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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL [*LORDS*]

Seventh Sitting

Thursday 31 January 2013

(Morning)

CONTENTS

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Monday 4 February 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Martin Caton, † Nadine Dorries

† Barwell, Gavin *(Croydon Central)* (Con)
Browne, Mr Jeremy *(Minister of State, Home Department)*
† Burrowes, Mr David *(Enfield, Southgate)* (Con)
† Chapman, Jenny *(Darlington)* (Lab)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Elphicke, Charlie *(Dover)* (Con)
Goggins, Paul *(Wythenshawe and Sale East)* (Lab)
† Green, Damian *(Minister for Policing and Criminal Justice)*
† Hanson, Mr David *(Delyn)* (Lab)
† Heald, Oliver *(Solicitor-General)*
Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† McDonald, Andy *(Middlesbrough)* (Lab)
† Paisley, Ian *(North Antrim)* (DUP)
† Rutley, David *(Macclesfield)* (Con)
† Syms, Mr Robert *(Poole)* (Con)
† Vara, Mr Shailesh *(North West Cambridgeshire)* (Con)
† Vaz, Valerie *(Walsall South)* (Lab)
† Wilson, Phil *(Sedgefield)* (Lab)
† Wright, Simon *(Norwich South)* (LD)

Neil Caulfield, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 31 January 2013

(Morning)

[Nadine Dorries *in the Chair*]

Crime and Courts Bill [*Lords*]

Written evidence to be reported to the House

C&C 10 Prison Reform Trust

C&C 11 National Council of Women of Great Britain

11.30 am

Clause 18

Judicial appointments

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

Jenny Chapman (Darlington) (Lab): It is a pleasure to serve under your chairmanship, Ms Dorries.

Clause 18 deals with judicial diversity, and we very much welcome its enactment of schedule 13 and the provisions that it includes on judicial appointments and judicial diversity. The clause builds on progress that began under the previous Government towards a transparent and independent appointment process for our judiciary, and towards encouraging the opening up of the profession to a more diverse range of talented applicants.

There is clearly a problem, because the comparative statistics on gender equality make the most embarrassing reading for, I suppose, all of us—I was going to say for the Ministry of Justice, but that would be a bit unfair. Women predominate in the judiciary in countries such as Slovenia, where they constitute 78% of judges, Greece, where they make up 65% of judges, or France, where they make up 64% of judges. By comparison, less than a quarter of the professional bench in the UK is female. The proportion is lower only in Armenia, where slightly less than 23% of judges are women, and in Azerbaijan, where the figure is just 9%, so we clearly have an awfully long way to go.

With that in mind, perhaps further progress could be made and should be encouraged. We have tabled amendments to that effect to schedule 13, which are matters for debate when we reach that schedule. We welcome the clause's inclusion in the Bill.

The Minister for Policing and Criminal Justice (Damian Green): I am grateful for Opposition Members' support for the clause. As the hon. Lady has just said, there are a couple of amendments to the schedule, which is the substantive provision, so I suggest that we move on to a substantive debate on the schedule and the amendments to it.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Schedule 13

Judicial appointments

Damian Green: I beg to move Government amendment 69, in schedule 13, page 219, line 12, at end insert—

"8A In section 27 of the Constitutional Reform Act 2005 (selection for appointment to Supreme Court to be on merit etc) after subsection (5) insert—

(5A) Where two persons are of equal merit—

(a) section 159 of the Equality Act 2010 (positive action: recruitment etc) does not apply in relation to choosing between them, but

(b) Part 5 of that Act (public appointments etc) does not prevent the commission from preferring one of them over the other for the purpose of increasing diversity within the group of persons who are the judges of the Court."'.

The Chair: With this, it will be convenient to discuss amendment 77, in schedule 13, page 219, line 31, at end insert—

'() Each of the Lord Chancellor and the Lord Chief Justice of England shall lay before Parliament a report annually, describing—

(a) their performance of the duty in this section;

(b) the contribution made towards a more diverse judiciary in the preceding year; and

(c) the composition of the judiciary, including the number of part-time and full-time judges, gender, educational background and other relevant demographic data.'.

Damian Green: Government amendment 69 applies a "tipping point" provision to UK Supreme Court appointments, similar to the one being applied to other judicial appointments in England and Wales by paragraph 9 of schedule 13. It will allow a selection commission to take diversity into consideration when making the final selection decision between two candidates of equal merit. However, I stress that the provisions will come into play only when two candidates for a Supreme Court appointment have satisfied the merit criteria.

The Government's position has always been that the tipping point principle should apply to Supreme Court appointments, and we believe that section 159 of the Equality Act 2010 could already be applied to Supreme Court appointments. However, that interpretation was questioned on Third Reading in the other place, and the Government undertook to consider whether there was merit in putting the issue beyond doubt through an express statutory provision. After further consideration, we decided to introduce this amendment to remove any uncertainty that the tipping point applies to Supreme Court appointments. I look forward to hearing what the hon. Member for Darlington has to say about amendment 77, which she has tabled, before I respond to it.

Jenny Chapman: Amendment 77 deals with a requirement that

"the Lord Chancellor and the Lord Chief Justice of England shall lay before Parliament"

an annual report on progress in this area. I should say that we strongly welcome the provisions in the Bill that address judicial diversity, and we support Government amendment 69, which the Minister has just moved. It is very welcome, and it is encouraging to see cross-party support and consensus on the issue. To demonstrate

that, I shall reference the words of a Liberal Democrat Member of the other place, Lord Marks, who, in debating the issue, noted that

"for all its strengths, the judiciary is…too white, too male and too middle class to be representative of the society it serves."—[*Official Report, House of Lords,* 4 December 2012; Vol. 741, c. 582.]

He shares the view, expressed by the Government in their consultation on the issue, that a judiciary that does not adequately reflect our contemporary society does some damage to public confidence in our system. Diversity matters, for reasons of representation, equality of opportunity and the quality of the profession.

The House of Lords Select Committee on the Constitution, in its report on judicial appointments published last year, opened the third chapter with this statement:

"We take it as a given that no-one should be prevented from becoming a judge merely by reason of their sex, race, religion or other protected characteristic".

It stresses that diversity incorporates a number of other elements,

"including disability, sexual orientation, legal profession and social background."

It is social background that we are particularly interested in. The Constitution Committee rejected

"any notion that those from under-represented groups"

were "less worthy candidates" or that a more diverse judiciary would

"undermine the quality of our judges".

I am trying to skip through this, Ms Dorries, as I know that we are trying to make progress today.

There is a significant benefit to increasing the pool of talent that is considered. That does not endanger appointment on merit, which I know would concern members of the Committee, but it does increase the choice of meritorious candidates from which to pick. We have only to look at the Government Benches in this Committee. It is not that there are not any stunningly brilliant women members of the Liberal Democrat or Tory parties in Parliament, but obviously there are not enough to enable the Government to select any for the Committee. *[Interruption.]* It is a fact.

In 2011, only 22.3% of the judiciary were women and 5.1% were black and minority ethnic. Only one in 20 judges are non-white and fewer than one in four are female. The trouble is that the higher up we go, the worse the situation is and the less representative it becomes. In the Supreme Court, there is only one female on the bench compared with 10 males. There are no female heads of division; all five are male. Only four out of the 37 lords justices of appeal are women, and only 17 out of 108 High Court judges.

As Baroness Hale commented, we need

"a variety of dimensions of diversity".

