PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CONSUMER RIGHTS BILL

Twelfth Sitting

Thursday 6 March 2014

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 161) 2013 - 2014

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 10 March 2014

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: †Mr David Amess, Sandra Osborne

† Baker, Steve *(Wycombe)* (Con)
† Chishti, Rehman *(Gillingham and Rainham)* (Con)
† Colvile, Oliver *(Plymouth, Sutton and Devonport)* (Con)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
Durkan, Mark *(Foyle)* (SDLP)
† Flello, Robert *(Stoke-on-Trent South)* (Lab)
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Glindon, Mrs Mary *(North Tyneside)* (Lab)
† Gyimah, Mr Sam *(Lord Commissioner of Her Majesty's Treasury)*
† Harris, Rebecca *(Castle Point)* (Con)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† McPartland, Stephen *(Stevenage)* (Con)
† McDonald, Andy *(Middlesbrough)* (Lab)
† Munt, Tessa *(Wells)* (LD)
† Newmark, Mr Brooks *(Braintree)* (Con)
† O'Donnell, Fiona *(East Lothian)* (Lab)
† Sandys, Laura *(South Thanet)* (Con)
† Willott, Jenny *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*

John-Paul Flaherty, Georgina Holmes-Skelton, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 6 March 2014

(Afternoon)

[Mr David Amess *in the Chair*]

Consumer Rights Bill

Clause 63

Contract terms which are or must be regarded as unfair

Amendment proposed (this day): 70, in clause 63, page 36, line 25, at end insert—

'(1A) Where a contract includes a term which is included in either Part 1 or Part 2 of Schedule 2 of this Act, the trader must draw to the attention of the consumer these terms and their rights to challenge these under this legislation prior to purchase.'.—*(Stella Creasy.)*

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Clause stand part.

Amendment 99, page 50, line 11, in schedule 2, after 'realisation', insert 'or management or delivery'.

Amendment 66, page 51, line 10, in schedule 2, at end insert—

'(14A) A term (including those within the scope of paragraph 22 of this Schedule) which has the object or effect of permitting a trader to increase the price of, or alter unilaterally any characteristics of goods, digital content or services during any minimum contract period or before the end of a contract of a specified duration without a valid reason or where it is reasonably foreseeable that the consumer would not be free to dissolve the contract without being disadvantaged.'.

Amendment 64, page 51, line 37, in schedule 2, at end insert—

'(21) A term which requires a consumer to pay a charge for or be liable for an element of a good or service that another party has also been charged for in the course of the same transaction.'.

Amendment 65, page 51, line 37, in schedule 2, at end insert—

'(22) A term which seeks to restrict the ability of a consumer to access information to enable them to ascertain whether the contract they are being offered could undermine their statutory rights.'.

Amendment 67, page 51, line 37, in schedule 2, at end insert—

'(23) A term which has the object or effect of enabling a trader to increase the price of the contract unilaterally without a valid reason and where the consumer is unable to—

(a) enter into a new regulated mortgage contract or home purchase plan or vary the terms of an existing regulated mortgage contract or home purchase plan with the existing mortgage lender or home purchase provider; or

(b) enter into a new regulated mortgage contract or home purchase plan with a new mortgage lender or home purchase provider.

The terms "regulated mortgage contract" and 'home purchase plan' have the same meaning as in the Financial Services and Market Act 2000 (Regulated Activities) Order 2001 as amended.'.

Amendment 68, page 51, line 37, in schedule 2, at end insert—

'(24) If the contract is for a financial service, a term that directly causes financial detriment to the consumer such that it can be seen to reasonably alter the capacity of the consumer to pay the costs of the contract.'.

Amendment 69, page 51, line 37, in schedule 2, at end insert—

'(25) Where the service provided is for an additional assistance service as set out in section 51, a term providing for charges unless the original provider of the service has approved this service and range of costs for its provision within which this charge is included.'.

Amendment 100, page 52, line 17, in schedule 2, at end insert—

23A Whether a consumer is able to dissolve a contract, in the case of contracts provided by any Government department or local or public authority, shall be decided by whether a reasonable person would consider that dissolving the contract should be possible.'.

Schedule 2 stand part.

Sheila Gilmore (Edinburgh East) (Lab): I am glad to have the opportunity to contribute to this important debate. Just in case members of the Committee are waiting with bated breath, I would like to tell them that I have been able to examine the dress that I bought—indeed I am wearing it—and establish that it was without flaw or fault in good time. Having promised my hon. Friend the Member for Walthamstow that I would wear it as soon as there was some sunshine, which I think we can say there is today, I can call it a successful, even if rushed, purchase.

Stella Creasy (Walthamstow) (Lab/Co-op): I think we ought to put it on record that the Committee thinks it matches my hon. Friend's blazer very well so it is a perfect accompaniment this afternoon.

Sheila Gilmore: I thank my hon. Friend for that comment. I have to say that they were not bought together, so it is quite serendipitous.

Unfair contract terms for consumers have a long history. Sadly, they do not always involve rogue traders and people who indulge in fairly sharp practices. The original purpose of putting into law provision about unfair contract terms went far beyond such businesses. Many businesses had what were perceived to be unfair contract terms tucked away in the notorious small print. Even quite large organisations were prone to using such terms, and that is why the legislation was required.

The hon. Member for Wycombe suggested that businesses surely want to retain their customers and do not want to engage in sharp practice.

Steve Baker (Wycombe) (Con): That is not quite what I said. I think the record will show that I said I would always seek to retain my customers and get referrals.

Sheila Gilmore: I stand corrected. Unfortunately, some businesses do not take a long-term approach, although perhaps they should. If they set up some service, they may see it as relatively short term and be willing to close it down and start up again as something else if they have to. So retaining long-term customers is not always in their eyes the most important thing. For a lot of firms it is important because they know that word of mouth is vital in building up their customer base. One dissatisfied customer who tells lots of other people about their experience is not good for the business.

Amendment 69 deals with copycat websites. They have received a lot of attention recently, and that is a good thing. Action is beginning to be taken. I am pleased to say that some have clearly changed their presentation. They carry little warnings saying that they are not the official Government website and that they provide other services. They still obviously want to tell people that they will get something extra from using their service, but at least warnings come up. That is useful. It shows the importance of constant pressure.

Some of the most obvious examples of such websites have for some time succeeded in convincing people who would otherwise consider themselves to be quite savvy. There is a fear that if we close down one, some other scheme will be thought up and used.

That is where legislation of a more general type that nevertheless homes in on certain issues is useful. If we simply say, either through regulation or through some form of enforcement, that such a website will be much curtailed—perhaps even banned at some point—and something similar but not exactly the same springs up in its place, the amendment would allow us to deal with that.

Before we broke for lunch, the example was given of a company purporting to help people get back benefits that they may not have claimed, or where mistakes had been made. Organisations' apparent ability to think up new ways of parting us from our money is considerable, but a clause of this kind applying not to a specific description, such as a copycat tax or passport service website, but to any form of service providing additional assistance, would allow such services to be challenged if the terms and conditions had not been met, where the original provider of the service had not approved it and where the range of costs was not clearly identified. Adding to the existing list of potential unfair contract terms is helpful.

Amendment 68 relates to contracts for financial services that cause financial detriment to somebody supposedly being helped, which is sadly all too common. People often have great need to be helped out of debt problems, for example, and it is good that they can get help, but unfortunately, there have been a number of examples of people signing up to an arrangement in which they pay considerable fees for the supposed help they are being given, and discover after some time that their original debt has not been reduced at the speed they had hoped. They sign up for a service and think they are not just paying for the service but making inroads into their debt problems, but then find they are not. In that situation, people are harmed by what they have got into.

The language here—the terms are general—does not simply allow us to capture a specific type of service under a specific name, whether it is a debt management service or a high-cost lender, but is sufficiently generic to capture some of those activities and allow people to challenge them for recompense, to get their money back or to end the contract they have entered into. That is highly valuable.

I know the Government do not necessarily like adding endlessly to legislation. But as we have seen over the years—that is why we have the list in schedule 2, which has developed over time—it is important to give people remedies and rights. If that means we have to add some further provisions, that is not in itself a bad thing. I hope the Government take the opportunity to close some of these loopholes, in order to protect consumers who often enter into arrangements that are a lot more complicated than my simply buying a dress. That is the problem: people are probably already in quite difficult situations—for example, with debt management companies—that most of us would not wish to get into. The last thing anybody wants is that, far from improving their position, they are just treading water or getting in deeper financial difficulty. That cannot be right. We should be doing all we can to protect people from, in many ways, themselves. All consumer legislation is about protecting people from themselves.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Jenny Willott): Welcome back after lunch, Mr Amess. I congratulate the hon. Member for Edinburgh East on her delightful dress. I am glad that there were no faults with it and that she has been able to show it to us all today, in the sunshine.

This large group of amendments concerns the grey list that we have all been talking about, and which we can all agree is a crucial part of protection against unfair terms. It has come up a number of times during debates on other parts of the Bill, as has the need for such protection. Committee members have raised points about each amendment in turn, so I shall talk about each one.

Amendment 70 would address two issues. First, as I have said before, we agree that consumers should be informed about their rights. That is why, as I have also mentioned before, we set up the implementation group: to ensure that people know their rights and how to access the remedies if there is a problem. That is also why we have committed to producing guidance on unfair terms and why schedule 3 makes it clear that the Competition and Markets Authority can publish advice and information on this part of the Bill. It is important to ensure that the guidance and advice is available to people. As I have said before a number of times, we do not agree that the Bill should state how consumers are to be informed. It is too early to do that. It is important for the implementation group to identify that.

The other part of the amendment would apply a prominence requirement to grey list terms that would have to be drawn to the consumer's attention. As a general principle, we agree that important terms of a contract should be drawn to a consumer's attention. That is why we introduced a new requirement for prominence into this part of the Bill. Core terms must now be both transparent and prominent, to avoid assessment for fairness. However, we must be wary of unintended consequences. The Office of Fair Trading explained those in its evidence to the BIS Committee when scrutinising the Bill:

> "Not only is it obviously unnecessary for consumers to have their attention drawn to terms which are not intended to be of any effect in relation to them, it is also potentially misleading…the unwary will go ahead and will then be at risk of being assured that the term is binding since they signed the contract in full knowledge of it."

If terms are drawn to the consumer's attention, they are more likely to be found fair, which means that a perverse consequence of that requirement could be that consumers are bound by terms that might otherwise be found unfair. That is clearly not in the consumer's interest.

[Jenny Willott]

Other amendments in the group propose additions to the grey list. Colleagues have mentioned those proposals today. Before coming to each in turn, it is worth stepping back and setting out our approach to the list generally. The grey list is a vital part of the legislation and it is important that we get it right. We are not opposed to adding to and updating it, for example.

We asked the Law Commission to consider improving the list. It recommended three changes, all of which we are making. We are also taking a power to make changes later, if they are needed, subject to the agreement of Parliament. There is acceptance that the list will probably adapt over time, as appropriate. Where there is a general issue with types of terms that have significant potential to disadvantage consumers, that is a candidate for addition to the list. Where there is a particular issue in a particular sector, either sectoral regulation or a non-regulatory approach is the proportionate response. When we make changes, we need to be sure that they will benefit consumers without placing undue burdens on businesses, because ultimately that is not in consumers' interests, either.

2.15 pm

Amendments 66 to 68 relate to financial services. I want to be very clear: the Government are determined that lenders should treat borrowers fairly. That is a cast-iron position. The Financial Conduct Authority is responsible for the conduct regulation of residential mortgage lending and sets the rules that mortgage lenders are required to meet to ensure that customers are treated fairly. However, as I am sure we all appreciate, decisions concerning the pricing and availability of mortgages, including the level of interest charged, remain commercial decisions for lenders. As long as lenders meet the rules set out by the FCA, the Government do not seek to intervene in those decisions.

I can, however, reassure hon. Members and consumers that terms such as those described in the amendments are already assessable for fairness if they are not in plain, intelligible language. The Bill will add that they must also be prominent to avoid a challenge. That means that a consumer must be made aware of such a term. If they are not happy to agree to it, they can vote with their feet and not contract with that service provider.

A number of hon. Members made points about the FCA and the regulation of financial services in relation to unfair contract terms. The FCA is responsible for considering the fairness of terms under the Unfair Terms in Consumer Contracts Regulations 1999. It looks at standard terms in financial services contracts that are issued by authorised firms, including mortgages, general insurance and life assurance, bank, building society and credit union savings accounts, pensions, investments and long-term savings. The FCA also has powers under the Financial Services and Markets Act 2000.

Firms have an obligation to comply with the FCA's rules and its principles for business, which include that firms have to pay due regard to the interests of their customers and treat them fairly. They also have to communicate information to them in a way that is clear, fair and not misleading. Therefore, many of the issues about contract terms that apply more broadly are already part of the FCA's rules for financial services providers.

That relates to the points raised by the hon. Members for Stoke-on-Trent South and for Edinburgh East about car insurance and debt management companies. On the issue of car insurance, under the Bill, charges cannot be hidden. To avoid assessment in court, they must be transparent and prominent. If they are not, they are assessable for fairness by the courts. That is already in the Bill. Also, the FCA regulates insurance, as I said, so providers must make their communications clear and fair and they cannot be misleading. If providers do not do that, consumers can go to the Financial Ombudsman Service. Its decision is binding, and it can award substantial redress. Much of the protection for consumers under the FCA rules is stronger than under the general protections in the Bill, because, as the hon. Member for Walthamstow said, this is a particular issue for the sector. The sums of money involved can be significant and the risks are high, so the sector has some strong, sector-specific regulation that applies in cases such as those that were highlighted. The same applies to the issues raised by the hon. Member for Edinburgh East about debt management companies. They are also regulated by the FCA and have to comply with the same terms.

