PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL [*LORDS*]

Ninth Sitting

Tuesday 5 February 2013

(Morning)

CONTENTS

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Saturday 9 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

Tuesday 5 February 2013

(Morning)

[Martin Caton *in the Chair*]

Crime and Courts Bill [*Lords*]

Written evidence to be reported to the House

C&C 13 Criminal Justice Alliance

C&C 14 The Howard League for Penal Reform

8.55 am

Mr David Hanson (Delyn) (Lab): On a point of order, Mr Caton. I would welcome your view of developments in the relationship of the Bill to Northern Ireland. Yesterday, as you may be aware, the Northern Ireland Assembly considered the legislative consent motion in relation to the Bill, part 1 of which gives effect to the National Crime Agency—we considered that last week. The Northern Ireland Assembly voted 56 for and 39 against endorsing that legislative consent motion, but the vote was on a cross-community basis and the majority of nationalist and Unionist votes was not met, so that motion has not yet been carried, which has serious implications for our consideration of part 1.

My point of order is simply to welcome any statement that the Government might intend to make, at some point before the Committee's proceedings are completed, about their approach to the legislative consent motion. Our discussions last week showed the importance of the Bill to Northern Ireland, so I would welcome clarification from the Minister on which Minister and which Department are taking the lead on developing negotiations with the parties in Northern Ireland on that matter, and on whether, as we discussed last week, amendments will be tabled about the substance of the impact of the Bill on Northern Ireland.

We are approaching the twilight of our period in Committee, and if any new clauses are to be tabled to part 1, that should be done in Committee, because if not, the Bill is shortly to return to the Floor of the House on Report, and Northern Ireland discussions take some time. My point of order is to seek, through you, Mr Caton, a statement from the Government as to how they propose to deal with the extremely serious matter of the current lack of consent for the National Crime Agency to operate in Northern Ireland.

The Chair: Thank you, Mr Hanson. It would be useful if the Government, either now or very soon, indicated how they will deal with that particular problem.

The Minister for Policing and Criminal Justice (Damian Green): I am happy to do so now, Mr Caton. The matter was addressed at an earlier stage in the emergence of the problem by the Minister of State, Home Department, my hon. Friend the Member for Taunton Deane, who said that

"we are carefully considering the part 1 provisions to see how they can…be modified to give the NCA some functionality in Northern Ireland"—

in the absence of a legislative consent motion—and that we

"will aim to introduce any necessary amendments to the Bill on Report."—[*Official Report, Crime and Courts Public Bill Committee,* 29 January 2013; c. 174.]

That is the current plan.

Mr Hanson: Further to that point of order, Mr Caton. I am grateful to the Minister for that. We understand that point, which we knew was the case before today. My point of order relates to how the Government will ensure that the end result is not just that the legislative consent motion is amended or carried, but that that is done to the satisfaction of all parties in the very fragile situation of the Northern Ireland Assembly. There is a clear division, and I want to know from the Minister, through you, Mr Caton, which Department—the Northern Ireland Office or the Home Office—is taking that matter forward and how it intends to do so.

Whatever amendments the Minister tables to give effect to the operation of the National Crime Agency in Northern Ireland, the principal point is that several parties in Northern Ireland currently do not wish it to operate, which is why they have refused legislative consent. That has implications not just for the operation of the National Crime Agency, but for relations about the operation of the Northern Ireland Assembly. I am seeking, through my point of order, clarification of the Government's view on that matter.

Damian Green: I am not sure that that is a point of order, but I am happy to reassure the right hon. Gentleman that both the Home Secretary and the Secretary of State for Northern Ireland are working with the Justice Minister in Northern Ireland to resolve the matter. Clearly, we must respect the devolution settlement, but with regard to what clearly is a point of order on the progress of the Bill, I would repeat what I have just said about the Report stage.

The Chair: We must now continue our line-by-line consideration of the Bill.

Clause 30

Use of force in self-defence at place of residence

Mr Shailesh Vara (North West Cambridgeshire) (Con): I beg to move amendment 81, in clause 30, page 32, line 13, at end insert—

'(8G) For the avoidance of doubt, the provisions of subsection (5A) will apply to any person who, when V enters the building as a trespasser and it is necessary to use force against V, is present in any of the premises covered by subsections (8A), (8B) or (8C), whether or not that person dwells in said premises.'.

It is a pleasure to serve on the Committee with you as Chair, Mr Caton. I declare an interest as a non-practising solicitor. Clause 30 is of considerable importance and over the years has received much attention and debate. Members will be aware that in 2006 I introduced a private Member's Bill with cross-party support to achieve

precisely what clause 30 now proposes. Of course, others before me also sought to make the same amendment. So I welcome this clause, but it would be enhanced and improved and save further court cases in future if amendment 81 were made. Without the amendment we have a situation where if a householder is attacked in his or her house, the standard of force that can be used is raised so that they must not use a grossly disproportionate element of force, as opposed to the present reasonableness.

If someone is in the house with the householder—let us say a carpenter doing some work—the burglar enters and the carpenter helps the householder overpower the burglar, then the carpenter will also be subject to the higher test. That is reasonable. However, the clause as drafted also provides for mixed use. Where you have, for example, a corner shop with a flat above, then if the shop owner is attacked in his shop, he will be subject to the higher test. But if the same carpenter who was with him in his own house when the house was judged as being separate is now in the shop fitting some shelves and again helps the shopkeeper overpower a burglar, that carpenter will be subject to a lower test. Basically, in a home the householder has a higher test, plus any third party. In a mixed dwelling, the owner of the flat above has the higher test, but if the same person who would have been with him in his own home helps him in the same circumstances, he is subject to the lower test. That clearly is an anomaly,

The Minister will doubtless argue that there has to be a limit somewhere. I agree with him. There has to be a limit, and in fact the legislation as drafted recognises that. It recognises a geographical limit, which is the dwelling or a commercial premises associated with the dwelling. It is not the same as saying that if the householder or the shop owner were in a park accompanied by somebody else, there would be a higher test, because clearly there would be no dwelling associated with it. So given that we have one scenario where a third party has a higher test and another scenario associated with a dwelling where a third party has a lower test, I would have thought it eminently sensible that the test should be altered so that everyone is covered.

Let me give another example. I am a householder and live in a house separate from my business and my son visits me. If both of us were to be attacked, we are both subject to the higher test. However, I then have a corner shop and live above it and my son lives away from me, visits and decides to stand behind the counter and help me. If we are then attacked and my son helps me, then he would be subject to the lower "reasonable" test, whilst I would be subject to the higher "grossly disproportionate" test. The same circumstances, a little difference in where it is. One person of the household is protected, but not the other, because of the location.

It is a relatively straightforward amendment. I very much hope that the Minister will give it serious consideration, because it simply tidies up the law. I fear that if the law is not amended this anomaly will have to be picked up at a future time. It would remain unfinished business, and would simply have to be sorted out at a later date when it could very easily be tidied up now.

Jenny Chapman (Darlington) (Lab): I have some remarks addressing clause 30 more generally. Would now be an appropriate time to make those remarks?

The Chair: If the rest of the Committee are happy not to have a stand part debate, then I am happy for you to make your contribution now.

Jenny Chapman: Thank you for your guidance, Mr Caton. Amendment 81 makes a lot of sense, given what the Government seem to want to do with clause 30. The hon. Gentleman made his case very clearly, and it does seem that if I was in my neighbours' house and they were being burgled perhaps I might feel moved to intervene, and I should be able to use self-defence as my defence. That makes sense to Opposition Members.

On clause 30 more generally, the Minister knows that considerable concern was expressed by Members on both sides of the House, including some members of the Cabinet. Significantly, concerns were expressed by the Director of Public Prosecutions and other prominent members of the legal profession. However, I think it would be remiss if we did not air those concerns when considering this clause.

For clarity, clause 30 deals with Government proposals to make changes to the law on self-defence in the case of burglary. This was referred to on Second Reading. Burglary is an absolutely dreadful, awful crime. To have your home invaded—or even your place of work, if you happen to be there—is a terrible and personally distressing experience. That is undeniable. People can find themselves in the most terrifying situations, and if someone is forced to confront an intruder in their own home they need to know that they have the right to protect themselves. I think most of us are aware of how we would feel if we had to protect a member of our family.

That is why Labour agreed in 2008 to strengthen the law for victims in that regard, and that assurance was given to victims of burglary. In 2008 Labour placed on a statutory footing the right of victims to use what was then called reasonable force to defend their home. We should understand that the definition of what force is reasonable is not decided in a sort of dispassionate risk assessment the following morning. That is recognised in the law; the Crown Prosecution Service and the Association of Chief Police Officers describe reasonable force to be,

"what you honestly and instinctively believe is necessary in the heat of the moment".

That is therefore already recognised. The current law provides a defence for victims who, in what are recognised to be traumatic circumstances, have found themselves needing to use force to protect themselves, their home or their loved ones.

The Secretary of State was warned explicitly by his predecessor, the right hon. and learned Member for Rushcliffe (Mr Clarke), not to oversell this policy and this clause. That is probably quite sound advice, because the question we must ask is what difference this will actually make. We are absolutely in favour of clear, robust protection for victims in these cases, but it seems to be the opinion in most quarters who should know about these things that that is what we already have. To give an example, Keir Starmer, the Director of Public Prosecutions, said that the current law worked very well. The Lord Chief Justice, Lord Judge, noted that the current law allows home owners great protection. In fact, some of the Government's own Cabinet members have argued that the proposals are unnecessary, and that sensible people will no doubt point out that they

[Jenny Chapman]

cannot think of a successful prosecution in a genuine self-defence case, and conclude that the public now have a reasonable confidence in the state of the law.

Paul Mendelle, QC, the previous chairman of the Criminal Bar Association, noted that the current law works well, and importantly, is well understood by juries. He continued:

"Leave it alone and stop playing politics with the law."

Could it be the case, as the new chair of the Criminal Bar Association, Michael Turner, QC, also seems to think, that this is simply a vote-catcher? There is nothing wrong with that.

Mr Vara: The hon. Lady is making some powerful points, but while she lists all the people that she has, what does she say to the fact that successive Metropolitan Police Commissioners feel that the law should be enhanced in the way that the Government propose?

Jenny Chapman: I would point them in the direction of the new police guidance that was issued at the end of last year, which clarifies advice to police officers regarding where prosecutions should and should not be made. It even advises when victims should not be detained in order to make statements; they should be able to do that in their own homes. That is a far more sensible approach. The new advice to police officers clarifies the situation very well, so I would go back to them and see whether they maintain that point of view.

Mr Vara: I would like to think that the hon. Lady would agree that it is better to have clarity in the law than for an officer to have to go away to look at guidelines. There has to be clarity, and that is what this is seeking to do. When we deal with theft, there either is theft or there is not; police officers do not go running to guidebooks. Likewise in this situation, they should have clarity.

Jenny Chapman: That is a ridiculous point because there already is clarity in the law, and officers sometimes need to refer to guidelines, as the hon. Member should know. Part of their training would be to make them aware of these particular issues, so I do not quite understand what the hon. Member is trying to say. The guidance is there and it is very clear. I do not think police officers would have any trouble getting their heads around it.

We are concerned that the Government's proposed change does not really add protection; it just adds more confusion. The point is that the line between disproportionate and grossly disproportionate is still not clear. The Government say that they want to clarify it, but we are not clear on what the difference is. Under the current law people can shoot a burglar in the face and not be prosecuted, so what exactly is grossly disproportionate? Also of serious concern is that the proposal may have the opposite effect, and that has been raised, I believe, in the other place. We need to consider that and the Government need to respond to it. The proposal could encourage confrontation where it should be avoided. If burglars perceive that they are under greater threat from home owners, they may well arm themselves to a greater degree than they do at the moment. There is wide-ranging consensus out there that the Government's changes are at best unnecessary, and that they could increase risk and confusion.

