PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION BILL

Second Sitting

Tuesday 29 October 2013

(Afternoon)

CONTENTS

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Saturday 2 November 2013

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

The Committee consisted of the following Members:

Chairs: †Sir Roger Gale, Katy Clark

† Bain, Mr William *(Glasgow North East)* (Lab)
† Baker, Norman *(Minister for Crime Prevention)*
† Dowd, Jim *(Lewisham West and Penge)* (Lab)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Hanson, Mr David *(Delyn)* (Lab)
† Harper, Mr Mark *(Minister for Immigration)*
† Hillier, Meg *(Hackney South and Shoreditch)* (Lab/Co-op)
Huppert, Dr Julian *(Cambridge)* (LD)
† Jones, Helen *(Warrington North)* (Lab)
† Kirby, Simon *(Brighton, Kemptown)* (Con)
† McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
Mills, Nigel *(Amber Valley)* (Con)
† Milton, Anne *(Lord Commissioner of Her Majesty's Treasury)*
† Opperman, Guy *(Hexham)* (Con)
Paisley, Ian *(North Antrim)* (DUP)
Patel, Priti *(Witham)* (Con)
Robertson, John *(Glasgow North West)* (Lab)
† Smith, Henry *(Crawley)* (Con)
Soames, Nicholas *(Mid Sussex)* (Con)
† Syms, Mr Robert *(Poole)* (Con)
† Wilson, Phil *(Sedgefield)* (Lab)

John-Paul Flaherty, Matthew Hamlyn, *Committee Clerks*

† attended the Committee

Witnesses

Carolyn Uphill, Chairman, National Landlords Association

Richard Jones, Policy Director, Residential Landlords Association

Caroline Kenny, Executive, UK Association of Letting Agents

Katharine Sacks-Jones, Head of Policy and Campaigns, Crisis

Professor Colin Riordan, Vice-Chancellor of the University of Cardiff and Chair of Universities UK's International Policy Network, Universities UK

Jo Attwooll, Policy Adviser, International Policy, Universities UK

Adrian Berry, Chair, Immigration Law Practitioners' Association

Public Bill Committee

Tuesday 29 October 2013

(Afternoon)

[Sir Roger Gale *in the Chair*]

Immigration Bill

2 pm

The Committee deliberated in private.

Examination of Witnesses

Carolyn Uphill, Richard Jones and Caroline Kenny gave evidence.

2.2 pm

The Chair: We will now take oral evidence from the National Landlords Association, the Residential Landlords Association and the UK Association of Letting Agents. For the record, will the witnesses please identify themselves?

Carolyn Uphill: Carolyn Uphill, chairman of the National Landlords Association.

Richard Jones: Richard Jones, policy director of the Residential Landlords Association.

Caroline Kenny: Caroline Kenny, from UKALA.

The Chair: Thank you for joining us.

Q68 Mr David Hanson (Delyn) (Lab): Reading your submissions, I get the impression that you object to the clauses in the Bill in principle. I may not share that approach, but I am interested in whether you simply object in principle or whether amendments to the Bill might make its objective and principle more palatable to you and your members. You may answer in whichever order you wish.

Carolyn Uphill: Yes, in principle we are very concerned about the Bill. It is going to impose an administrative burden on landlords who are not experts in immigration, over and above the proper checks that they do now. We do believe that landlords should check the identity of a tenant; unless you know who the tenant is, you do not know whether they are who they say they are and whether they have a right to stay in the country and therefore to work or get benefits and be able to pay the rent.

The principle of checking identity is not so much the worry as the logistics of how that is done and understanding the documentation. We certainly fully oppose the idea of periodic checks, because we believe those can lead to very dangerous and unintended consequences, which I will be happy to expand on later.

Richard Jones: From our perspective, we have objected in principle, simply because we think that the Bill and its provisions are not workable and will not be effective in achieving the objectives set out. I echo what has just been said. The UK Border Agency cannot cope with it, so how can we expect a whole host of small landlords to do anything better than the UK Border Agency has been able to achieve?