The introduction of grey list terms as laid out in the amendments, however, would reduce the valuable flexibility that lenders currently have in making commercial pricing decisions across the market. If we set conditions that they cannot meet, such as knowing future details of their clients' financial position and of their competitors' products, they will not be able to offer good deals to consumers, and consumers will ultimately lose out. For those reasons, we do not think that amendments 66 to 68 represent appropriate additions to the grey list. When there are problems, many of the issues mentioned in them are already covered elsewhere.

Amendment 64 is widely drawn, relating to any sorts of costs or liabilities under a consumer contract. As I said a moment ago, we prefer prices to be set by the market as a rule. The hon. Member for Walthamstow mentioned estate agents, and we had a discussion also involving the hon. Member for Wycombe. The Government have taken action to protect consumers from rogue estate agents. The Office of Fair Trading has a duty to supervise the working and enforcement of the Estate Agents Act 1979. The OFT may take action against those who do not comply, including by banning estate agents where necessary. From 31 March, the role will transfer to a lead enforcement authority—as we all know, Powys county council—which will enforce the measures throughout the UK.

The hon. Member for Walthamstow expressed concern about the ability of Powys county council to deliver the service. When the decision was made to transfer the OFT's powers to a single trading standards authority, an open competition was run to select the most appropriate local authority to discharge the functions. All UK local authorities were invited to bid for the work. Six bids were submitted, all of which were scrutinised by a panel that included the National Trading Standards Board, trading standards officers, the Department for Business, Innovation and Skills and so on. Each bidder was required to demonstrate how it would provide the services required under the 1979 Act and the expected costs of running the regime. Powys county council was judged to be the authority best placed to provide the function. The funding available to the OFT to provide that service

will be provided to Powys county council. It is ring-fenced to ensure that the service is delivered and that there is continuity of service between the OFT and Powys county council.

Stella Creasy: Will the Minister's officials confirm for all of us the persons on the National Trading Standards Board who made the decision to award the contract to Powys? It will be interesting for the Committee to have, for reasons of transparency, the names of the persons on the board. I am happy to get that detail at any point. As the Minister mentioned how the decision was made, it would be helpful to have the information.

Jenny Willott: I do not have the information. We can find out, but I do not know whether such information is generally published. We can find out for the hon. Lady, and I will come back to that her.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): Further to that point, will the Minister be absolutely clear? We heard at BIS questions in the Chamber about Powys setting a budget, the involvement of the Welsh Government and everything else, with the chaos that seems to have gone on there in the past few months. One of the consequences of the budget-setting process was to be massive cuts to the CAB services in Powys. She says that the money is ring-fenced and protected completely, but may we have that set out categorically in a letter to the Committee? People have genuine worries, given the experience of Powys council in recent months.

Jenny Willott: As I said in BIS questions, the funding is provided by the National Trading Standards Board to Powys county council. It is ring-fenced for the provision of that service. That is on the record and clear. I do not see what difference it would make if I put it in a letter, as I have said it, and it is in *Hansard* as a clear record. The funding will ensure that the service is maintained. It was awarded to Powys county council following a rigorous open competition.

Stephen Doughty: Have the Minister and her Department drawn up any contingency plans, in particular given the chaos of recent months, in case there should be further governance failings or changes at Powys council?

Jenny Willott: The function is that of the trading standards officers in Powys county council. Clearly, the Government have contingency arrangements for all sorts of different things happening to ensure that provision is maintained among all Government functions in a lot of different areas. In the discussion on the statutory instrument on the issue, it was made clear that the Government would keep an eye out. There is a clear line of accountability through the National Trading Standards Board and up to BIS to ensure that the service is of a suitable quality. The National Trading Standards Board is responsible for ensuring that the service is provided efficiently and effectively.

Robert Flello (Stoke-on-Trent South) (Lab): The Minister is giving some helpful information to the Committee on this point, but may I press her further? When budgets were devolved to local authorities in a not totally dissimilar way for public health, they only got about 90% of the money. Can she be clear to the Committee that 100% of the money for trading standards—the same amount that was within the previous department—is going to Powys?

The Chair: Order. Before the Minister responds, let me be clear: the exchanges are interesting, but I ask Members to draw their remarks close to the amendments.

Jenny Willott: Thank you, Mr Amess. In response to the hon. Gentleman, yes, I can confirm that 100% of the money is being ring-fenced and passed to Powys county council.

More broadly, estate agents must belong to an approved redress scheme, giving consumers access to remedies when things go wrong. Such redress schemes can award up to £25,000 in compensation, and that is a significant level of consumer protection. Under the consumer protection regulations and current unfair contract terms law, as well as their own industry codes, estate agents must make fees and charges clear for consumers. It is an evolving market however, and the hon. Member for Walthamstow highlighted the potentially worrying emerging trend of double charging, which was also raised in Business, Innovation and Skills questions this morning. As I have said, I have written to the redress schemes to draw their attention to the concerns that have been raised about the practice. I have specifically asked them to look into the issue and respond to the concerns that I have raised. I will write in similar terms to the lead enforcer when that is appropriate. I look forward to seeing what they think can be done and what their concerns are. It will be useful to see what complaints they are getting, as well.

The hon. Member for Walthamstow said that if amendment 64 were accepted passed and the practice it describes put on the grey list, it would allow the ombudsman to take action on double charging by estate agents. To clarify, it would not, because the list of regulators in schedule 3 does not include the property ombudsman. That is one reason why we think that working with the ombudsman service is a better way to try to achieve action.

The contracts that estate agents draw up will be covered by the unfair contract terms that we are discussing, and there could be enforcement either through action in court or through Trading Standards taking action on unfair contract terms. Ombudsmen must have due regard for the law in their rules, and they can include in their codes of conduct details of items that they feel need to be considered. That is why we are working with the ombudsman service to tackle the issue.

On amendment 65, the Government agree that consumers should not be prevented from accessing data about their use of a product or service. We had a good discussion the other day about that and the importance for consumers of being able to access their information. That is a central driver for our midata programme. As I said when we debated the matter at length, I am not minded to legislate on issues related to midata until the review has concluded. Taking action now would prejudice the results of that review, which would not be beneficial to the programme or ultimately to consumers. I want to wait until that review has been completed before taking action.

[Jenny Willott]

Amendment 69 brings us back to an important issue that we discussed the other day and a number of hon. Members mentioned this morning. I agree that misleading websites that try to palm themselves off as legitimate Government websites need to be stopped. That is why the National Trading Standards Board is to get an additional £120,000, which I announced the other day, to investigate trogue raders—sorry, rogue traders; I am full of spoonerisms this week—and why the Government are working with search engines to take down misleading websites as they are identified. There is a lot of action in that area at the moment.

Stephen Doughty: I have had some helpful correspondence from Google about its actions and discussions on this issue. Has the Minister had the same conversations with and assurances from other companies, such as Bing, Yahoo and other search engines?

2.30 pm

Jenny Willott: The discussion is being led by the Department for Culture, Media and Sport, and the Cabinet Office. My understanding is that the DCMS regularly talks to a lot of those providers, so there is ongoing discussion on these issues.

Amendment 99 would remove a term rather than adding a new one. The relevant wording of this paragraph of the grey list, as with most of the other paragraphs on the list, is the same as in the existing law. We have maintained this drafting after strong and consistent advice from stakeholders—led by enforcers, but including consumers groups and business groups—that they wanted to keep the existing text of grey list terms.

I reassure the Committee that paragraph 3 of the grey list already covers management or delivery of a service, which is the point that the hon. Member for Walthamstow made. According to OFT guidance, that item on the grey list provides that a term may be unfair if it makes an agreement binding on a consumer where the trader's provision of service is subject to the trader's will. That issue was raised by the hon. Member for Wycombe earlier. That item on the grey list has been part of UK and EU law since it was created in 1993. The OFT now has more than 20 years' experience of handling cases about it, and copious guidance has been published on these terms. That expertise will transfer to the Competition and Markets Authority after April.

Paragraph 3 of the grey list is about traders taking payment and including terms allowing them unilaterally not to provide the service. For example, a consumer pays up front to join a new gym, which is being built, because they are offered a discount if they sign up before the service is available. Clearly, that membership depends on the gym opening for business. Paragraph 3 of the grey list means that the consumer can challenge and get their money back if that gym does not open and operate. It deals with those sorts of circumstances.

It is also worth remembering that even if a term is not on the grey list, it may still be assessable for fairness. The grey list is not exhaustive. Other things may be considered as well; the court can take various different things into account when it is assessing for fairness.

The hon. Member for Walthamstow said that amendment 100 is inspired, in part, by concerns about social housing rent increases, social care and so on. There is recognition in legislation that people affected by social housing rent increases are a special group and as a result protection is built into the law. For example, the Government have a policy—introduced by the previous Government and maintained, to date, by this Government—on rent increases for social housing, to recognise the particular situation of social housing tenants. That policy includes a limit on annual rent increases, to take into account the circumstances of that particular group.

The hon. Member for Walthamstow also raised issues about social care, child care and similar services. One of the reasons why we have a grey list is to be able to look at and assess for fairness the terms built into some of these contracts. There are items on the list that protect consumers from traders making unilateral changes, for example. Where there is a problem in a specific sector, the Government take action. As I said, social housing rent increases are capped to recognise the special circumstances of a particular group of tenants. We also have the local government ombudsman, who can look at social care. When a particular group of people has particular problems, action can be taken to address them.

The hon. Member for North Tyneside highlighted the issue of an organisation charging for providing advice that could also be available for free. If that organisation did not make clear at the beginning that there was a charge, and if that information was not transparent and prominent, it would fall within the terms of the Bill and be assessable for fairness. If people were informed of that, if the fact that there was a fee associated with the service was transparent and prominent, and if the whole cost was made clear to them before they signed the contract as required under the consumer contracts regulations, to some extent we must say that it was their decision to go ahead with that contract.

I completely agree with the hon. Lady that a lot of free financial advice is available—there are some fantastic organisations in my area, such as one called Speakeasy, which I am sure the hon. Member for Cardiff South and Penarth also has dealings with; it provides excellent free advice and support for people in the circumstances that the hon. Member for North Tyneside described.

The information provided to members of the public is critical, because we need to ensure that people know what services are available. They need to know that their MP can help them, and we need to signpost them towards organisations that provide services for free, if that is what they want. If an organisation is not clear up front about the fees that it charges, so that people think they will be getting a free service but then find that a chunk of their benefits payments is taken away in fees, that could fall under the terms of the Bill. I hope that reassures the hon. Lady.

The hon. Member for Stoke-on-Trent South raised concerns about whether any amendment to a contract would be covered. The answer is yes. Once the Bill is in place, if new contracts are agreed and then amended, the amendments will also be subject to this part of the Bill. I hope it will provide him with some reassurance if I say that contracts cannot normally be amended unilaterally, without the agreement of the consumer, unless a term in the contract allows such an amendment.

In that case, the consumer should usually have the right to exit the contract. A number of terms in the list cover such circumstances.

Robert Flello: I am grateful to the Minister for those reassurances, but to return to a point that I made earlier, somebody in that situation might not be able to go anywhere else. For example, there could be a case such as we discussed earlier, when a person has a buy-to-let mortgage and goes out to the market seeking to move it, only to find that lenders are interested only in brand-new mortgages rather than remortgages, so the person cannot go anywhere else.

Jenny Willott: The circumstances that the hon. Gentleman highlights are one reason why the Financial Conduct Authority has clear rules, and why it has stronger protections for consumers in certain areas. It can examine the circumstances and see whether a company is treating its customers fairly. That is a broad-brush term that means the FCA has a wide margin within which it can consider all the circumstances of a case and take such situations into account. The Financial Ombudsman Service also has significant powers to order redress, so there is quite a lot of protection for consumers in the circumstances that he mentions.

I hope that I have covered the concerns that hon. Members have raised, and that with the reassurances that I have given, the hon. Member for Walthamstow will feel able to withdraw the amendment.

Stella Creasy: I also welcome you, Mr Amess, to the afternoon sitting. Let us start with something on which we can find common ground—the wonders of the dress that my hon. Friend the Member for Edinburgh East is wearing. It is brightening up our day.

I will set out what I welcome in the Minister's comments and where there are further points of disagreement, but first I wish to express my gratitude to the hon. Member for Wycombe for taking so much time to explore Habermas, who has been influential in my thinking, and his discussions of communicative acts. I was slightly perturbed when the hon. Gentleman said that the state was founded on coercion—it felt to me as if he had been reading Kropotkin. If he has not yet, I would recommend it, although I was not influenced by him as much as the hon. Gentleman clearly has been. I digress, but I want to put on record that it is important that people are contemplative when it comes to legislation, and these are useful tools to remind us of that.

I am happy to withdraw amendment 70, on the basis that the Minister is delegating responsibility to the implementation group for the "better that you don't know" principle, which she appears to be adhering to. If someone does not know, at least they can say it was unfair later. The implementation group clearly has a long reading list and will be a phenomenal piece of work, judging by what we have been told. I am also happy not to press amendments 66 and 67, given that the Minister says the concerns are already covered in other parts of the legislation, particularly the notion that terms must be given prominence.