When asked about the evidence to support the policy, and the number of cases in which a home owner has been arrested or charged after defending their home against a burglar, the Government responded that they do not hold that data—we have tried a couple of times to ask them—but *The Guardian* was able to do a trawl of cases. There were 11 cases between 1990 and 2005 and seven of those were domestic. That was even before the law was altered in 2008.

9.15 am

Michael Wolfkind, QC, the barrister who acted on behalf of Tony Martin in probably the most renowned case of self-defence in burglary, said that there was no need for the law to be changed and that the law already recognises that people react in a certain way in the heat of the moment. I refer to the letter to the Secretary of State from the right hon. and learned Member for Rushcliffe. It is a short letter, so I hope the Committee will not mind if I read it out:

"An announcement of a third change to the law of self-defence in almost as many years has a great potential to go wrong.

Sensible and influential people in the House of Lords and elsewhere will no doubt point out that they cannot think of a successful prosecution in a genuine self-defence case and conclude that the public now has reasonable confidence in the state of the law.

They will point out that we are giving the judges the seemingly impossible job of concluding that a particular act is both reasonable and disproportionate.

The risk is that we are simply setting ourselves up for a damaging and unnecessary battle with sensible commentators and heavyweight legal experts.

I do not intend to block the announcement but I do hope the Ministry of Justice will take note of these concerns and, in particular, avoid over-selling the policy which could easily backfire."

That is sound advice.

Mr Vara: The hon. Lady will recall that the letter spoke of successful prosecution, but the whole point is to avoid an individual going through the misery, pain and suffering of getting to the prosecution stage in the first place. If a decision can be taken instantly that the incident is not worth taking to court, the individual can get on with their life, rather than having a year or so of their and their families' lives completely disrupted. For that reason alone—I contend that there are others—it seems appropriate that the law should be clarified.

Jenny Chapman: The hon. Gentleman makes a valid point. It is important that we do not put victims through protracted uncertainty when they have done nothing wrong. They are a victim of crime who has acted in self-defence, which, within the law, is perfectly allowable. However, if the hon. Gentleman looks at the police guidance, which was amended recently—I do not want to read the whole thing out—it is clear that that should not happen and that police officers should take cognisance of the circumstances as they find them, so that in such situations they would not feel obliged to take the type of action that would lead to a protracted legal process.

Valerie Vaz (Walsall South) (Lab): Nevertheless, even though people are victims, they have committed a crime and it is for independent prosecutors to decide whether they have a legitimate defence.

Jenny Chapman: I think my hon. Friend is alluding to the charge that has come from the legal profession about extra-judicial punishment being meted out by individuals. We are talking about people who have not committed a crime: victims of crime acting in self-defence. There have not been any successful prosecutions that would indicate that what we are talking about are people who have not themselves committed a crime. There have been instances—some quite famous—of people chasing intruders down the street and bashing them to near death with cricket bats. Those circumstances are different and do not rest on the self-defence defence, so they are slightly different. Nevertheless, my hon. Friend has made a point that the Minister needs to reflect on and respond to, because that point has been strongly expressed by colleagues in the legal profession.

We are asking the Government to resist the temptation to oversell the change, because we do not think that it will make any practical difference to the way in which victims of burglary are treated. The police guidance and the law as it stands give protection to victims of burglary. There is concern about the dangers of burglars arming themselves to a greater degree. Because of the overselling of the change, they might get the impression that that is in their best interests.

Steve McCabe (Birmingham, Selly Oak) (Lab): I acknowledge that the hon. Member for North West Cambridgeshire is sincere in his amendment. It would be hard to find fault with the example that he gave. However, the amendment applies to "any person" on the premises at the time. The hon. Gentleman cited a situation where the shopkeeper and his son may be present, and his son would not be covered. What if the person present was paid protection because the shopkeeper had been threatened on a previous occasion? Would that person also be covered by the amendment? Would that not amount to premeditation on the part of both the paid protection and the shopkeeper? Would that not amount to licensed violence? Surely, that is not what the hon. Gentleman intends. If we were to support the amendment, that would be the result.

Mr Vara: I am grateful to the hon. Gentleman, who makes a good point. The reason the amendment is open-ended and refers to any third party, is that it is intended to cover people such as shop assistants, who may work there but not live on the premises, or customers, who may be legitimately there with a view to purchase but go to the rescue when the burglar attacks the shop owner. As far as paid help is concerned, it is highly unlikely that any shopkeeper, certainly in a corner shop, makes enough money to pay security guards. However, I hear what the hon. Gentleman says.

Steve McCabe: As I indicated earlier, I respect what the hon. Gentleman is saying. However, we are not paid to legislate on what is highly unlikely; we are here to scrutinise the words of the legislation, including the amendment. I suggest that if that person had been secured by the shopkeeper, they would meet the terms of the amendment but could amount to licensed paid protection. I would certainly have concerns about that aspect.

On the wider point, this represents the danger of trying to translate party speeches—maybe necessary for that occasion—into legislation. There cannot be a person in the room who has not come across someone who has had their house burgled, or had personal experience, who does not recognise what a traumatic experience that is. Certainly, the prospect of confronting that person in your home is almost impossible to imagine. However, I am much guided by the advice we have had from a number of legal sources, as well as the comments by my hon. Friend the Member for Darlington. There is already quite a body of law on this subject and, as my hon. Friend pointed out, there has not been a host of prosecutions. The "Crown Court Bench Book" spells out the kind of guidance that judges across the country should give to a jury in respect of the matter.

I come back to what we are asked to approve. It is one thing for someone to grab the nearest available implement to defend themselves when confronted with such a situation, but are we seriously saying that someone who repeatedly stabs someone or stamps on their head, long after the point they are unconscious on the floor, should be allowed to escape any consequences? That would appear to be what we would do. We almost seem to be inviting people to use disproportionate force, irrespective of the circumstances. That is not what anyone in this room would really want to legislate for. We want to afford decent protection to ordinary people who are threatened in their own homes or premises. We want to ensure that judges and police forces go out of their way to recognise the trauma and the threat that those people were under at that moment.

Jenny Chapman: My hon. Friend reminds me of a comment made by a Member in the other place, and he can perhaps help to shed some light on the issue. How many stamps on the head is grossly disproportionate and how many is just disproportionate?

Steve McCabe: I read in my local paper the other night about a street assault, about which the judge made the point that the sentence he applied was due to the repeated kicks to the head that were delivered by the assailant long after it was obvious that the person on the ground was unconscious. Clearly, the context was very different, but the judge considered that behaviour to be significant when it came to the length of the sentence.

I want to conclude by saying I am worried that we are going to create a situation that will make things more difficult for juries and may actually encourage a level of violence that none of us would want to see in such situations.

Damian Green: I suspect that it would help the Committee if I respond first to the amendment moved by my hon. Friend the Member for North West Cambridgeshire. I will then address the general points made about clause 30.

I am grateful to my hon. Friend for his support for the provisions in the clause. The Committee will know that he has assiduously been pursuing a change in the law on householder defence for a number of years, for

[Damian Green]

which he is to be commended. I quite understand that he, like the Government, wants to ensure that we finally get these provisions right, and in that light I fully appreciate the points he made. It is common ground between us that we are seeking to afford householders greater protection where they defend themselves against an intruder in their own home. The question is about where we draw the line. I hope that I can persuade my hon. Friend that clause 30 adopts the right approach.

As a first step, it might be helpful if I clarify precisely who is and who is not covered by the clause as it stands, because that might go a long way to allaying my hon. Friend's concerns. The provision is first and foremost about householder defence. The home is the one place where a person should have the right to feel safe. Being confronted by an intruder in those circumstances would be particularly terrifying. The feeling of anguish or panic would be heightened if someone knew that family members or close friends staying with them in the house were in imminent danger.

New subsection (8A), which would be inserted in section 76 of the Criminal Justice and Immigration Act 2008, therefore ensures that the provision will apply to anybody lawfully in a dwelling who may come face to face with an intruder. That would include the householder and his family, but it would also include friends or visitors—for example, a childminder—who are lawfully in the dwelling when the attack takes place.

New subsection (8B) recognises that some people live in buildings that also serve as a workplace. Often, there is only a door or a flight of stairs separating the workplace from the living area of the building. If an intruder broke into the non-residential part of the building, it is only right that those living in the building should benefit from the heightened defence. The potential threat to a shopkeeper and his or her family in the connected living quarters is obvious.

Turning to the detail of my hon. Friend's amendment, he is saying that if somebody is lawfully present in a dwelling—be it a home, a shop with living quarters attached or military sleeping accommodation—and is attacked by an intruder, it should not matter whether that person actually lives in the building or is simply visiting the property. As I explained, new subsection (8A) is already worded in such a way that anyone lawfully present in somebody's home will benefit from the heightened defence if they are confronted by an intruder. I hope that will provide my hon. Friend with some reassurance.

The difficulty with my hon. Friend's amendment is that it would also mean that people who were simply visiting a shop or other workplace that happened to have living quarters attached to it could benefit from the heightened defence, regardless of whether they lived in the building. Customers, delivery drivers or sales staff could all rely on the heightened defence if they were confronted by an intruder. Although we accept that it could be deeply traumatic to come face to face with an intruder in those circumstances, the focus of the provisions has always been on householder defence. It is meant to be about circumstances when the householder acts instinctively in fear or panic to protect himself or loved ones in his home from real or perceived danger.

9.30 am

If we widen the defence beyond householders in their dwellings so that it covers customers visiting a shop, for example, it would be difficult to justify not extending the defence to other scenarios where a person might come under attack such as when they are confronted by a mugger on the street. The current law on the use of reasonable force will continue to apply in those situations so it is not as though people will have no protection to defend themselves in such circumstances.

The provision is designed to focus on householder defence because those cases tend to concern the public the most. Householders want to feel safe in their homes, and they want to know that the law will be on their side if they use reasonable force to protect themselves or their families from a burglar.

Jenny Chapman: The Minister has just summed things up perfectly. Householders do want to know that they can use reasonable force, which is what the law states now. They need to know the difference between disproportionate and grossly disproportionate, because that is where they will be caught out.

Damian Green: Indeed. If the hon. Lady will hold her horses for a second, I shall come to the point that she made in her speech. Meanwhile, in light of what I have said, I ask my hon. Friend the Member for North West Cambridgeshire to consider withdrawing the amendment.

Let me move on to points made by the hon. Lady. The Secretary of State for Justice has long supported the need for clearer laws to protect householders who use force to defend themselves from burglars, in what must be frightening circumstances. That is the direct answer to her point. There is clearly a difference between an attack in a person's own home when close family or children may be present and a mugging on the street, terrifying though that is. The coalition agreement contains a specific commitment to give householders the protection they need to defend themselves from intruders.

Steve McCabe: I am curious about the distinction, too. If someone is trying to break into my home through the back door and I confront them, and at the point when I actually strike them they are outside the house in the back garden, does the law of reasonable defence apply, but if they take two steps further and are inside my house at the point at which I strike them, would I be eligible to use the different defence?

Damian Green: I am conscious from the hon. Gentleman's speech that, as ever, he is assiduous in posing individual cases. The general point that applies to many of the issues raised by him and his hon. Friend the Member for Darlington is that, obviously, individual cases are decided by individual judges. The purpose of the provision is to give not only greater protection to householders, but greater clarity about the protection they can seek, not least so that judges know what Parliament intends. The hon. Gentleman can pose various hypotheses, but each case will have to be decided by a judge.

Section 76 of the Criminal Justice and Immigration Act 2008 clarified aspects of the common law on the use of force in self-defence. The effect of the clause would be that householders who fear for their safety

and act instinctively to protect themselves or others in their home from intruders, using a disproportionate level of force, will not automatically be regarded as having acted unreasonably and treated as criminals.

Jenny Chapman: Will the Minister give way?