As to improvement, I would echo what has just been said in relation to the post-agreement contravention provisions. They are onerous and concerning to our members. Certainly, if the steps required of a landlord could be limited to things to be done at the outset of a tenancy, or at least when there is a change in the identity of the tenant, and if the provisions in relation to post-agreement contraventions could be removed, that would improve the Bill from our perspective.

Caroline Kenny: From agents' point of view, many letting agents are already familiar with carrying out a certain level of immigration checks during the course of their business. We have generally welcomed the Bill, but we share concerns about the reporting aspect of the ongoing checks.

Q69 Mr Hanson: What could the Committee, or more specifically the Minister, do to help you work towards the principle? Would it be by making changes to some of the demands on you so it is more workable? Are there concrete things you can suggest to the Committee that we should look at? Broadly speaking, there is still a shared objective with the Government on the principle; it is done for employers and potentially for landlords. What tweaks could be made to make it more palatable?

Carolyn Uphill: If we must have the landlord responsible for making initial checks, having made those simple and possible for the landlord to do, we believe that that should be the only check by the landlord. If the landlord is to take on someone with a temporary visa, it is at that point that they should be required to send information through to the Home Office, which knows that there is somebody there with a temporary visa and where they are. That passes on the responsibility for dealing with that to the proper immigration authorities and avoids the landlord becoming involved.

If we require a landlord to make a periodic check, you must be under no illusion that you are putting the landlord in an extremely difficult position. A comparison has been made with the employment checks. An employer is in a totally different position. It has an ongoing day-to-day relationship with their employee. It will probably have some human resources function or even a department to help it.

If an employer has to ask the employee to leave because they are no longer entitled to work in the country, it can do so. It can ask them to leave the premises, and the dismissal will be fair. On the contrary side, the landlord simply cannot walk into the property and require the tenant to speak to them or communicate with them; if a landlord turns up unannounced, that can be harassment and a criminal offence. If the landlord says, "Can I come round to check the documentation?" when they get there, the tenant may have disappeared and then the immigration services have lost them. The tenant will not have paid any bills.

Conversely, the tenant may refuse to give the landlord admission, which then bars the landlord from doing maintenance checks and even the gas safety test, and that is very dangerous for the property. In the worst scenario, the tenant, possibly feeling themselves under threat because they might be sent out of the country, perhaps back to a war zone of which they are frightened, could become aggressive with the landlord.

You only need one incident, where the landlord and the tenant get into some sort of physical situation, for that publicity to put all landlords off even considering taking on anybody on a temporary visa. Then you have all those people as vulnerable tenants forced into the underclass of rogue operators who will not care who they take and certainly will not inform the immigration authorities.

Q70 Mr Hanson: What assessment have any of you made of the support that you would require under the terms of the Bill to deliver that for the Home Office, which is what it is effectively asking you to do? What additional training, support, mechanisms and information would you require to deliver what is in the Bill at the moment?

Richard Jones: At the moment, we understand there is virtually none. The Home Office has confirmed to us that there will be 10 staff employed to assist landlords. It is not entirely clear whether those are the same 10 who already assist employers or whether 10 extra staff will be employed for that purpose.

As far as the checking systems and the training needed are concerned, there have been no suggestions from the Home Office that anything additional will be proffered to help landlords. The very little that will be offered by way of resources will be devoted by the Home Office to publicity and ongoing training. Landlords come and go. Clearly, many landlords are small operations. They come into the market and they leave the market. How will they be kept up to date with this requirement? Regrettably, nothing has been suggested that will really provide any assistance to landlords to perform these things.

Following on from that, I will, if I can, mention the post-agreement checks. In your original question about what help could be provided, what I failed to understand is that for banks, there will be a central database, or databases, that they can consult and effectively get a clearance. There will be no such system for landlords by and large, except where papers are sat in Lunar house, or wherever, pending processing.