I echo the comments of my hon. Friend the Member for Cardiff South and Penarth about the work that Google has done on copycat websites. The Minister will know that we are concerned that they can still be set up, and that we may be delegating the chasing of the companies behind them to search engines, rather than trying to deal at source with the way in which the industry has grown up. That was the intention behind our amendments, but we are happy that the Minister recognises that important problem. We will therefore give the Government an opportunity to show whether their approach will work, or whether it is like Japanese knotweed—it might be cut down in one place, but it will appear somewhere else.

I also echo the Committee's support for the Minister's interpretation of our amendment 99, and the idea that the delivery of services is also an important part of an unfair contract term. I am pleased that the Minister believes that paragraph 3 of the grey list covers that point, and I am happy not to press the amendment.

I am confused by what the Minister said about amendment 100 and how the Bill will apply to the public sector. It is welcome that she is now discussing that point, and I also believe from the hon. Member for Wycombe's challenge to the Minister earlier that he is moving closer to our position, rather than us moving closer to him. We have to look at consumer rights within the public sector. That is the right thing to do, not just in on the narrow matter of direct commissioning contracts, but more generally on the relationships that people have with services and their right for them to be satisfactory and fit for purpose. Surely that is what we all want in our lives.

I am a little concerned when the Minister talks about seeing the public sector as a special sector and says that there is therefore a need for state intervention at all times, rather than also making sure that consumers have powers to challenge services. That may not be the best approach. We all recognise that there are differences in how services are delivered and how people can experience them. The Minister gave the example of rent contracts. Let me give an example mentioned by my hon. Friend—I think everybody is a friend in this debate—the Member for Plymouth, Sutton and Devonport about the poor quality of the lift in the block of flats he visited. The question about whether someone could dissolve a contract with a social housing association because it had done nothing about the lift and they could not get up or down from their property seems an interesting one to consider.

That being said, we have tabled some new clauses that will give us an opportunity to explore in more detail how the Bill will apply to the public sector. We are concerned to make sure that everybody has rights within the public sector. The question whether someone can dissolve a contract will come into discussions about whether there are powers and rights within that contract to enable it to be challenged. I am happy not to press amendment 100, with notice that we expect to return later in the Bill's progress to the issue of where somebody's rights come into play in the public sector. We believe the rights set out in it should clearly apply to the public sector, and that careful consideration should be given to how unfair contract terms within the public sector are dealt with. They will necessarily be different because of the mixed relationship that comes into play from people being both a provider to a service—by being a taxpayer—and a consumer of it. The question of the dissolution of services seems an interesting example of that.

[Stella Creasy]

On amendment 65, members will remember our conversation on the same subject on Tuesday and the Opposition's commitment to ensuring that consumers have as much information as possible. I am concerned that the Minister has not given the assurances that we are looking for on unfair contract terms. People are having their access to information restricted, and we have already said that we want to return to the issue of how people access information. The midata project could be used as a template—rather than the totality of the data that people might access—to see how it might be applied across a wide range of services.

It is appropriate that we return later to the concern about people having their access to information restricted, which amendment 70 would address. I am happy to withdraw the amendment, while giving notice to the Committee that we remain concerned that traders might undertake practices that restrict people's access to information and so skew the choices people are able to make. That in itself should be considered unfair.

2.45 pm

The two amendments on which the Minister's answers have not satisfied us are amendments 68 and 64. Amendment 68 would address an unfair contract term knowingly pushing someone into a financially detrimental position. I understand her point about what is in other parts of the Bill, but I am not sure that she understands our point on why separate protection is required. My friend, Lee Sherriff, who is a determined campaigner in Carlisle, has been working on this issue for some time.

My hon. Friends from the north-east and the northern cities of Scotland have also talked about how some companies operate and their business models, which promote debt among people who they must know are in debt. We are not satisfied that the general provisions in the Bill will cover that particular format of business. We therefore want to press amendment 68 to a vote, because it is right that we address direct financial detriment in a contract. After all, if someone goes a company for a debt management plan and the company sells them something that has a 90% legal fee in it—or, indeed, the 15% fee that my hon. Friend the Member for North Tyneside mentioned—then that cannot be a fair term, because of the very nature of the business that the company is being commissioned to undertake. The amendment would offer a way for such debt management plans to be challenged, alongside the work that the FCA will do.

I understand the concern that you expressed, Mr Amess, about our conversations on Powys county council. We are concerned about what the alternative will be if we do not put into the Bill the protection that the amendment offers on the ability to challenge double charging. That is the metric against which we are judging the issue. I hope you will forgive me for referring back to BIS oral questions in the House this morning, but the Minister said that she was going to refer estate agents to Powys county council trading standards. Those who were not there for that sterling excitement will have missed the reason for part of the debate.

Powys county council has had three different cabinets in as many months. It had to be threatened with intervention by the Welsh Government to set a budget yesterday. People on the ground are desperately concerned that Powys gets its house in order. There are genuine concerns about its ability Powys to supervise an industry about which there are growing issues. The debate we had today showed that those concerns are not just in my part of London or even in Wycombe; they exist across England and Wales.

A piece of work by the HomeOwners Alliance will come out tomorrow showing that 82% of estate agent websites make no mention of fees at all. A third of estate agents refuse to give their fees out over the phone and two thirds insist on doing in-home valuations before discussing fees. There is a threefold range in their costs, and the HomeOwners Alliance has uncovered widespread evidence of sharp practices in the industry. Double charging is perhaps the most pointed example of recent months, but it is by no means the only one.

The question for all of us, if we are not going to amend the grey list and give consumers the protection that we suggest, is who else will be able to act. I hope that the Minister's officials will have the list of the people who were involved in making the decision to put the contract over to Powys county council. I would be concerned if she tried to suggest that information about who had awarded a public contract was not in the public domain, because the availability of that information is a standard principle of freedom of information requests. I asked about that because some members of the National Trading Standards Board have a direct interest in the decision, in that they are paid employees of Anglesey county council so they would have been part of the bid. We know from the bid documents that Powys county council has produced that it was a joint bid.

Jenny Willott: Will the hon. Lady give way?

Stella Creasy: I will happily give way to the Minister, but the bid documents clearly state that Anglesey county council was involved in the bid.

The Chair: Order. I have allowed discussion on the matter to develop to this stage, but I do not want it to progress much further. If the Minister wants to put something on the record, I will allow that.

Jenny Willott: I want to put on the record that it was not a joint bid with Anglesey county council. Powys county council is the sole local authority that will be leading on this; it is not a joint contract.

Stella Creasy: I thank the Minister for that answer, but it contradicts the documents that Powys county council has provided, and we are asking what the alternative will be. The Minister suggests that systems of redress would be the appropriate avenue through which to pursue the matter. I am sorry if she was not clear about what I was saying earlier, but I have already written to the property ombudsman about the issue, and the quote that I gave earlier about being unsure of the legal position on double charging came from the property ombudsman. The property ombudsman is already telling us that the law is not clear, which is why we are trying to provide clarity through the unfair contract terms provisions.

Powys county council clearly has problems, and we wish it well with resolving them. It is simply not strong enough to take on the industry and supervise the 500,000 people employed in real estate in this country, especially

when there is huge and growing concern about estate agents' behaviour and evidence of the sorts of sharp practices that our amendments are designed to tackle. We do not believe that Powys county council will provide adequate consumer protection, and we are increasingly worried about the decision to transfer those services to it, so we believe that further protection is needed. The letter from which I have quoted indicated that the property ombudsman is also looking for direction. We think that our amendments would do the job.

I am disappointed that the Minister does not have an alternative amendment to cover double charging because she feels that it is too broad. Given that it will be for the courts to interpret, we do not think that our proposal is too tight. It would answer the point raised by the hon. Member for Wycombe by allowing the matter to be discussed in a legal context without necessarily determining that a double charge was always inappropriate. We reject the Government's argument that their mechanisms for dealing with double charging will be sufficiently appropriate and robust, so we want to press amendments 68 and 64 to a vote. I beg to ask leave to withdraw amendment 70.

Amendment, by leave, withdrawn.

Clause 63 ordered to stand part of the Bill.

The Chair: Order. Following that point, the vote on amendments 64 and 68 will take place under schedule 2.

Schedule 2

Consumer contract terms which may be regarded as unfair

Amendment proposed: 64, in schedule 2, page 51, line 37, at end insert—

'(21) A term which requires a consumer to pay a charge for or be liable for an element of a good or service that another party has also been charged for in the course of the same transaction.'.—*(Stella Creasy.)*

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 8]

AYES

Creasy, Stella	Glindon, Mrs Mary
Doughty, Stephen	McDonald, Andy
Flello, Robert	
Gilmore, Sheila	O'Donnell, Fiona

NOES

Baker, Steve	Kwarteng, Kwasi
Chishti, Rehman	McPartland, Stephen
Colvile, Oliver	Munt, Tessa
Gyimah, Mr Sam	Sandys, Laura
Harris, Rebecca	Willott, Jenny

Question accordingly negatived.

Amendment proposed: 68, in schedule 2, page 51, line 37, at end insert—

'(24) If the contract is for a financial service, a term that directly causes financial detriment to the consumer such that it can be seen to reasonably alter the capacity of the consumer to pay the costs of the contract.'.—*(Stella Creasy.)*

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 9]

AYES

Creasy, Stella	Glindon, Mrs Mary
Doughty, Stephen	McDonald, Andy
Flello, Robert	
Gilmore, Sheila	O'Donnell, Fiona

NOES

Baker, Steve	Kwarteng, Kwasi
Chishti, Rehman	McPartland, Stephen
Colvile, Oliver	Munt, Tessa
Gyimah, Mr Sam	Sandys, Laura
Harris, Rebecca	Willott, Jenny

Question accordingly negatived.

Schedule 2 agreed to.

Clause 64

Exclusion from assessment of fairness

Stella Creasy: I beg to move amendment 72, in clause 64, page 37, line 19, leave out from 'that' to end of line 23 and insert—

'the assessment is of the appropriateness of the price payable under the contract, by comparison with the goods, digital content or services supplied under it, but only where the price payable does not relate to future variable fees or charges payable under the contract.'.

Clause 64, for those who are keeping track, is about what terms can be excluded from an assessment of fairness. We have had the conversation about what would be unfair; this is about further things that would be excluded. Amendment 72 was suggested by the Financial Conduct Authority consumer panel. It relates to the exception that is put forward. At present, the Government are proposing that only the price of a good or service can be exempted from this test. This means that a trader could argue that a price includes any future charges or contract that may not have been discussed prior to purchase—or there is a concern that that is how some traders might interpret the provision.

We are seeking to hear from the Government how they want to protect consumers from that eventuality. For example, if you were to sign up to a broadband contract and suddenly a substantial fee was applied at a later date, would that be considered unfair? It would only be able to be considered unfair if it had not been excluded from this provision. This provision excludes things that can then be considered for the unfairness test. By tightening this, we hope to give consumers more clarity. We would like to hear how the Minister wants to give consumers more clarity about how any future charges or costs may or may not come under that provision. If a consumer signs up in good faith for a particular contract—such as a mortgage or a financial services premium—at a particular price and finds that the price has been hiked up, they would be able to challenge that on the basis that it was unfair without a trader saying, "Well, actually, price in general, as a generic term, has been included." I am sure the Minister will clarify whether that is the spirit and intention of the provision and we would be very happy to hear her response.

Jenny Willott: The amendment covers an issue that the Government have looked at in great detail. We asked the Law Commission to look at it twice, in 2005 and 2012. It was also widely debated when we published the draft Bill and during the pre-legislative scrutiny. We all agree that it is important to get this right. The breadth of the exemption and how to access it has been unclear for far too long. It should not have taken several high-profile court cases to interpret the law. Consumers should know what to expect and traders should know what they have to do.

The Law Commission recommended what you now see in the Bill. It consulted widely before making these recommendations. It considered this to be a careful balance between protecting consumers and allowing the market to operate. The Government have agreed with their approach.

The amendment is in two parts and it makes two substantial changes, although I think the hon. Member for Walthamstow only referred to one. I will take the two issues in turn. The first is about whether subject matter terms should be allowed to be assessed in court, even if they are prominent.

3 pm

In my view the amendment is a step too far. Markets should be able to operate and a consumer and trader must be able to agree deals between them without fear of challenge. It is good both for the trader and the consumer. We do not want to curtail the trader's ability to offer goods or services for sale or, more importantly, the consumer's choice in the market.

For example, consider a relatively simple contract. A small business agrees a contract with a consumer to build an extension. It agrees to supply four new windows for £1,000. The consumer is obviously free to shop around for a better deal, but if they decide to go with that company, it should not be for the court to decide whether the supply of four new windows is a fair term. Of course, it should be clear to the consumer how many windows they are getting. There are protections elsewhere in the Bill if they do not get the number of windows they contracted for. It should also be clear that the small business should be able to sell the windows without fear of legal challenge on the number of windows they have agreed to sell. Under the Bill, as drafted, they can avoid that risk and higher prices by making the deal that the consumer is getting prominent and transparent in the contract.

The second issue is about limiting the type of price terms that are exempt. Again, we have looked at that in a lot of detail. As I am sure you know, Mr Amess, this part of the unfair terms regime derives from EU law. When the Supreme Court looked at the matter in the Abbey National case, it rejected the idea that the price of a contract could be split into the headline price and other charges. It thought it was often unhelpful and difficult, if not impossible, to make such a distinction. The Supreme Court said:

"There is no justification for excluding…price or remuneration on the ground that it is ancillary or incidental."