Damian Green: May I deal with the how many stamps on the head question put by the hon. Member for Birmingham, Selly Oak? That is also about judges. People will not automatically be regarded as having acted unreasonably, but of course, it is always open first to the prosecuting authorities and subsequently to the court to decide that the individual act may well have been unreasonable. The provision gives the individual a greater level of protection because of the likelihood that people are not taking calm and rational decisions about what is happening in such terrifying circumstances, but in the end it is for the court to decide.

Jenny Chapman: That is really the nub of the matter. At present, the test is reasonable force. Cases have already gone through the courts when a householder shot a burglar in the face and was not found to have acted unreasonably. What will a householder be able to do that they cannot do now?

Damian Green: I am glad the hon. Lady brought that case up. As my hon. Friend the Member for North West Cambridgeshire pointed out, it is not only about the successful prosecution or the successful conviction of a person; it is about the lead-up. The way the police behave in the individual circumstances can cause a huge amount of distress to individual householders.

Jenny Chapman: But in response, I ask the Minister whether, as he envisages the future, a householder shooting a burglar in the face will not lead to any kind of court process.

Damian Green: The hon. Lady is persistent in asking me to decide hypothetical court cases in the future.

Jenny Chapman: They are real; they happened.

Damian Green: And we saw what happened then. The measure will give an extra level of protection to the householder, but of course, in any individual case it will be for individual judges to decide. The hon. Lady can be as inventive as she likes in thinking of hypothetical circumstances, and I will allow her to continue to do so.

Jenny Chapman: I am sorry, but the new guidance to police officers makes it clear that they should be extremely sympathetic to the situation that the householder finds themselves in. I want to understand from the Minister whether the point of the change in the law is that cases where a burglar is shot should not proceed to court. Is that what he wants to see?

Damian Green: I am afraid that was not a new hypothetical case. It was the same hypothetical case that the hon. Lady raised earlier.

Valerie Vaz: Will the Minister give way?

Damian Green: Hang on; may I answer the first question?

The key difference is that disproportionate force will not of itself be deemed unreasonable. That is the level of guidance it is sensible to give to both the police and the courts. That is the difference; it is an extra protection for householders. The hon. Lady asked about the purpose of the measure. It is to give extra protection to householders.

Jenny Chapman *rose—*

Damian Green: May I give someone else a go?

Valerie Vaz: I thank the Minister for giving way. May I ask whether a stamp to the head, which may kill someone if they have thin skull syndrome, is grossly disproportionate?

Damian Green: Again, that is a hypothetical circumstance that would have to be decided by a court. Opposition Members keep giving individual cases that may or may not go to court and may or may not happen. It is not for Parliament to decide on individual issues. It is for Parliament to pass laws, which judges interpret.

Mr Vara: May I simply refer the hon. Member for Darlington to the police guidance, oft-quoted by the Opposition? She will see that it states that each case should be judged on its own circumstances. It is wrong to press the Minister about individual circumstances, when the guidance, to which the hon. Lady has made several references, says that each case should be judged on its own merits. I would have thought the guidance answers her questions.

Damian Green: I entirely agree. I will give the hon. Lady one more go.

Jenny Chapman: The Minister is very generous. I do not think we are any clearer.

Mr Vara: Read the guidance.

Jenny Chapman: I have read the guidance. It is easy to pick on individual circumstances because there have only been seven. It is not difficult to read them all and wonder whether the new law will make any difference. What difference will it make? When a householder shot an intruder in the face, the case went to court and the householder was able to use the current law of self-defence and was found not guilty. Presumably the Government want a change in the law or they would not be passing the law. So what is the difference? That case went through a court process and the person was found not guilty. The only difference I can think the Minister wants to see is for there to be no court process following the shooting of an intruder. Am I right?

Damian Green: I will keep telling the hon. Lady that I will not try to hypothesise about individual cases.

Valerie Vaz: Will the Minister give way?

Damian Green: No. I will answer on this case first.

Jenny Chapman: It is complete nonsense.

Damian Green: The hon. Lady says it is complete nonsense, but it has already been pointed out to her that she should read the police guidance.

Jenny Chapman: I have got it.

Damian Green: If you have got it, read it. You will see that the police are told, as I keep saying, that each individual case needs to be decided on its merits. Opposition Members keep providing hypothetical circumstances and I will keep saying that every individual case will be decided on its merits, because that is what the police guidance says. The substantive point that the hon. Lady is making about whether the case would go to court is clearly a matter for the police and the prosecuting authorities. The change in the legislation gives an extra level to householders, precisely so that the police and the prosecuting authorities, as well as perhaps the courts eventually, have a different test to apply throughout the process.

Steve McCabe: Mr Caton, I do not know whether the Minister has stumbled upon a new form of defence, but to say that he will not deal with hypotheticals means that he is inviting us to legislate in the abstract. The whole purpose of our being here is to test his propositions and to understand what he is trying to achieve. He is here not only to clarify the law before we pass it, but to give guidance to the courts on how it should be interpreted. If he is incapable of dealing with any concrete example of how his legislation will work in practice, he does not have any confidence in it.

Damian Green: Actually, I have to say that that is a completely absurd interpretation.

Valerie Vaz: Will the Minister give way?

Damian Green: Yes—the hon. Lady is getting quite excited.

Valerie Vaz: The Minister himself has been the subject of discretion and I do not want to dwell on past airings, but there are law lecturers up and down the country who will be concerned by what he says about this procedure. In Committee is the place to do this exercise, partly because the Minister can go away with the officials and decide that maybe there is not the clarity in the law that we seek. We cannot pass a piece of legislation in the way that the Dangerous Dogs Act 1991 was—in a hurry and without thought, because there was confusion. This is the right forum for this kind of exercise.

Damian Green: Absolutely this is the right forum for this kind of exercise, but the hon. Ladies and hon. Gentleman on the Opposition Benches are trying to posit individual cases. I will say it one more time: the police guidance says that every individual case has to be taken on its merits by a court. It is not for Ministers to tell individual judges how to do their job in future hypothetical situations.

Jenny Chapman: Will the Minister give way?

Damian Green: May I first quote the Lord Chief Justice? The Lord Chief Justice made it clear that judges view burglary as a very serious crime and as more than just a crime against property; they view it as a crime against the person as well. He said judges have to put themselves in the position of a householder who has

"reacted with fury, with anxiety, with fear"

and

"has no time for calm reflection."

There may well be cases in the future that benefit from the additional protection, and that is the guidance which the Lord Chief Justice wants to give judges in the future. He is very sensibly not going down the route of commenting on individual hypotheses.

Jenny Chapman: Whenever I have been on Bill Committees before—I have not done as many as my right hon. Friend the Member for Delyn, who I think has done 35—examples have always been used to illustrate the benefits of a change in the law. It would be enormously helpful for this Committee and for others considering our deliberations later if the Minister could provide an example of where the new protection would be of benefit where the current legislation falls short, because, for the life of me, I cannot think what that would be.

Damian Green: I am sorry that the hon. Lady cannot think what that would be. I will not hypothesise, because I apply the strictures to myself that I apply to her.

Mr Vara: The crime survey for England and Wales for 2010-11 estimates that there were 745,000 burglaries during that period. In approximately 75,000 of those cases, force or violence was used against the victim. The hon. Member for Darlington seeks examples. There were 75,000 uses of violence or aggression in one year alone, each with individual circumstances. I would like her to accept that one cannot judge issues in a Committee Room; they have to be judged at the time by the officers in the Crown Prosecution Service. If she wants examples, in one year alone 75,000 cases of violence arose. There is a need to clarify the law, if only to help those 75,000 people.

Damian Green: I would go further than that: not only can we not decide individual cases, but it is wrong for us to decide individual cases. That is precisely why we have a legal system and the courts.

Jenny Chapman: There have been 75,000 cases and no prosecutions. That leads us to think that things are working in a pretty fair way as they stand.

Mr Vara: Will the hon. Lady give way?

9.45 am

Jenny Chapman: It is not my speech.

We are not asking for a lot. All we want is to understand the provision. If there are 75,000 cases that the Minister could refer to, that should help him out. We want just one example of where the provision might benefit the householder.

Damian Green: I detect an eagerness from my hon. Friend the Member for North West Cambridgeshire to intervene.

Mr Vara: The hon. Lady is wrong to say that there are 75,000 cases where there have been no prosecutions. An array of charges could have been brought, and in many of those cases people were prosecuted for, found guilty of and sentenced for not necessarily violence, but other charges, such as burglary or assault. The hon.

Lady needs to reflect on that, rather than simply have a blanket "No, there were not any prosecutions," because there were.

Damian Green: I am grateful—

Jenny Chapman: May I respond to that point?

Damian Green: The hon. Lady will have a chance, with leave of the Committee, to speak later. If she wishes to, she may do so, rather than make her speech in bite-sized chunks. I will give way to her again in a minute.

I want to deal with one of the serious points made by the hon. Member for Birmingham, Selly Oak, about whether the provision is a vigilantes charter. I appreciate that that point was also made in another place. The provision is not that, but a recognition that people confronted by a burglar and acting in fear of their safety in the heat of the moment cannot be expected to weigh up exactly how much force is required. In such extreme circumstances, we think that they should have greater legal protection.

The provision is certainly not a licence to commit any act of violence whatever the circumstances. People would still be prosecuted if their use of force was unreasonable in the circumstances. Specifically, what would appear to be disproportionate force in the cold light of day might be allowed, but the use of grossly disproportionate force will never be reasonable. I hope that that reassures the hon. Gentleman.

On that point, does the hon. Member for Darlington wish to intervene? As a default, I assume that she wishes to intervene at every moment.

Jenny Chapman: The Minister is very well mannered, and I am grateful.

I want to respond to the point made by the hon. Member for North West Cambridgeshire about the 75,000 cases and people being charged with all kinds of things. We are talking here about the law of self-defence; that is the clause we are looking at. If we want to consider other potential crimes and defences, the Government will have to propose different legislation. Self-defence is what we are here to consider. Our position is that the Government's proposal will not make a jot of difference.

Damian Green: I do not agree with that and, as I have said, neither does the Lord Chief Justice.

Steve McCabe: I am interested in the Minister's reliance on the Lord Chief Justice as his defence for his proposition. Will he care to comment on the remarks made by a former Lord Chief Justice, Lord Woolf? He said that

"I regard it as a very bad example of where statutory interference with the common law is wholly unnecessary."—[*Official Report, House of Lords,* 10 December 2012; Vol. 741, c. 885.]

He did not seem to share the Minister's confidence in the proposal.

Damian Green: I do not agree with that. The interaction between statute and common law is always difficult. Members on both sides of the Committee will recognise that there is genuine public concern about people who are fundamentally victims of crime being criminalised themselves. That is at the root of the changes. The changes under the clause will give extra protection to householders who find themselves in such terrifying circumstances.

Mr Vara: Does my right hon. Friend agree that the people we should be paying attention to are those on the front line? Does he agree with former Metropolitan Police Commissioner Lord Blair, who said:

"I thought reasonableness was quite a difficult concept at 4 o'clock in the morning in your kitchen, whereas something as stark as gross disproportionality did seem to me to be clearer",

or with one of his successors, Lord Stevens of Kirkwhelpington, who said:

"Householders should be presumed to have acted legally, even if a burglar dies, unless there is contrary evidence"?

Another person who has had experience on the front line rather than in academia is Sir Bernard Hogan-Howe, who said:

"I think, probably, there's an argument at the moment for making sure that that bar gets higher, and that the homeowner has better protection, and the burglar is put more on notice that they're at risk if they choose to burgle someone's home while they're in it".

Does my right hon. Friend agree that we need to start taking notice of the people who have to deal with the matter on the front line, rather than academics?

Damian Green: My hon. Friend makes a powerful case. We can quote authorities on either side of the argument about whether it is necessary to give householders greater protection, but the Government believe it is important to give householders greater latitude to protect themselves than the current law permits. The law currently states:

"The degree of force used by D"—

the defendant—

"is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances."

We are raising the bar by stating that the use of disproportionate force can now be regarded as reasonable in those terrifying situations where a householder is confronted by an intruder. Clause 30 introduces a material and overdue change, and I commend it to the Committee.

