are still possible, particularly in untrained hands and in inadequate laboratories. Even in well-equipped premises that can happen. Many years ago, in a totally different experiment, a colleague and I voluntarily withdrew a paper that had already been accepted by the international journal *Nature* because we felt unsure that we could replicate our results after lengthy storage of the DNA on which we had run gels.

It is clear from this report that forensic science, yet another area in which the UK has led, is in dire straits, due to underfunding, poor regulation, inadequate training, limited university courses, which are seen as a cash cow, and scanty meaningful research. There are too few properly qualified individuals and a very wide range of forensic specialities. This report is commendable because it clearly outlines many of the key issues. As Sir Brian Leveson, who gave evidence to this inquiry, pointed out, inadequate or flawed forensics seriously undermine the system of British justice and the trust of the public.

4.38 pm

Lord Griffiths of Fforestfach (Con): It is a great pleasure to have been a member of the Select Committee on Science and Technology at the time we undertook this investigation. In this context, I thank the noble Lord, Lord Patel, for his outstanding leadership. He was relentless and courageous in getting to the root of the problem. I hope that he feels as a result that we served him well. I also thank the excellent contribution that our special adviser, Professor Ruth Morgan, made, not just when we were meeting but with what she handed out as preparation for today's debate.

At the outset, I make one point—namely, to draw attention to the seriousness of the issue we are debating. In the United Kingdom, we live in countries that uphold the rule of law and have a legal system that aspires to deliver justice. As we wrote in the report, the integrity and accuracy of evidence is critical to ensuring public trust in our system. If that trust ever drains away, the consequences for our society will be enormous. Therefore, it is very important to stress that securing justice is really at the core of what we are doing. It is not simply about the police having a very successful record of prosecutions, entrepreneurs believing that the private sector should be intimately involved in provision or the science community feeling that the development of science is critical. What really matters is the reliability and accuracy of forensic science in providing public confidence in our system.

In this context, I shall make three points. First, we made it very clear in our report that the fundamental weakness of the current system was at the highest level—namely, to do with the relations between the Home Secretary and the Secretary of State for Justice. We concluded that there was a lack of leadership providing a vision, strategy and agenda for the whole of the forensic science service. We said that we really need one umbrella that covers policing, the judiciary and the defence community. We heard again and again, as we have heard this afternoon, that the parent system is too fragmented, with parts entrenched in silos. As a result, the quality of forensic science is not at present fit for purpose nor up to our traditional reputation.

That recommendation, which is foundational to our report, was based on the evidence we received from Ministers, although they may not have been as blunt as I have been today, and from the Forensic Science Regulator. One week before our report was

published, the Home Office published a review of forensic science, the primary focus of which was the management of the market, but in addition it said that it recognised a broader set of issues which would have a significant impact on shareholders' confidence in the system. Then the Government, in their response to our report, mentioned that they had set up a steering committee, jointly chaired by the Home Office and the Ministry of Justice, but its primary focus was the operation of the market. More recently, as we heard from the noble Lord, Lord Patel, the Criminal Justice Board last year set up the forensic sub-group to oversee the issue.

In my judgment, all of that falls short of setting up what we were recommending—a forensic science board. I do not know why that is. It may be that the departments have other, more urgent matters of business, which I could understand, that they need more time, or that they face the challenge of persuading some of those who are in quite deep and well-protected silos of the need for change. Are the interests of the judicial system and the defence community, alongside the police, adequate to establish what we set out to achieve in this review?

A second issue I will draw attention to is the market for forensic services, which has been described today as dysfunctional and in evidence to us as unstable. This is not straightforward, but, if we look back, I believe that three trends have become apparent. One is that in-house provision by the police has kept increasing over the past 10 years, so that by now, 80% of forensic science is conducted in-house by employees of police forces, and only 20% by marketplace provision. This trend was commented on in the House of Commons report on the closure of the Forensic Science Service back in 2011, when the police had, at most, 40%. The Commons committee made a strong recommendation that it should be prevented from increasing. Clearly, since that time, it has gone on increasing.

The second trend is the charge of serious market fragility and instability. By this I think people mean that we have here a sector in which a small number of large firms are undercapitalised. Some have withdrawn or gone into administration. Little investment seems to have been made in innovation and there has been a loss of skills from the profession. When police forces join together, they act as a monopoly buyer—a monopsony—to drive down prices excessively, as the noble Lord, Lord Mair, mentioned. A commoditised model for procurement that places undue weighting on price and less on quality of service means that we are not getting the kind of value for money that we are looking for. Finally, long-term contracts covering large areas will squeeze out small providers.

The third trend, which has been noticeable over recent years, is the cut to budgets. If you want a vital private sector, there must be resources in it, and those who are purchasing have to put funds into it. However, what we see here is great uncertainty over the structure and the future of investment in this business, and the question I ask myself is: if I were a private investor—which I am not—in the area of science and biotechnology and so on and knew something about the business, would I put money into this? There is so much uncertainty at present surrounding this market.

Despite these criticisms, it is important to note that in the report we make it very clear that we did not hear convincing arguments in favour of resurrecting the Forensic Science Service, which was closed down in 2012 and was a completely state-owned, commercial organisation. What we did recommend—I am delighted that the Government have taken this on board—was an expanded role for the Forensic Science Regulator, especially in relation to the procurement process, to avoid the clustering of contracts and maintain the capabilities of small providers.

The question for the Minister is: does she not feel that, if we are to have a competitive market in which there is a stream of new ideas and innovation, the extent of in-house police provision needs to be not only halted but cut back in the way that the House of Commons Select Committee was recommending 10 years ago? I do not say this from an ideological perspective. If provision by the police is more effective, so be it—let us have it. But I have a nagging suspicion that this trend will not produce the innovation that a more open marketplace would provide.