The Law Commission said in 2013:

"A test which focused on whether a term is transparent and prominent would often produce much the same effect as a test which focused on whether it is ancillary or incidental."

It added:

"The emphasis on prominence, however, offers a practical way of distinguishing between a headline price and what are commonly thought of as incidental and ancillary terms."

The Government agree with that. The advice from the Law Commission was that the word prominent would tease out a lot of the issues that have been raised. We need an unfair terms regime that works in practice. A regime that does not work is of no use to consumers or traders. In many cases it is not possible to distinguish the price payable and future charges. The payment for the good, service or digital content will often include the future charges because that is how the payment is structured.

The British Bankers Association said in its written evidence:

"We believe the uncertainty and subjectivity of potentially limiting the exclusion of price to an un-established subset of the total costs and charges in a contract would fail to meet the aim of the Consumer Rights Bill to simplify and clarify existing consumer law."

Given the view of the Supreme Court, which has looked at this, and the need to make the law in this area as simple as possible, I do not think that we should limit the exemption in the way that the amendment would.

More generally, the Bill will significantly increase consumer protection from unfair terms. We have already discussed some of those matters. We are making it clear for the first time that grey list terms are assessable, and we are adding to the grey list a number of terms that were recommended by the Law Commission. That means that more terms can be challenged in court. We are also introducing a prominence requirement for the first time. To avoid assessment, terms must be both transparent and prominent. That is a substantial increase in consumer protection. That will include all charges payable now or in the future, fixed or variable, that the trader wishes to be exempt from being assessed for fairness.

The Law Commission thought that those two changes would adequately protect consumers and be workable for traders. Given those improvements that we are already making, I hope that the hon. Member for Walthamstow will feel able to withdraw her amendment.

Stella Creasy: I thank the Minister for her response. She may have jumped ahead of herself to talk about the details of amendment 71, which is about provenance, rather than the question of fairness and the generic definition of pricing that amendment 72 deals with. I draw her attention to amendment 71, which talks about provenance and things that are hidden in plain sight.

With amendment 72 we were simply seeking to raise the concern that the Financial Services Consumer Panel raised, namely that exempting key contractual terms from a fairness test is "a missed opportunity". I am a little concerned that the Minister has not necessarily given the protection or insurance that people would hope to have against a substantially increased fee that they could not have predicted being applied suddenly at a later date.

On the basis that the Minister recognises that there is an issue, I am happy to withdraw the amendment. But it would be helpful to separate the concept of what has been seen at the time of purchase from the behaviour of, perhaps, a financial services provider at a later date—that is what the Financial Services Consumer Panel was

referring to. We need clarity on the fact that at some points prices could be considered for fairness. Without that, the chair of that panel suggests that the whole of part 2 of the Bill

"will be rendered obsolete if firms can simply make all of the main subject matter of their contracts prominent and transparent."

I know we will go on to discuss how things could be hidden in plain sight when we debate amendment 71, but it would be helpful if the Minister could set out that she does not discount the possibility that future prices would be considered for fairness tests. That is the panel's point—that traders should not think that they have carte blanche.

Jenny Willott: The point is that this matter has been considered at length by the Supreme Court, which gave a clear judgment on what could and could not be considered as part of the price. Clearly, hidden charges that people do not know about or that are suddenly included in a contract at a later date could not be considered to have been prominent at the beginning. The costs associated with a particular contract are protected if they are transparent and prominent. If they are not transparent or prominent, they are not protected or exempt from being assessed for fairness. If an organisation hides price terms in the small print or they are not clear to consumers, those price terms would not be considered prominent and transparent and so would be assessable for fairness. The protection is only for price terms that are prominent and transparent.

Stella Creasy: I thank the Minister for that. We will probably get more clarity when we discuss amendment 71, when I will talk about the Supreme Court's decision and its implications for pricing. I am genuinely trying to be helpful. Is she saying that, with a general price for a service, if consumers felt that they could not have reasonably assessed an increase in price, that increase could be assessed for fairness at a later date—in other words, that it is not solely about the price that someone commits to at purchase?

Let us go back to the example of the Bank of Ireland mortgage. In future, will consumers be able to assess whether the escalation in prices they saw was fair? Is it the case that that would not be excluded by the clause? In other words, is it that there is a by-default exclusion rather than a deliberate inclusion of future prices? That is what I am trying to get at and I would be grateful if the Minister could clarify that—that there is an exclusion by default because price is a generic concept in the Bill, rather than a specification of what someone could reasonably know at the point of purchase against any future pricing that may include unfair terms.

Jenny Willott: If a fee or significant increase is introduced later, it was not transparent or prominent at the time of the contract, so it can be assessed for fairness. A trader cannot introduce extra charges or do something dramatic later on that was not agreed up front. The price is exempt from being assessed for fairness only if it is prominent and transparent.

Stella Creasy: I think that is helpful. In the Bank of Ireland example, it would mean that the fees could have been assessed for fairness. That was what the panel was trying to get at: because of the way the Bill is drafted traders might have been able to argue that all prices at all times were excluded. It is helpful that the Minister has said that is not the case. It will then be up to the courts to decide which part of the price could be exempted. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 71, in clause 64, page 37, line 30, after 'term', insert 'and it would form part of their purchasing decision.'.

I hope that it will make more sense for us to try to separate out the two debates. The Minister has already referred to the Supreme Court decision in 2009. Our amendment was suggested by Which?, the consumer organisation, following the judgment, because there is a concern that one of the unforeseen consequences of that Supreme Court decision would be to make it much harder for enforcement and consumer bodies to challenge prices that are disclosed in contractual small print. It is the concept of something being hidden in plain sight.

So, essentially, a trader has given the details of something within a contract, but a consumer would not necessarily have understood the significance of it and would have no ability to challenge any subsequent increase. Indeed, that is exactly what happened with the Bank of Ireland. It was able to resist the consumers who challenged the substantial increases in their mortgages, because it was able to say, "This was part of your contract," but it was essentially hidden in plain sight.

It would help if the Minister could set out—if she will not accept the amendment—how she intends to protect consumers from the consequences of the judgment. It makes matters much easier, as long as traders put somewhere in the contract, in whatever language they choose, something about an increase in charges. "You as a consumer will be liable for them, even though you might feel they are not prominent and transparent." That is what the amendment seeks to clarify.

Stephen Doughty: This is a crucial issue. It has come up quite often in relation to mobile phone roaming charges. Thankfully, we have had action at European Union level to limit such charges in Europe. However, it does not apply when we travel to the United States or Canada. Like many consumers, I have been hit by massive charges—more than I ever expected when I signed up to my mobile phone contract—when I have used even a brief amount of data when I have been travelling in the United States, for example, so I absolutely agree with the points that my hon. Friend makes.

Stella Creasy: I thank my hon. Friend for being so honest. I, too, have had the same experience, a bit like his experience with Sky TV and signing up for football. The details are in the contract, but in such a way that consumers may not be able to identify them to be able to assess them for fairness. By excluding them in such a way, consumers will not stand a chance of being able to challenge them.

Stephen Doughty: That is true, but there is also the issue of things changing during the course of a contract. One of the phone contracts that I had some years ago briefly had a period during which someone could buy relatively cheap booster packages to travel, for example,

[Stephen Doughty]

to the US and Canada and other countries. My brother lives in Canada, which is why I was there visiting. The trader later discontinued the packages. I had not become aware of that, and when I tried to purchase one, I could not, and instead I was hit by massing roaming charges. So we have a problem with things changing in the small print. I am sure it was there somewhere in the contract, but it was certainly hidden from plain sight.

Stella Creasy: I am sad to hear that my hon. Friend's visit to his brother might have been affected in such a negative way; I can understand the frustration. The way the rules are explicitly drafted at the moment would exclude some contractual clauses, including those that set out the price, from any fairness assessment. So the amendment tries, as the previous amendment did, to tighten the rules. We need to understand how the Government see the rules being applied in the real world, where people will have contracts that have small print and requirements in them, which may lead to charges or to particular restrictions on a service, that they had not necessarily understood, particularly when it comes to pricing. We want to ensure that consumers do not get stung.

If the Government do not want to accept the amendment, will they set out how they think they can deal with the problem? Organisations such as Which? are concerned that they do not have sufficient power any more to tackle hidden charges in the small print, which are not only a bugbear in terms of mobile phones, but could be extremely costly for consumers when it comes to mortgages or financial services.

Andy McDonald (Middlesbrough) (Lab): One of the examples we come across time and again is my hon. Friend's favourite airline, Ryanair, which regularly buries within its terms and conditions bear traps for people to fall into. I fell foul of them recently when my family had omitted to check in online before they went to the airport. I had to come to their rescue and pay £70 per head to get them on the flight. That cheap economy price suddenly turned into a very expensive journey.

Stella Creasy: Goodness me! It is remarkable how the Committee becomes like therapy for us all, explaining our negative experiences that embody the problems we know consumers face every single day.

3.15 pm

We have talked a little about financial and mobile phone services, but I want to give the Committee one final example to explain what we are trying to address: someone who has taken out a rental agreement. We have already discussed some of the problems home owners have with estate agents, but tenants are also facing real problems, especially bearing in mind how unregulated the lettings industry is.

When renting a property, a consumer will be focused on the monthly rent, the deposit, and any up-front charges posed by the landlord or letting agent. However, there are also charges that occur later in the relationship, such as renewal fees, check-out fees and inventory fees. I know of residents who have been charged thousands of pounds when they moved into a property and several hundred pounds when they moved out—there were credit checks and inspections before they could get their deposit back. Tenants might not consider such things, but they may well be in the small print of a contract.

If price is excluded from any assessment under the clause, such charges would not be permitted to be considered for fairness, because they would be considered part of the price. The amendment would protect consumers from what I am sure is an unintended consequence of the decision to stop certain terms being assessed. If the Minister thinks there are other opportunities to test such charges—for example, if we could challenge some of the letting agents in Walthamstow who are charging such frankly outrageous fees—it would be helpful to know how she thinks that would fit into the Bill. We see this as a pretty standard consumer issue.

Stephen Doughty: Does my hon. Friend agree that service charges in rental agreements are becoming a problem, particularly the ways in which they are varied at a later stage? I have heard of a number of cases in my constituency where such charges are very low in the first few years of a rental contract in a block of flats, but they are then whacked up very high. The terms are, I am sure, in the contract, and if people had gone through every line, they might have noticed them, but the reality is that the charge is hidden in plain sight. We must be tighter on such things.

Stella Creasy: My hon. Friend is absolutely right. Just because a price is prominent, that does not mean a consumer would factor it into their assessment of what they were going to pay. People do not always know about additional or later fees. The amendment relates to how we deal with such fees. It will be interesting to hear what the Minister has to say and whether she accepts the spirit of the amendment. If she does, but does not think that we are at the correct point in the Bill to deal with the matter, where else might we do it?

Jenny Willott: The amendment relates to our previous debates about hidden charges and how we can ensure that people know what they are getting themselves into before they enter into a contract. The Government believe that the requirement in the Bill for core terms to be prominent as well as transparent—the introduction of "prominent" is new—in order for them to qualify as exempt is already a significant enhancement for consumers compared with the current position. Because of that new requirement, consumers will for the first time have significant protection from unfair terms in the small print—the issue the hon. Lady raised—or unclear language. The latter covers the issue of hiding things in plain sight, because there is protection if something is unclear.

However, the Government believe that the amendment would reduce clarity, increase uncertainty and might not improve consumer protection. It is not clear, for example, how a business would know whether a consumer had made a decision based on certain information. Many contracts are now agreed online, without a consumer talking to the trader, so how would a trader know that the consumer had factored information into their decision? How would a trader know whether they had complied with the requirement? Indeed, it is not clear how traders could ever comply.

There is a link with the point made by the hon. Member for Stoke-on-Trent South in the previous debate. We know from anecdotal evidence that consumers often tick a box to say that they have read and understood the terms and conditions without reading any of them or giving them much consideration at all. Part of the Government's motivation for the Bill is to make the rules as simple as possible for both traders and consumers to understand, so it is important that businesses know what they have to do in order to comply. The Bill therefore seeks to make as clear as possible the ways in which traders can comply with the unfair terms requirements.

Our approach reflects that of the Law Commission, which recommended the provisions in the Bill as a balance between protecting consumers and enabling traders to comply. The commission considered whether to amend the prominence test, and it said:

"we do not believe that this particular test should be subjective, or else it would be too difficult to apply in practice".

The hon. Members for Cardiff South and Penarth and for Walthamstow mentioned letting agency fees; the contract between the consumer and the agent will be covered by the clause. If there are hidden fees that are not made clear, prominent and transparent up front, they will be assessable under the grey list.

The hon. Member for Walthamstow also asked how we can ensure that consumers are protected. As I mentioned in my previous response, much of this follows from the Supreme Court judgment in the Abbey National case. After that case we asked the Law Commission to consider how to protect consumers. We have followed the commission's advice by introducing the new prominence requirement. We now have three new grey list terms to protect consumers. Negotiated contracts will now be subject to the unfair terms regime. Those are the protections that have been built in following the Abbey National case.

The hon. Member for Cardiff South and Penarth mentioned roaming charges. Under the Bill, roaming charges must be transparent and prominent to avoid a challenge. If they are not transparent and prominent because they are hidden in the small print, they are open to challenge. We have previously discussed hidden charges and the fact that, when they come into force, the consumer contracts regulations will require a trader to show up front the full costs expected of the consumer before they purchase. Some elements of hidden charges will need to be shown up front before the consumer enters the contract, which will hopefully get rid of some of the issues. That certainly addresses the point raised by the hon. Member for Middlesbrough on hidden charges associated with flights, which will need to be made clear up front before a consumer enters a contract.