Mr Vara: In the light of what the Minister has said, I am happy to withdraw the amendment. Would it be appropriate, Mr Caton, to make one or two general comments? I assure you that they will be brief.

The Chair: You are welcome to make a comment on the clause.

Mr Vara: Thank you, Mr Caton. I simply want to tell the hon. Member for Darlington that when she quotes people, she should reflect that in the present Cabinet, the Attorney-General, my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve), was a signatory to my private Member's Bill in 2006, and he agrees with the proposals. She should also be mindful that there is guidance, but the purpose of legislators is to ensure that the law is as clear as possible before those who interpret

[Mr Vara]

it have to look at guidance. When she talks about support, it is important to remember that in more or less every public survey that has been done, there is widespread support for raising the bar.

Valerie Vaz: Can the hon. Gentleman help me by pointing out where "grossly disproportionate" is defined in the Bill?

Mr Vara: The grossly disproportionate test will be inserted in section 76 of the Criminal Justice and Immigration Act 2008. The Crime and Courts Bill simply amends the existing legislation. The hon. Member for Birmingham, Selly Oak spoke earlier about encouraging vigilante groups, but the law is quite clear. If somebody attacks me, and I attack them in the heat of the moment using whatever force is necessary to protect myself, that is fine. If the person ends up unconscious, that is fine. If I stab them when they are unconscious, however, that is not fine, and that would be grossly disproportionate. There is a limit. Examples were given earlier of people kicking and punching mercilessly without limit, but that would not be the case. One can use whatever force is reasonable to defend oneself, but when it is abundantly clear that no more aggression is required, because the attacker is on the floor, anything beyond that would be grossly disproportionate.

Steve McCabe: I have no doubt that the hon. Gentleman is sincere in what he is trying to achieve, but the problem with what he is saying is that since the Minister does not entertain the idea that there might be such a thing as an example to illustrate or support his case, we have to take it wholly on faith that the wording will be interpreted as his hon. Friend envisages. There is absolutely no reason to suppose that that will happen, however, which is why we are trying to scrutinise the legislation.

Mr Vara: The hon. Gentleman talks about scrutiny, but I would call it mischief-making. It is perfectly clear what is intended. I will conclude by saying that we as legislators have a duty to listen to the people who put us here. An ICM poll for *The Sunday Telegraph* in December 2009 reported that 79% of people felt that the law should be improved, enhanced and a higher test brought in. In my area, at the time of my private Member's Bill, *The Cambridge Evening News* did a survey and 90% of local people wanted the test increased. If we are here to do good for the public and listen to them, this measure would put into place what the public want. I say to the hon. Gentleman and the hon. Member for Darlington that their efforts at mischief-making will not be fruitful. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Jenny Chapman: I was led to believe that I might get the opportunity to make a few more remarks. I will try to help the Committee by using a few examples to illustrate our case that this is not a groundbreaking, helpful piece of legislation, and that the Government are overselling it.

These are real examples provided by the Library. I will give five examples where the householder was not prosecuted. In a robbery at a newsagent's one of the two robbers died after being stabbed by the newsagent. The CPS did not prosecute the newsagent but the robber, who was jailed for six years. A householder returned to find a burglar in his home. There was a struggle during which the burglar hit his head on the driveway and died. There was no prosecution. Armed robbers threatened a pub landlord and barmaid with extreme violence. The barmaid escaped, fetched her employer's shotgun and shot at least one of the intruders. That was not prosecuted under the current law. Two burglars armed with a knife entered a house and threatened a woman. Her husband overcame one of the burglars and stabbed him. The burglar died. There was no prosecution. A middle-aged female took a baseball bat off a burglar and hit him over the head, fracturing his skull. Many people would say she was a hero. The burglar made a complaint but there was no prosecution.

There are other examples where there have been prosecutions. I would like to know whether such cases would or would not lead to prosecutions in future, because if there is not to be a difference, there is no point to the clause. The Minister does not seem to want to engage at all with that line of argument, which is curious. These are examples of where there were prosecutions under the current law, and we want to know whether there would be in future.

A man lay in wait for a burglar on commercial premises, caught him, tied him up, beat him, threw him into a pit and set fire to him. Is that disproportionate, grossly disproportionate? A number of people trespassed on private land to go night-time fishing. They were approached by a man with a shotgun who threatened to shoot them.

Damian Green: In their home?

Jenny Chapman: They ran away. I am just using these as examples.

Damian Green: So far the hon. Lady has produced examples that would specifically not be covered by this law at all.

Jenny Chapman: Yes, because it is very hard to find examples of where householders have been prosecuted. This is the nearest we can get. If the Minister had answered our questions in the first place we would not have had to go through all this rigmarole. The first five examples were all householders or places where the household is attached to the place of work. Those would be affected by the clause. We have been unable to find prosecutions under the current law for householders. This is what we have got. We have a householder who lay in wait for a burglar who tried to burgle his shed. The householder shot him in the back and that led to a prosecution. I made a difference that he lay in wait, and the fact that the shotgun had not been licensed also made a difference. We need to understand what difference it is we are being asked to agree to. As it stands, there does not seem much point in voting either way, as it is not going to make any difference. We need the Minister to clarify the difference that the law will make. That is all we want to know; it is not hard.

Damian Green: I have said at some length—indeed, I have responded to many interventions—that these provisions provide an extra level of protection that is not currently available for householders in the particular and terrifying circumstances of finding a burglar in their home. As my hon. Friend the Member for North West Cambridgeshire eloquently pointed out, it is a change that is not only necessary but welcomed by the vast majority of the public. I therefore commend the clause to the Committee.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

10 am

Clause 31 ordered to stand part of the Bill.

Schedule 15

DEALING NON-CUSTODIALLY WITH OFFENDERS

Jenny Chapman: I beg to move amendment 86, in schedule 15, page 262, line 2, at end insert—

(za) have regard to the need to promote rehabilitation,'.

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

Amendment 87, in schedule 15, page 262, line 8, leave out 'exceptional'.

Amendment 92, in schedule 15, page 262, line 19, at end insert—

5 (1) The Secretary of State shall periodically publish the outcomes of community orders awarded by each criminal court in England and Wales, where "outcomes" is defined as the number and classification of re-offences recorded for each offender sentenced by the court, following their sentence.'.

Jenny Chapman: Our debate now should be slightly less contentious, but hopefully it will have slightly more purpose. This group of amendments would change schedule 15, which is on dealing non-custodially with offenders. Amendments 86 and 87 would alter part 1 of the schedule, which deals with community orders. I want to take the opportunity to look at this part in order to tackle some confusion and perhaps do a little myth-busting of the Government's proclaimed innovation in this area. I hope that the Minister will be able to demonstrate that I am wrong, but I fear that we are seeing an overselling of something that is not actually a great change.

Part 1 places an obligation on a court to include in a community order at least one requirement imposed

"for the purpose of punishment".

So far, so good. That neatly allows the Government to lay claim to the word "punitive" and claim that they have greatly toughened up community sentences. However, if we look for actual change, there really is none. The Government are arguing that a court should consider the need for punishment in sentencing, but that would not be a change at all. The Minister will know that punishment must already be considered in every case by every court as the first statutory purpose of sentencing. So we are slightly at a loss as to the need for this measure.

Another point that shows how the measure is meaningless is that the Government are not actually offering courts any new, innovative punishments to pick from. This is a missed opportunity. We waited a long time for the Government's ideas on community sentences to materialise, but we have found that they do not have any. The list of orders that courts can use for sentencing is exactly the same, with the exception of a provision on alcohol. There is nothing new at all, which really is a disappointment. The proposals on alcohol are still being piloted, so we do not even know whether they will emerge as being available for sentences in the long term.

One assumes that what must be different is the way that these tools can be used. The Government note that what they would suggest as punitive requirements are, in the main, community payback, curfews or a fine. However, the Bill does not specify what is and is not considered punitive. A court could look down the 13 components of a community order and just decide that a drugs order or some sort of tagging—whatever it wants—can be punitive, which does not change sentencing at all. In fact, the explanatory notes specify that this is to be for the discretion of the court, exactly as it is currently:

"New subsection (2A) does not set out which requirements fulfil the purpose of punishment; this will be for the court to decide in all the circumstances of the particular offence and offender before it."

So our question is: what is new?

We should perhaps give some credit to the Secretary of State for recognising what most people already knew, which is that the best punishment for one offender may not be the best for another, and that a court's discretion is paramount to effective sentencing. However, we must ask what effect this new part actually has, because if a court can consider any requirement it passes down to be punitive, where is the great change to sentencing policy? We do not see it. Considering that courts are already—rightly—bound to consider the need for punishment, and pass a sentence that is appropriate to the offender and the seriousness of the offence, what is different about the Government's current proposals? It is a slightly uncanny repeat of the self-defence proposals we have just debated, and unfortunately it seems that this duty is more soundbite than sound policy.

If the duty does add something to the mix, is the Minister not concerned that what it actually adds is mostly more confusion? The courts will not be certain as to what exactly is expected of them, and how far their own power of discretion goes. As an example—Opposition Members like examples; we think they are helpful—at what point does the duty dictate that a fine must be imposed? Is it in every case in which a court does not impose unpaid work or a curfew, or is it up to the court to decide where a fine is appropriate? Can banning a violent offender from drinking alcohol be classed as primarily punitive, as well as a rehabilitative measure? I do not think many of our constituents would class that as punitive. What regard should the court have to the other four duties of sentencing, in light of this new duty? Our amendment seeks to help the Government address some of the detail of the proposal.

On rehabilitation, amendment 86 addresses the concerns over the effect the duty might have on other responsibilities of sentencing. On this side, we want to see community sentences that are most certainly tough. We are very

[Jenny Chapman]

concerned about the lack of community confidence in non-custodial sentences. They must be robust, and they must be effective. The aim and title of the Government's consultation was "Punishment and Reform: Effective Community Sentences." We just do not see any evidence of that in the Bill itself.

The Secretary of State concludes his foreword to the Government's proposals with the observation:

> "Debates on criminal justice are too often framed as a choice between punishment or rehabilitation. But the truth is, this is a false division. Any sensible system needs both".

We completely agree with that, but the Bill does not reflect that at all. We are being asked to agree that courts must sentence to a punitive element of a community order without actually saying what that might be. It seems that sentences could be much less punitive as a result, and would not be required to include a rehabilitative element. We think this is an oversight; would the Government consider including it as we suggest?

Both the Secretary of State for Justice and the Prime Minister have made much of their determination to lead on never knowingly underselling themselves as a rehabilitation revolution in the criminal justice system. However, our amendment raises the question of where in the Bill this revolution is, because again this schedule is at best a missed opportunity. The Government really should be able to do better after thinking about this for two years. This clause was only included after it had gone through the other place, I think because Ministers were at a loss as to what they wanted to do, and have come up with something that really does not do very much at all. They only came up with it at all because they had to fill a gap left in the Bill.

The rehabilitation element that we ask for in amendment 86 is, as the Government claim to recognise, a fundamentally important aim of sentencing. That is because it provides for the vital aim of the protection of the public. The purpose of sentencing is not to repeatedly punish an offender; we want them punished once and once only. We need to punish them properly once, and prevent them from committing crimes again. That is the whole point of the process. What we want is not just better punishments, but less crime and fewer victims.

The Government's impact assessment admits that we do not know the impact of substituting other requirements with unpaid work or a curfew, and it recognises that there is a risk that reoffending rates may change. Is the Minister concerned about the effect that the duty imposed by part 1 will have on a court's ability to effectively sentence for rehabilitation as well as punishment? What impact does he believe the new duty will have on the relationship between the five statutory sentencing duties, including rehabilitation and reparation to victims, and the court's explicit consideration of each? Does the Minister believe that a court should have regard for the need to promote rehabilitation when sentencing, as our amendment suggests?