The other thing that we have suggested to the Home Office—and they tell us they have not got the resources to cope with this—is that, instead of taking copies of the documents at the outset and making your judgment and then holding on to them, at that point those documents could be passed over to the Home Office. If the landlord did that, they would be absolved of any responsibility for judging the veracity or otherwise of those documents. Again, the Home Office tell us that, while that would be very useful intelligence, they would not have the resources to process that kind of exercise.

Q71 Mr Hanson: Have any of you been party to discussions on the guidance that the Home Office, I understand, intends to issue prior to consideration of the Bill in Committee next week?

Richard Jones: No. We were told that it has been under preparation.

Q72 Mr Hanson: Just to be clear, you have not formally been consulted on the guidance. You have not seen the guidance and you are not party to the drawing up or preparation of the guidance.

Richard Jones: Not at this stage. We believe that we will be. I have certainly had a discussion with one official who has told me that he was under a lot of pressure and he was getting the guidance together, but there have been no approaches regarding any detailed discussions.

Q73 Mr Hanson: I have one final question. The Bill obviously focuses on the impact of landlord activity in relation to the immigrant community. What assessment have you made, if any, of the potential impact it might have on indigenous individuals from the UK who wish to rent from your members? Do you think it will have an impact on the ability of any sector of the community to rent from you? Will it add additional burdens and costs? What is your assessment?

Caroline Kenny: We are concerned that it might have an impact on ethnic minorities, irrespective of their immigration status. That is a major concern for us.

Carolyn Uphill: I am not sure whether you are alluding to whether it will free up more housing. I think that is unrealistic.

Q74 Mr Hanson: I am alluding to the impact it might have on people who are UK citizens who wish to rent accommodation. A UK citizen can look and sound as if they might be from another part of the world, and they might not have a passport or appropriate documents. I am inquiring, in this great assessment, whether you have considered what the impact might be on the indigenous population as well as those who are coming here for work.

Carolyn Uphill: I think what you are inquiring about is whether there will be any racial discrimination, which would be a very sad consequence of the Bill.

Q75 Mr Hanson: Not just that; I am inquiring about cost and paperwork in general for individuals who are British because they would have to prove they were British. I might not have a passport.

Carolyn Uphill: That is a valid point. If people do not have a passport there will need to be consideration of other documents. The greatest risk is that you have to remember that landlords are in business to let their property as quickly as possible, because while it is empty they are running up overheads. So the landlord is going to be tempted to take the easiest option.

In a situation where there is high demand for rented property and several people are after that particular property, if people come round for viewing holding out their indigenous British passport, and there is obviously nothing else to inquire about, that person is going to get priority for that property.

Richard Jones: There will inevitably be an impact. There will be more paperwork; there will be more chasing of papers. Landlords, to protect themselves from allegations of discrimination, will have to check everybody.

I am involved in my professional capacity on occasion with undertaking money laundering checks, so I have some direct experience and know all the practical difficulties of getting the right paperwork from people. At the moment, landlords can take their own view; the tenant may be recommended to them so they do not need to

perform any checks, or they may be willing to take a view on a situation. Having to produce original paperwork and copy and retain it will inevitably impact on British citizens as well.

Q76 Mr Hanson: Just so that I am clear, I would genuinely like to know how much additional work or paperwork or activity you will have to undertake as landlords to ensure that you meet the requirements, if the legislation is passed as it is. What is your assessment of the increase in the general work load for you?

Richard Jones: It is very difficult to judge, because it will depend on what paperwork the individual can provide, but it will make everything much more formal and time will be taken. People will have to go away and get papers, which will have to be photocopied. It is difficult to judge, but it could add half an hour per transaction, if you want an average estimate.

Carolyn Uphill: And a great deal more where a landlord is unsure of the documentation they are being shown. It was of great concern that several MPs said on Second Reading that they had difficulty interpreting immigration, visa-type paperwork. The landlord, who has no experience of that, is going to be in a greatly difficult position. Either it will take them a long time or they will shy away from those prospective tenants.