My final, brief point is on the importance of the defence community, alongside policing and alongside the courts, and the need for symmetry in funding between prosecution and defence. This point was made powerfully by one witness, barrister Carl Harrison, who said that in his career he had been commissioned by the police as the prosecuting authority 160 times and by defence counsel only three times. He concluded that this reflected the level of funding available to challenge specialist forensic evidence. The point was also made powerfully in the six letters between the Ministry of Justice and the representatives of Keith Borer Consultants that were provided for us by Ruth Morgan in advance of this debate.

The increase in funding from £35 million to £51 million is certainly welcome but, if defence-focused organisations are to be able to recruit, train and retain high-calibre individuals, more funding will be needed, and this will be another important item on the agenda of a regulator with statutory powers.

4.49 pm

Lord Krebs (CB) [V]: My Lords, although I was not a member of the Select Committee at the time of this inquiry, I now have the privilege of serving under the chairmanship of my noble friend Lord Patel, so I can say with confidence that he will have led it in a most effective and courteous way. I thank him for his superb introduction, and him and his fellow committee members for their excellent report.

I will talk about research and development in forensic science, a theme that has been touched on by other contributors, including the noble Baroness, Lady Walmsley, my noble friend Lord Mair and the noble Lord, Lord Winston. The committee's report describes three important facets of the scientific basis of forensics: identifying the sources of a material or mark, for example a chemical trace; the activity levels of a material, for instance how long it might remain as a trace; and the biases in human judgment in interpreting the evidence. The report also highlights the increasing importance of digital forensics, as has already been referred to by my noble friend Lord Mair and the noble Lord, Lord Winston.

[Lord Krebs]

This country has a distinguished history in forensic science. This includes the development in the 1830s by James Marsh of the Marsh test for arsenic poisoning; the use of fingerprints, developed by Sir William Herschel and Francis Galton in the late 19th century; and, of course, the discovery of hypervariable mini-satellite sequences—DNA fingerprinting—by Sir Alec Jeffreys, that was first used to successfully solve a double murder case in 1986. We also pioneered forensic science in the world of fiction. Arguably the most famous fictional detective of all time, Sherlock Holmes, was a master of forensic science and wrote several monographs on the subject. Furthermore, he was ahead of his time. He used fingerprint evidence in *The Sign of Four*, which was written 11 years before this technique was finally adopted by Scotland Yard in 1901.

Moving back from fiction to fact, it may be helpful to anchor my comments on the need for more research on forensic science with a real example. The Royal Society and the Royal Society of Edinburgh have published an excellent set of primers on forensic science in practice, including one on forensic gait analysis, briefly alluded to by the noble Lord, Lord Winston. The question is: can you identify a person by the way they walk, for instance as captured on CCTV footage? Although forensic gait analysis is used in courts, the primer notes:

"The scientific evidence supporting forensic gait analysis, as currently practised, is … extremely limited."

The report goes on to say that there is "no evidence" to show that gait is unique to an individual, no credible database for assessing the frequency of abnormal gait, no published estimates of the error rates in identifying individuals by gait, and no standardised methodologies for analysis and comparison of gaits. In one small published study of the accuracy of gait identification, the failure rate among experts was a staggering 29%. In short, if gait analysis is to continue to be used in courts, more research is urgently needed. That is just one illustrative example.

In this context it is particularly concerning to read the analysis published in 2019 by Professor Ruth Morgan of UCL, who, as the Grand Committee has heard, was the specialist adviser to the committee. She reported that during the 10 years to 2019, the research councils, now under the umbrella of UKRI, invested a paltry £5.6 million per year in forensic science, which she estimates to be about 0.1% of the total budget for the research councils over this period. Furthermore, it appears that this investment is declining, from a peak of £13.5 million in 2013 to only £1.1 million in 2018. As Professor Morgan points out, less than half this spend is on dedicated forensic science research, as opposed to other research that might have implications for forensic science. It is also focused on short-term challenges, rather than on research that would build the foundations for the next generation of new forensic techniques: so-called foundational research.

One may well ask whether £5.6 million a year is a big or a small sum of money, bearing in mind the breadth of themes that it covers, including digital and cyber science, analytical chemistry, molecular genetics, imaging, psychology, statistics and linguistics. Well, one way to consider whether £5.6 million a year is a small or big sum is to put it in the context of the overall cost of crime in this country, estimated by the Home Office to be in the region of £59 billion per year. Perhaps another illustration of the relative size of £5.6 million per year spent on research is to note that, according to a 2015 estimate, Transport for London spends roughly twice this amount each year dealing with graffiti. In short, £5.6 million seems a very small number.

This small and apparently declining investment in forensic science by UKRI must also be viewed in the context of the marketisation of forensic services, already referred to by my noble friends Lord Patel and Lord Mair, and by the noble Lord, Lord Griffiths of Fforestfach. According to Professor Morgan's analysis, this marketisation has had a cascade of negative consequences for forensic research. It has resulted in restrictions on dissemination of new tools because companies view their discoveries as commercial and confidential, a dramatic decline in the size of the market, with a reduction of more than 60% in spend on forensic science services, and a lack of investment by the private sector in research.

It is against this background that the Select Committee made two recommendations relating to research and development. First, it recommended the creation of a national institute for forensic science within the UKRI family to set strategic priorities for forensic science research and development and to co-ordinate and direct research funding. In their reply, the Government said:

"We will carefully consider the business case for a National Institute".

The noble Baroness, Lady Warwick, and my noble friend Lord Mair interpreted this as a polite form of rejection of the idea.

Secondly, the committee recommended:

"Current levels of investment in forensic science research are inadequate and do not appear to reflect value to the criminal justice system. We believe that the Home Office has abdicated its responsibility for research in forensic science. We recommend that UK Research and Innovation urgently and substantially increase the amount of dedicated funding allocated to forensic science for both technological advances and foundational research, with a particular focus on digital forensic science evidence and the opportunities to develop further capabilities in artificial intelligence and machine learning."

In their reply to this recommendation, the Government said that they would

"ensure that policing and the CJS benefit from advances in science and technology by developing and implementing new forensic techniques more coherently."

They added:

"The Home Office and the Ministry of Justice are focussed on developing an even stronger working relationship with UKRI as we work with them and other strategic partners to develop and set strategic priorities for forensic science research and development."