On roaming charges, Ofcom also has powers under schedule 3 to take action to protect consumers, so roaming charges are addressed in a number of places in the Bill. I hope that reassures Opposition Members.

Stella Creasy: I thank the Minister for her response. I welcome her recognition that hidden charges are a concern. An unintended consequence of the Supreme Court judgment is that firms may be able to get away with hiding more things in plain sight. I am pleased to hear that she thinks that fees that are not made clear are part of it. I know we keep adding to the working list for the implementation group, but what does "prominent" mean? She will recall our debate on clause 62 in which we discussed consumer notices. That is particularly pertinent to letting agents. I see signs about admin fees that are non-specific about what those fees are for. A letting agent will apply all sorts of admin fees, demanding that all sorts of things be covered, and claim that that is part of the contract. Helping consumers to understand what they can and cannot challenge if they sign up to a contract would be incredibly helpful, given that some of the language used by traders at local and national level can be obtuse. "Purported" communication can also be considered relatively obtuse, too. Some guidance on that from the implementation group would be welcome.

Jenny Willott: I reassure the hon. Lady that there is detail in the Bill on what "prominent" means, but we will be working with the regulators and consumer groups to provide guidance on that. She is right that it is important that people understand.

Stella Creasy: I thank the Minister for her answer. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 73, in clause 64, page 37, line 32, after 'circumspect', insert ', taking into account social, cultural and linguistic factors.'.

The amendment pertains to the idea that not all people process information in the same way, as the Minister has said on a number of occasions. As a psychologist, I can tell her that there is a body of research on how different people approach decision making. However, the Bill does not have the flexibility that she tells us we need when we apply information tests to people. The amendment would build in that flexibility from the perspective of an average consumer, a notion that is consistent with the European Court of Justice's jurisprudence. It would allow the nature of the consumer—in particular, whether they are vulnerable—to be considered when these parts of the Bill are interpreted.

I will shamelessly put on the record the work of my former tutor, Dr Brendan Burchell, who has done a fantastic piece of work about financial phobia. Anyone interested in debt and how we should apply the law should read his detailed research into the ways in which different groups approach financial information. He highlights the fact that not all people process information in the same way, so we need in law a way of taking that into account when the provisions in the Bill are applied. For example, when we consider what is fair, purported or reasonable, we need to take into account the people in question. The amendment seeks to add that flexibility to the Bill.

I hope, given what the Minister has said in previous discussions about the broader importance of recognising how people interact with information, she will recognise that we need to take into account the ways in which individuals interact with information in themselves. The amendment would give lawyers and courts the ability to take that into account when they deal with people who have mental health problems, learning difficulties or medical conditions. Dr Burchell uncovered financial phobia in his interesting work, which might be taken into account when decisions are made about whether terms are reasonable or fair for people. I hope the Minister will give a positive response to the amendment.

Andy McDonald: My hon. Friend has cited her inspiration. I have another reference for her, which sadly seems to have inspired some unscrupulous traders. W. C. Fields worked to the maxim, "Never Give a Sucker an Even Break."

Stella Creasy: As ever, my hon. Friend has a much better quotation than any of us could come up with to explain our point. My professor helped me to understand the phobia of exams and doing homework, and his work on phobia is well regarded. I look forward to what the Minister has to say. I hope she understands our point about incorporating individual consumers into decisions and tests about fairness, and about the notion of an average consumer.

Jenny Willott: The amendment hinges on the requirement of prominence, which we have discussed. The introduction of the word "prominent" is significant and it will increase consumer protection. One of the aims of this part of the Bill is to ensure that the law is clear and the regime works for consumers and traders. I appreciate the spirit of the amendment, but I am concerned that if it were included in the Bill it would undermine its clarity. However, I will explain why it is not necessary.

The Government agree—and everyone in the room will agree—that vulnerable consumers need to be protected. The existing consumer protection regulations protect vulnerable consumers from misleading and aggressive practices. They take into account whether a practice is directed at a particular group and whether that group is particularly vulnerable when considering if a practice is misleading. Elsewhere in the law, therefore, there is specific protection for vulnerable consumers. The Government have committed to amend those regulations to make it easier for consumers who have been victims of such practice to get redress themselves.

3.30 pm

The amendment, however, would require a trader to take into account the cultural, linguistic and social status of a consumer when making a judgment about whether a term is prominent enough for that particular individual. As I am sure that everyone would agree, that is not practical for most contracts to which the unfair terms provisions apply. Traders cannot be expected to know the characteristics of their customers. In many cases, they will not have direct personal contact with them—if something is done over the internet, for example, they do not have the personal interaction to be able to make that judgment.

To reassure the hon. Member for Walthamstow, in the spirit of the amendment, a Law Commission report examined the issue in 2013, and it recommended the definition that is in the Bill. The commission explained:

"The legislation needs to use a general test that can be applied across all sectors…We do not believe that this particular test should be subjective, or else it would be too difficult to apply in practice."

It added that the fairness test would continue to protect vulnerable consumers, because of how it is assessed:

"We stress that under our recommendations the fairness test will continue to operate in the same way and 'all the circumstances attending to the conclusion of the contract' will still have to be taken into account by the courts. If a consumer's vulnerability is a relevant circumstance, then the court must take it into account."

When the courts are looking at a case, the issue of a consumer's social, cultural or linguistic abilities—or mental health problems, as the hon. Lady highlighted—will be taken into account, because those are factors that can be used to assess fairness in those particular circumstances.

I would be loth to change the term in the Bill, because it would become subjective. We have had clear evidence that an objective test is better than a subjective one. I hope the hon. Lady is reassured that those circumstances can be taken into account by the courts, and will be when they assess whether an individual consumer's treatment was fair.

Stella Creasy: I thank the Minister for her answer. I have to be honest: I prefer the reassurance, rather than the slightly dismissive reference to an objective versus a subjective test. It is worth remembering that there are 5.2 million adults in England who are functionally illiterate, with reading levels of age 11 or below. Having seen this at first hand with the payday lending industry, which regularly lent to people with mental health difficulties—indeed, it chased down adults with learning difficulties—despite supposedly voluntary codes stating that it would not lend to or pursue such people, I am nervous about using a narrower definition than the standard European Union one of an average consumer.

I am happy to withdraw the amendment on the basis of the Minister reassuring us that those issues will be taken into account. In dealing with some of those companies lending to people with mental health difficulties, one of the problems has been that they have been able to say "buyer beware", rather than being held to account for lending to people who clearly could not have understood the terms and conditions of the deals they were being offered. None of us wants to see that happening again. It is right for us to put on the record that the intent of the Bill is to cover the same sorts of issues as the European definition, even if that definition is not used. Will the Minister confirm that that is the intent, even though a narrower objective is in the Bill? That could be helpful if the Financial Ombudsman Service, for example, were to challenge some of the behaviour of those companies.

Jenny Willott: I have made it clear that we do not want to change the definition, because we have had clear advice following the work of the Law Commission, which feels that it is important that it be an objective test. However, all the circumstances relating to whether an individual consumer is vulnerable can be taken into account when assessing the fairness of the terms. That is exactly what we are looking at—whether a court will take those circumstances into account when making such a decision.

Stella Creasy: I thank the Minister for her answer. I think we have made clear our concerns about ensuring that financially vulnerable people are better protected by the law. On the basis that the Minister told me that the amendment is already provided for—as opposed to not required, which would be different—I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 64 ordered to stand part of the Bill.

Clauses 65 to 67 ordered to stand part of the Bill.

Clause 68

REQUIREMENT FOR TRANSPARENCY

Stella Creasy: I beg to move amendment 74, in clause 68, page 38, line 41, after 'trader', insert:

', which for these purposes includes a provider of financial services,'.

The clause deals with the requirement for transparency, so we have moved on from debating what is fair or unfair to what is known or unknown. Although we will debate amendments 74 and 75 separately, they should be seen as part of the same discussion. A particular concern has been raised with us regarding the providers of financial services. I want to say something briefly about amendment 74 before we move on to a more substantive debate on amendment 75, so I hope that, if things are not entirely clear, colleagues will bear with me until we get to debate that amendment.

Through amendment 74, we are seeking reassurance from the Government that providers of financial services, and especially insurance companies, are explicitly covered by the transparency requirements. We want to ensure that the clause's transparency requirements include the work of the legal interests of insurance companies. Before we move on to debate the next amendment on the substantive issue of the concern about insurance companies and their legal divisions, will the Minister confirm that she sees insurance companies and their brokers and all traders acting on their behalf as covered by the transparency requirement, so that courts and other enforcers can be clear that that is the spirit and intention of the law? That may seem to be implicit in the clause, so if she can give us an explicit commitment that financial services and insurers are covered—she will recall our concern that some provisions allow various sectors exclusions from legislation—we can move on to the next amendment.

Jenny Willott: I can indeed give that assurance. When we refer to traders in this part, that includes all traders dealing with consumers, including those in the financial services sector. I could explain why I do not think it would be helpful to make the amendment, but as it is a probing amendment I hope the hon. Lady is satisfied with that clarification.

Stella Creasy: I thank the Minister for her answer. I am happy that we can be confident that insurance services will be covered by the requirements. As a result, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 75, in clause 68, page 39, line 2, at end add—

'(3) Whether that notice is a general statement of the consumer's legal rights or specifically with regard to the obtaining of legal advice or assistance by an injured consumer it shall be drafted by and shall only recommend or direct an injured consumer to bodies that are wholly independent of the trader or anyone connected to the trader.'.

The hon. Member for Plymouth, Sutton and Devonport has been sat there waiting avidly to understand what we are concerned about—all will be revealed. The amendment goes to the heart of our concern about evidence of growing consumer detriment in the provision of insurance services and the role of legal protection. Members may have insurance policies that offer them legal protection and they may be familiar with those.

The cost of legal action—particularly the fees—can be prohibitive and none of us wants to take such action, although I know that some of us have benefited from that as a trade in past lives. If one had struggled financially to claim compensation following an accident or unfair dismissal at work, or even a dispute with a tradesman, one such remedy—the Minister has referred to this in the course of our discussions—would be through the courts under common law. However, that can be expensive and that is why legal protection insurance can be a useful add-on.

Such insurance is usually sold as an add-on to a home or car insurance policy for a small extra premium that many people are prepared to pay, but sometimes it is free. It tends to have a limit on how much may be claimed. The amendment seeks to probe how that process happens. There is growing concern that there may be a conflict of interest at the heart of how insurance services and legal advice within those services are sold and managed. I know that some hon. Members in the Committee, having worked in the field, have direct experience of some of those issues, and that others wish to speak about it, so I do not intend to set out in detail where the amendment is coming from. Suffice it to say that there is a simple question: if someone claims against their legal insurance, for whom does the legal service contract? It is in the interests of the insurance company that legal fees are as low as possible, as it is covering those fees. Does it mean that it will act to get the consumer the best deal, or simply the cheapest deal? Those two might not always be the same.

The amendment would give consumers who take out legal protection through their insurance policies greater certainty that any lawyer contracted through such a deal would act independently of the interests of the insurance company. The lawyer would therefore act in the consumer's interests in any of their dealings, rather than purely in the insurance company's interests.

The issue is of particular concern because of some of the work done by the Competition Commission, which found that the industry was not working well for consumers. A series of conflicts of interest were creating incentives to increase the price of premiums, at the expense of quality of cover. A chain of interactions between the insurance company and the lawyer meant that it was beneficial to insurance and legal services companies to ratchet up the fees and expect the consumer to pay for them, rather than to ensure that the consumer—who, if they were claiming, had obviously had some terrible experience such as an accident or being sued—got the best deal.

The Competition Commission has suggested that the extra premium costs as a result of those problems are between £150 million and £200 million a year. The issue is not just the cost to the consumer, but concern that the work—be it the representation or any replacements made—may not come as standard. Let me make it clear that this issue is separate from the question of whether a consumer might claim on their insurance, for example, for the cost of repairing a car if they have had an

[Stella Creasy]

accident. We are talking about legal representation if, for example, someone was being sued for causing the accident.

I hope that that is relatively straightforward. Given that there are members of the Committee who have much greater expertise on the issue than I do, I shall stop there and look to them to explain—probably better than I can—what the concern is.

Andy McDonald: Before I start my remarks, given the nature of the amendment, I would like to refer the Committee to my declaration in the Register of Members' Financial Interests. I was a practising solicitor at Thompsons Solicitors, for a modest return, until I took up my position here, for an even more modest return.

I would also like to refer to you, Mr Amess, as you probably have the best memory of such events of everyone present. Looking at the issue, we will discover that we are talking about a closed shop. You will recall, Mr Amess, that under the Employment Act 1990, closed shops were made illegal, and that they were further curtailed under the Trade Union and Labour Relations (Consolidation) Act 1992. My hon. Friend the Member for Walthamstow has tabled an amendment that reveals that the closed shop is alive and well, operating in this particular area of consumer practice.

Before I continue, I should take the opportunity to set the record straight about Ryanair. I am not convinced that it was £70 a head; it may have been £1 or £2 less. I want to put that on the record, because I do not want to fall out with Michael O'Leary. It might have been £50; I am sure that he will agree with me.