Richard Jones: Just to clarify my answer, my estimate of half an hour was in answer to Mr Hanson's question about how long it could take for a British citizen. I agree that it could take much longer for someone subject to immigration control.

Q77 Henry Smith (Crawley) (Con): What percentage of landlords go through a managed company setting—that is, how many landlords use agents, on average? Is it 90%? Is it 75%?

Caroline Kenny: The latest National Landlords Association survey for the final quarter of last year indicated that 51% of landlords use a letting agent.

Q78 Henry Smith: Would it be correct to say that letting agents have become used to having to take on different requirements in legislation? For example, most recently they had to take on the deposit insurance scheme system that was introduced a few years ago.

Caroline Kenny: Yes, and we have upcoming legislation. There is the amendment to the Enterprise and Regulatory Reform Act 2013 regarding independent redress, and as of Friday we will need to comply with the Advertising Standards Authority ruling regarding the display of fees on property advertisements. The measures in the Bill will be another requirement for letting agents to take on board. However, having said that, as I said at the beginning, a professionally trained letting agent is already used to carrying out certain checks, simply because they cannot recommend taking on a tenancy to a landlord where a tenant potentially has limited leave to remain. The recommendation to the landlord in such circumstances would be not to commit to a tenancy for longer than the period of the leave to remain. That is standard practice for us, but we feel that the ongoing checks contained in the Bill are rather contrary to the best practice that we have been used to.

For example, going back to that scenario, if a tenant has a limited right to remain and the landlord agrees that they can be given a six-month tenancy, it will be made clear to the tenant from the beginning that they have been granted a six-month tenancy because their visa lasts for six months. Towards the end of that tenancy they will need to prove that they have the right to remain for longer, so that we can prove that to the landlord, otherwise they will not be granted a further tenancy. In that way, we have already been ensuring that illegal immigrants do not have the right to reside in the private rental sector. However, the proposal for ongoing checks indicates that such checks would either be at renewal or a year after the initial tenancy had started, so there is potentially a gap during which the tenant would not have the right to remain. That goes against the best practice that letting agents have been adhering to.

Q79 Henry Smith: Would it be correct to say that letting agents are used to periodically having to redo credit checks and fulfil other requirements to update regularly?

Caroline Kenny: On occasion, at renewal, if there are concerns—for example, if we were aware of a change in the tenant's employment status—we would recommend to the landlord that we carry out additional checking prior to the landlord granting a renewal of the tenancy.

Q80 Henry Smith: So would it be fair to say that for the more than half of landlords who let their properties through agencies, it is common practice that regulations and guidelines change—the law changes—and that in the past such changes have been successfully managed by letting agents?

Caroline Kenny: Yes, I would say so, but I would qualify that by saying that letting agents who belong to professional trade bodies are always kept updated as to legislative changes. They abide by a code of practice and by best practice in the industry. We obviously still have a huge hill to climb in the industry, however, because by our estimates only a third of letting agents currently belong to a trade body.

Q81 Henry Smith: Can you envisage a situation in which the proposals in the Bill might be helpful to the letting agent industry, in that more landlords would be more likely to let through a managed setting, as somebody else would be dealing professionally with the complexity of running their lettings?

Caroline Kenny: I can envisage that. That is where the professionally trained letting agent comes into their own, because they carry out that due diligence on behalf of the landlord.

Q82 Phil Wilson (Sedgefield) (Lab): What proportion of the housing stock is let privately at the moment, nationally, do you think?

Carolyn Uphill: Over 17.5%.

Q83 Phil Wilson: What do you think that figure will be by 2020?

Carolyn Uphill: I believe that it is heading rapidly towards 25%. Can I come back on Mr Smith's question? We have to deal with the reality, rather than the idea that landlords will all go to agents. The reality is that 49%—nearly half—of all landlords do not go through

an agent, but instead manage their portfolios themselves. Those portfolios are fairly small. Although we represent large portfolio landlords as well, typically our members have two to four properties, so they are fairly small, and they do not have the expertise and official back-up of an agent.