I referred earlier to social mobility and the social background of judges, which is just as important as gender. I would like to refer to Alan Milburn's report on social mobility. When we speak about diversity, it is important to be aware of the many different concerns that come into play. The eight protected characteristics listed under the Equality Act are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. When addressing access to the professions, however, another aim must inform our efforts—social mobility.

The panel on fair access to the professions, which was chaired by the former Darlington MP Alan Milburn, was established by the previous Government in 2009 and produced a report in the same year. In his findings, Alan Milburn noted that

"alarmingly…there is strong evidence, given to the Panel, that the UK's professions have become more, not less, socially exclusive over time…The default setting in too many professions, particularly at the top, is…to recruit from too narrow a part of the social spectrum."

We are being asked to consider judicial diversity today. Members across the House and the profession know, and the numbers demonstrate, that the judiciary is one of the least representative professions. Only 7% of our population attend independent schools, but more than 70% of judges did. If we are to address the representative nature of our judiciary, we need to have a discussion, at least, about why it is still the case that a talented student from a school in my constituency is less likely to make it to the bench than an equally talented child raised in different circumstances.

Gavin Barwell (Croydon Central) (Con): I completely share the concerns that the hon. Lady is expressing about the lack of representativeness in our judiciary, and indeed many other professions. What is her analysis of the answer to the question that she has just posed? Why does she think that an equally talented young person from her constituency has less chance of reaching the top of one of the professions?

Jenny Chapman: I recommend that the hon. Gentleman read the report on fair access to the professions, because he will find in it many suggested solutions. There are important recommendations concerning information, advice and guidance; Sure Start; young people making different choices early in their school careers; and mentoring opportunities. The judiciary and legal profession are entering into some of those areas now. I recommend that he looks again at that report. He indicates that he has, so he should know where I am coming from.

The report provides a number of recommendations—this might help the hon. Gentleman—to address levels of social mobility and the barriers to opportunity that face many potential candidates, often from particular backgrounds. The report places responsibility for making progress in a wide range of camps, including both the Government and the profession itself. A I said, it is hugely encouraging to see the Government's commitment to increasing diversity. However, it is less encouraging when considered against a background of policies such as lack of protection for Sure Start funding and the scrapping of education maintenance allowance, both of which directly hit the early life chances of young people from disadvantaged backgrounds.

The key action needed was the establishment in the Constitutional Reform Act 2005 of the Judicial Appointments Commission. That commission was established by the previous Government to maintain and strengthen judicial independence, by taking responsibility for selecting candidates for judicial office out of the hands of the Lord Chancellor and making the appointments process clearer and more accountable.

In section 64 of the Act, the then Government placed on the commission a statutory duty to encourage diversity. I am pleased to note that the current Government have

[Jenny Chapman]

agreed, after some persuasion in another place, to extend that duty to the Lord Chancellor and Lord Chief Justice. The figures do show some improvement. Since its creation, the JAC has made almost 2,500 selections. More than 35% of those were women, and at least 9% were black and minority ethnic. Of selections for the courts, approximately 34% were women and 7% were black and minority ethnic. There is still a huge way to go.

We welcome the Government's provisions in part 2 of schedule 13, including what is perhaps the centrepiece of the schedule, the tipping point principle. Our amendment 77 is intended to build on progress that has already been made and strengthen provisions in the Bill. In the response to the public consultation on judicial appointments, the then Secretary of State, the right hon. and learned Member for Rushcliffe (Mr Clarke), stated:

"As well as any legislative change there will need to be strong and clear leadership at all levels."

The new statutory duty now calls for that strong leadership. Our amendment calls for the way that leadership is exercised to be clear. It would require the Lord Chancellor and the Lord Chief Justice of England to lay before Parliament a report annually. The report should describe

"their performance of the duty in this section…the contribution made towards a more diverse judiciary in the preceding year; and…the composition of the judiciary, including the number of part-time and full-time judges, gender, educational background and other relevant demographic data."

It is a simple amendment that highlights of the importance of tracking and measuring progress.

After extending a duty to the Lord Chancellor and Lord Chief Justice and believing it important enough to be a statutory obligation, it is reasonable to ask for reports on how they have used their position for the advancement of that duty and how far they have progressed. Questions will need to be asked and answered—what continued work are the Department and the profession undertaking? Have assessments been made of the impact of reforms, such as the legal aid changes, on legal staff? What is the profile of those entering the profession?

It is vital to be able to see and evaluate progress. We will gain experience in what works and what does not and what more needs to be done. If we are to do this, let us do it properly and be willing to hold progress up for inspection. That is what the amendment is intended to do. We have specified educational background as one area on which progress should be reported, as although it is not included in the Equality Act definition of diversity, we think that in this case it is of equal importance. It is clearly an influential determinant of entry into the profession. The provisions in the Bill are certainly a step in the right direction, but amendment 77 would ensure that there is a force that keeps moving that way. I hope that the Government will consider the merits of reporting on their hard work in this area, and of asking the profession to do the same.

11.45 am

Valerie Vaz (Walsall South) (Lab): It is a pleasure to serve under your chairmanship, Ms Dorries. I congratulate my hon. Friend on her thoughtful speech.

Clearly, we all start from the premise that amendment 77 is supported by men and women. When we consider equality issues now, we are talking about men and women, and about people from diverse backgrounds, who all support them. We have moved on since I first started out as a lawyer. Lady Justice Hallett is also trying to educate the judiciary about cultural life. Members of the Committee will recall the time when judges asked, "Who is Gazza?" and, "What is Linford Christie's lunchbox?" Times have moved on, and we have a new set of judges coming through.

I felt that I had to say something today, partly because when people talk about equality issues, they usually feel that standards are being lowered. That is never the case; it is usually that, be they women or people from ethnic minorities, people are more qualified. The tipping point principle that the Government have introduced is clearly an excellent measure, and it reminds me of previous legislation allowing measures to be taken where a work force needs diversity in a post in order to replicate the wider work force.

It is good that this measure has come from the Government, and I want to see progress on it, which I am sure there will be. It will help people to think that if, for example, four people are applying for a job and three of them are from a different or diverse background, the job does not simply go to the one other person. I hate using terms such as "white" or "male"—I do not like describing people in that way. That is where the frustration has lain and why people do not apply for positions, because they feel that they have been excluded. However, that is another myth, because women and people from ethnic minorities are around and do apply for positions, certainly within the judiciary.

I do not know whether the Committee is aware of this, but previously, when judges were appointed they would get a tap on the shoulder. If someone appeared before a particular judge, the judge would say to them, "Come into my chambers," where he would say, "I think you should apply for the bench." That is why we see the judiciary in its current state. Clearly, men used to be the main barristers, solicitors and so on. To some extent it still happens now. If someone appears before a judge, the judge—whether in the High Court, the Supreme Court, or whatever—will say, "I think you should apply for it."

However, that is changing, and I am pleased to say that the process is now very rigorous. There is a lot of mentoring and shadowing at all levels. It is not really a question of waiting for women or people from ethnic minorities to come through, because they do. We must look at what happens at the lower levels. If access to the Bar or to training contracts has been reduced, as my hon. Friend the Member for Darlington mentioned when talking about Mr Milburn's report, people need support and help. We need only look at the Attorney-General's panel of barristers—I ask the Government to look at ways of making that more diverse. I would ask them to consider ways of increasing the fees, because only if one has a good practice can one afford to go on the panel. The fees are absolutely minimal, and people may not want to take time away from their budding practices to try to get on to the panel.