The Government's response, however, makes no reference to either foundational research or evaluative interpretation.

In closing, will the Minister update us on her response to these two recommendations? Have the Government concluded their careful consideration of the case for a national institute for forensic science and, if so, what did they decide? Has there been an increase in the amount of public funding of forensic science research

and has this included more funding for foundational research, as recommended by the Select Committee in its excellent report?

4.59 pm

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I thank the Science and Technology Committee for its work in producing this excellent report, its chair, the noble Lord, Lord Patel, for his masterly exposition of what the report is all about and, of course, the committee's staff who have been so incredibly helpful in briefing Peers ahead of this debate.

I will now exhibit my worst character defect, according to some of my friends, and say that I was not a member of the Science and Technology Committee, but I was a member of the Metropolitan Police Authority for the 12 years of its existence from 2000 onwards. As soon as the idea of privatising the national Forensic Science Service was floated, I made a speech in which I said, "This is a mistake and it will cause all sorts of problems". Well, I told you so—rather I told them so. I was very unhappy when it finally went ahead.

The worrying thing that underpins all this, across the forensic sector, committee and the Government, is the acceptance that miscarriages of justice have occurred as a result of the failures, changes and inconsistencies in the way that forensic science is conducted. That innocent people may have been found guilty and guilty people may have been found innocent should worry everyone in this country because it undermines the whole justice system and the rule of law. I am yet to see any serious reflection from the Government on the implications of this or any attempt to ensure that these injustices are remedied.

I will come back to this issue, and I would like the Minister to explain what conversations the Government have had with the Attorney-General and the Lord Chancellor to trawl through these past cases and ensure that any forensic errors are put right and that anyone wrongly convicted has their conviction overturned. This work should be conducted using government funds and should not be constrained by the availability of individuals' funds or legal aid.

The Government's response to the report, specifically on legal aid, sadly expresses that they are

"not aware of legally aided defendants being denied access to forensic testing and expert advice for funding reasons."

Will the Minister expand on the basis of that assertion? Is it founded on ignorance or have they gone out of their way to seek examples of legal aid limits getting in the way of justice? I ask this because some Peers had an email from a forensics organisation that mostly does legal aid criminal defence work. It says that, while the three main laboratories that work with the police have had significant increases in funding recently, there has not been a corresponding increase in funding for the defence. It says that it has tried to engage with the Government about legal aid funding, but to no avail, for example, on the arbitrary limit on travel time of four hours. This does not tally with the Government's claim that people are being denied access to the forensic science that they need to prove their innocence.

To conclude, I believe that it is impossible to separate forensic science from the wider undermining of criminal justice funding that has occurred during 11 years of Conservative cuts. At the beginning, the noble Lord, Lord Patel, said that somebody gave evidence that a national crisis brought us to this point, but it was not; political decisions by the Conservative Government made it clear that we would take this route. The Government have treated people's innocence as an unaffordable and optional luxury, rather than the underpinning of the fabric of society's trust in the justice system. When people realise that innocent people can go to jail and guilty people can go free because of failures in the system that the Government have allowed to happen, the whole system is doomed.

The Deputy Chairman of Committees (Lord Palmer of Childs Hill) (LD): My Lords, the noble and learned Lord, Lord Morris of Aberavon, has withdrawn, so, I now call the noble and learned Lord, Lord Thomas of Cwmgiedd.

5.04 pm

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, it was a great privilege to have been co-opted to this committee for this inquiry, and a privilege, pleasure and education to serve under the wise and far-sighted leadership of my noble friend Lord Patel.

During the course of the evidence, it was sad to hear that the respect in which the leadership the UK had shown in forensic science had declined so rapidly. Only a few years before, that leadership had been celebrated at a conference organised by the Royal Society, which demonstrated that the UK was then significantly ahead of several states and of the leaders in the field, which are acknowledged to be Australia, Switzerland, the Netherlands and the United States. I had hoped that this report would provide the opportunity for the UK to regain that lead, particularly as a result of serious issues relating to forensic science that had arisen in the United States under the leadership of its then President.

The report concluded that the failings in the system were due to three matters: lack of high-level leadership, lack of funding, and insufficient research and development. The noble Lord, Lord Patel, gave a perfect overview, and I join him in tributes to those who advised the committee. Other noble Lords have dealt with other issues, in particular the market, AI and miscarriages of justice. I will confine my remarks to leadership, and to research and development. I appreciate that the criminal justice system's focus over the last year and a half has been on dealing with the problems brought about by Covid-19, but forensic science is essential to justice and nothing can excuse a failure to plan ahead now to restore its position.

I therefore turn first to the need for high-level leadership. I tried to find out what has happened since the Government's response to the report in July 2019. The criminal justice board publishes its minutes. The minutes of July 2020—the last I was able to find—said this. They are short, so I can quote them:

"Forensics: Stocktake 2020 … The LORD CHANCELLOR spoke about the importance of forensics within the CJS and was pleased to receive an update from the Forensics Sub-Group to the CJB which is jointly chaired by the Ministry of Justice and Home Office.

[LORD THOMAS OF CWMGIEDD]

BARONESS WILLIAMS OF TRAFFORD noted that the Sub-Group had identified the need for the Forensic Science Regulator to become a statutory body.

The LORD CHANCELLOR thanked the Sub-Group for all their work and invited Board members to provide further comments, outside of the meeting, on the paper presented."

If I may respectfully say so, I am afraid that is not very informative as to progress over a year.

More seriously, the criminal justice board has much else to do. In the years I served on it or went to its meetings, which was shortly after its formation until I retired as Lord Chief Justice, it was not the kind of body, nor was any sub-group, that was effective on the detailed issues that require great expertise and knowledge of science and the law with which this issue is concerned. However, more serious is the problem that the work on forensic science needs to be independent and accountable. The minutes show how unaccountable it is because there is no explanation of what it does, and it cannot be regarded as independent. Forensic science needs to serve the police, the prosecution, the defence and the interests of justice. It is very difficult to see what the criminal justice board sub-group has done on that first issue.