We have again had the comparison with employers. I was an employer myself for 30 years, but I had an office, a photocopier, staff and facilities. The average small landlord meets the tenant at the property they are showing and does not have access to that office equipment or to qualified help. We were asked earlier about what could be provided to help landlords. One thing that has been mentioned is a telephone helpline that will respond within 48 hours. In many, many cases, the property will be gone by then. A landlord can do a credit check within minutes, so that helpline may not be fast enough to provide the information necessary.

Q84 Phil Wilson: How many private landlords are there?

Carolyn Uphill: I do not think anybody has an actual figure. We believe about 1.4 million.

Richard Jones: The estimate we work on is 1.2 million.

Q85 Phil Wilson: So approximately 600,000 do not go through letting agents.

Carolyn Uphill: Approximately, yes.

The Chair: Does that tally, Ms Kenny?

Caroline Kenny: According to the figures we have, yes.

Q86 Phil Wilson: What is the average size of a private landlord's portfolio?

Carolyn Uphill: Between two to four properties, although that is an average. Some have just one property; some have hundreds.

Q87 Phil Wilson: It is essentially a cottage industry, is it not?

Carolyn Uphill: Yes.

Q88 Phil Wilson: In Durham, where my constituency is, we have a big problem with private landlords. There are some good landlords and some rogue landlords, but the vast majority are amateur landlords who do not realise, at the end of the day, what they are getting into. I am concerned that well-intentioned people will not be able to cope with the plethora of bureaucracy that the Bill will bring in. Would you agree with that?

Richard Jones: Yes, very much so. They are going to be bewildered by the complexity of it. I have calculated that there are 404 different EU or European economic area documents, although it was quoted as 444 on Second Reading—I think I had overlooked the fact that local authorities in Italy apparently issue their own individual documents. I have also calculated that there are 13 different documents for those who are subject to immigration control. It is just bewildering.

To come back to Mr Smith's point, and partly in answer to your point, the problem is not just the cost of this, but the cumulative cost of the other things that have already been mentioned—that increase in added burden that is going to confront the industry.

Q89 Phil Wilson: So this is a cottage industry of 1.2 million landlords. You have said, Mr Jones, that there will be only 10 people at the Home Office to run this.

Richard Jones: Yes. That was my calculation from the impact assessment on staff salaries. It was subsequently confirmed to me by a Home Office official that that would be the number.

Phil Wilson: So we have 10 members of staff at the Home Office to look after 1.2 million landlords.

Richard Jones: And of course, only a limited number of them will be on duty at any one time; some will be off on holiday, on training or whatever.

Q90 Phil Wilson: Are letting agents regulated?

Caroline Kenny: Not at present. We are self-regulating. I would like to add that it seems that letting agents will be dependent on the Home Office as well for the e-mail response and telephone response. We share the concern about the proposed e-mail response time being 48 hours, particularly given the shortage of property on the market at the moment.

Q91 Phil Wilson: So you have 600,000 private landlords who do not go through letting agents and 600,000 who do go through letting agents, who are not regulated.

Caroline Kenny: That is it, approximately.

Q92 Phil Wilson: Approximately, because it was 50:50. Do you think the Government are biting off more than they can chew with this proposal? It might seem good in principle, but how can you regulate it? Will it eventually lead us to a national register of private landlords? The other thing is selective licensing schemes, which I have two of in my constituency. How will this affect them? Will it be easier to administer in selective licensing areas?

I have two other points. Will the administrative burden push up rents? Also there is no central database for private landlords—I think you said there was one for banks. This is a bureaucratic nightmare that cannot be implemented.

Richard Jones: Touching on your selective licensing point, the Bill suggests that agents may be willing to take on the responsibility. I have to say that from my experience of houses in multiple occupation licensing and selective licensing, those agents who manage these properties have been very reluctant to take on the responsibility of licence holders. I am not sure that agents will be prepared to take on this legal responsibility in the new world that is envisaged. They will shy away from it when they realise the problems that they might encounter with the penalties when a member of staff gets it wrong. That will inevitably happen with the changeover of staff in agencies, which is, I am sure you will agree, high.