The current practice in before-the-event legal expenses insurance is to direct customers who might need that to a limited number of providers. That means that there is a real risk of over-emphasis on the financial returns gained from the relationship between the trader and the body that the consumer is directed to. In short, the solicitor who contracts to do the work in the hope of volumes of work will negotiate the terms and conditions with the trader, including the hourly rate at which they are paid. It is very much a race to the bottom, and that impacts on the quality of advice and representation that consumers receive. There is a grave risk of cherry-picking and of gross under-settlement, which is a massive consumer detriment.

3.45 pm

When the cases that are picked up in these circumstances progress, the consumer can engage a lawyer of their choosing if legal proceedings are necessary, but often the damage is done by the time that stage is reached. I have seen many an example of poor practice and of providers of services limiting their advice to telephone communication. They never sit down and take full instructions from an injured party. I have picked up a number of cases over several years of very poor practice and under-settlement.

So we are unearthing what can only be described as a cartel that is there for the betterment of the body to which the consumer is referred and very much to the detriment of the consumer. If the body to which the cases were referred could demonstrate its expertise and competence, it would be competing in an open and free market, but that simply is not the case. I would not say that people are being suckered into these contracts, but they are simply not aware that they exist. They simply do not need the cover in any event. Some people are paying additional premiums for legal expenses insurance that they may have rolled up in other products such as their household and contents cover. There is a debate about how that should be extracted and identified as a separate financial transaction, but people already have legal expenses cover with their household and contents insurance or credit card cover and yet they are persuaded to part with an additional fee for such a service. It is available to them in all manner of ways.

This practice is not confined to road traffic accidents and personal injury cases, but sadly that is where it is found most frequently. A particular case has been brought to my attention. I believe that it was eventually conducted by my former employers, Thompsons. A couple aged 81 and 79 were injured when a car overtaking from the opposite direction hit their car head on. One of them was airlifted to hospital with a severe whiplash injury. The next day, while she was in hospital, and with no discussion with her, the legal expenses insurers started a claim. This is common practice, Mr Amess. You may be surprised to hear that, but legal expenses insurers who get wind of this information very rapidly start a claim for personal injury without the consent or involvement of the person who was injured. They do so on a speculative basis, because number crunchers will tell them that those people who would object are few in number, and the process is under way and they gain a financial advantage. Because of what is called the pre-action personal injury protocol, the sooner someone gets on with putting in a letter of claim and progressing it, the sooner they can get to settlement. Time is money, and that is why it is done, but often claims are made without the party concerned knowing anything about it.

In this particular case, the legal expenses insurers got on with the business of appointing so-called medical experts, who went about an assessment they did not really think was in any way appropriate. They estimated damages at between £1,800 and £2,000. It was clearly a much more significant injury—it was quite incapacitating—and when the case was ultimately rescued and put into the hands of somebody who could do a proper job, it turned out that the true value of the damages was some £8,000. There would have been a potential £6,000 loss, or shortfall.

The client said:

"We didn't ask for a legal expenses insurer and we can only assume they got our details from our car insurance company. We were in shock after the accident, yet we were harassed with phone calls from them pushing us to make a claim and then when we agreed the way we were dealt with was so impersonal we felt we were just like a statistic. Their letters were in legal mumbo-jumbo and we struggled to make sense of them."

The client eventually realised that they already had that cover available, because the gentleman concerned was a retired Unite member and had access to legal services through that route, which cost him absolutely nothing. As a result, he was able to recover proper damages, and he concluded by saying:

"What happened to us is a real warning to others. Don't allow yourself to be pushed into having your insurers appoint people to act for you and get a second opinion if you are in any doubt."

That message must go out very loudly from this Committee.

I am sad to say that that practice is not restricted to what we would describe as the commercial insurance market. I am afraid that members of our armed forces are also unwittingly drawn into these arrangements. Since the repeal of section 10 of the Crown Proceedings Act 1947 in May 1987, members of the armed forces have had the ability to pursue claims of negligence against the Ministry of Defence. That principle is being somewhat eroded by some commentators at the moment, who would like to see that position changed; I certainly would not.

What has happened since 1987 is that products have been developed for the benefit of members of the armed forces, whereby they can recover personal accident insurance, as someone would with a holiday scheme, or otherwise; in such a scheme, if a terrible accident should befall someone, there would be a tariff-based system. There is also the ability through legal expenses insurance to cover actions to claim damages for negligence by an employer or another party. That is as it should be.

Sadly, the MOD chose to approve one single product, which is predominant in the market, namely that of PAX Insurance. Under that policy, the MOD restricts the legal advisers that are available to one single firm. What happens ultimately is that there are other providers in the marketplace, who are able to represent injured people extremely well. However, it is difficult to get past that initial filtering process, because members of the armed forces are a captive audience, with their referral to the same policy for the benefit of an accident payment system—a tariff-based system—and when they seek full and comprehensive legal advice they are only with one firm.

That has been the case since 1989, so I am making the criticism and observation of Governments of all colours that they have not properly looked at this issue. Here we are today, debating an amendment that seeks to make it clear in a commercial enterprise—a commercial contract—that that anomaly should be put right. It should be revealed who has been involved in these practices and yet our own Government is party to something very much along the same lines.

I very much welcome and support the amendment. It shines a light on a very concerning area and one of great restrictive practice that, in the context of the Bill, we could seize this opportunity to correct.

Jenny Willott: The hon. Gentleman obviously knows a huge amount about the issue and he clearly feels very passionately about it. It is helpful and we are lucky in the Committee to have so many Members with valuable expertise. The hon. Member for Wycombe has been very helpful on some of the technological issues, and the hon. Member for Middlesbrough clearly has a lot of experience in these areas. We are lucky to have such a broad range of experience among Committee members.

I have sympathy with a lot of points that the hon. Gentleman made. There are certainly cases in which people are not given the advice and support that they need. In the circumstances that he highlighted, at times when people are having possibly the worst time of their life, after horrific car crashes and all sorts of things, they probably need to know that they can rely on people and that people have their best interests at heart, even more than normally, so I have a lot of sympathy with the points that he made.

As I am sure the hon. Gentleman knows, the contract covering the legal services element that he and the hon. Member for Walthamstow highlighted is normally part of the insurance contract and as such, it is covered by Financial Conduct Authority rules. The FCA is the regulator responsible for ensuring that companies comply with the rules, principles and so on.

The FCA principles that would cover their conduct are principles 6 and 7, both of which I mentioned in a previous debate. Principle 6 is:

"A firm must pay due regard to the interests of its customers and treat them fairly."

That is a broad principle. It gives the FCA quite a lot of leeway to decide what it thinks treating a customer fairly looks like. It is purposefully broad so that the FCA can take account of individual circumstances when it wants to look at whether it can take a case forward.

Principle 7, which is the second principle that would apply, is:

"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."

That also links to some of the points that the hon. Member for Middlesbrough raised about the way in which such firms are communicating with consumers.

There are various requirements by the FCA of insurance companies, which include such things as:

"Firms should give clear and accurate advice about insurance products so that customers understand what a policy does and any limitations it may have."

In the area that the hon. Gentleman raised, that second part is particularly valid, about the limitations that there may be in the requirements for the consumer in relation to the terms of the contract that they are signing up to.

The FCA has also produced an "Insurance Conduct of Business Sourcebook", in order to set the standards that are required for insurance companies, and that is what covers these relationships. The rules include that consumers are given all appropriate information. The hon. Gentleman has highlighted issues such as the fact that consumers are not being given the information that they need about the terms of the services that are available to them, and that when something happens, they are not being given the information that they need in order to make informed decisions about who to get to act on their behalf.

Andy McDonald: I am grateful to the Minister for outlining FCA principle 6, but is not the heart of fairness the fact that the consumer can be confident that their affairs will be conducted properly, professionally and competently? Sadly, what is at the heart of these agreements, more often than not, is not the interests and rights of the consumer but the financial interests of the trader who sells the product in the first instance and the organisation that delivers the service that the consumer has purchased. That is what governs this product, not the best interests of the consumer, and that is where the lacuna lies in my view.

4 pm

Jenny Willott: Clearly, a lot of these cases involve extremely complicated relationships between the different parts of the contract. The hon. Gentleman is right to highlight some of the potential conflicts of interest and

[Jenny Willott]

so on that arise from that complexity. That is why it is important that the FCA can apply the general principle that customers must be treated fairly. That should pick up the points that he makes about ensuring that such traders act in the best interests of consumers, and he has mentioned a number of cases in which it is questionable whether that was so.

As the FCA is the regulator, it can refer such cases to the Financial Ombudsman Service. We heard evidence at the beginning from Martin Lewis about the fact that the Financial Ombudsman Service is extremely effective at obtaining redress for consumers. Its decisions are binding up to £150,000, so it has quite significant power to ensure that consumers are given redress when something goes wrong.

The issues raised by Opposition Members today relate to complex contractual relationships, and they are more properly matters for the Treasury. I therefore propose to pass them on to Treasury Ministers and ask them to look at them and then get back to the hon. Gentleman with some more detail about what is being done and how this can be tackled, because it is an area for regulation by those Ministers. I hope that that answers Opposition Members' questions.

Stella Creasy: I thank the Minister for her recognition that there is an issue. This is another example of a fairly simple consumer concern—whether, as we said in the double-charging debate, someone should act on behalf of two parties—in that the needs of the purchaser of legal insurance might not be the same as those of the insurer. There is a simple point about whether it is fair for people not to know that that conflict of interest might arise.

I am fully prepared to believe that, as the Minister says, the FCA can take on this issue, but as she says that she will write to the Treasury, I wonder whether she will also write to the FCA and ask whether it plans to look at the potential conflict of interest in the industry and consider what it might be doing to people's insurance premiums and to the quality of the legal cover and payments that they receive.

My hon. Friend the Member for Middlesbrough has shown today just how serious this issue is and how it is growing. The fact that the Competition Commission investigated it suggests that the problem is recognised. If we do not ensure that the Bill protects consumers from the potential conflict of interest in legal provision in insurance services, how else will that happen?

I appreciate that the Minister says that she will write to the Treasury, but given that she said that the FCA rules should cover this, it would be helpful for the Committee to know whether this is a live issue for the FCA and whether it is considering any change. If she gave that assurance, I should be happy to withdraw the amendment.

Jenny Willott: I am more than happy to write to the FCA with the concerns that have been raised today.

Stella Creasy: We have put on record our concerns about these issues and this industry, and we will wait to hear from the Government what response they get from the FCA before considering whether the Bill might become a better vehicle to deal with them by default because the FAC is not looking at them. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 110, in clause 68, page 39, line 2, at end add—

'(3) For the purposes of transparency, the Secretary of State shall report to Parliament within three months of Royal Assent of this Act on how the Government intends to ensure that all traders offering services on behalf of any government department or local or public authority shall ensure the consumer is able to access information regarding any consumer contract or consumer notices which may reasonably be understood to apply to them.

(4) This information shall be provided to the consumer—

(a) in a form which enables the consumer to assess whether the price being paid for the service is reasonable; and

(b) in such form as allows any government, local or public authority to use this information to secure social and consumer benefits insofar as this complies with existing data protection law.

(5) The Secretary of State's report shall include information on consumers' rights to access this data and how they may exercise their rights under this Act subject to data protection legislation.'.

The Chair: With this it will be convenient to discuss amendment 98, in clause 68, page 39, line 2, at end add—

'(6) For the purposes of transparency, the Secretary of State's report to Parliament within three months of Royal Assent of this Act under subsection (3) shall include how the government intends to ensure that salient, non-commercially sensitive information is published on all contracts offering services on behalf of any Government department or local or public authority.'.

Stella Creasy: I hope that these amendments will find favour with the hon. Member for Wycombe, given his earlier comments, because they are about how such rights will apply to the public sector. In particular, they deal with some of the issues that the Minister has raised, such as unfair contract terms and transparency. Amendment 110 is designed to ensure that consumers can obtain any information that they require to assess whether the price that they are paying for public services is fair. Amendment 98 deals with non-personal data. Hon. Members will remember from previous discussions the difference between data on an individual's direct relationship with a public service, and information contained in a data set to which they may have contributed. We need to make sure that both sets of information are available so that consumers can exercise their rights under the Bill to assess whether they are paying a fair price for a service.

It is not contentious to say that transparency is a good thing, so we should try to make services and decisions as transparent as possible. That goes back to the E word—empowerment—because people will be able to make better decisions if they can obtain information. For that reason, the CBI and Which? support the amendments. Those organisations, which represent consumers and traders who interact within the public realm, recognise the benefits of providing such information.

Fears about providing information—I wonder whether the Minister's comments reflect such fears—are not well founded. In fact, there is a recognition that the more information we can provide, the better decision making

can be. The CBI is concerned that consumers' ability to obtain information and assess whether a service is provided as they want it to be—and, therefore, whether the price is fair—affects the kinds of services that are commissioned, to which their members may contribute. The debate over the use of private providers is for another time, but the CBI's point about consumers' concerns is paramount. How can a consumer know whether a good service is being provided if they do not know the context, such as what the costs are, what the alternatives are and whether their public money is being used to obtain best value? I speak as an avid former member of the Public Accounts Committee and a huge fan of its work on value for public money. The amendment looks at the matter from the opposite perspective. It is right to have a national body that represents the interests of taxpayers, but having the necessary information immediately to hand would help us to make the decisions that we all have to deal with in our daily lives.