If the Government believe that both punishment and rehabilitation are key to ensuring we protect the public and are tough on crime, which is what they have always said, why does only one of them make it on to the face of the Bill? It seems that the Secretary of State would like credit for supporting both, but the Government are not really doing either. As I have tried to explain, although the Bill states that courts must have a punitive element, it does not say what a punitive element is, and there are still the same 13 sentencing options in community orders, so there is actually nothing new that a court can do after the Bill is enacted.

Amendment 87 addresses the question of the exemption to the duty. It is a probing amendment to seek clarity. The Bill provides that the duty to include a punitive element does not apply in exceptional circumstances, where a court considers that the imposition of a punitive element or a fine would be unjust. Will the Minister advise us what "exceptional" means? An exemption has been included following agreement among consultation respondents that the duty would not be appropriate in the sentencing of certain offenders. Perhaps that is what the Government are getting at. If that is the case, we need to understand. Perhaps it refers to people with mental health issues or learning difficulties, which are not exceptional in the prison population—if anything, they are distressingly common.

If the circumstances of an offender mean that it is not in the interests of justice to apply the duty, does that mean that the circumstances are exceptional or not? Can the Minister shed some light—without using examples if he does not want to—on when a court would or would not consider a case to be exceptional? Would it be able to take into account relevant factors such as serious learning difficulties, a personality disorder, or ill health? Is that what he intends? Such situations are not exceptional.

On amendment 92, we are concerned about the lack of confidence in sentencing generally, but mostly in community orders. The public do not see them as a suitable punishment in many of the cases where they are awarded. We want the Government to consider publishing the outcomes of sentencing decisions by courts. There is very little transparency, and it is difficult to assess the performance of different courts and the different decisions that are made across the country. We know that it is a difficult thing to do and there are many factors to take into account. However, we note that such things have been done for many years in areas such as health and education. They have been found very useful by decision and policy makers, so they may help to improve the outcomes of decisions taken in court.

We already measure how long it takes for a case to be heard, how many cases are adjourned and how many witnesses have not turned up, but we are interested in outcomes by court, and the outcome that we are particularly interested in is reoffending. I look forward to the Government's response to our probing amendment.

10.15 am

Paul Goggins (Wythenshawe and Sale East) (Lab): I want to follow my hon. Friend's excellent speech and focus my remarks on amendment 87. My hon. Friend has made some important points and posed some interesting questions, and I am interested in the Minister's response.

I am not squeamish about the idea that community punishments should be punitive. If our constituents are to have confidence in community sentences, they need to be assured that punishment will form part of them. In principle, therefore, I have no problem with the direction of travel that the Government are taking. I have one difficulty with the proposals, however. Proposed

new subsection (2B), which provides the exception to the rule, to section 177 of the Criminal Justice Act 2003 shows that the Minister has recognised that difficulty. Normally, he expects that a sentence should have a punitive element, but he accepts that in some circumstances that would not be justifiable or appropriate.

The problem is the word "exceptional", which is rather superfluous, and which promotes a certain concept or perception rather than anything of substance. Who is to define what is meant by exceptional? In my view, the sentencer should determine what is exceptional, and I sense that the Minister is trying to interfere and stray a little further than he ought. If we were to ask our constituents whether learning disabilities and difficulties were exceptional, many of them would say yes, but between 20% and 30% of offenders who come before the courts have learning disabilities or difficulties. If we were to ask our constituents, "Are mental health and emotional well-being difficulties exceptional?" many of them would say that they are, but a third of people sentenced to prison fall in that category. Many of us may regard personality disorders as exceptional, but surveys of sentenced prisoners show that 62% of men and 57% of women who are sentenced to prison have personality disorders. If those conditions are exceptional in the common view but they are not exceptional among offenders, proposed subsection (2B) may be honoured more in the breach than in actuality.

I encourage the Minister to drop the word "exceptional", because it is not necessary. I have no argument with the idea that a community sentence should have a punitive element, provided that sentencers can choose not to go down that road if they judge it to be inappropriate in a specific case. All I am saying is that the Minister should not try to circumscribe such cases but should leave the decision to the sentencer. I urge him to think carefully about leaving "exceptional" out. In practice, the outcome would probably be the same, but without some kind of deception being played on people. It is for sentencers to determine such matters, and I hope that he will leave the decision to them.

Damian Green: I am grateful to the hon. Member for Darlington and the right hon. Member for Wythenshawe and Sale East for their speeches. Let me deal with the amendments in order, and I hope that this will answer the points that both Members have made. Amendment 86 aims to ensure that the court has regard to the need to promote rehabilitation, and I assume that the purpose behind the amendment is to ensure that punishment does not come at the expense of rehabilitation. The Government have repeatedly said this before, but I am happy to reassure the hon. Lady and the Committee that we do not intend anything in the provision to jeopardise the prospect of rehabilitation for offenders. The evidence shows that community orders can, in the right circumstances and if managed properly, be highly effective at tackling the causes of offending. The Government are clear that we need to build on the reductions in reoffending rates in recent years and not put them at risk. That is why we are proposing to retain section 148(2A) of the Criminal Justice Act 2003, which provides that the requirement or requirements, whether punitive, rehabilitative or both, imposed as part of a community order should be those that, in the court's opinion, are most suitable for the offender.

I wish to make it clear that, as a result of those provisions, that requirement would, in future, be subject to the duty to impose a punitive element, but that does not change the fact that the courts will still, having decided on a punitive requirement, have to ensure that, if it were combined with another requirement, the combination is the most suitable for the particular offender before them. Section 177(6) of the Criminal Justice Act 2003 requires courts to consider, when imposing two or more community order requirements, whether they are compatible with each other, given the circumstances of the case. Again, we do not intend to change that requirement.

Jenny Chapman: Can the Minister explain what a punitive element is?

Damian Green: I am coming to that.

In short, the provisions will not prevent courts from imposing requirements that are focused on the offender's rehabilitation or from imposing a combination of requirements that is most suited to the offender's needs. While accepting the spirit in which the amendment has been tabled, I believe that the existing statutory framework already provides adequate safeguards in that regard. The Bill, as drafted, gives courts considerable flexibility to impose a community order requirement to fulfil the duty to include a punitive element, so long as they can be confident, on the evidence before them, that the requirement will genuinely prove—

Jenny Chapman: Will the Minister give way?

Damian Green: It would help the hon. Lady if I could finish my sentence. I shall explain what she wants to know.

The Bill, as drafted, gives courts considerable flexibility to impose a community order requirement to fulfil the duty to include a punitive element, so long as they can be confident, on the evidence before them, that the requirement will genuinely prove to be punitive for an offender. While courts will be required to determine whether the circumstances of the offence and the offender justify imposing a requirement for the purpose of punishment, they will still have to weigh that against the relevance of other purposes when determining the overall sentence.

Jenny Chapman: I really want to know what a punitive element is. At the moment, it is not a curfew or a fine, and courts understand that, but am I right that in the future a court will be able to say that any one of those 13 requirements is punitive? Is not that misleading because, on the one hand, the Government are saying that each community order will have a punitive element but, in actuality, the courts could be making orders that are far less punitive because they can say whatever they like is a punitive element? Does not that pose a risk of further undermining public confidence in community sentences?

Damian Green: No, I do not agree. The provisions will ensure that community orders contain a recognisably punitive element, while ensuring that courts retain the flexibility to tailor community orders around offender circumstances. That is precisely why we amended our original consultation proposals.

Jenny Chapman: Will the Minister give way?

Damian Green: I will give way in a moment.

Courts should be required to include specified elements as we recognise that, depending on the circumstances, all of the existing 13 community order requirements could be punitive for a particular offender. It has to be for the court to decide which of the elements would be punitive for an individual offender and then decide that at least one element of a sentence is punitive in that circumstance.

Jenny Chapman: But the Minister said, "recognisably punitive". Recognisably by whom? Where does the punitive element come in to an order that might include a drug or alcohol order? Who will say that that is punitive? Again, the provision is nonsense. It will not change matters. If anything, it will undermine public confidence in community orders and ironically could make them less punitive.

Damian Green: The defendant would recognise, the court would recognise and then the wider community would recognise. The hon. Lady accepts that 13 different types of order can be made. In different cases, different people will find them punitive. Fines or curfews will be punitive for different people, and the court has to decide that, as long as there is a recognisably punitive element. Nothing in the requirement prevents the court from imposing a single requirement that fulfils multiple purposes of sentencing or from imposing multiple requirements to meet multiple purposes. As long as the courts are providing a recognisably punitive element, we are not seeking to circumscribe them.

Amendment 87 would widen the circumstances in which a court might choose not to impose a punitive element in every community order. The Government are well aware that offenders who receive community orders are a diverse group, with wide-ranging characteristics and personal circumstances. Nobody disputes that community orders should take account of those needs and circumstances. We also agree that each sentence should be tailored to the offender and, to the extent possible, seek to address the causes of their offending. That will not change, which is why the Government have embarked on such a wide-ranging programme of reforms to transform rehabilitation.

The rehabilitation of offenders, however, is just one purpose of sentencing. Although trying our best to reform offenders is critical, expecting them to face punishment is legitimate. It is not enough to say, as some argue, that the sentence, in and of itself, is punishment enough; we owe it to society and particularly to victims to ensure that offending is adequately sanctioned. Let us not forget that community orders are handed out for offences that are not inconsequential, and the harm done can be very real. We are talking about bodily harm, burglary and similarly serious offences and regrettably, more often than not, repeat offenders. Given that, it is right that exceptions to the rule should be tightly drawn.

To answer the point made by the right hon. Member for Wythenshawe and Sale East, the Government's view is that the existing community order framework gives courts and the probation service significant flexibility to make reasonable adjustments to requirements to fit the circumstances of an offender. For example, the hours of a curfew can accommodate the imperatives of an offender's life, or the type of work involved in community payback can be adjusted to suit an offender's physical or mental health. The provisions we are introducing do not alter that flexibility.

Given all that, the Government believe that removing the exceptional circumstances provision would dilute the proposal so much as to defeat its purpose. That is why proposed new subsection (2B) of section 177 of the Criminal Justice Act 2003 has a tightly defined threshold of "exceptional circumstances". In those circumstances, removing the word "exceptional" is little more than a wrecking amendment.

Jenny Chapman: I would call it not a wrecking amendment but a probing amendment. We want to understand the Government's proposal better. Are 20% of cases exceptional? Or is it 5% of cases? I do not want to press the Minister to give an example, but what does "exceptional" mean? Nothing he has said has made us any the wiser.

Damian Green: "Exceptional" means the exemption is tightly drawn. Courts will need to consider not only whether there are exceptional circumstances in a case but whether those circumstances mean including a punitive element in the sentence is unjust.

Steve McCabe: Will the Minister give way?

Damian Green: May I finish my explanation?

I almost regret to say this, because I suspect the Opposition will not like it, but, as ever, whether there are exceptional circumstances is a decision for the court in each individual case. If we took the totality of the responses to the consultation and included them all as potentially exceptional circumstances, they would not be exceptional because different people have said that the exemption could potentially apply to offenders with mental health issues and learning difficulties that prevent them from understanding the sentence through to those unable to carry out the requirement because of poor health or addiction and those with personality disorders, or low maturity in the case of young adults. Courts will have to weigh up in each category whether a punitive element can be imposed that takes account of an offender's circumstances, or whether those exceptional circumstances present such issues that imposing punishment would be unjust, which is the key element.

Steve McCabe: As we will not know what is meant by "exceptional" before the Bill is passed, will there be an expectation that the courts, when they make a decision to exempt someone, will give the reasons why they regard that person's circumstances to be exceptional and, therefore, worth an exemption? At least that way a body of case law might develop.

10.30 am

Damian Green: Yes, that is exactly what will happen. Having an exceptional circumstances clause is not unusual. Inevitably, in each area such a clause is used, a body of case law builds up, as the hon. Gentleman says. I point the hon. Member for Darlington and others to the necessity of avoiding injustice in sentencing.