Obviously there are certain barristers who can afford to take a brief in Luton, even though the costs of getting up there far outweigh the costs of the brief.

Sometimes simple briefs that give someone experience before a court can pay something like £30. The cost of getting to different places so that one's clerks are pleased far outweighs that.

One has to look at what happened—I have to mention this—under the previous Government. Baroness Hale is a shining example of how to change the face of the judiciary and how to take steps to make it different. She has a background in academia. Previously, some judges would have thought, "Maybe that is not acceptable", but she has proved to be a diligent judge. I would also have to say that about Baroness Butler-Sloss. She had not been to university, but she has been one of the most outstanding judges, male or female, in this country.

The issue is very important. To me, that is the beauty of the rule of law in this country. It is the third arm; the brilliant triangle; the checks and balances, which is why it is so important to have a diverse judiciary. Whether we are talking about a female Prime Minister, MP or anyone else, once the mould is broken, we will wonder what all the fuss was about.

Damian Green: The Committee will be pleased to hear that I will resist the temptation to follow the route set by the hon. Member for Darlington and have a debate on the wider policy on social mobility, because I completely agree with her that that is a central issue facing all Governments in this country—certainly all Governments since I came to this House.

One of my gloomy reflections on modern Britain is that while, on the whole, life for the vast majority of people here is immeasurably better now than it was in the 1970s, when I left school, one thing that I suspect has become worse is that it is more difficult now for someone who comes from my background—I was born in a terraced house in a small town in south Wales, to parents who had both left school at 14—to get on in life. That is one of the depressing things about modern Britain, and it is one of the reasons why hon. Members on both sides of the House feel passionately about social mobility. It is always extremely difficult to promote that, but it is important.

What the hon. Member for Darlington pointed out in relation to the lack of diversity in the Supreme Court at the moment is, unarguably, a symptom of other problems. It is not a problem created by or the fault of the Supreme Court or even the legal system as a whole, but a symptom of a much wider and deeper problem, which we are not supposed to be debating now.

Amendment 77, as the hon. Lady suggested, seeks to build on the changes introduced by the Government on Third Reading in the other place. A new statutory duty was introduced, committing both the Lord Chancellor and Lord Chief Justice to encourage judicial diversity.

The Government are firmly committed to improving diversity in the judiciary. We consider that a more diverse judiciary that reflects modern society will enhance confidence in the whole justice system. The new statutory duty will provide a visible statement of the importance that both the Lord Chancellor and the Lord Chief Justice will place on that vital issue.

We agree with the underlying principle of the amendment—namely, that it is important that statistical and other information on progress is made available, including steps being taken by the Lord Chancellor, the judiciary and others such as the Judicial Appointments Commission and the legal professions. The publication of such information will allow the public to hold those contributory parties to account in achieving increased diversity.

However, I am not persuaded that it is necessary to set out a reporting requirement in primary legislation. The majority of the information is already published by both the Lord Chancellor and the Lord Chief Justice, through their work as joint leads on the judicial diversity taskforce. The group, which includes representation from the JAC and the legal professions, is taking forward the recommendations made by the advisory panel on judicial diversity and has committed to reporting on progress annually. The latest annual report was published last September and includes details of the latest statistical position on diversity, as well as progress on a range of other activities.

The judiciary also publishes statistical information annually concerning its diversity, both courts and tribunals-based. Parliament already possesses the appropriate mechanisms to invite both the Lord Chancellor and the Lord Chief Justice to discuss what actions they are taking on these matters, without the need to resort to statutory duties.

The Lord Chancellor also has a range of ways of promoting diversity. The Bill includes a number of valuable legislative changes that should help to promote diversity. However, we all recognise that statutory change in itself will not bring about the change we all want; the issue is just as much about cultural change. The role of the Lord Chancellor in bringing that about may be more subtle. It may include behind the scenes encouragement or challenge with the legal professions or judiciary. Such leadership is important to help drive progress, but does not necessarily lend itself to the formal reporting envisaged by amendment 77.

Although I understand the reason for the amendment, I am of the view that imposing such requirements in primary legislation is excessive and I therefore invite the hon. Lady to support the Government amendment.

Jenny Chapman: I am grateful to the Minister for his comments. The legal profession and judiciary are probably one of the better professions that have a problem with transparency, reporting and collecting information.

The Opposition will be keeping an extremely close eye on the issue and we will use other opportunities to hold Ministers to account. As the right hon. Gentleman said, there is an issue of culture and leadership, and we feel strongly that Ministers and the Secretary of State have a clear role in that. However, I am happy not to press the amendment to a Division.

Amendment 69 agreed to.

Jenny Chapman: I beg to move amendment 78, in schedule 13, page 220, line 22, at end insert—

'Judicial appointments

14A After section 65 of the Constitutional Reform Act 2005 insert—

"65A Additional guidance

The Lord Chancellor, after consultation with the Lord Chief Justice, the Treasury Solicitor and the Chairman of the Judicial Appointments Commission, shall issue guidance as to the circumstances in which those employed by the Government Legal Service, the Crown Prosecution Service or any other

[Jenny Chapman]

government legal office may apply for any of the judicial office or tribunal posts, which are in the remit of the Judicial Appointments Commission.".'.

The amendment is about careers in the legal profession and how we destroy what is often called the glass ceiling, which can discourage diversity at the very top of the profession. The amendment returns to an issue touched on in the previous discussion. It is about progress to all ranks. The provision on the tipping point is welcome; it addresses access to the profession at precisely one point of the appointment process. However, we think that much needs to occur before that, so that eligible candidates can reach that point in the first place.

The amendment addresses the issues raised by both the advisory panel on judicial diversity and the panel on fair access to the professions about how a candidate moves up in a profession once they have entered it. The amendment would require the Lord Chancellor to

"issue guidance as to the circumstances in which those employed by the Government Legal Service, the Crown Prosecution Service or any other government legal office may apply for...judicial office or tribunal posts".

It addresses a specific issue regarding opportunities for career progression in legal and judicial office.

The advisory panel on judicial diversity explicitly reported that as well as encouraging new entrants to the judiciary, progress on diversity must be sought by encouraging career progression for those who enter the profession. The panel noted that the diversity of those entering the profession is significantly greater than that of those who have the experience to apply for judicial office. Therefore, it persuasively argued that delivering a more diverse judiciary is not simply about recruiting talent where it may be found, but about retaining that talent and enabling capable individuals to reach the top. That argument was also prominent in the 2012 report, delivered by the Lords Constitution Committee, on barriers to judicial diversity. The report noted that

"women have been studying law and entering the solicitors profession in equal or greater numbers than men for over twenty years. Yet the so-called trickle-up effect whereby greater diversity amongst young lawyers should lead to a more diverse judiciary has failed to materialise to any significant degree."

It also noted that

"other professions, for example the senior Civil Service, have made much greater and faster improvements in diversity over the last few decades"

than has been accomplished in the judiciary.

12 noon

Encouraging applications from candidates from across the legal profession, rather than just barristers, and ensuring that the best candidates from all backgrounds can progress to a point where application to the judiciary is a genuine possibility, are central components of improving access to and the diversity of our judiciary. The amendment speaks to a concern raised by the Lords Constitution Committee about the barrier to appointment for those employed by the Government legal service. Lawyers in the Government legal service are of a high calibre. They go through a stringent application procedure, and constitute a pool of talented potential candidates for judicial service.