A future new clause deals with the role of advocacy, which is absolutely about ensuring that consumers have the appropriate information to enable them to exercise the rights that the Bill gives them. If the Committee were to support the amendments and new clause, I passionately believe that two thirds of our casework would disappear—that alone may be an incentive to Members from all parts of the House to support our proposals—because there is often a presumption that people have access to the information they need to exercise their rights when they do not, so MPs, citizens advice bureaux and consumer organisations become the back-stop. That is not good for business, for consumers or for the public sector, and the amendments are designed to address that situation. Access to the necessary information would inform the quality of the service that consumers receive and help to ensure that it is fit for purpose. It would also help to ensure that any remedies to which a consumer may have recourse are informed by accurate information.

I am sure that we have all encountered in our surgeries people who ask what my former council leader used to call the "pink elephant question"—people who demand that pink elephants be provided along Walthamstow high street in the belief that that is possible and that we are simply a roadblock to the pink elephants that the community needs. It is in consumers' interests to provide better information about how much everything costs so that they understand what options are actually available. One would not go into Tesco and demand a pink elephant—although perhaps Members have done that; wonders will never cease—and if one did one would be informed that they were not on offer. But in the public sector, the opaqueness of information can sometimes lead to unreasonable demands and bad decision making. By providing information in the way set out in the amendments, and as a matter of course, we can empower not only consumers but those who work with them to ensure that we get both best value for money and best service.

The disagreement on this matter may arise because the Opposition believe that the flow of information is at the heart of progressive public services. Information such as that referred to in the amendments can empower all consumers, yet at the moment it is all too often known by only a minority of consumers. For example, somebody with a child with special educational needs may have a statement and therefore a direct contract with their local authority. Any Member who has had someone in that position come to their constituency surgery will know that some local residents are better than others at securing the outcomes that they want, because some of them will be better informed about their choices. I have dealt with cases in which the cost of educating a child with special educational needs outside the borough has come into play, with questions about whether the provision is fair. Those parents who are better informed are often better able to challenge—after all, under a statement they have rights about the kind of service that they get—than those who are less well informed.

It would be incredibly progressive to address the lack of information and transparency about decision making within the public sector—about the contracts that are offered and the deals that are done by public services. It would open up an area of information, of redress and of empowerment that all too often is confined to those with sharp elbows. We believe that that would improve not only costing but outcomes within the public sector. That is why we have tabled the amendments. They feed into the discussion we had on Tuesday on a progressive approach to the consumer and to the public sector that we want to see the Bill support. We hope we can encourage the Government to go further and support that. *[Interruption.]* I can see that the hon. Member for Wycombe is looking attentive as a result of that idea. I agree with him that there are many aspects of information provision in the private sector that help drive quality and improve efficiency. We want to see that in the public sector as well.

That is the spirit behind both the amendments. I hope that the Minister will engage positively with the need to make sure that not just those with sharp elbows or the ability to mine data through freedom of information requests but everybody has access to the information they need to make good choices, and can understand when the choice they might wish to make—the pink elephant—is not available, and why that might be the case. Two thirds of my casework is not pink elephants, but a lot of it is information gaps. That is what we are seeking to redress with the amendments. Accordingly, I look forward to a positive and constructive response from the Minister.

Steve Baker: The hon. Lady said, tantalisingly, that the amendments might reduce our casework by two thirds. I am sure she did not mean to suggest that that would be a good thing because it would increase the time we could spend in the Tea Room. I feel sure that, like me, she believes that a reduction in our casework is a good thing because it would represent a reduction in human suffering in our constituencies. I am sure all hon. Members would agree.

I want to pick up the point about the extent to which public services can embrace the same sort of principles as business, and, in particular, whether revealing more information would help to deal with the structural problems in the public sector. I do not think it would, and for that reason I do not believe that the amendments are misconceived. Perhaps it will help the Committee if I mention the title of a campaign by the *Bucks Free Press* on our hospital: it is called Hand Back Our Hospital. The title is apposite, because before our hospitals were nationalised to produce the NHS, Wycombe hospital

[Steve Baker]

was a locally owned mutual. In many ways it was not the hospital that it is now, but it served the public need. The public ended up with an accident and emergency unit, for example, but that has subsequently been taken away from them.

The essence of choice in the public services as opposed to the private sector is voice versus exit. On the left, people believe that to have a democracy it is enough to be shouty and to have elections for representatives to sit in these rooms and produce the services that people want. With exit, as the Minister referred to earlier, people can vote with their feet, and take themselves and their money out of unsatisfactory arrangements and go elsewhere.

4.15 pm

I know from my speeches and testing of this concept in Wycombe that the public are generally warm to the idea of Wycombe hospital being a locally owned mutual. That would perhaps provide A and E services under a new model that the NHS is currently incapable of delivering. All of that is for another day. The point is that I am sure that the public in Wycombe would be happy to exit the present arrangements, to stop being taxed in order to pay people large sums of money by general standards to take away their services. At the moment, there is no way to exit from those unsatisfactory arrangements provided in the public sector.

We need a better way, which is more mutual, more co-operative, more in line with the wishes of those people who pay. It will not solve the problems of the NHS to give people more information. I particularly mention the NHS because it is very close to my heart and a top priority for my constituents. When we talk abstractly about the public sector and public services, perhaps that makes sense if we are talking about people spending their individual care budget, which is a very important subject. However, when we look at where most of the money is being spent in the public services, we see that the health service is at No. 2 and education is at No. 3. Unless a measure like this is relevant in health and education, I would suggest that it does not go far enough.

Both health and education need to be brought to a point where the choices that people make are not merely informed in the way that the amendments suggest but actually offer meaningful exit. For example, my constituents could say no, they will not pay the chief executive of a hospital trust more than £200,000 a year—I would have to check—in order to take away our services. That is not good enough.

Stella Creasy: At the risk of upsetting the hon. Gentleman, I suggest that he reads Albert Hirschman, who talks about the value of voice and exit together as positive behaviour mechanisms. Let me give him an example of how that would work in the amendment: 10% of our entire NHS spending is on our failure to tackle diabetes. We wait until people get so ill that they have to go into hospital to have their feet cut off or have renal failure.

Does the hon. Gentleman agree that if diabetes patients had access to that information and understood the cost of waiting they would want to see more community-led services to help keep them well? That would be in their interests and better value for money. Information can lead to behaviour change individually and collectively, and that is what we think this proposal would unleash.

Steve Baker: I am grateful to the hon. Lady for further extending my reading list of left-wing authors. If she looks back at my record she will see that I am supportive of the co-operative movement—and intend to be more so—for the practical reason that it combines both voice and exit. Provided that co-operatives are on a small enough scale, it is possible to get away from one and join another. I see great potential in co-operatives and mutuals for combining both things. I do not want to be too ideological. There is a very practical problem. My constituents cannot refuse to pay for services that are unsatisfactory. Merely giving them more information will not solve that problem, so I will not support the amendment.

Jenny Willott: This is an interesting debate. We had a precursor of it when we heard evidence at the beginning of Opposition Members' desire to bring public services into the remit of the Bill. First, I think we can probably all agree that transparency is at the heart of the consumer reform package; it is at the heart of the Bill. It is important to have consumers interact with businesses and residents interact with public services.

However, this is the Consumer Rights Bill and, as we discussed at the beginning, it is about contractual relationships between consumers and traders. I completely agree with hon. Members that it is important to have responsive and open public services, so that people know what they are getting and what they are contributing to. We can all agree on that. The hon. Member for Wycombe highlighted why it is important.

When the Committee took evidence on the first day of consideration, no consumer group wanted the Bill to deal with public services as well. Citizens Advice, Which?, the Office of Fair Trading and the Trading Standards Institute all thought it should not. *[Interruption.]* The hon. Member for Walthamstow is shaking her head. I have the quotes here if necessary. The general consensus was that the Bill was chunky and important—it is about consumer rights—but how public services can be responsive to individual needs is a different issue.

All public sector organisations, as the hon. Lady highlighted, are subject to freedom of information requests, so there is a mechanism for accessing the information, rather than requiring the Secretary of State to report three months after the Bill is enacted. Many of the services that hon. Members have highlighted today would not be covered by the Bill, as they are not services provided under contract, but under a statutory duty. A small proportion of areas of public services are provided under contract, and such areas would be covered by the Consumers Rights Bill. However, where public services are provided under a statutory duty, they do not fall under the remit of this legislation. I therefore do not think it would be appropriate to accept amendment 110, which would extend the Bill into areas that it is not designed to cover.

On amendment 98, which is about public contracts and transparency, I want to reassure the Committee that the Government are more transparent about their commercial activities than any previous Administration.

We are committed to ensuring the transparency of contracts that the Government procure. We already have a robust policy that requires all central Departments to publish tenders and contracts above a threshold of £10,000 on the Contracts Finder website. We have published more than 6,300 tender documents and more than 19,000 contracts, so there is a lot of information out there that people can access.

We have just endorsed the adoption of the open contracting principles in the UK open government national action plan, which sets out measures to deliver greater transparency of contractual data. We have already committed to go further by expanding the requirement to publish to the wider public sector, and that will be implemented through legislation.

I remind the Committee that the consumer contract regulations that will come into force later this year require traders within scope to give comprehensive information to the consumer before they enter a contract, so there is transparency of contracts at that level. It does not matter whether the trader is acting on their own behalf or on behalf of a Government or public body; they would all be covered by the consumer contract regulations.

I would support the principle of amendment 98, but the Consumer Rights Bill is not the appropriate mechanism for it, so I hope the hon. Lady will withdraw her amendment.

Stella Creasy: I feel as though I am turning to supervision this afternoon, but I want to add to the reading list for the hon. Member for Wycombe. I am sure the hon. Member for Spelthorne has already read TH Marshall and the idea of citizenship and the contract that one might have with the state. Many British citizens will be startled to hear the Minister suggest that we do not have a contract with the state—that this is merely about services provided to us and that we like it or we lump it. Even if we are not having a philosophical debate about our relationship with the state, as taxpayers who pay for something, she is not doing justice to the scope of the legislation she has brought before us.

Let us remind ourselves of clause 2(7), which defines businesses that will be covered by this legislation as including

"the activities of any government department or local or public authority."

The legislation clearly does apply. The Minister wants to quote the evidence that was given to the Committee, but what those organisations said—and, indeed, have subsequently said—was that because the scope of the Bill at that point was not explicitly about the public sector, they had not considered it. They did not say that they did not think it should apply. They have been very positive about the idea subsequently, not least because the legislation is already drafted to cover such instances.

Can the Minister tell us where the specific examples are? Is it, for example, personal care budgets? After all, the Bill covers implied contracts. Anybody who actually has a personal care budget will know that there is a schedule. Is it a statement of special educational needs? Is it a rental agreement with a housing landlord? After all, with the social housing landlord, someone will have a series of rights that they are expected to adhere to. Do they not have rights in terms of their being fit for purpose? *[Interruption.]* My hon. Friend the Member for Cardiff South and Penarth mentions dental treatment. There are also student tuition fees. After all, the Office of Fair Trading has just said that some universities might be breaching students' consumer rights in the way in how they apply sanctions to students who, for example, have not paid their library frees, thereby denying them their university education.

Consumer rights are being applied in myriad areas of the public sector where the Bill will no doubt come into play. The Minister suggests that only one or two very small areas will be affected and that the Bill is not about services provided under a statutory duty. In her evidence three or four weeks ago, she offered us a letter on where she saw the Bill affecting the public sector, but that letter has yet to materialise. If she has sent the letter, I am afraid that it has been lost in the post. That is interesting—do we have an implied contract with the postal service if we pay for a stamp? She might want to use her fit-for-purpose test. *[Interruption.]* Indeed, the postal service has been privatised, which makes the question simpler.

The Bill covers consumer notices and implied contracts. The Bill makes it clear:

"'Business' includes the activities of any government department or local or public authority."

Consumer rights will come into play within the public sector. Opposition Members believe passionately that it is right that we consider the rights that people have within the public sector, because there is such inequality in exercising those rights—it is about sharp elbows. That is where amendments 110 and 98, and the new clauses that we have tabled, come from.

Jenny Willott: I wish to make it clear that I wrote to the Committee on 12 February. I have the letter here, and I am happy to send the hon. Lady another copy. I sent the letter when I said I would.

I have made it clear that the public services that come under the Bill are the ones provided by contract. Public services provided under a statutory duty do not fall within the Bill's remit. As the hon. Lady highlighted, and as I said, there are some public services that are provided by contract, which will fall within the Bill's remit, but the majority of public services are provided under a statutory duty, as I am sure all hon. Member are aware, and those duties do not fall within the Bill's remit.

Stella Creasy: I thank the Minister, but I can honestly tell her that we have looked for the letter because we are concerned about the matter. Will she clarify, for example, the situation in the case of personal care budgets? People have a contract with their local public authority, so is that covered by the Bill? Is a statement of educational needs covered? Are child care vouchers, or anything that might be purchased with child care vouchers, covered? Is an ASBO or its successor covered? After all, an ASBO is a direct contract between the consumer and the trader, and it is "business" as defined by the Bill.

There are multiple examples of where people increasingly have a direct contractual relationship with the public sector and where we think the Bill could be applied. It is therefore right that, as the Bill passes through the House, we understand how consumers will exercise their rights under the Bill in relation to the public sector.

Steve Baker: The hon. Lady seeks to lecture Government Members on citizens' rights. I remind her that, in 1991, the Major Government introduced the citizens charter, which sought to make the Administration accountable

[Steve Baker]

and citizen-friendly by ensuring transparency and the right information. Lecturing Government Members is a bit too much. The Conservatives have always stood on the side of rights for the public and for citizens in relation to the public sector.