Amendment 92 places a duty on the Secretary of State to publish reoffending data.

Paul Goggins: I am grateful to the Minister for giving way before he moves on to the next amendment. I acknowledge that if "exceptional" is taken out of proposed section 2B, it may be necessary for him to redraft paragraph 2 overall, but this is not a wrecking amendment. I am troubled that it would have to be an exceptional case for it not to receive the punitive element. There may be cases, however—*[Interruption.]* I am sure that the Minister will want to listen carefully to my point—

The Chair: Continue, Mr Goggins.

Paul Goggins: It is a rather important point, because if a sentencer is faced with a set of circumstances in which a particular individual is not exceptional, because they have learning disabilities and mental health problems, but putting the punitive element in would not be appropriate, the sentencer will be in a difficult position. That is the point I am putting to the Minister, and I ask him to reflect on it. It may not be an exceptional case —there are many people who go before the courts who have personality problems, addictions and difficulties —but the punitive element might not be appropriate. I ask him to reflect on the difference between appropriate and exceptional. I urge him, rather than to just have a robust read-out of the justification for his policy, to reflect and come back on Report with a redrafted paragraph 2 that takes account of that problem.

Damian Green: I take the right hon. Gentleman's points very seriously, because he has done a lot of good work in this area. One of the reasons why I went through all the potential reasons for taking a case as "exceptional" in the consultation is because if we included all them all, it would not be exceptional, because it would cover a significant proportion of the cases that come before the courts where that type of sentence might be appropriate. The virtue of having an "exceptional" exemption, rather than merely saying to the courts that the sentence should be appropriate, which is slightly motherhood and apple pie, is precisely to avoid the legitimate point made by the hon. Member for Darlington about something needing to change as a result of the provision.

The mandatory inclusion of a punitive element, whatever it might be—it will be different in individual cases—is precisely the change that we want, so as to increase public confidence in community sentencing. My fear is that what the right hon. Gentleman wants would either mean that nothing changed or that public confidence in the efficacy of community sentencing was reduced, precisely because there would be more sentences where there was no obvious punitive element. I appreciate his point, but it does not quite take the trick, if I can put it like that.

Amendment 92 would place a duty on the Secretary of State to publish reoffending data for every offender to whom a particular court has given a community order. In contrast to amendment 87, I support the spirit in which amendment 92 is intended. I take the hon. Lady's point that she did not intend it as a wrecking amendment. The sentencing framework can be complicated for victims and the public to understand, and too often they do not find out about the impact of a particular sentence. It is absolutely right that we provide information to the public about the effectiveness of community orders in a way that is meaningful to them. That is why the Government are making radical improvements to the availability and accessibility of sentencing information for the public. A single interactive website, open.justice.gov.uk, allows members of the public to look at reoffending rates and the numbers of repeat offences for offenders serving community orders and other sentences in the community, broken down to local council level. It also gives information about the numbers of community orders and other sentences imposed at individual court level. All the data sit alongside the information, in plain English, explaining how sentencing works and the meaning of various terms used in the justice system.

For those with an interest in detailed data, for example criminal justice practitioners and academic researchers, we also publish an annual data set that gives anonymised information about reoffending rates for every offender given a community order or other sentence served in the community. The data are broken down by gender, age and the probation trust dealing with the offender, and give information on both whether they have reoffended and, if so, the number of reoffences.

Although the data do not quite break down to the level envisaged by amendment 92, that is solely to avoid the chance of individual offenders or victims being identified. Indeed, the amendment could breach data protection safeguards by requiring the publication of such a detailed level of information.

Jenny Chapman: There is an argument about what may be published for public consumption, but in local government, although information is recorded that might not be published publicly, it is already shared among authorities, the Department for Communities and Local Government and the Department for Education—for example, regarding exclusions from a school. It would be easy to identify the child concerned, if someone wanted to. I therefore find it a little hard to take that the same approach cannot be at least considered for the criminal justice system.

Damian Green: Clearly, there is a boundary at every point where the provisions of data protection cut in—indeed the provisions of common sense. For instance, it would be slightly alarming if the fact that an individual child was constantly truanting became publicly known, because that would make them more vulnerable.

I am extremely keen on the transparency and availability of information. As I have just said, the Government have made considerable strides in that area. I do not agree with the hon. Lady that amendment 92 is necessary, given our strong commitment to publish and explain information about reoffending at local level. It is part of a much wider range of work the Ministry of Justice is carrying out to open up access to information about the justice system, for example linking the outcomes of cases to information on the police.uk website and creating a justice data lab to give providers of services to offenders reoffending data relevant to the groups with whom they are working.

There is a considerable programme of greater transparency and provision of information broken down to the local level, where it will be the most useful. I hope that in the light of those explanations, the hon. Lady will withdraw her amendment.

Jenny Chapman: I will withdraw the amendment—it is a probing amendment—after making the following comments.

For us, the amendment is about confidence in the system. There is a danger in the way in which the Government are going about the matter. From one side of their mouth, they are saying to the public, "We are going to make community sentences more punitive," while from the other side, they are saying, "Actually, we are not going to do anything different. Carry on as you are. You do what you like. In fact, we now have more discretion than before. There is nothing new in the provision whatsoever." That is in danger of being mis-sold by the Government, and they will be found out. Public confidence will not improve; if anything, it will decline as a result.

We have waited two years for the Government to get around to doing something on community sentences, and what they have come up with is pitiful. We will withdraw the amendment, but the Government should have done an awful lot better with the time, talent and expertise they have at their disposal.

Regarding the publication of data, yes, one of the reasons for our amendment is transparency, so the public can see what they are paying for. We recognise the good work that the Government have done on that in recent months. The data lab idea looks great, and I am interested and quite excited by it, because it will benefit the system as a whole.

However, the other reason for wanting data to be collected is not necessarily for public consumption. It is about performance managing the process and the people making decisions within it. For example, 10 or 15 years ago, it would have been unthinkable for an individual surgeon's outcomes to be recorded, published and available to patients, and for us to see who was doing the best work and to intervene when problems arose. We have nothing like that in the criminal justice system. One reason for amendment 92 is to enable a similar approach to be considered.

The Minister says he is concerned about identifying a child who is truanting from school, but that is not the point. Such things are recorded and shared among authorities, as they are in local government, so that improvements can be made and scarce resources allocated properly. It is not unheard of; it can be done. We are not worried about data protection in this instance, and I would be grateful if the Minister continued to consider the matter, as it is something that Labour Members would look to introduce should they form a Government. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Paul Goggins: I beg to move amendment 100, page 262, line 24, schedule 15, leave out 'activities'.

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

Amendment 101, page 262, line 27, schedule 15, leave out 'restorative justice requirements' and insert

'participation in a restorative conference'.

Amendment 102, page 262, line 28, schedule 15, leave out 'justice' and insert 'conference'.

Amendment 103, page 262, line 29, schedule 15, leave out 'an activity' and insert

'a meeting or series of meetings'.

Amendment 104, page 262, line 33, schedule 15, leave out 'and'.

Amendment 105, page 262, line 36, schedule 15, at end insert 'and

(d) which is facilitated by a restorative justice practitioner whose role is to prepare for, facilitate and follow up the meeting.'.

Amendment 106, page 262, schedule 15, leave out lines 37 to 42 and insert—

'(3) The victim is entitled to participate in any meeting which constitutes or forms part of a restorative conference.

(4) The restorative justice practitioner may allow any other person or persons—

(a) to participate in any meeting which constitutes or forms part of a restorative conference, or

(b) to attend any such meeting for any purpose specified by him including to provide additional information or to act as a supporter of the victim or the offender if he considers that their participation or attendance for that purpose would assist the process of restorative justice.

(4A) Participation by any person in a restorative conference shall require the consent of that person.

(4B) The Secretary of State may make rules about the procedure of restorative conferences.

(4C) Without prejudice to the generality of subsection (4B), rules made under this section may, in particular, make provision—

(a) specifying the circumstances under which the court should consider deferral and imposition of a restorative conference requirement,

(b) specifying which persons may act as restorative justice practitioners,

(c) specifying what training and accreditation is required for the registration of restorative justice practitioners and the standards they will work to,

(d) conferring or imposing functions on restorative conference facilitators (which may include power to exclude from a meeting constituting or forming part of a restorative conference persons otherwise entitled to participate in it),

(e) about the period within which restorative conferences must be completed, and

(f) about the information that must be returned to the court including the participation of the offender, a report on the restorative conference, its outcome and any action which the offender has agreed to undertake.

(4D) Rules made under this section are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument, and accordingly section 5 of the Statutory Instruments Act 1946 (c.36) applies to such rules.

(4E) Without prejudice to the generality of section 1(5)(a), where the passing of sentence has been deferred the court may include in a community order or in a youth rehabilitation order an activity requirement—

(a) requiring the offender to undertake any action to which he has agreed in a restorative conference, or

(b) where the victim has agreed to participate in a meeting constituting or forming part of a restorative conference at a subsequent time, requiring the offender to participate in that meeting.'.

Amendment 107, page 262, line 43, schedule 15, leave out 'justice' and insert 'conference'.

Amendment 108, page 263, line 1, schedule 15, leave out 'activity concerned' and insert 'conference'.

Amendment 109, page 263, line 2, schedule 15, at end insert—

'(5A) A restorative conference requirement may be imposed whether or not the court considers that there is a real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

(5B) A restorative conference requirement may not be imposed unless the offender entered a plea of guilty to the offence.'.

Amendment 110, page 263, line 4, schedule 15, at end insert—

'(7) In this section "participation" may include a victim's entitlement to participate by teleconference, video conference, or having another person represent their views to the offender on their behalf.'.

Paul Goggins: There is growing interest across the criminal justice system in restorative justice. There are increasing numbers of police officers trained in restorative justice techniques. Many of the relatively new neighbourhood panels that have been established are using RJ to deal with low-level offending and antisocial behaviour. Provision for the victims of more serious offences remains very limited. The Bill presents an opportunity to put restorative justice on a strong statutory footing for the first time in England and Wales.

Research trials conducted by the Home Office in 2003-04 examined the use of restorative justice with adult offenders and their victims, both pre and post-sentence. The offences committed included burglary, robbery and violence. Interestingly, the research demonstrated that RJ can reduce reoffending by between 14% and 27%, as well as delivering 85% victim satisfaction.

Overall, 70% of the victims said that RJ had been offered to them at "about the right time", but 21% said that they wished it had been offered earlier. These proposals would provide the earlier opportunity that those victims would have preferred. The legislation is certainly needed. I was staggered to discover that there has not been a single case of pre-sentence restorative justice since the research trial closed in 2004.

The Committee can gain an insight into what can happen in the restorative justice process. I know many Members will have had some dealings with restorative justice. It is instructive to look at some of the case studies in the Home Office research, and I will share one example with the Committee.

John was robbed by one man while another struck him across the face with a knife. Semu was arrested for the robbery. By the time Semu was due to be sentenced, John's life had changed dramatically. He suffered panic attacks, and had sleeping difficulties and frequent mood swings. His family had been forced to move to a completely different area. John and his wife Sam agreed to take part in pre-sentence restorative justice with Semu, his mother and brother.

During the RJ, John and his wife described what they had been through since the attack. At that point, Semu's mother, in tears, apologised to Sam, and Semu's brother described the shame that his family felt following Semu's behaviour. Semu had never before realised the wider impact of his actions and he apologised. Semu received a two-year custodial sentence, during which he completed a drug treatment course, which he had agreed to do as part of the RJ process. John, the victim, said the conference did him good, and helped both him and his wife to put the event behind them.

10.45 am

It is very interesting that, after the conference, John and Sam went back to the scene of the robbery for the first time without John suffering a panic attack. The importance of restorative justice is that it focuses on the victim and the needs of the victim. It feeds that into the sentence and the work that offenders must do to rehabilitate themselves and make sure they reduce the chances of future reoffending.