The second thing, which is about to happen, is putting the Office of the Forensic Science Regulator on a statutory basis. Dr Gillian Tully was an excellent regulator. She retired two months ago—she was a pleasure to work with and achieved a great deal. Her most recent achievement was dealing with the very difficult subject of standards for evaluating opinions, which play such a large role in the evaluation of forensic evidence. There is an interim regulator, but when is the new regulator to be appointed? When will the Government look seriously at its powers? That is the key issue. Although the regulator's role is key, it is not that of leadership. It is to ensure quality and accreditation, and that the market functions efficiently. It is not independent and it cannot provide the holistic leadership of scientific research required in our system.

I look forward to hearing that much more may have been done, but I could not find it. Maybe that is due to my inability to trawl the records in sufficient detail, but I could find no explanation elsewhere. I very much look forward to what the Minister can say about progress. The UK needs to be back at the top of the league, and it can do that only with holistic leadership of the kind set out in the report.

The second aspect I briefly refer to is the need for proper funding of independent forensic research. Again, I refer to just two areas: digital and DNA. It is clear from the evidence received by the committee and from evidence I received when chairing the Welsh Government's Commission on Justice in Wales that digital forensics remains a major issue. Indeed, it has been an issue for the last nine years. Two things have gone hand in hand: the increased power of mobile devices and their ability to store so much, and the increased use of them to communicate in permanent record things that would never have been recorded before, which comes as a surprise to many. They are therefore essential to the administration of justice—not only for establishing guilt but for showing that conduct that may be complained about was innocent.

The use of digital forensics is important to the deterrence of crime through successful prosecution, the confidence of victims in the system, as assurances about the way information is contained in phones is critical, and, equally importantly, the proper use of police time. For example, in commercial litigation, increasingly sophisticated and independently reliable software has made a very significant difference. It extracts and searches properly and reliably. As far as I can ascertain, there are still serious issues with what needs to be done to tackle these matters—extraction and particular searching—so that something reliable is available to the police, the prosecution and the defence, which is so critical to the three issues to which I have referred. There are other aspects, including AI, facial recognition and deepfake, about which the noble Lord, Lord Mair, has spoken and which underline the urgent need to address an area that requires significant leadership and investment.

DNA has been essential to the criminal justice system since the 1990s. It has made a significant contribution to the conviction of the guilty and, equally importantly, the exoneration of the innocent. It has been a journey not without its problems: low-template DNA brought about serious miscarriages of justice in the way in which it was first used, and mixed and partial profiles and transfers have been a real problem. Much has been done; the Royal Society has led with a primer on this subject, which is parallel to the one spoken of a short while ago. But as I understand it, there are issues with mixed and partial profiles and transfers, and much more needs to be done. These are but two examples of the need for development and research—and it is development and research that are both scientifically independent and not dependent on police budgets.

The forensic science budget, to the extent that it is now largely in the hands of the police, must be looked at again. As the noble Lord, Lord Krebs, stated, I very much hope that the Minister is able to tell us a bit more about what UKRI has been doing, what advice it is taking and what it is going to do to bring investment to these vital areas.

Let me look at a way forward. I hope that the way forward will be by government action. In March 2011, the Law Commission produced an excellent report on expert evidence and draft legislation. Two years later, the Government said they would not bring forward a Bill and, therefore, made it clear that it was up to others—leave the law as it is, or look for change. All the reforms envisaged by the Law Commission were then brought about by the Criminal Procedure Rules, much to the benefit of the criminal justice system, and they worked.

The report we have been speaking of is the 10th in 10 years. As far as I can ascertain, nothing much has happened, although I hope the Minister will be able to tell us otherwise. It may be that it is because structures are not devised to be accountable or informative. However, forensic science is essential to justice, as the speech of each of your Lordships has shown, and it is essential to keep the UK at the forefront of world leadership in science and the law.

I trust that Her Majesty's Government will not fail in restoring the position, but if they do, I hope that we will be able to find an example similar to that which was taken in relation to the report of the Law Commission and find another way to put into operation this excellent report, if Her Majesty's Government feel unwilling or unable to do so.

5.15 pm

Lord Fox (LD): My Lords, I often start speeches by saying that it is an honour to follow this or that noble Lord, but I have to say that it is absolutely a great honour to follow the expertise that we have heard already, led off by the outstanding speech by the noble Lord, Lord Patel—a counterpoint to his outstanding leadership of the committee in producing this report.

We are here today to celebrate the second birthday of this report. It was published in April 2019, when I was a member of the Science and Technology Committee. The Government responded in July 2019, and it is safe to say that some water has passed under the bridge since that summer. The first thing was the general election in 2019 and then, of course, Covid. The general election means that in fact the Government are a different Conservative Government from the one who made the initial response, although I note that the Minister has remained the same. I therefore assume that the Minister stands by the response that was made by that different Conservative Government and that we are not, as in other cases, dealing with a distancing.

When it comes to the pandemic, the criminal justice system has, like all aspects of public life, come under extreme pressure. The backdrop for discussing this could hardly be more difficult, and that is not only because of the virus. The Lords Constitution Committee set out the issues last month. The pandemic, it said, has left the court system in England and Wales in "crisis", with a backlog of cases that could take years to clear. Importantly, it also said that a decade of cuts has meant that the court system was already in a "vulnerable" state when the disease outbreak occurred last year. It continued:

"Without adequate resources, technology or guidance, our much cherished justice system remains at risk."

That report very much reinforces the situation that we are discussing today about the forensic science service. I hope that Covid is not used as an excuse for where we are now.

In their response to the report, the Government were clear:

"The Government agrees that the 'delivery of justice depends on the integrity and accuracy of evidence'."

They also said that

"our top priority is to prevent miscarriages of justice."