The Government legal service and the CPS have, encouragingly, more diverse work forces than much of the legal profession. Those services contain a proportionately higher number of people from under-represented groups. In the Treasury Solicitor's Department, over 50% of senior civil servants are women, and 15% of those at senior civil service pay band 1 are from black and minority ethnic backgrounds. In the CPS, women form 75.9% of Crown prosecutors, 63.9% of senior Crown prosecutors, 49.7% of Crown advocates, and 21.6% of senior or principal Crown advocates. Of CPS lawyers for whom ethnicity data are held, BME lawyers make up 21.7% of Crown prosecutors, 18.3% of senior Crown prosecutors, 14.4% of Crown advocates and 8% of senior or principal Crown advocates.

The recruitment process for the Government legal service is designed to recruit candidates from a wide range of socio-economic backgrounds. The process takes no account of the candidate's schooling, A-level results or the university that they attended. It ensures that their educational background and the standard of their attainments while at school do not bear on their eligibility. The selection process is based on their ability at the time they apply.

The appointment of more Government lawyers and prosecutors to the bench is therefore a practical option. It will improve judicial diversity and encourage talented candidates to apply to the GLS and, later, to judicial and tribunal posts. However, there is a barrier. GLS lawyers are currently prevented from becoming judges due to their Government status. In another place, the Government explained that it is policy that Government lawyers, when holding judicial office, cannot sit on cases involving their Department. Therefore, CPS lawyers cannot sit as recorders in criminal courts, because the overwhelming majority of cases are prosecuted by the CPS.

In another place, it was asked whether we are missing out on talented CPS applicants. Members of the Bar and solicitors who practise in the criminal area are able to sit as recorders. Restrictions were partially relaxed by the previous Government, but there are still not many posts available.

The Lords Constitution Committee agrees that

"it remains necessary to avoid conflicts of interest".

The Opposition accept that. However, those barriers need to be properly addressed. The Committee said:

"Structural impediments to the appointment of government lawyers and prosecutors should be removed."

It recommended that

"Those who work for the Government Legal Service and Crown Prosecution Service must not be prevented from becoming judges because of their status as government lawyers."

Steve McCabe (Birmingham, Selly Oak) (Lab): Is my hon. Friend being a touch too timid in her amendment? The Government already recognise that, where candidates are of equal value, the under-represented candidate should be given preference. Would it not make perfect sense to set a minimum quota for people from the GLS for these posts, as a way of speeding up broader diversity in the judiciary?

Jenny Chapman: That is a very interesting suggestion. I must admit, I did not consider that when I prepared the amendment. I would be interested to hear the

Minister's response to that proposal. If he does not want to go as far as that, perhaps he will consider our suggestions.

The Government and the JAC must act to overcome any undue impediments to candidates being appointed as fee-paid or full-time judges. That is important for ensuring equal access to judicial appointments and because it would promote the diversity of the judiciary. Furthermore, it is in the public interest that high-quality candidates are not discouraged, which they might be, from applying to join the GLS or the CPS because of a potential lack of career progression in the judiciary.

The amendment is probing. We want a sense of the Government's thinking on this area. Issuing guidance might help advertise the posts that are available to GLS and CPS lawyers and encourage applications. Centrally, it would draw attention to the issue and afford an opportunity for thought on how progress could be made. We are keen to hear the Government's position on the amendment.

Damian Green: First, I will deal briefly with quotas. The problem with quotas, as both the hon. Lady and the hon. Member for Birmingham, Selly Oak will recognise, is that they could easily lead to a situation where there are two candidates and the less good one has to be appointed. That is always the objection to quotas and when that situation happens, it is unfair to individuals.

Valerie Vaz: I thought I had addressed that point. It is always the argument that is put forward, but the Minister has to start from the premise that the candidates are of equal calibre. When we talk about quotas, it is never that one candidate is of less calibre.

Damian Green: If they are entirely of equal calibre, the hon. Lady will welcome our clarification that a tipping point may be reached with the Supreme Court. If that was what the hon. Gentleman was proposing, that is fine. My impression was that he was proposing an overall quota, which I would not agree with.

Steve McCabe: I do not want to delay the Minister, but I was pointing out that it is his proposal that where candidates are of equal value, preference should be given to the under-represented candidate. I was suggesting that he stretch that to this area and create a minimum quota with the same rules applied.

Damian Green: There are clearly technical complications with that, in that once there is a minimum quota, more candidates of equal merit are required. That in itself would cause mathematical problems.

Valerie Vaz: They are there.

Damian Green: Well, if there are two candidates of equal merit for a post, tipping point arrangements can apply. That is how to get diversity.

Amendment 78, as the hon. Member for Darlington said, would impose a duty on the Lord Chancellor to issue guidance on the circumstances in which Government lawyers may apply for judicial office. The Government are keen that members of the employed legal professions are encouraged to apply for judicial roles for which they are eligible. We agree that that could be a useful route to increasing the diversity of the judiciary, as well as ensuring that the Government can attract the best lawyers. We are also open to considering suggestions on how more progress could be made in this area, but requiring statutory guidance is not the correct approach.

It may help the Committee if I set out the restrictions for Government lawyers holding judicial posts, as it is important that those are not overstated. It has been the policy of successive Lord Chancellors that serving Government lawyers, including those in the CPS, do not sit on cases involving their own Department when holding judicial office, as the hon. Lady said.

The policy is based on the need to comply with article 6 of the European convention on human rights, which provides that litigants are entitled to be heard in front of an independent and impartial tribunal. That restriction does not, however, prevent Government lawyers from applying for a whole range of fee-paid judicial offices. Indeed, the published Judicial Appointments Commission programme for 2012-13 included more than 300 vacancies for fee-paid office that would be open for Government lawyers.

That restriction has more of an effect for CPS lawyers, as their opportunities to sit as fee-paid judges in criminal cases are limited. However, even in instances when the work can be organised in such a way that a CPS lawyer can sit and hear non-CPS prosecuted cases, that is done. As a result, since 2003, CPS lawyers have been eligible for appointment as deputy district judges at magistrates courts in some criminal cases, and the Judicial Appointments Commission makes it clear when advertising the posts whether CPS lawyers can apply.

Another option is for CPS lawyers to seek judicial experience in a different jurisdiction. We need to think creatively about the concept of a judicial career and how experience in one area can support subsequent appointment to judicial office in another area. In 2004, the requirements that in order to be considered for a particularly salaried judicial office, an individual's fee-paid judicial service must be in that or in a similar post, were changed, so the fee-based service in any jurisdiction was made acceptable.

A CPS lawyer could sit as, for example, a fee-paid civil deputy district judge or a fee-paid member of a tribunal, and then apply, for example, as a salaried district judge on the basis of that experience. It is, of course, important to communicate the opportunities that are available to Government lawyers, and that is best done in a targeted fashion—to them, rather than through statutory guidance.

The availability, for example, of deputy district judge roles that are open to CPS lawyers will vary from one recruitment exercise to the next. I put it to the hon. Lady that the best approach is to make it clear whether the posts are open to CPS lawyers in the materials published by the Judicial Appointments Commission as part of the information pack, which is produced in support of every selection exercise.

We also need to look more creatively at other ways in which the opportunities can be communicated. I know that the JAC has worked closely with the legal profession to develop web-based seminars, highlighting the opportunities for judicial office that are available to

[Damian Green]

lawyers. There are two web-based seminars on the commission's website that employed lawyers, from all branches of the profession, can access for free at a time and place most convenient to them. More of those are planned.