Stella Creasy: May I take it that the hon. Gentleman is deeply unhappy with the Minister's suggestion that we do not have a rights-based culture? She says that it is actually about statutory duties, which are separate from consumer rights. The hon. Gentleman and I might not agree that the cones hotline was the embodiment of public rights that we intend to achieve, but from what he says I would wager that he agrees that, where consumers have rights, they should be able to access the information that enables them to exercise those rights. Within the public sector, if one is to judge whether a service is satisfactory or fit for purpose, one should be able to access that information. That is the intention of our amendment, and it was the intention of our amendment on the midata project.

I remind the Committee that amendment 110 does not commit to a specific format; it simply says that we need to understand how people will access information so that they can exercise their rights. It is a proportionate amendment, and for the Minister to dismiss out of hand the idea that such information and such rights should apply across the public sector in the way we believe they will as a result of the Bill—we support opening up public services to the challenge, scrutiny and positive constructive empowerment that comes from such rights—is a disappointment. I am sure that people will have a direct contract not only in relation to personal care budgets as they are expanded, but in relation to things such as child care vouchers, tuition fees and rental agreements.

4.30 pm

I am happy to withdraw the amendment, because we will continue to have this debate, and I reserve the right to raise the issue with the whole House on Third Reading, because it seems to me that there will be Government Members who will be deeply unhappy if we do not have this conversation.

Will the Minister just clarify something? Does she see the Bill coming into play in the examples that I have given? If she does, when we come to debate some of the other amendments, at the very least Members from all parties can be prepared to have the conversation. For example, what are a student's rights if they have their degree removed from them because they have not paid their library fee, or if they feel that the quality of the tuition that they have directly paid for is not fit for purpose? What are their rights under this legislation?

Jenny Willott: The Bill covers contracts between a consumer and a trader, and the word "contract" has a specific legal definition. If that definition is met, consumers are covered by the Bill; if it is not met, they are not covered by it. A contract is an agreement—expressed either orally or in writing—with specific terms, between two or more persons or entities, in which there is a promise to do something in return for a valuable benefit known as consideration.

It is not just about the use of the word "contract"; there is a legal definition that applies to the word that defines whether something falls within the remit of the Bill. For example, with an ASBO there is no payment or consideration, so it is not a contract that meets the definition of "contract" in relation to the Bill. However, with things such as personal health budgets, if a commissioning group, rather than purchasing a service on behalf of a consumer, provides the means to the consumer so that they can make their own choice, at that point the agreement will be between the consumer and the provider of that service. Therefore, that is a contract for services that will be covered under the Bill.

As I said, there are areas of public services that are delivered by contract, but the contract has to meet the proper legal definition for those services to be covered by the Bill. Other public services are clearly not covered by it.

Stella Creasy: I thank the Minister for her answer. Can she confirm that tuition fees and services bought with child care vouchers are covered by the Bill? Can she confirm that a tenancy is a contract between a local resident and their local authority, and as such is a contract under this Bill?

Jenny Willott: No, a tenancy agreement is covered by separate legislation. In the case of child care vouchers, if the individual consumer has the money and then uses those resources to purchase a place from a child care provider, then there is a contract and there is consideration included in it, so that would be covered.

Stella Creasy: I hate to press the point, but if the Minister could clarify whether tuition fees are covered by the Bill, I think the Committee would have enough examples to begin to deal with the issues that we might want to cover. I believe that there will be different legal interpretations about some contracts, but will she clarify whether tuition fees are covered? *[Interruption.]* I think that her officials are saying that they are, but I would welcome her guaranteeing that that is the information that they are trying to give her, because for many of our constituents that would be a particularly appropriate example to explore how consumer rights come into play.

Jenny Willott: I am told that it is the case if the student is a consumer.

Stella Creasy: As a former youth worker, I happen to see young people as people too, and therefore as consumers, and capable of purchasing their own education, unless the Minister is suggesting that if their parents have paid their tuition fees it is different. Perhaps what comes into play is whether they have taken out the tuition loan themselves. Either way, I think the confusion about these issues reflects the points that these amendments were designed to tease out, and I am sure that Government Members will want to reflect on that as we move on and consider parts of the Bill to which we have tabled amendments about the public sector and what rights people might have. I believe that the point that we are seeking to make with these amendments is—at the risk of sounding overly grand—well made.

We will not press the amendments, but I am sure that we will return to the issue at a later date, unless the Minister wants to clarify whether she means that students would not be considered as consumers if their parents had paid the tuition fees, but would if they had taken out their loans themselves.

Rehman Chishti (Gillingham and Rainham) (Con): On the question of whether the consumer is the parent or the student, it is the student who gets the qualification at the end of their consumer. The parents do not get the qualification, so the consumer would necessarily be the student who goes to university.

Stella Creasy: I thank the hon. Gentleman for that helpful and, I presume, legally based intervention. He confirms what we suspected, which is that students have consumer rights under the legislation, because tuition fees, as the Minister has clarified, are eligible for consumer rights legislation if students are the consumers. The point is made, and we look forward to further debates. I hope that by then Government Members will have reflected on our concern that if the rights are not clear within the public sector and consumers are not able to access information to exercise their rights, detriment will occur. That is what we need to tease out in the following amendments. I am sure that the hon. Member for South Thanet has strong views on that, and her history of involvement in consumer rights in the public sector will come into play. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 68 ordered to stand part of the Bill.

Clauses 69 and 70 ordered to stand part of the Bill.

Schedule 3

Enforcement of the law on unfair contract terms and notices

Stella Creasy: I beg to move amendment 102, in schedule 3, page 55, line 10, at end insert—

'(5A) The CMA shall publish an annual assessment of the extent of consumer detriment caused by the use of unfair terms, as defined in this legislation, including detriment unknown to the consumer.'.

This amendment continues in the spirit of providing information for consumers. Members will be aware of the new Competition and Markets Authority, which will take over a number of roles in consumer rights and, in particular, some of the roles that the Office of Fair Trading has been performing. The amendment follows on from our discussions on unfair contract terms, and I hope it is relatively uncontroversial.

The Bill allows the CMA to issue advice and guidance on unfair contract terms. The amendment would ensure that there is a report to Parliament on where unfair contract terms have been used, outlining the impact on consumers. Given that the Minister said that there might be further amendments to the list of unfair contract terms set out in schedule 2, that information could be used to inform any further amendments to that list.

I do not propose to spend particularly long on the amendment, which is, I hope, simple and straightforward. If the Minister will not accept it, perhaps she will clarify where we might get information on unfair contract terms and whether detriment has occurred. *[Interruption.]* The hon. Member for Braintree looks at me quizzically, so I will explain again. I apologise if it is not clear.

The Bill, as drafted, gives the Competition and Markets Authority the role of issuing information and advice about unfair contract terms. The amendment, in addition to that advice and information, which might be on an ad hoc basis, would require Parliament to have an annual report on where unfair contract terms had been applied. The hon. Gentleman might recall the debate earlier today, which showed that unfair contract terms accounted for some £2 million of detriment to consumers. The amendment would mean that we could identify where that was happening, that so we could track gaps in unfair contract terms or terms that were redundant.

Mr Brooks Newmark (Braintree) (Con): I hear what the hon. Lady is saying. I was trying to understand, as someone who likes to ensure that legislation is only used if absolutely necessary, what the amendment does. I was trying to listen actively, as I was always taught to do. As the Bill stands, the information will be out there. A report will be written and I will have access to it as a consumer, as will all consumers. I am trying to understand the motive behind the belt-and-braces approach of the amendment, which would take that extra step of the report coming to Parliament. What will that help us as legislators do, given that we will already be able to see it, because the information will be out there?

Stella Creasy: I am afraid that the hon. Gentleman has made my argument for me, because there is no guarantee that that information will be out there. There is no provision for annual reporting. I apologise if he has misunderstood what I am saying. The amendment is not about bringing the information to Parliament; it is about collating that information, so we can see the extent of consumer detriment. There is no guarantee under the Bill that such collation would be made. I will give an example to explain.

Mr Newmark: In the absence of an annual report, what will happen to with the information? Will it disappear into the ether, or will it be out there somewhere?

Stella Creasy: I must be honest with the Committee: as time has gone on, I have begun to feel that we may yet entice the hon. Gentleman on to our side. He seems to understand our concern well; namely, that the information may well exist but not be in the public domain. I hope that the Minister will assure me that the Government have provided for that, given how much concern there is about unfair contract terms.

I will give the hon. Gentleman an example by turning to my favourite subject: the payday lending industry. The Financial Ombudsman Service held data for a number of years about problems and the people reporting them. There was concern that the types of contract under which the loans were being issued were causing problems, but there was no clarity about publishing the information. Members with eagle eyes will have seen that we have tabled an amendment to a later part of the Bill about how ombudsman services should use data.

[Stella Creasy]

The example I have given shows how data sets can be collated that illustrate detriment to consumers, but may not be acted on unless an organisation has a duty to do so—we know that the Competition and Markets Authority is intended to be a much stronger regulator than the Office of Fair Trading has been.

The amendment would ensure that the information is not simply held separately. For example, we have discussed the insurance industry. There might be escalating concern about unfair contract terms in that industry, as well as concern about the rental industry—again, we have discussed unfair contract terms in that industry. The clause would enable us to see things from the perspective of the consumer. Rather than looking at individual sectors, we could pool the information and ask where unfair contract terms were causing consumer detriment. That could inform any proposed legislative changes—for example, any addition to schedule 2, which we discussed earlier—or allow us to make recommendations to other regulators. The Competition and Markets Authority has the power to make such recommendations.

The amendment would simply ensure that the information was published—the hon. Member for Braintree suggested that that would be a good thing—and that action would arise from it. I do not see that as an onerous duty; after all, we would expect the Competition and Markets Authority to gather that information anyway. The issue is pooling it and recognising that we should do something with it to prevent future problems for consumers.

I hope that I have shown the principle behind the amendment to be relatively straightforward, and I look forward to the Minister's support for the notion. If she does not think that amendment 102 would achieve its aim, I would welcome her ideas about how else we can mine and gather intelligence about consumer detriment.

Jenny Willott: The amendment gives me a welcome opportunity to talk about schedule 3 to the Bill, which is vital to part 2. As we have said many times in Committee, there is no point in a consumer protection regime if it is not enforced. Schedule 3 provides a tailored, specific enforcement regime for the law on unfair terms. We have taken the current enforcement regime and worked with the Law Commission and stakeholders to improve it. We have updated and renewed the provisions, including by making it clear for the first time that enforcement action can be taken against consumer notices, and that enforcement action can be taken against terms that are not transparent, as we have already discussed.

Schedule 3 includes a key role for the new Competition and Markets Authority, as the hon. Member for Walthamstow said. It will sit at the heart of the enforcement work on unfair terms and will have the power to issue guidance on what traders need to do to comply with the law in part 2 of the Bill. The Competition and Markets Authority will publish details of the enforcement action it has taken, and traders, consumers and other enforcers will be able to ask it for that information.

The hon. Lady asked where one could find information about action that has been taken on unfair terms and the related work that is being done. I am sure she knows that the Office of Fair Trading has already published a lot of information. Document OFT311 is the main OFT guidance document, which includes examples of the detriment that consumers have faced. The OFT has also published sector-specific guidance, such as on gym membership—following previous discussions about weight loss and running marathons, I am sure that that is close to all our hearts—with numerous other examples as well.

Under schedule 3, the CMA must give information on enforcement action and so on if asked, as I said. I am also happy to reassure the Committee that the CMA will report annually on its work.

4.45 pm

Mr Newmark: I want to ensure that we as a Government are addressing the problem. Therefore, the CMA should report any example of bad behaviour that is investigated and say how it will address the problem and perhaps change the rules, or the law, rather than simply implement what is already there.

Jenny Willott: The CMA is planning to use the information that it gets on consumer complaints, as well as from other sources, to see where there are problems and to prioritise the markets that it looks at. Its draft—it comes into existence in April—annual plan makes it clear that the CMA wants to prioritise using its enforcement action in complex and precedent-setting cases, so that it makes the best use of its powers and its ability to act, where we can expect to achieve an impact in entire markets, with a particular focus on work on unfair contract terms. I hope that that reassures the Committee.

In relation to the amendment, unfair contract terms is therefore one of the areas that the CMA has highlighted as a priority. The CMA has a statutory responsibility to report annually, so that will happen every year. If there is a problem with an area of consumer detriment that the CMA is able to identify, it will be picked up within its work. More importantly, the CMA will then prioritise action on it. I hope that that answers the issue highlighted by my hon. Friend the Member for Braintree.

In addition, the CMA has made it clear that it wants to work closely with partner organisations, including a lot of the consumer groups, to ensure strong consumer protection and enforcement. A consultation paper was put out last year in which the CMA committed to working seamlessly with other regulators in the area to ensure that the whole system is tied up together.

My Department regularly monitors consumer detriment as well, to inform our policy and work. We will publish a report on consumer detriment across a range of sectors and issues later this year. It will pull together the work of different organisations and of the Government. I hope that this information will reassure the hon. Member for Walthamstow—as well as my hon. Friend the Member for Braintree—and that she will withdraw her amendment.

Stella Creasy: It is good to hear that there will be annual reporting on consumer detriment, particularly on unfair contract terms. That is all we were seeking clarity about. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 3 agreed to.

Clauses 71 to 75 ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 76 ordered to stand part of the Bill.

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

4.49 pm

Adjourned till Tuesday 11 March at five minutes to Nine o'clock.

Written evidence reported to the House

CR 24 Office of Fair Trading