Carolyn Uphill: One of the biggest worries is that this proposal will feed the rogue operator sector. You mentioned having some trouble with some rogue operators. We, as the National Landlords Association, have no brief for these people, because they bring our industry into bad repute. They feed on the homeless and the vulnerable, and if you make it less attractive and more of a risk for

a landlord to take on someone who has only a temporary right to stay in the country, those people will be forced into using that underclass of operators.

Q93 The Chair: Caroline Kenny, do you want to add anything to that?

Caroline Kenny: We are concerned that the Bill adds to the burden for letting agents, although our best practice is that we have already gone some way towards meeting the requirements. What should not be ignored in the discussions on letting agents' fees is that the potential knock-on effect of letting agents not carrying out any immigration checks so far will be an increase in their fees.

Q94 The Minister for Immigration (Mr Mark Harper): First, as a small statement, I take issue with the "cottage industry" description. Taking the residential landlords' evidence, you have 20,000 landlords, who manage 250,000 properties—that is an average of 10 each—with a portfolio worth an estimated £40,000 million. That is quite a large cottage industry. Even if the median number of properties that a landlord owns is, say, four or five, even in parts of the country where property prices are not as high as they are in London, for example, that is still a portfolio worth several hundred thousand pounds. Perhaps we can accept that landlords are making a reasonable income from their properties. Calling it a cottage industry is not sensible.

Picking up on the questions, you said in your evidence, Ms Uphill, that you thought that the majority of landlords would be able to incorporate initial immigration checks into their existing referencing procedures with relatively little difficulty. You and the other witnesses are more concerned about the follow-up check, so that is what I want to focus on. Ms Kenny gave examples of how some of her members deal with people with limited leave, which is that they only give lets and leases for the period of someone's leave. We are proposing that you can let property to someone and you then do a check either after a year or when the leave expires, whichever is longer. We designed it like that because we did not want to create a burdensome process where we insisted and mandated that you can only let property to someone for the period of their leave. I want to explore how we deal with that follow-up period.

Carolyn Uphill: Let me re-emphasise that we are very concerned about the periodic checks. We think that they are positively dangerous and will have all sorts of unforeseen consequences.

You mentioned that you could give a period of tenancy just to meet the visa requirements, but that is against all the political parties' desire to see longer tenancies, for starters, but also the landlord is not in a position to do anything about this. If the tenant no longer has the right to stay, the landlord cannot enter the property and evict them—that is a criminal offence. You will be putting the landlord in a position where they cannot do anything other than go through the normal court procedure for possession, which can take anything between four to six months, during which time the tenant will stop paying, will not look after the property and may become aggressive with the landlord because they are in fear of being sent home. This will put landlords at unnecessary risk, and they will therefore be unwilling to let to anybody who does not have the clearest legal right to be in the country.

Q95 Mr Harper: Can I be clear about what the Bill requires? The Bill does not require the landlord, once they have carried out the periodic check and discovered that the tenant no longer has leave to be in the country, to do anything except notify the Home Office. It is then our job to take enforcement action against the tenant. We do not require the landlord to evict the tenant—we did think about that, and we decided not to do it for the reasons you set out—nor does the contract become unlawful. All we require is that the landlord notifies the Home Office, and then, quite properly, our immigration enforcement officers will use our legal powers to take action against the tenant. We do not require the landlord to do anything other than notify the Home Office.

Carolyn Uphill: You are requiring them to see the documents; therefore, they will need to see the tenant and will have the difficulty of making an appointment to go to the property. You are putting their business model at risk. The point has been about landlords making a lot of money. Please let us remember that the landlord letting the property has the overheads of the property—probably a mortgage, and certainly gas checks, licensing, electric checks, maintenance fees—to pay. They need the income from the tenant. If they perceive that there is a risk in letting to somebody who is here only on a visa, they are simply not going to take the business risk. You will force those people into the hands of rogue operators, who will be delighted.