I hope that the professions will continue to work with the commission and to support its efforts to draw those, and other online resources as they are produced, to the attention of all their members, as the assistance provided is very beneficial. Such an innovative and targeted communication will be more effective at addressing the issue than statutory guidance. However, if, in the future, it were considered desirable to produce statutory guidance on the issue, the power to issue guidance under section 65 of the Constitutional Reform Act 2005 already provides the basis to do that without the need for the amendment.

Steve McCabe: What would convince the Minister in the future of the need for statutory guidance? Does he have a monitoring mechanism up his sleeve so that we can judge his good intentions?

Damian Green: I do not have a specific monitoring mechanism, but such matters are monitored all the time. We discussed earlier the number of opportunities that Parliament has to scrutinise both the Lord Chancellor and the Lord Chief Justice on the general issue of diversity. Clearly, those who work in the Government legal service can be assiduous in promoting information about such matters inside the Government.

Transparency is a good thing, and the Government seek to promote it. The amount of information that exists on the issue means that, in effect, there is a continuous public monitoring process with, as I have explained, the backstop of the possibility of a move to statutory guidance, if necessary. As I said, significant progress has been made, and I hope that I have persuaded the hon. Member for Darlington, who said that hers was a probing amendment, to withdraw it.

12.15 pm

Jenny Chapman: I am grateful to the Minister for his remarks but, although a lot of creativity is being used in respect of the issue, progress—although significant—is incredibly slow. We regard the matter as an area where it is appropriate to monitor such progress closely, and we may wish to return to it at a later date. Although I am thankful for what the Minister said, we want to see much faster progress in the coming years. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 13, as amended, agreed to.

Clause 19 ordered to stand part of the Bill.

Schedule 14 agreed to.

Clauses 20 and 21 ordered to stand part of the Bill.

Clause 22

Appeals relating to regulation of the Bar

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

The Solicitor-General (Oliver Heald): Ms Dorries, may I congratulate you on chairing the Committee? I also want to pay tribute to Baroness Deech, who added the clause to the Bill in the other place. It is a long-needed simplification of appeals in the regulation of the Bar, and I believe that it has all-party and wide professional support.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

Payment of fines and other sums

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

Andy McDonald (Middlesbrough) (Lab): I want to make some observations and to express my worry about the clause in two major respects—first, on the issue of fines and the cost of enforcement and, secondly, on contracting out. I readily acknowledge the logic that a person, having been subjected to a financial penalty on conviction, should bear the costs of enforcing such a financial penalty. Such costs should, of course, fall on the payer and not the state.

Nevertheless, I have some concerns about an individual's ability to pay. Clearly, significant costs are attached to the issue of distress warrants under which goods or money can be seized. There will be a fee for the registration of the outstanding sum on the register of judgment and orders, for taking enforcement proceedings in the civil courts and, indeed, in the making of a clamping order in respect of an offender's vehicle.

Has any modelling been done? If so, will the Minister give guidance on the likely sums that a convicted person would be liable to pay and include some analysis of the predicted recovery level of such cumulative charges? The state should not be thwarted in pursuing a criminal according to law, but is there not a risk of heaping debt on debt, and making it increasingly unlikely that such financial penalties and the attendant enforcement costs will not be paid? Is there not a risk that some individuals will not be able to break free of an ever-decreasing downward spiral?

Of course, individual financial circumstances change over time, and I therefore ask the Minister to advise the Committee on how deterioration in an individual's finances might be reflected within the regime.

Subsection (2) provides the Lord Chancellor with the clear ability to contract out the functions of fines officers. Currently, some 2,000 people are employed by Her Majesty's Courts and Tribunals Service in the enforcement of criminal fines and fixed penalty notices. The last reported annual figures show that they have increased fine collection by 14.5%. That has been achieved by chasing down the most difficult cases. The apprehension is that private companies are more likely to chase fixed penalty notices for things such as speeding fines, rather than for other criminal offences for which fines are harder to collect.

Would it not be folly to ignore the recent experience of the contracting out of the translators' service? As my right hon. Friend the Member for Barking (Margaret Hodge), the Chair of the Public Accounts Committee, said on 14 December 2012,

"Interpretation services are vital for ensuring fair access to justice. Yet when the Ministry of Justice set out to establish a new centralised system for supplying interpreters to the justice system, almost everything that could go wrong did go wrong. The Ministry awarded the contract to a company, ALS, that was clearly incapable of delivering. The Ministry had been warned that ALS was too small to shoulder a contract worth more than £1 million, but went ahead and handed them an annual £42 million contract covering the whole country.

The Ministry did not understand its own basic requirements, such as how many interpreters it needed or in what languages. And it ignored the views of interpreters, who were clear that they had serious concerns about the contract and were adamant that they would not work for ALS. As a result, the company was able to meet only 58% of bookings against a target of 98%. The result was total chaos. Despite this, the Ministry has only penalised the supplier a risible £2,200. This is an object-lesson in how not to contract out a public service."

The Committee concluded that the Ministry failed to undertake proper due diligence of ALS's winning bid. Sadly, the Ministry was unable to quantify the additional cost of the failure.

I would like to hear from the Minister how he can guarantee a better deal for the taxpayer if contracting out provisions are taken up. Will the existing provider be able bid for the work? My fear is that, if that does not happen, we run the risk of losing the success and recovery rates that are currently enjoyed, together with the expertise that has been built up over many years, as currently exists within our own HM Courts and Tribunals Service staff.

If the service is contracted out, in whole or in part, can the Minister guarantee that any such tendering process will include a robust due diligence process, so that the experience of the translators' service debacle is not repeated and that the penalty for failure within any such contract will fit the crime?

Mr David Burrowes (Enfield, Southgate) (Con): I am pleased to follow the hon. Member for Middlesbrough. The clause is important since with penalties from the courts we often concentrate on the more serious ones that grab our attention. However, financial penalties make up 65% of all penalties imposed by criminal courts. It is important to get the provision right to ensure effective enforcement of financial penalties.

The hon. Gentleman spoke of the success of recovery of fines. There has been increasing success since 2008-09 when the rate for payment of fines was 84.7%. In 2010-11 the payment rate was 93.2%. That is relevant. However, it is not just about fines being paid; I want to draw into the debate the issue of compensation orders being paid promptly. The responsibility is on the offender to make payment, so I welcome the shifting of the burden in the costs of enforcement. We have to reflect that there is a victim, particularly in relation to compensation. We have to consider how the victim is dealt with in terms of prompt and effective payment of compensation.

Notwithstanding the relative success in recovery rates, some £600 million is outstanding from fines and other awards over a number of years. That must make us pause to ask whether we can do more to ensure that, overall, a lesser amount is outstanding from orders of the court, and what we need to do about that.

The Minister may be able to help, but I have been unable to glean information on how much compensation is currently outstanding, both cumulatively and year on year, from those awards. That is important, and it is the subject of my remarks. My understanding is that £413 million of fines and other awards was ordered in 2010-11, £282 million of which has been collected. I am not aware of the breakdown for compensation, because the figure also includes fixed penalty notices and other awards.

Costs are also a burden on the taxpayer. The collection of sometimes relatively small amounts for both fines and compensation can be disproportionate to the amount recovered, which imposes a burden on the state. We must consider how that burden might be shifted on to offenders. I particularly welcome an important provision in the clause that explicitly allows powers and practical arrangements to ensure that the costs of recovery, particularly where there is non-compliance, are shifted on to the offender. Indeed, that is the case in many recoveries of civil debt, as the hon. Member for Middlesbrough knows all too well.