Those are both very reassuring comments but, of course, without willing the means, they are quite flimsy. We should therefore ask the Minister whether she thinks the Government are doing everything possible to ensure that evidence is as accurate as possible and whether they are doing all they can to avoid miscarriages of justice. If the noble Baroness, Lady Williams, is frank, as she usually is, I am sure she will be able to indicate that there is work to be done, and it would be important to indicate what the timeline for that work is. Not to put too fine a point on it, as other noble Lords have mentioned, more often than not, justice hinges on forensic evidence. If the evidence is inaccurate or inadequate, justice is compromised, and, as many of your Lordships have said, once confidence in the evidence goes, confidence in the whole justice system is compromised, and that is central to our democracy.

I hasten to add that, thanks to the dedication and hard work of many practitioners, that terrible situation is largely avoided. But I ask the Minister: what about the environment these people work in? Does it have the finance it needs? Does it have leadership? Does it have a structured approach to standards? Is it doing the necessary work to embrace the future? Is there equal access to necessary services?

Many of these points have been covered by other noble Lords, so I apologise for some repetition, but I am going to take each of them in turn. There will be many questions; indeed, there already have been. I hope the Minister will undertake not just to answer as many as possible in her verbal response, but to answer them in writing, and to publish the answers in the Library. She is nodding, which is very helpful.

First, does the forensic science service have the finance it needs? We have heard what the Constitution Committee said about the whole justice system, and of course the forensic science service has not escaped. As the noble Lord, Lord Mair, said, in 2010 some £120 million was spent on forensic science, but in 2019 that had dropped to £50 million to £55 million. Can the Minister tell us what the budget for this year and next year is?

In the Government's response on the issue of market stability, the role of a special team set up by the National Police Chiefs' Council within the forensics capability network was highlighted. That team, they said, was going to co-operate across police forces and

"manage commercial strategy; manage contracts; co-ordinate capability building and provides long-range demand forecasts."

The noble Lord, Lord Griffiths, who is sitting opposite me, knows more about markets than most people, and I hope that the Minister will study carefully his critique of this situation. I had written down, "This is a good way of creating a more effective monopsony"—and that is exactly what is happening. It does not help the structure of the service providers one iota.

What has this body actually done? How many police forces have now bought into the network—and, by exclusion, how many have not bought in? What concrete initiatives have we seen over the past two years in terms of the market, and market structure? How do the Government assess the stability of the market—or who do they rely on to make that assessment for them? I think it was the noble Lord, Lord Winston, who said that some private sector companies had adapted their services to the Covid situation. We need to study this on pure forensic service terms.

The Government also committed to provide

"all budget holders with data and measures to assess the impact of forensics spend on outcomes in the criminal justice system."

I find that a very intriguing sentence. What outcomes are being targeted? Is it pounds per conviction, or what? What data, what measures, are the Government providing to budget holders, and when will those measures and that data be published?

[Lord Fox]

The second issue is leadership. We have heard categorically from many speakers how our proposal for the creation of a forensic science board was designed to create strategic focus. I am not surprised that Her Majesty's Government damned the idea with faint praise—or rather, with no praise at all. What they offer instead is an alphabet soup. We have the MoJ, the Home Office, the National Police Chiefs' Council, the Forensic Capability Network, the College of Policing, the criminal justice boards, UKAS, the Chartered Society of Forensic Sciences, UKRI, the Forensic Science Regulator and, of course, all the companies in the private sector providing the service. I am sure I have missed some out. I have one simple question for the Minister: in the regrettable instance of a miscarriage of justice due to a problem with the forensic evidence, where does accountability lie? With whom does the buck stop?

My third question is: does forensics have a structured approach to standards? In this area I am uncharacteristically optimistic, or I have been led to be optimistic by the noble Earl, Lord Lindsay, who set out the work the regulator is doing with UKAS. However, as other noble Lords have said, the regulator needs the powers and the resources. It would be helpful if the Minister could say where those resources are going to come from—because if they came from a levy, that would be levying an already impoverished sector.

Is the forensic service doing the necessary work to embrace the future? That is a debate unto itself, and we have heard phenomenal contributions from some of your Lordships. The Government's response raises the prospect of a document that the Forensic Capability Network is creating, a five-year road map to prioritise rapid development in key areas such as DNA and digital innovation. I looked for this document and could not find it. Does it exist? If it does not, can the Minister confirm which five years it is supposed to cover? If it does, can he explain where we might find it?

Finally, is there equal access to the necessary services? This is the most vital single issue. Without equal access, we do not have equal access to justice and without justice we do not have democracy. The report set out the issue of access to forensics for defendants, particularly those on legal aid. As we have heard, the Government said that they were not aware of legally aided defendants being denied access to forensic testing and expert advice for funding reasons. That flies in the face of the evidence that we heard. The chairman of the committee, the noble Lord, Lord Patel, set out a clear case as to why the Government should be concerned about this.

The noble Lord, Lord Griffiths, talked about asymmetry in the market, and there is a very important asymmetry that we have not talked about yet in detail. It concerns the availability of service, and here I cite none other than the website of the Forensic Science Network itself. On the homepage of the network—and in a minute we will remind ourselves how important it is to the Government—it says:

"Welcome to the new network for forensic science in England and Wales, supporting more than 4,000 specialists with critical services, advice and technology."

So far, so good. We then come to the strapline:

"FCN is the UK's largest forensic science network—for policing, by policing."

Watch those words. It reinforces this elsewhere, as is clear if you dive into the question of its purpose. It says that it

"provides much of the evidence that can identify and bring offenders to justice."

It characterises forensics in that way, while I and the rest of the committee characterise forensics as bringing justice to a court proceeding. That is not the line the FCN takes.

Let us remind ourselves that this is the FCN that is tasked to set out strategies, as we have heard earlier, and that is managing the market for forensics. The noble and learned Lord, Lord Thomas, spoke about the need for independence. This is in no shape or form independence. An independent forensic service is one way of going about gaining that independence; this report goes another way and talks about having a structure that delivers independence. I conclude that this service has not delivered, and not just because of financial starvation; structurally, there is a big problem in the middle of the way this service is delivered, and the Government should very carefully look at this debate and this report.