Q96 Mr Harper: I am a little confused about your general point about the difference with employers. Landlords have an ongoing relationship with their tenants; the tenant pays the rental income, and the landlord is responsible for the safety of the property and other things. I do not understand why it is so complicated, after a period, to make a check. Ms Kenny in her evidence said that a number of her members check people's immigration status and let according to that status. Some 63% of Mr Jones's members already carry out immigration checks without apparent difficulty—that is what you said in your evidence, Mr Jones. I fail to understand why it is so complicated.

Carolyn Uphill: You are making a point about landlords. Landlords are in the position that the tenant has their home address; it is a legal requirement that the landlord's address is in the tenancy agreement. You are therefore reporting somebody who may be in fear of their life if sent back to wherever they came from. They may take that personally against the landlord. There is a possibility that the measure could put the landlord in physical danger, and as a representative body we cannot possibly support that.

Richard Jones: If I can clarify on the 63% point, our survey simply enquired what documents people check, not what the purpose of the checks was. Yes, 63% of landlords asked to see passports, but that was, first, to establish identity, and secondly, to look at the tenant's credit worthiness. It was not necessarily anything to do with checking immigration status.

This is slightly out of context, but I want to come back to the cottage industry point. What we said in our evidence was that 78% of all landlords own only a single dwelling for rent, which makes up 40% of the total private rented sector stock. That is based on the last Department for Communities and Local Government private landlord survey in 2010. From our perspective,

yes, we find that landlord associations tend to have members who have a higher number of properties per landlord. That is because they tend to be more professional. What I am trying to reflect is the industry as a whole. I think everybody, not least the Department for Communities and Local Government, will agree that it is a cottage industry. Only 10% of landlords have more than 10 properties, and they are mainly the corporate landlords, so it is a cottage industry.

You raise the situation regarding employers. There is a fundamental difference. It sounds technical, but it is fundamental and goes to the heart of the landlord-tenant relationship. When you rent a property, you pass over physical possession of it to the tenant. The tenant is entitled to exclude the world, landlord included, unless the landlord has reserved a specific right to go in. The issue of tenants arguing that they are being harassed if the landlord starts to visit the property has already been touched on. The employer-employee relationship is entirely different. Usually you have daily contact and can discipline employees. You cannot discipline tenants, so there is a fundamental difference in the relationship, which gives rise to the kind of problems that we are talking about.

Q97 Mr Harper: Let me pick up on that. I agree with you that the landlord-tenant relationship is very important. So for the very reasons that you set out, why would a landlord not want to ensure that the person to whom they were letting—and who they presumably wanted to be able to pay their rent—had, for example, the right to work in the United Kingdom and access to financial products, and was not an illegal immigrant? Because by definition, an illegal immigrant is here in breach of immigration rules and the law. Why would a landlord want to rent a property to someone who was a law-breaker, had no right to be in the country, was not able to work legally and would therefore have difficulty paying the rent?

Richard Jones: In principle, I am sure that they would not, unless they are in the criminal landlord category that we all want to see dealt with. What we are concerned about is the ignorance and, in turn, the limited knowledge. It is this limited knowledge that frightens people off. Landlords will shy away from individuals who are here perfectly lawfully to start with, and they will effectively discriminate against them. If you are faced with two tenants, one of whom has full status and one of whom is of limited status, you will not let to the one who has the limited status. It may well be that they have limited leave to remain, and that leave may well be extended without any difficulty, but the landlord will shy away from that potential tenant for that reason.

Q98 Mr Harper: I put the same question to the other two witnesses.

Carolyn Uphill: I would come back to the idea of the relationship between the landlord and tenant. It is absolutely valuable. The National Landlords Association is now running an effective letting campaign to try to enhance communications between landlords and tenants. There should be a good relationship—it is fundamental to the success of the landlord-tenant partnership. This sort of situation, where the landlord could become responsible for checking the continuing immigration status of the tenant, is destructive of that relationship.