A report, "Facing Up To Offending: Use of restorative justice in the criminal justice system", published jointly in September 2012 by the inspectorates of constabulary, probation and prisons and the Crown Prosecution Service, investigated the use of RJ across the criminal justice system. The report's main finding was that while there were many local examples of good RJ practice, provision of restorative justice is inconsistent across the country, both in quality and in quantity. Through this legislation we can ensure that wherever restorative justice is offered to victims it is done professionally and effectively.

The amendments strengthen the legislative provisions for pre-sentence restorative justice. Those supporting the amendments intend to provide clarity, a firm platform for good practice, and strong safeguards for victims. In turn, I hope this will increase the confidence of the judiciary and help ensure that the legislation is fully implemented.

I am delighted that there is cross-party support for the amendments. I particularly welcome the support of the hon. Member for Enfield, Southgate, although I am sure the Committee understands that today he will be very busy outside this Committee. I very warmly welcome the support of my hon. Friend the Member for North Antrim, who I hope will have an opportunity to participate later and speak from his own experience of restorative justice, particularly in the youth justice system in Northern Ireland, where it has been implemented very effectively. My hon. Friends the Members for Birmingham, Selly Oak, for Middlesbrough and for Walsall South have signed my amendment, as indeed has my hon. Friend the Member for Darlington, on the Front Bench. I warmly welcome all that support. I am also very grateful to the Restorative Justice Council, and Lizzie Nelson in particular, for all the help I received in drafting the amendments. I know their dedication and professionalism is respected and appreciated by the Minister and his officials.

Everyone agrees with the Government's aim of placing restorative justice on a strong statutory footing. The purpose of the amendments is to provide greater clarity about the framework and the processes required to achieve the Government's aim. Without greater clarity I fear there is a real risk that the legislation will simply sit on the shelf. It has happened before; for example, restorative justice was briefly mentioned in the Criminal Justice Act 2003, but in effect it was almost a throwaway line about meetings between victims and offenders being an option for a community sentence. Eight years after the commencement of that Act, Thames Valley is the only area in the country to have actually used the legislation to provide restorative justice as part of a community

sentence. It really is time—I know the Minister agrees—to move restorative justice from the margins to the mainstream of our criminal justice system.

All the amendments I propose are based closely on the existing legislative provision for youth conferencing in the Justice (Northern Ireland) Act 2002, which is tried and tested legislation, with proven outcomes for both victims and offenders. Youth conferencing in Northern Ireland is delivering lower levels of recidivism, with 70% victim participation rates and 89% victim satisfaction rates. As well as my hon. Friend the Member for North Antrim, my right hon. Friend the Member for Delyn should also take pride in those achievements, because he was formerly the criminal justice Minister for Northern Ireland, and oversaw the setting up and running of the conferencing system.

Amendments 100 to 102 replace the word "activities" with "conference." This provides a delivery model for restorative justice that has the strongest evidential base. Amendment 103 defines a restorative conference as a meeting or a series of meetings. It is important that when the court defers sentence for RJ, sentencers know that a properly managed engagement between the victim and the offender will take place, rather than a confused rush to a series of unspecified activities.

The review of the Home Office research trials found that conferencing led to very high levels of victim satisfaction and reduced reoffending. The Government recognised the strength of that evidence in the new National Offender Management Service commissioning guidance, and in their efforts to train all youth offending team staff and volunteers to conference facilitator standard. I do not feel that I am pushing at a closed door; the Government are already using the findings of that research to inform their decisions and commissioning arrangements. Conferencing allows the victim and the offender to meet face to face with supporters and a trained facilitator to look at three issues: what happened, who was harmed and what needs to happen to repair the harm?

Proposed new subsection (3) in amendment 106 would entitle victims to participate in any meeting that forms part of the restorative conference. This is an informed provision. It is taken directly from the Justice (Northern Ireland) Act 2002, and it is the key legal underpinning for the high-quality work of engaging and preparing victims carefully for their involvement in the restorative justice process. It contrasts with the legislation for referral order panels, which states that the victim "may be invited" to attend, which in too many cases has led to poor practice in victim contact work. It is interesting that, on average, victim participation in referral order panels across the country is just 13%. In fact, that figure masks a wide divergence of performance in different youth offending areas; some of the best YOTs have 60% victim participation, while others have none.

Providing victims with entitlement to participate would make it absolutely clear in the primary legislation that the process is about providing victims of crime with a voice, the chance to tell the offender about the real impact of their crime, the opportunity to have the harm they experienced taken seriously by the offender and the opportunity to have their questions answered. Good victim contact work also includes such simple, practical things as ensuring meetings happen at a time and place, and in a way that suits the needs of the victim.

Proposed new subsection (4) in amendment 106 would make it clear that the restorative justice practitioner may invite others to join the restorative conference. Research shows that additional participants—usually family members of the victim or the offender—can make a positive contribution to the process. That was found in my example of John—the victim—his wife, and Semu, his mother and his brother. Sometimes the victim finds it hard to speak about the harm caused to them, and the support of a parent, a brother or a sister is invaluable. Their participation can also allow the conference to recognise and address the harm caused to them as secondary victims of the crime.

Proposed new subsection (4A) would require the consent of all participants. The Minister will understand that consent is particularly important, and requires careful handling. Under the Bill as drafted, it is not clear who will obtain the consent of those involved or when consent will be sought. It is essential in my view that the restorative justice practitioner undertakes that task, and that is reflected in the responsibilities outlined in amendment 106. All available evidence shows that victim take-up is strongest when they are offered restorative justice by the person who will actually facilitate their meeting with the offender. The RJ practitioner can answer questions about the process, reassure the victim about their concerns and tailor the process to their needs. In short, the restorative justice practitioner is someone the victim can trust.

Leaving the issue of consent until after the decision to defer, which in practice would happen under the amendments, means that some cases may be returned to court because the victim's consent is not given. However, the evidence suggests that there is in fact a high take-up rate when it is the restorative justice practitioner who makes contact and seeks the involvement of the victim and all the other participants.

Proposed new subsections (4B), (4C) and (4D) would allow the Secretary of State to make statutory rules through secondary legislation that governed how restorative justice conferences are conducted. The rules would provide statutory guidance on a number of important issues, including the training, standards and accreditation required of restorative practitioners; their powers to exclude participants from a restorative conference, for example on safety grounds; and the time allowed for the completion of the restorative conference process. In Northern Ireland, it is set at four weeks, with 97% of cases returned to court within that period, and 70% of victims attend the conferences.

I am not necessarily arguing that the time be set at four weeks—clearly the Minister and his officials would need to think about what a realistic time scale would be—but the provision should not be left open-ended and there should certainly be a much speedier response than the six months allowed under the Bill as currently drafted. The guidance would provide clarity about the information that must be returned to the court following the restorative conference. That is, of course, a vital part of the process.

Proposed subsection (4E) provides clarity to the court about the requirements that can be made within a subsequent court order for activities that have been agreed at the restorative conference. They can include provision for the offender to participate in a meeting with the victim at a later date if that is something the

victim wants to happen. For example, in a case where the victim is not ready or able to participate in a conference within the deferral period, rather than applying for an extension to the deferral period, the court can pass a sentence with the RJ conference included as a requirement of the community order.

Amendments 107 and 108 mirror earlier amendments, substituting "activities" for "conference". Proposed new subsection (5A) in amendment 109 enshrines what is clearly the Government's intention, namely that deferral for restorative justice should be available to the court for any type of offence. The amendment is essential; otherwise the provisions for pre-sentence restorative justice will be caught within the general deferral guidelines, which allow deferral only for cusp of custody cases.

My understanding of the Government's intention is that RJ should be available to all victims of crime, of all offence types, whatever sentence the court may later impose. If the Minister looks back at the Home Office research, as I am sure he has, he will see that it involved the use of RJ post and pre-sentence for offences of a very serious nature. None the less, it showed the effectiveness of RJ and the RJ conference process.

The rules provided for in amendment 106 could exclude some offence types. I am sure that there will be concern that some offences are so serious that they would not qualify for a restorative process. For example, in Northern Ireland, murder, manslaughter and terrorism offences are excluded, and restorative justice cannot be used in such cases. In the rules and the guidance provided by the Secretary of State, it would be possible to exclude certain offences if they were deemed too serious.

I referred to the Home Office research trials, which included the very serious offences of burglary, robbery and violence. In those trials, almost all the offenders in the pre-sentence RJ cases went on to receive a custodial sentence, so the legislation needs to make it clear that RJ can be used in any type of case, including cases serious enough to warrant a custodial sentence.

Proposed subsection (5B) of amendment 109 requires that the offender must have entered a guilty plea for a restorative conference to be imposed. That would make it clear that the minimum requirement for an offender to show that they take responsibility for their crime would be the fact that they were prepared to plead guilty. It would also prevent the possibility of the restorative process being used when the offender denied all responsibility and put their victim through the trauma of a trial. Clearly, that would be inappropriate. The amendment would, however, allow for a guilty plea at any stage in the court process, including to a lesser charge than the charge for which the offender was originally prosecuted.

Amendment 110 clarifies the meaning of "participation" and allows for situations when the victim might prefer to take part in the meeting by teleconference or video conference, or by having somebody else such as a family member represent them at the conference.

11 am

I apologise for detaining the Committee for some time to explain the amendments, but there are a number of them. I have tried to set out the whole framework, which is not at variance with what the Government are trying to do; it would add substance to what the Government are trying to do. It is informed by people who are at the cutting edge of ensuring high quality in restorative justice, and it would complement and build on what the Government are trying to do. Taken together, the amendments offer a constructive proposal to ensure that the Bill provides a clear and robust framework for RJ, which I know that the Government want and that victims of crime need.

Ian Paisley (North Antrim) (DUP): I support the amendments tabled by my right hon. Friend and colleague. I want to make some brief comments about my own experience of restorative justice and what I witnessed of the process with my own eyes in Northern Ireland.

Confession is good for the soul, so I must confess to the Committee that I came to restorative justice as a complete sceptic. I am from the Hang 'em High Union, which believes that we must make sure that offenders really are punished and that they are seen to be punished. I had a Road to Damascus experience as a result of what I witnessed in the restorative justice processes that were embarked upon, encouraged, supported and led by the Police Service and youth justice agencies in Northern Ireland. The process started with a trial in Ballymena, in my constituency, which I attended with the Youth Justice Agency and the Police Service. I met victims and perpetrators of crime, and I witnessed the process at first hand. I saw difficult-to-reach teenagers, in particular, who had got away from themselves and their families and got away from being controlled. I saw those children and young people being brought back into a sense of responsibility, a sense of having a stake in the community and a sense of taking responsibility for their stupid and wrong actions, and acknowledging that they had done wrong.

Restorative justice is not a soft-touch option, and that must be made very clear. It challenges the individual to the core. It challenges them in their sense of value, it challenges them in their activities and it challenges them in their ethos. It goes right to the foundation of unpacking an individual, and it helps them to explain to themselves why they got into the circumstances they are in. The process then repacks them with values and an identity and, we hope, with a new outlook on life that will prevent recidivism. It will, we hope, ensure that they will not be constant offenders who start on the downward spiral from being a little pain to becoming a major problem to their community and to their society. It stops them, jolts them and shakes them back into where they should be as a sensible member of society.

My colleague is absolutely right. Restorative justice cannot be some haphazard, suck-it-and-see process. It has to be structured. There have to be clear lines of definition regarding who takes the lead in the process and what the expected outcomes are. The process needs to be marked against those challenges and those outcomes. That is why I support the amendments tabled by my right hon. Friend. It would be ironic if something very positive such as this emerged from the dreary steeples of Northern Ireland to affect the whole of this kingdom.

Jenny Chapman: It is a real pleasure to follow those contributions. I always enjoy listening to my hon. Friend the Member for North Antrim. He speaks with great passion and with the authority of having seen such work in practice. I am happy to give my support to the

[Jenny Chapman]

amendments tabled by my right hon. Friend the Member for Wythenshawe and Sale East. As we have heard, restorative justice is a valuable and, unfortunately, underused tool in our criminal justice system. We welcome that aspect of the Bill. We see it as an opportunity to make real progress.