When a local authority tries to recover council tax arrears, the burden of late payment shifts to the person who is paying late. Private sector contractors are routinely involved in recovering payments for local authorities, interestingly with different rates of success. Private companies help to ensure not only payment but prompt payment, which, ultimately, is to everyone's advantage.

I have not previously declared my interest as a defence solicitor dealing with offenders of limited means. Enforcement must be proportionate and reflect people's means. No doubt the court will take that into account when considering the level of a fine or other award and the time to pay. Every agency involved in enforcement must have a sense of proportionality.

I welcome the Government's intention to ensure that how we recover and enforce debt that is to be paid to society is about not only financial penalties but restorative justice or other assets. We must have a broader view when trying to ensure that amends are made.

Compensation is important, because my experience of magistrates courts is that the amount ordered is a contribution to compensation, rather than full compensation for the victim, which often has to happen in other ways. I particularly welcome that under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, we now have a statutory duty, whenever an offender comes before the court, to consider compensation. There was some interest among the Opposition in pushing for that provision and clause 23 is aligned with it. I am sure both sides of the Committee are on the side of trying to ensure that compensation happens in all its forms as often as possible.

In magistrates courts, some 63% of compensation orders involve amounts of less than £100. Such orders, given the limited means of offenders, are routinely made over a period of time, and it might be £5 a week, particularly for someone who is on benefits. There is then the question of trying to ensure compliance with that £5, which might not come one week—there might be £1, or something else. Who gets that compensation? The compensation is passed on to the victim, who might be a victim of a particularly serious assault. The payment, which might be weekly or monthly, is a few pounds. From my time considering this policy area when I was in opposition, I know victims are victimised through the whole enforcement process. They get pounds or pennies in compensation and their victimisation can

[Mr David Burrowes]

last a long time. The Minister described how it can take a long time to get compensation—not just weeks or months, but years. Victims see a derisory amount for what they have experienced coming through to them each month.

12.30 pm

Jenny Chapman: I am listening carefully to what the hon. Gentleman says, but perhaps the answer to the problem is what Louise Casey suggested in her report on the victims of crime. She suggested the establishment of a victims fund so that there would not be delays or an ongoing financial relationship between perpetrator and victim. Many victims find that relationship offensive. A victims fund is a better solution.

Mr Burrowes: I am sure the hon. Lady will welcome the fact that the Government are putting more money into a victims fund, not least through the Prisoners' Earnings Act 1996, which was just lying on the statute book and we implemented. Some £800,000 has now come from prisoners directly into the victims fund, providing a pot. I know that it is going to victims services much more directly, and we may need to look creatively at how it can go to victims directly. Victim surcharges are being extended to all levels of serious offending, so that offenders are increasingly paying for their crime. However, I take the hon. Lady's point about the victims fund, which could be used more fully and directly. I will come to that point shortly.

Andy McDonald: We used to have something called a victims fund: the Criminal Injuries Compensation Authority. Continually lifting the bar and excluding people from the process defeats the object that the hon. Gentleman is trying to achieve. If we could revisit that, we would not have to reinvent the wheel. We could go back to people being paid out under that system, and the continuing obligation of the offender to pay would not involve the victim at all.

Mr Burrowes: I have tried not to go into the whole debate around criminal injuries compensation; I was making a point in support of the Government's amendments. One of the problems was that that scheme was not sustainable, and many victims were getting a small amount over a long period, and the victimisation goes on.

It is important that we see compensation as a priority and that it is paid to the victim as soon as possible, preferably in full. The clause provides an opportunity to engage, where appropriate, with the private sector in collection. It is important to follow the route of local government and ensure that there is an incentive for all parties to ensure prompt payment. The present system does not properly do so. The burden then shifts to the offender to make prompt payment. I urge the Government to focus on compensation orders. That is where it matters most for victims. The incentive and the burden, and the expense of late payments for compensation, will fall on the offender. It will not be surprising if compensation does not come in dribs and drabs, but perhaps more fully, when offenders see that their compensation orders for less than £100 are rising without their being able to do much about it. That will particularly benefit victims.

I urge the Minister to go further, as we suggested in opposition, and engage with the private sector, perhaps credit agencies, to make up-front payments that go directly to victims. The order would be made at court and within a week the full payment would go into the hands of the victim. The business of enforcing the debt would fall on the offender and the agency. There would be an incentive to pay it as quickly as possible to avoid interest rate charges and enforcement costs.

Steve McCabe: I am really interested in what the hon. Gentleman is suggesting, given the experience of student loans and the green deal. Does he have any information on how many private credit companies are interested in the proposal? What would be in it for them?

Mr Burrowes: I am taking the Committee away from the scope of the clause and mooting a future way of approaching things. The bottom line is that we are not talking about students; we are talking about offenders who need to pay their due. We are also talking about victims, who almost routinely do not receive full payment for the crime committed against them, but only a contribution. We have the motivation to create more creative opportunities to ensure that victims receive full payment. We must ensure that fines and compensation are paid so that the burden does not fall on the taxpayer but where it should—on the offender.

Jenny Chapman: I very much want to speak about the clause, as we have serious reservations about it, particularly proposed section 36A, which is headed:

"All functions of fines officers may be contracted-out".

The clause provides for the contracting out of the functions of fines officers, and for the costs of enforcement to be recovered from the debtor liable for the initial financial penalty. We have serious reservations about those provisions in light of the wider context of enforcement practices, which we have not yet discussed, and the status and progress of plans for regulation.

I am pleased to have the opportunity to debate these issues in the light of the Government's recently—very recently—announced proposals on bailiff reform. Due to the considerable delay in the Government's announcement on bailiff action, that luxury was not available to hon. Members on Second Reading, nor to noble Lords during the entire passage of the Bill in the other place. Why has it taken from May until January for the Government to respond to their consultation on bailiff regulation?

The consultation response document is 60 pages long. After eight months of procrastination, a clause was published halfway through the progress of the Bill. The clause will implement progress that was largely designed and detailed by the previous Government. It is disappointing that the Government did not show a resolve to tackle the issue more urgently, or afford both Houses the courtesy of properly scrutinising their proposals on the regulation of bailiffs. The Minister looks confused.

Damian Green: I am only confused because we are about to debate the regulation of bailiffs under clause 26. It is an important issue, and I am happy to debate it

with the hon. Lady. I look puzzled because I am slightly confused about why she is trying to debate it under clause 23.

Jenny Chapman: We think it is relevant to clause 23. The Government's proposals to outsource the collection of fines will be introduced before regulation can be implemented. That is not a wise way to proceed, and I will explain why. We all know, from our constituency caseloads, that people are concerned about the behaviour of some agents operating in the bailiff industry. That should not be news to Members on either side of the Committee. The Government's consultation, and the previous Government's legislation, the Tribunals, Courts and Enforcement Act 2007, which the Government plan to enact, were undertaken in response to a real and pressing problem.

We know that the people involved are offenders, but incidents of intimidation, threats, aggressive behaviour, excessive fee charging and misrepresentation of powers have been well reported. In many cases, vulnerable people are inexcusably subjected to those distressing ordeals. I will not labour the point because Members already have a view, but known cases include children on their own in a house told that their possessions will be taken away; parents told that their children will be taken away; fees hiked to indefensible and unaffordable levels; and threatening messages sent at all times of the day and throughout the night.