5.28 pm

Lord Rosser (Lab) [V]: First, I, too, congratulate the noble Lord, Lord Patel, and his committee on the report, which is very clear in its message, findings and recommendations. Just over a month ago, we had the Second Reading debate on the Forensic Science Regulator Bill. During that debate the noble Lord referred to the Science and Technology Committee, as its chairman, and the report we are now discussing. He said that the regulator Bill, which he supported and welcomed, was nevertheless a

"missed opportunity for the Government to address other issues in relation to forensic science and its use in the criminal justice system. The quality and delivery of forensic science in England and Wales are inadequate".—[*Official Report*, 19/3/21; col. 591.]

The noble Lord has repeated that statement today. What were those other issues and why is the quality and delivery of forensic science in England and Wales inadequate?

During the debate last month, the noble Lord, Lord Patel, asked what role the Home Office and the Ministry of Justice would play in the governance of the forensic science service, as there was, he said, a lack of leadership. The noble Lord also said that there was an increasingly dysfunctional forensic science market, that the quality of forensic science needed bolstering and that research and development in forensic science was underresourced and lacked co-ordination. He said that the United Kingdom used to be regarded as the world leader in forensic science technologies and innovation, but that we are now regarded as a place where not to look, including in digital forensics, where the demand for digital evidence and the complexity of the requirements continues to grow. Today, the noble Lord has also referred to the impact of budget cuts, reorganisations, cuts to legal aid and exponential growth.

In the Second Reading debate on the regulator Bill, my noble friend Lady Young of Old Scone, who was also a member of the Science and Technology Committee, referred to the instability of larger providers, the patchiness in availability of specialists and niche providers, and the lack of a strategic overview of future skills and staff requirements—all pretty damning observations, many if not all of which have been repeated in speeches today.

In their response to the debate last month, the Government said that the decision to close the Forensic Science Service in 2012 was taken because it was losing an estimated £2 million a month. As with the ill-fated probation service reorganisation, it looks as though the Government paid scant regard to the effectiveness, stability and suitability of the alternative arrangements that were introduced—hence, we are in the position we are in today, with inadequate forensic science provision in the criminal justice system.

I quote the last paragraph of the summary of the committee's report:

"Unless these failings are recognised and changes made, public trust in forensic science evidence will continue to be lost and confidence in the justice system will be threatened. Crimes may go unsolved and the number of miscarriages of justice may increase. Furthermore, world leading specialist expertise will be under-used, and England and Wales may never regain its reputation as holding the international benchmark for forensic science. This report follows others that have raised similar concerns, yet the changes that are necessary have not been made, despite acknowledgements that they would be. Forensic science in England and Wales is in trouble. To ensure the delivery of justice, the time for action is now."

Yet, there seems to be no shortage of bodies, organisations and programmes involved in forensic science services—a point that the noble Lord, Lord Fox, drew attention to. That is possibly part of the problem.

The Government's July 2019 nine-page response to the report refers to the Forensic Science Regulator, UK Research and Innovation, Home Office Science, the Forensics Policy Steering Group, the Criminal Justice Board, the Home Office, the Ministry of Justice, the forensic science strategy, the National Police Chiefs Council, the Forensics Capability Network, police and crime commissioners, the Legal Aid Agency, local criminal justice boards, the United Kingdom Accreditation Service, the Chartered Society of Forensic Sciences, the regulator's advisory council, the Royal Society, the Transforming Forensics programme, the Criminal Procedure Rule Committee, the digital investigation and intelligence programme and the College of Policing, in addition to police forces, providers and criminal justice system stakeholders.

The Science and Technology Committee report we are discussing refers to the problems highlighted by noble Lords today and during the Second Reading debate on the Forensic Science Regulator Bill last month. However, as has been said, the report was published exactly two years ago this coming Saturday. The Government's response to the committee's report was published in July 2019—one and three quarter years ago. I may be in a minority, but I do not see how the role and effectiveness of this House is enhanced by that kind of delay in discussing one of our own committee's reports.

The only benefit that the lengthy delay had is that it makes it more difficult for the Government credibly simply to tell us what they intend to do in response to the report, as opposed to what they actually have or have not done, and what specific improvements have already actually been delivered over the last one and three quarter years since they published their response. I will look for the Government to spell out what specific improvements there have actually been in the provision and delivery of forensic science in the light of the recommendations made and problem areas identified by the committee in their report beyond the completion of the passage of the Forensic Science Regulator Bill.

During the debate last month, the Government referred to the presentation of plans to the Criminal Justice Board; setting out four key pillars of a forensic science reform programme; work being progressed with the Ministry of Justice, the regulator's office and other stakeholders; investing £28.6 million to accelerate innovation and combat crime; providing police forces with specialist support functions; publishing a digital forensic science strategy; developing a workforce strategy; and supporting the Forensic Science Regulator Bill—something they said they would do five years ago. The impression I got from that government response last month is that, over the last two years, there have been no actual specific improvements to the inadequate quality and delivery of forensic science in the criminal justice system as identified and spelled out in the Science and Technology Committee's report.

If I am wrong in saying that, could the Government, either in their response today or subsequently in writing, spell out what those measurable, specific improvements in the quality and delivery of forensic science have been over the last two years that have addressed issues identified by the committee in their report? If I am basically right in saying what I did, could the Government, either in their response today or subsequently in writing, spell out what measurable specific improvements to the inadequate quality and delivery of forensic science in the criminal justice system identified and spelled out in the Science and Technology Committee's report they are now committed to introducing, implementing and achieving, and within what specific timescale?

Too much of the Government's written response in July 2019 and in the debate last month seemed to be about changing the way things are done, rather than a commitment to delivering specific, clearly identifiable and measurable improvements in the quality and delivery of forensic science in England and Wales, which the committee's report said was inadequate. The Government said in the conclusion of their response in July 2019 at paragraph 24:

"Through implementation of the joint-review of forensic science and its ongoing consideration of their Lordships' recommendations, the Government expects the provision of forensic science into the criminal justice system to be significantly strengthened. The Home Office and the Ministry of Justice are jointly responsible for bringing about the collaboration, investment and oversight required to make this happen."