The list of names that have been added in support of my right hon. Friend's proposals demonstrate genuine cross-party support for improvements in the provision of and access to restorative justice. We are trying to encourage that and give the Government confidence to press ahead and make sure that it is done properly. The amendments add much-needed clarity and detail to the Government's proposals. They provide for the right of victims to participate in any meeting that forms part of the restorative conference and for their entitlement to have other people present with them for support throughout the process.

It is important that the victim's experience is the focus of restorative justice provision. It can be an exceptionally beneficial service that asks and allows for an offender to make some reparation to their victim. Before seeking rehabilitative benefits in the case of the offender, the purpose must be to improve the victim's experience of the criminal justice system, and aid their ability to understand and deal with the experience that they have been subjected to. The quality of the service that we provide to victims is a concern. We can do these things well or badly. To do them badly is a waste of everyone's time and money and completely counter-productive for the victim.

On the Government's intention to provide for restorative justice to take place pre-sentence, I understand the benefits of moving quickly into the process for the victim, but it is not the timing itself that I have trouble with. We need to understand the potential for participation in restorative justice. We do not want that to be a benefit to the offender in terms of the sentence that they receive. Participation might be perceived to translate into a more lenient sentence for the offence. That is a concern for victims who participate in restorative justice post-sentence, when parole, for example, is considered. Many victims feel disinclined to participate, because they fear that their participation may encourage the Parole Board to take a more lenient decision in the perpetrator's case. We do not want the measure to be of any benefit whatever to the offender. We do not want it to act as a disincentive for victims to take part in the process, or as a perverse incentive for an offender who is not ready or willing to effectively engage in restorative justice to take part anyway, because they feel it would favour them in the sentence that they receive.

I have worked in prisons and delivered anger management courses to offenders. It is very easy for an offender to take part and be plausible, and act as though they are taking everything on board and taking it all terribly seriously, only to find that they are going through the motions to get their parole. Some assurance from the Minister that that is not the intention—I am sure it is not—would be appreciated.

The training and accreditation of those who will provide the service is clearly also vital to ensuring the safety and comfort of victims. If people are properly trained, supervised and supported in the delivery of restorative justice, some of my worries about disingenuous participation of offenders might be dealt with because, obviously, practitioners would be experienced in such matters, and that will ensure the safety and quality of the service. How and by whom the service is to be rolled out are issues that the Government have been quiet on, and we would like more information about that.

I welcome the amendments. They address a gap in the schedule's detail. I hope that the Government will agree to them and demonstrate their support not only for the need to increase the availability of restorative justice to victims, but the need to offer the highest quality of provision possible. I am pleased to back the amendments tabled by my right hon. Friend.

Damian Green: I pay tribute to the right hon. Member for Wythenshawe and Sale East for his significant contribution, both in his time as a Northern Ireland Minister and subsequently, to promoting restorative justice throughout the United Kingdom. As he said, the overall thrust of the amendments is to ensure that restorative justice is established throughout the criminal justice system and is available to victims and offenders at each stage of the justice process. That is exactly the Government's intention, and we are committed to ensuring that we achieve the objectives that underpin the amendments.

It is crucial, for example, that restorative justice is delivered to a high standard by trained professionals. Similarly, we want pre-sentence restorative justice to be available no matter what sentence the offender is likely to receive. As the right hon. Gentleman said, the amendments are inspired by the provisions for youth conferencing under the Justice (Northern Ireland) Act 2002. Where he and I might slightly part company is that I am not sure amendments in such a form are the best way in which to deliver restorative justice in England and Wales. They do not sit well with our delivery structures, which are based around local providers from the public, private and voluntary sectors delivering services for offenders, as he knows. We want those providers to have the discretion to innovate, in order to transform the way in which offenders are turned away from crime.

I fully recognise the need for minimum standards to be in place to support the delivery of high-quality restorative justice activities. However, we believe that non-statutory guidance for practitioners, alongside a system of accreditation and quality assurance led by the Restorative Justice Council, provide a lighter-touch and more flexible regime that will ensure high standards while freeing up providers to innovate. I am worried that if we set out a prescriptive scheme under primary legislation, we risk stifling innovation and the wider natural development of restorative justice within England and Wales. An overly prescriptive regime under the Bill could mean that we have to come back with amending legislation before new innovative restorative justice schemes can be implemented.

Therefore, while I agree with a substantial amount of what the right hon. Gentleman has said and, indeed, what others have said, including the hon. Member for North Antrim, I am not persuaded that the amendments represent the best approach in the context of England and Wales. The Government consider that that level of detail should be set out in guidance, which is easier to adapt as new ideas develop. Ultimately, providing for

that under guidance will provide us with significant flexibility to improve continually the restorative justice process.

The right hon. Gentleman and the hon. Member for Darlington asked several questions, such as when and how consent from a victim will be obtained. As it stands, the Bill is clear in that an RJ activity can take place only when the victim consents. For example, in new section 1ZA(3), the process of consent and when it is given is more appropriately dealt with under guidance. He asked about the entitlement for victims to participate. As drafted, schedule 15 already makes it clear that an RJ activity carried out pre-sentence has to include one or more of the victims involved in the case, and that the activity has to maximise the offender's awareness of the impact on the victim and give the victim the chance to talk about that impact.

The right hon. Gentleman also referred to the six-month deferral limit in the context of Northern Ireland. The amendments slot into the existing court powers to defer sentences for a range of purposes, and that is why there is a six-month limit. I absolutely accept his point about the need to take forward restorative justice as fast as possible, and nothing in these provisions requires a gap of six months; that is a maximum period only.

11.15 am

Steve McCabe: Is it the Minister's intention to make it clear in the guidance that six months is not the period that he intends should pass before the restorative justice process takes place?

Damian Green: As I have just said, I hope—the guidance will make this clear—that the process moves forward as fast as is practical. Six months is the outer limit, in line with other deferral processes in other legislation. I am happy to assure the right hon. Gentleman and others who put their names to the amendments that we are working closely with the Restorative Justice Council and other key partners to ensure that the supporting guidance will be detailed, substantive and cover the points raised by the amendments. That includes setting out: the training and accreditation that restorative justice practitioners will have to undertake to become registered; the fact that either the victim or the offender will be able to request restorative justice; and that restorative justice will take place only where both the offender and the victim agree to take part and have been assessed as fully able, willing and suitable to engage in a restorative justice activity.

On the important point about standards, the Northern Ireland experience highlights the need to have in place measures that ensure that restorative justice practitioners are working to a high standard. The Restorative Justice Council has a vital role in quality assuring restorative justice practice within the criminal justice system. Alice Chapman, who drove forward the development of youth conferencing within Northern Ireland, has been leading a review of the Restorative Justice Council. That independent review looked at what is required to ensure that the council is able to deliver its services on a large scale. Furthermore, the review will help us ensure that we have the right systems and processes in place for accreditation and standards to safeguard the needs of all victims. I cannot comment yet on its conclusions and findings as we are currently considering them, but I can say at this stage that they look promising and put us in a good place as regards restorative justice in England and Wales.

A second issue that I have with the amendments is that, by limiting restorative justice activities to participation in restorative conferences or meetings, they would reduce the scope of the available activities. Those restorative justice activities do not consist solely of direct meetings between offenders and victims. Some victims may not feel comfortable interacting directly with the offender. They may want to opt for written communication between both parties or the victim expressing themselves in other ways. Therefore the amendments could narrow the scope of restorative justice available to victims and offenders, and I am absolutely sure that that is not what the right hon. Member for Wythenshawe and Sale East intends.

Finally, some of the elements contained within these amendments are already provided for in the current provisions. For example, the provisions already allow courts to defer sentence for restorative justice to take place whether or not a custodial sentence is likely. Equally, courts can and do already specify that, where appropriate, restorative justice must take place post-sentence, as part of an activity requirement within a community order. In addition, the provisions do not prevent restorative justice taking place both pre and post-sentence as part of such a requirement.

I remind the Committee that respondents to the community sentences consultation expressed significant support for restorative justice to take place pre-sentence, so that victims and offenders can benefit from it sooner, which is precisely the point the right hon. Gentleman made, and argued that the gap in provision and in the use of restorative justice is in fact at the pre-sentence stage. That is why this part of schedule 15 focuses on pre-sentence restorative justice.

I should mention that the Ministry of Justice has recently published an action plan for restorative justice across the criminal justice system that takes into account the experience of Northern Ireland. It will help ensure that we increase awareness of restorative justice as well as improve our capability for delivering it. The action plan will ensure that there is a victim-led approach and a coherent vision of how restorative justice should apply across all stages of the justice process, including how we build local capacity within available funding and how we ensure a consistently high quality of delivery through accreditation and training standards. We have already started work with the Restorative Justice Council and other key partners to implement the action plan.

While I welcome and absolutely agree with the intentions underpinning the amendments, I believe that the provisions as drafted, together with guidance, quality assurance by the RJC and the measures in the action plan, will be the best way of delivering high-quality restorative justice in England and Wales. I hope that the right hon. Gentleman is reassured by that and will agree to withdraw his amendment.

Paul Goggins: Before I respond to the Minister's speech, I want to comment on the remarks made by my hon. Friend the Member for Darlington. She referred, quite rightly, to the danger of restorative conferencing

[Paul Goggins]

leading to softer and more lenient sentences. That is a fair concern, and she was right to raise it. I would not agree with that at all if that were to happen, which is why we need strong safeguards and restorative conferencing to be run in a professional way according to high standards.

Restorative conferencing should not lead to more lenient sentences, but to more effective sentences. In the example I have given, John, the perpetrator of a crime, had agreed to undergo drug rehabilitation as part of his two-year prison sentence, and that was deemed to be helpful. The sentence was more effective as a result of RJ, but not more lenient, because he went to prison for a two-year sentence. I hope that that offers my hon. Friend some reassurance.

At the core of RJ is the requirement to meet the needs of victims. That must be front and centre of any restorative justice practice. It is about the victim first, not about the offender first. The process needs to be overseen by restorative justice practitioners who are trained to a high standard. I hope that that responds to my hon. Friend's point.

I am deeply disappointed by the Minister's response. On Second Reading, he said that he was prepared to consider constructive suggestions on restorative justice. I am not saying that what I have proposed today is perfect, although I take some satisfaction that at least that he did not rely on the old argument that the amendment is technically flawed. That is normally the standard ministerial answer; if Ministers do not like an amendment, they describe it as technically flawed. At least the Minister spared me that.

I am deeply disappointed, because effectively, the Minister said that the way in which the Bill is drafted is fine and that the issues will all be sorted out by non-statutory guidance afterwards. That is all worthy, but he says that no changes are required at all of the legislation. I find that astonishing. I know that the Minister is genuine and committed to the process. The idea that the legislation could not be improved in some way to make clearer what the Government are trying to do is preposterous. If they really wanted to improve things, there would be an open conversation between us about how, between now and the debate on Report, the provisions in the Bill can be improved.

Many provisions in the Bill, as they are currently drafted, are unclear. There is no clear role for the person who will be responsible for managing the restorative justice process—the practitioner. There is no clear identification of the person who will seek the consent of those involved—the victim and the offender—or of the time at which that consent will be sought. Who will it be: a probation officer, a court officer or a police officer? The Minister was not able to say because his legislation does not say.

I also regret the fact that there is no provision in the Bill for the Secretary of State to make rules to govern the framework of restorative justice and the way in which it will be developed in practice. Such a framework is essential for the development of RJ if it is not to be a hotchpotch of local schemes that are made up as people go along. I agree with local innovation, which is important to have, because with innovation come new ideas and practices and a clear and strong commitment, but the process cannot just be left to local people to decide how to interpret it. There has to be some framework or standard. I am afraid that the Minister has failed to deal with that.

11.25 am

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

Adjourned till this day at Two o'clock.