It is important to put on record that such behaviour is committed by a minority of people who do great damage to the rest of the profession's reputation. We understand that bailiffs perform particularly difficult and necessary work, and those who undertake that task professionally and responsibly should not be tarred by the actions of untrustworthy colleagues, but the untrustworthy few punch above their status in the disruption and distress that they cause individuals.

Our concern about the clause is with regard to the seriousness of that irresponsible behaviour and, as I said, the Government's timing. They have brought forward proposals to address problematic bailiff activity, with the aim of improving safeguards that apply to the industry, and that is welcome. The implementation of the provisions in part 3 of the Tribunals, Courts and Enforcement Act, as introduced by the previous Labour Government, are welcome.

I touched on the fact that the Government have operated somewhat backwards and introduced their policy long after they introduced the Bill that will help to host it. We question whether the Government have also acted in an untimely manner with the proposed changes coming too early in comparison with the plans in their consultation response. We do not want individuals unprotected before the response to the consultation is implemented.

As it stands, the Government intend to offer new powers to private bailiffs under the clause, which will vastly open up the work of enforcing court orders to private operators before the enactment of any of the proposed improvements that the Government argue are so badly needed, and with which the Opposition agree. My main point is about timing. The Government's intended safeguards to transform bailiff action are not yet in place, so no culture change has taken root. I put it to the Minister that such a culture change will take a long time. No bad practitioners have been rooted out and, most importantly, no review has taken place from experience of how successful the reforms will be. There has been no time to address or identify shortfalls.

Key elements of the package need regulations before they can progress. The regulations have not been put before the House and they are not expected to be drafted until the summer. The clause includes the power for bailiffs to pass on their fees to the debtor, but the fee structure under the provision has not yet been finalised in legislation. Finalising it in regulations is included in the "next steps" section of the consultation response. We have too little information to be able to support this part of the Bill.

Courts Service enforcement staff currently have higher success rates than private providers. They exceeded all targets last year and increased fine collection rates by 14.5%, so the change is not one that the Government can believe the system needs so badly that it must be fast-tracked. Concerns about private practice also include the possibility of cherry-picking, whereby difficult cases are not dealt with. As a result, many high penalties, some required as compensation for victims, are not being secured. Equally, the contracting out of services is not something in which the current Ministry of Justice is particularly known for its success.

Will the Minister consider whether in light of the worrying practice that currently blights the enforcement industry, the expansion of further powers and available work should be withheld until a measurable, desirable transformation has been achieved, rather than ahead of a transformation that he hopes to achieve? The Government's consultation was entitled "Transforming bailiff action".

I raise those points to question whether we should not finish that job first and give ourselves time to check and honestly appraise our progress before moving to other reforms. I shall listen carefully to the Minister's reply, but at the moment, we are not minded to agree that the clause should stand part of the Bill.

12.45 pm

Damian Green: I am grateful to members of the Committee for their contributions to the debate. I emphasise again to the hon. Lady that the clause is not about enforcement action by bailiffs on the doorstep, but about the collection of fines and other sums by HMCTS staff, which are quite separate processes. I am sure that we will have a full debate on clause 26 regarding the point she makes.

Jenny Chapman: When the fines are contracted out, who does the Minister think will be awarded these contracts? What industry does he think will be doing the work?

Damian Green: Let me put clause 23 in context. It enables the costs of collecting or pursuing unpaid fines to be recovered directly from the defaulting offender, and ensures that there are strong incentives for offenders to pay fines promptly. Ultimately, collection costs will be added directly to an offender's fine if they fail to pay the fine to the agreed timetable and costs are incurred in pursuing payment. The costs do not apply to the

[Damian Green]

doorstepping enforcement activity undertaken by bailiffs on behalf of Her Majesty's Courts and Tribunals Service, which are governed for separately.

Once a person has failed to pay their fine, much of the work that goes into pursuing that fine involves the fines officer undertaking labour-intensive processes; for example, sending letter reminders, tracing offenders, validating offenders' information or arranging deductions from benefits or earnings. I am sure that the Committee will agree that it cannot be right that a proportion of offenders do not pay their criminal fines in a full or timely manner. That undermines the effectiveness of fines as a criminal punishment and costs the taxpayer millions of pounds each year to pursue. Equally, it cannot be right that the hard-working taxpayer should have to pick up the costs of pursuing unpaid fines.

I think two hon. Members asked about the actual numbers involved. In the financial year 2011-12, £314 million of fines and related awards were imposed in the criminal courts, and £279 million, not including confiscation orders, was collected. My hon. Friend the Member for Enfield, Southgate asked about the level of outstanding confiscation orders. In 2011-12, HMCTS collected more than £484 million from offenders, including confiscation orders, and in addition, £22.3 million in compensation has been paid to victims of crime, funded by criminals' cash and assets recovered through confiscation orders.

The total value of outstanding impositions has indeed decreased, as hon. Members said, from £1.9 billion to £1.8 billion, but clearly more must be done to tackle that. The outstanding balance includes £1.2 billion of confiscation orders, of which HMCTS leads on the collection of £225 million—those cases are the ones that are directly relevant to the clause. The remainder are collected by the Serious Fraud Office and the CPS. HMCTS is working closely with other agencies to ensure that the confiscation orders are enforced.

Before I move on to general points, I want to address the question the hon. Member for Middlesbrough asked about the level of payments. Under the proposals in clause 23, the administrative costs will be fixed and proportionate to the actual cost of collection. It is too soon to say the level at which the collection costs will be set, but I repeat that no such costs will be added to a fine if the offender pays it on time. I think that is a point that will unite the Committee. It will not apply to those who pay as ordered, or who remain in contact with the court and comply with their payment plan. Fines officers are more than willing to set up plans for offenders who struggle to pay their fines. I take the point made about that by Opposition Members. The clause is squarely aimed at those who deliberately evade payment and try to play the system.

There was a question about how the provisions relate to the privatisation of compliance and enforcement action. The provisions form part of the overall future strategy for fines collection, but irrespective of the tendering exercise that the hon. Members for Darlington and for Middlesbrough were concerned about, fines account for a significant amount of the criminal courts' business and are by far the largest disposal route from the criminal courts. Clearly, more improvements are needed to build on those we have made, which is what the clause seeks to do. HMCTS is looking for innovative ways for the future, including forming a partnership with a commercial company to deliver fines collection services jointly.

The second part of the clause will clarify the law regarding the functions of magistrates courts fines officers. They are administrative staff who perform the crucial function of ensuring the timely collection of fines, including applying administrative sanctions to secure payment from a defaulter. Section 36 of and schedule 5 to the Courts Act 2003 permit the functions of court staff, including fines officers, to be performed under contracting-out arrangements. However, the prohibition on contracting out functions of a judicial nature under section 2 of the Act led to some ambiguity as to whether the totality of the functions of fines officers may be contracted out. Our view is that the functions of fines officers under schedule 5 are purely administrative and therefore able to be performed under contract.

Fines officers are, self-evidently, not judges. Their functions, including the exercise of any discretionary powers in respect of enforcement action, are simply designed to give full effect to the decisions of the court. By removing the ambiguity in the 2003 Act, the clause will make the position crystal clear.

We are currently exploring the potential for creating a partnership with a commercial company to build on the improvements already made in fines collection.

Jenny Chapman: The Minister uses the word "partnership", which sounds lovely, but the Bill does not say "partnership", and that is the problem. It states:

"All functions of fines officers may be contracted-out".