If the Government are confident that what they intend to do will deliver specific, clearly identifiable and measurable improvements in the quality and delivery of forensic science services, they should set out what

[Lord Rosser]
those improvements will be, how they will be measured and within what timescale. It is called being accountable. If they cannot, how can we or they judge in the future whether their response to the issues the Science and Technology Committee has said need addressing has actually delivered? Like other noble Lords, I await the Government's response, including the extent to which they do or do not intend to implement the recommendations in the committee's report.

5.40 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank the noble Lord, Lord Patel, for securing this vital debate. I also thank the Science and Technology Committee for its very thorough inquiry into forensic science, and for its subsequent report. If I may, I will go through the tenets of the report and the questions arising from it today.

The report was clear—my noble friend Lord Lindsay spoke enthusiastically about this—that the Home Office and the Ministry of Justice needed to provide joint leadership in forensic science, and that the governance needs to inspire effective collaboration and co-operation across operationally independent bodies. As a direct result of your Lordships' report we created a steering group, jointly chaired by the Home Office and the Ministry of Justice. It soon became an official sub-group of the criminal justice board, reporting to the Home Secretary, the Justice Secretary and the Attorney-General. The sub-group is delivering a vital reform programme, which I will come to later, but this spirit of co-operation has strengthened over the last two years. Its work is ongoing and it meets every six weeks.

To reiterate, this Government are committed to protecting the public and keeping our streets safe. Scientifically robust evidence is one of policing's most important tools for investigating crime. The successful prosecution of county lines drugs gangs, sexual offences and violent crimes often depends on high-quality forensics, including digital forensics and DNA analysis. We should always remember the Stephen Lawrence case. It was only because British scientists were able to detect and analyse a drop of blood measuring less than 1mm in diameter that his family was finally able to achieve some measure of justice.

Despite everything said this afternoon, this country has some of the world's best forensic scientists, both in public law enforcement and within the private sector. Every day, their expertise is deployed to solve crime and deliver justice. The noble and learned Lord, Lord Thomas of Cwmgiedd, and the noble Lord, Lord Rosser, talked about comparators with other countries, particularly across Europe. When compared to nine other networks of forensic science institute state labs across Europe, the turnaround time in England and Wales using comparable metrics is world-leading. The turnaround time for drugs casework in England and Wales is 21 days; elsewhere, it is 24 days. For DNA casework, in England and Wales it is 10 days; elsewhere it is 43 days. We really should commend our forensic scientists here in the UK on their ability to turn things round.

I also welcome the significant efforts made by those involved in this work to markedly improve turnaround times. As noble Lords have pointed out, however, forensic science has faced challenges in recent years, including constrained resources—as I think all noble Lords have said—and an exponential growth in the volume of new sources of evidence, such as digital material. To answer the questions of the noble Lord, Lord Krebs, and others we have taken steps to address this by investing over £28 million in 2020-21 in the Transforming Forensics programme and a further £25.6 million in 2021-22 to continue to strengthen forensics services for policing, including digital forensics, which the noble Lord, Lord Mair, spoke about. We helped to set up the police-led Forensic Capability Network and our investment in it is bringing some much-needed stability to the commercial market.

When it comes to quality, the former forensic science regulator worked closely with all partners to establish standards for the collection, analysis and presentation of evidence. These are established in the regulator's codes of practice. Adherence to these codes, whether partners are employed by police forces or privately contracted, plays a key role in ensuring that the evidence used in investigations and presented to court can be relied on—which noble Lords have underlined this afternoon.

The former regulator rightly highlighted in her most recent, and final, annual report, as well as in discussion with my department, that the inability to enforce those standards has resulted in slower progress towards compliance with quality standards across the forensic community. I agree. That is why we fully supported legislation to give the regulator the power to enforce quality standards as a last resort, and to take action when it has reason to believe that substandard forensic science activities are creating a substantial risk to the course of justice.

The noble Lord, Lord Winston, talked about the Randox case. Obviously, it is subject to an investigation at the moment so I will not talk about it. But the legislation we supported is a very specific improvement that I know the noble Lord, Lord Rosser, and the Committee, will agree with. I know that there are noble Lords and others who think that the legislation did not go far enough. We do not claim that giving the regulator these important statutory powers will, on their own, be enough to address all the issues currently facing the provision of forensic science—not at all. Nevertheless, it represents a significant milestone in the delivery of quality forensic services in England and Wales. I thank the noble Lord, Lord Kennedy of Southwark, for successfully stewarding the Bill though the House.

To address the point the noble Lord, Lord Fox, made, there is of course more to do. That is why we are working with the Ministry of Justice, the Office of the Forensic Science Regulator, policing, the Attorney-General's office and other key stakeholders to deliver our forensic science reform programme. That programme was agreed by the Criminal Justice Board in July last year. It will make good on the commitments set out in the joint review of forensics provision implementation plan published in 2019, and will go some way to

tackling the issues identified in the committee's excellent report. The reform programme is organised around four pillars to deliver strategic oversight and leadership across the criminal justice system for the future of forensics.

The first pillar is police capabilities. In 2021-22 we are providing £25.6 million in funding to the police-led Transforming Forensics programme, as I said, so that it can continue to build the Forensic Capability Network to provide specialist support functions to forces such as increased capacity in digital forensics, particularly in child sexual exploitation investigations.

The second pillar is regulation of provision. I have already spoken about the Forensic Science Regulator Bill. We are also providing a clear legal framework for the extraction of information from digital devices belonging to victims and witnesses through the Police, Crime, Sentencing and Courts Bill. We will provide guidance on the use of this power through a statutory code of practice. We will also consider the legal framework for suspects through the response to the Law Commission report on search warrants.

The third pillar is criminal justice system capabilities. The MoJ is working to increase the transparency of expert witness credentials and ensure that defendants have equal access to experts. To answer my noble friend Lord Griffiths' question, the CPS and Judicial Office, together with other key stakeholders, are helping to oversee and deliver on this important strand through their membership of the forensics subgroup.