Partnership would be a different proposal, and it is a word that is often misused. Whether it would stand legally if used in the Bill, I am not quite sure, but it is slightly misleading to use the word in that context.

Damian Green: Clearly, the functions mentioned will be in partnership with the Courts Service, because they will be carried out on behalf of the Courts Service.

Jenny Chapman: It is not a partnership.

Damian Green: It is a partnership. We can certainly argue about that.

Stella Creasy (Walthamstow) (Lab/Co-op): For clarity, perhaps the right hon. Gentleman is looking at commissioning. He is not talking about forming a partnership with external enforcement agencies, but commissioning them.

Damian Green: I am talking about a partnership—*[Interruption.]* I think my hon. Friend the Member for Enfield, Southgate is right. The objection is to a partnership where one of the partners is in the private sector, which is an area of life that, interestingly, still has a degree of toxicity on the Opposition Benches, as the hon. Member for Middlesbrough said.

Jenny Chapman: I must take the Minister up on that. There is no toxicity about the private sector on the Opposition Benches. We are happy to work with the private sector; I point to the example of prisons, being

run by the private sector. [Hon. Members: "What about G4S?"] I do not think we want to get into G4S, do we? It may well end up running the bailiff service—I really would not go there.

There is no toxicity. The point is not one of principle. We do not object to working alongside or commissioning from the private sector, but we object to widening opportunities for work for an industry that is not regulated at all at the moment, and where there have been serious concerns about malpractice. It is not a private-public issue.

Damian Green: The hon. Lady could have fooled me, given the comments of some of her hon. Friends.

The hon. Lady made a legitimate point about time scales. She wanted to know when the provisions on bailiff reform will be brought into force and when we will propose regulations. Our intention is to implement them in April 2014, so we will bring forward the necessary regulations well in advance of that date. I hope that we can make the regulations this summer, so that the House will be able to debate them, if it wishes, in the appropriate Committees well in advance of anything happening on the ground. I hope that satisfies the hon. Member for Darlington that there is no attempt to railroad something through without proper parliamentary scrutiny. There will be full and proper parliamentary scrutiny before anything happens in public.

The underlying point, which I conclude with, is that we need investment and new technology if we are to achieve our aspirations for improving the collection and enforcement services. That is the aim of this Government, as it would be for any sensible Government. The narrow purposes of the clause are precisely to do that, and I commend it to the House.

Jenny Chapman: I listened carefully to what the Minister said, but on this occasion we are unpersuaded. We do not feel that enough thought has gone into the clause. The Minister said nothing about due diligence on the providers. The MOJ has not been fantastic at due diligence, particularly in regard to interpreters services. He said nothing about the length, transparency or cost of the contract. At the moment, providers will not be subject to freedom of information requests. For all those reasons, we cannot support the clause.

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

The Committee divided: Ayes 10, Noes 7.

Division No. 2]

AYES

Barwell, Gavin	Lopresti, Jack
Burrowes, Mr David	Rutley, David
Elphicke, Charlie	Syms, Mr Robert
Green, rh Damian	Vara, Mr Shailesh
Heald, Oliver	Wright, Simon

NOES

Chapman, Jenny	McDonald, Andy
Creasy, Stella	Vaz, Valerie
Hanson, rh Mr David	
McCabe, Steve	Wilson, Phil

Question accordingly agreed to.

Clause 23 ordered to stand part of the Bill.

Clause 24

Disclosure of information to facilitate collection of fines and other sums

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

Jenny Chapman: The clause is about the disclosure of information to facilitate the collection of fines and other sums, and it is consistent with the Opposition's remarks on the previous clause that we make some challenge on this clause too. It states:

"Her Majesty's Revenue and Customs, or a person providing services to the Commissioners for Her Majesty's Revenue and Customs, may disclose finances information to a relevant person."

We have concerns about what that means for the disclosure and handling of sensitive personal information. Will the Minister provide a little more clarity about the appointment of "a relevant person", as referred to in the clause, and the safeguards in place to ensure that only appropriate people have access to that information?

1 pm

Damian Green: I am happy to do that because I share the hon. Lady's concerns about disclosure of information.

Clause 24 would create new powers for HMCTS to obtain and access financial information held by HMRC for the purpose of assisting the court and fines officers in enforcing outstanding financial penalties. The new powers will complement those under the Courts Act 2003, and those on data sharing prior to sentencing that will be put in place by part 8 of schedule 15 to the Bill.

The measures will help courts and fines officers in enforcing unpaid fines and compensation orders, by allowing them access to additional information on defaulters for more effective and targeted use of attachment of earnings orders. Under the Courts Act, courts are already able to access an offender's social security information from the Department for Work and Pensions, if the offender has defaulted on the payment of their fine or compensation order and the court is trying to enforce payment. The clause will extend those data-sharing arrangements to enable HMCTS to obtain and access financial information held by HMRC—for example, earnings from employment—for the purpose of assisting the court and fines officers in enforcing outstanding financial penalties.

I hope I can reassure the hon. Lady and the Committee that such access to a fine-defaulter's personal information will be subject to a number of specific safeguards.

Jenny Chapman: If clause 23 is enacted and the contracted-out services are being delivered by, let us say G4S—a name that has been used—would the data-sharing agreement be between a state organisation and G4S, where this kind of information would be held by G4S? Is that the nub of it?

Damian Green: The information is held within the various parts of, in this case, HMRC. I am not entirely sure what the hon. Lady is talking about. The clause is specific about the purposes the data in question can be processed for. The courts, fines officers and authorised individuals in HMCTS will be able to process data only for enforcement purposes where the offender defaults on payment of a fine or compensation order.

Jenny Chapman: Will the Minister give way?

Damian Green: Can I make a bit more progress?

Jenny Chapman: I do not want the Minister to make so much progress that we lose the thread. He is talking about authorised individuals being HMCTS, but if HMCTS fines officers are contracted out, would the contracted-out organisation or individuals be authorised individuals?

Damian Green: HMCTS will still exist. We are not going to contract out the whole of the Courts Service. We may, as I said, though it seemed to be a source of some worry to the Opposition, go into partnership with private sector providers to provide certain specific information and services that will enable all these things to be done more efficiently than at present. The sensible thing that I hope will reassure the hon. Lady is that, of course, contracted-out staff will be able to use the information gateways, but they will be subject to all the same safeguards as HMCTS staff are now. The actual safeguards do not change. Authorised individuals will be doing the work, and it will be those authorised individuals who are subject to the safeguards.

The provisions will make it a criminal offence to process the data in a manner inconsistent with the provisions. That is as strong a purpose as we can make to prohibit any misuse of the data. A robust IT system will be put in place to enable data to be obtained securely. A key provision that I hope will further reassure the hon. Lady is that once an offender has been dealt with by the court or fines officer, his or her personal data will be destroyed within set guidelines. It goes without saying that the information has to be handled in accordance with the Data Protection Act 1998.

There is a big range of provisions. The procedure can be done only by authorised individuals, whether working directly for the state or for a contracted-out provider. Misusing the provisions will be a criminal offence. There are very strong protection measures and I hope the hon. Lady is reassured by them.

Jenny Chapman: I am reassured up to a point, in that there are quite severe penalties. However, it will be a concern to a great number of our constituents that their deeply personal information currently held by HMRC could end up in the hands of other providers. That is something that will concern many people. We will not vote against the clause now, but we might want to come back to it on Report.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Syms.)*

1.6 pm

Adjourned till this day at Two o'clock.