The fourth pillar is research and development. Home Office Science and the Forensic Capability Network are working together to identify current and future research needs and to design and implement a research and development model to meet the needs of the sector. Home Office Science has developed strategic mapping of potential funding routes for forensic science research and development. In addition, the Forensics Capability Network has developed working groups across the sector to inform the research strategy and development of capability road maps for forensic disciplines. Taken with the legislation to give the Forensic Science Regulator statutory powers, we think that this reform programme represents a joined-up and concerted effort to address the issues facing forensic science in England and Wales.

Those are, basically, the tenets of the report; I now turn to specific questions. If I do not get to any of the questions that noble Lords asked—there were quite a lot of very sensible questions—I will follow up in writing, as I usually do.

The noble Baroness, Lady Walmsley, talked about training, and I agree with her. But, of course, the police are operationally independent, and we cannot dictate on this as a Government. However, the statutory regulator can investigate labs, including police labs—which the noble Lord, Lord Winston, mentioned—that fall short of standards.

My noble friend Lord Lindsay asked about the accreditation of services; this is tied up with powers for the regulator. By having statutory investigatory powers, she will be able to take action against providers who fail to get accreditation.

The noble Lord, Lord Mair, asked about the procurement model. The forensics subgroup has representation from the Association of Forensic Science Providers and the commercial arm of policing's Forensic Capability Network so that market issues and procurement are discussed.

On my noble friend Lord Griffiths' question about police provision, again, they are operationally independent. It is for them and the PCCs to decide what is best, and they can best determine what is needed.

The noble Lord, Lord Krebs, asked about the national institute. I will write to provide a more fulsome response, if he is okay with that.

The noble Lord, Lord Fox, made absolutely the right point about evidence being as accurate as possible—we do not have an effective criminal justice system if it is not. I think that giving the regulator statutory powers will drive up quality standards and help ensure the accuracy of evidence. The MoJ is leading on work to ensure that forensic science is properly presented in court. On the budget, we will work closely with the regulator's office to ensure that it gets the resources it needs. We assess the stability of the market via the subgroup, and the Home Office and the MoJ are accountable for this. I will write on some of the other points that the noble Lord made.

The noble Baroness, Lady Warwick of Undercliffe, and the noble Lord, Lord Rosser, alluded to the Forensic Science Service that closed in 2012. They did point out, of course, that it was losing £2 million a month of taxpayers' money. While that is not a reason for its closure, there were repeated failings in addition that led to multiple case reviews and retesting programmes. The move has brought benefits. Commercial provision has had a significant positive impact on the delivery of forensic science, including increased resilience, faster turnaround times and reduced costs. I read the report thoroughly and I noted that the committee did recognise that a return to the FSS was not a desirable way forward, as my noble friend Lord Griffiths pointed out. We are now more joined-up than we were in 2019.

The noble Lords, Lord Patel and Lord Rosser, referred to budgets continuing to be under pressure while the demand for digital evidence and the complexity of its requirements continue to grow. The noble Lord, Lord Rosser, referenced the noble Baroness, Lady Young, talking about this at last month's Second Reading of the Forensic Science Regulator Bill. Our forensic science reform programme recognises that the demand for digital evidence and the complexity of its requirements continue to grow. That is why I am pleased that the NPCC published its *Digital Forensic Science Strategy* last summer, and that we invested more than £28 million in 2020-21 in the transforming forensics programme, with a further £25.6 million to come.

The noble Lord, Lord Patel, talked about the cost to defendants of getting a second opinion on forensic evidence being greater than the legal aid budget will fund, meaning that there is the potential for unsafe convictions as evidence cannot be effectively challenged in court. Legal aid regulations prescribe the maximum rates that are payable to forensic scientists and other experts, but these rates can be exceeded in exceptional

[Baroness Williams of Trafford]
circumstances. The Ministry of Justice is currently working to increase the transparency of expert witness credentials and ensure that defendants have equal access to experts.

The noble Lord, Lord Patel, and I think another noble Lord on the committee talked about the regulator working 3.75 days a week. The regulator is currently defined as a part-time role, but we recognise that they will have a higher workload as a result of the legislation, and there will be additional recruitment to the regulator's office to meet this need.

I think it was the noble Baroness, Lady Walmsley, who raised concerns about unqualified individuals being able to pass themselves off as experts in court when their credentials may be in doubt. I agree with her concerns, and the powers contained in the Forensic Science Regulator Bill will enable the regulator to publish lists of those unsuitable to be instructed as experts.

There was a final question from the noble Lord, Lord Patel: where in the Government does accountability lie for the quality of provision of forensic science services to assist the justice system? It is a joint effort by the Home Office and the Ministry of Justice, but, in answer to the question put by the noble Lord, Lord Fox, about who the buck ultimately stops with, it stops with the Home Office: that is the straight answer to a straight question.

Before I finish, I will just thank Gillian Tully—other members of the committee have also done this—for her excellent work and dedication to the role. I hope that her replacement will be just as good as she was.

I thank the committee and I will follow up any questions I have not answered in writing.

5.59 pm

Lord Patel (CB) [V]: My Lords, I thank the Minister for her comprehensive response. I also thank all noble Lords for their thoughtful, measured and excellent contributions. This has been one of the best debates I have heard or taken part in in recent days. In response, it is not in my nature to be confrontational, and I shall not be, and the Minister's response showed that much of the work is in progress. She also suggested that the Government had taken note of some of our recommendations and are finding a way to take them forward. I hope that is correct, because she has heard all the contributions today, which were not only powerful but well-meaning and supportive.

I think there is a recognition that the way in which the forensic science service serves the criminal justice system needs to be looked at. If that is the message I am getting from the Minister today, I am satisfied. Of course, that gives the Science and Technology Committee an opportunity, especially as the report is now two years old, to revisit the subject—maybe in about 18 months' time—with a short follow-up report. We may well do that, but for today I simply thank the Minister and all noble Lords who have taken part in this excellent debate.

Motion agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the room.

Committee adjourned at 6.02 pm.