We said from the beginning that we might be able to support the initial checks, although we were concerned about them. It is the periodic checks that will be so destructive of the relationship.

Caroline Kenny: Going back to the point about potential racism creeping into this, we are mindful of the Equality and Human Rights Commission's inquiry, which has only just been announced, into two letting agencies in north London, as witnessed in a BBC documentary. Our code of practice completely forbids such activity.

Mr Harper: So does the law.

Caroline Kenny: It is illegal and abhorrent, but we can envisage a stage where more landlords will ask their agents not to show their properties to people of ethnic minorities. That is what we are extremely worried about. We can see that there is a proposal in the Bill for a specific code of practice to address that, and we welcome it. We think that it is a good reaction to the concerns that have been raised in the consultation, but this is a big area of concern for letting agents.

Mr Harper: For the benefit of the Committee, when we come to debate these matters, we will have that prospective code of conduct available for Members to study so that we can deal with it in due course.

Q99 Meg Hillier (Hackney South and Shoreditch) (Lab/Co-op): Ms Kenny, you told us that checks are already being done by the legitimate agencies that you represent, which is roughly a third of landlords.

Caroline Kenny: We represent roughly 450 letting agents.

Meg Hillier: What percentage of landlords do they cover?

Caroline Kenny: I have not got the figure for the percentage of landlords that our members represent, but I can get that information to you.

Q100 Meg Hillier: Okay; that would be helpful. But if those checks are being done already, do you see any need for legislation to recreate what legitimate letting agents are doing on behalf of landlords anyway?

Caroline Kenny: That is a good question. At the moment, the way that a professional letting agent carries out these checks and monitors them, as I outlined before, works. If leave to remain is tied into the length of the tenancy, that is the best-case scenario, and we recommend that to our landlords.

However, we are extremely concerned about the risk of reprisals, which is tied in with the reporting element. We are not concerned about the initial checks, or the ongoing checks if they are tied into renewals, as would be ideal, but a letting agent is being asked to report to the Home Office if there is an illegal immigrant in the property. In the same way that a landlord's home address must be on the tenancy agreement, the letting agent responsible for letting the property to a tenant is known to that tenant. We have to ask for original copies, both at the commencement of the tenancy and upon periodic checks. There are premises at risk; not in every case, but that is the concern—that we are required to report.

Q101 Meg Hillier: Forgive me for my omission, Sir Roger: I should have drawn Members' attention to my entry in the Register of Members' Financial Interests, because I am a landlord.

With poor landlords, Mr Jones, you talked about the criminal element that you want to see removed, which would have a big impact for many of my constituents. Will anything in the Bill make any difference to those operators?

Richard Jones: None whatever. They operate outside the law, by and large, and get away with things as long as they can, such as applying for a licence when they should already have one. In fact, this legislation will be a boost to their businesses, as well as the ignorant who know nothing about it.

Q102 Meg Hillier: May I move on to sub-letting, which many of you may have something to say about? Under the proposals, landlords will have to check every adult living in the household. Experience of my constituency, where there is a high turnover of population and the reality of life is that people change jobs and move out of the area, tells me that there is lots of throughput in properties. Would you say that your members, or landlords in general, would always know who is living in their properties? I know that insurance issues mean that landlords like to know that, but will you talk us through the practical application of this proposal?

Richard Jones: The intention—I am not sure that the Bill's wording achieves this, and I will write to the Minister and his officials about that—is that unless the superior landlord, who originally lets the property, is willing to take on the responsibility, if the tenant in turn lets people into the property, they are meant to carry out these checks. That is totally unrealistic—it is simply not going to happen. That is the intention that underlines the Bill.

We are not clear about what happens with the normal things that can happen during a tenancy, particularly in a joint tenancy where there is a split-up and one partner disappears, or with groups of young professionals when people come and go. At the moment, that is not clear because it will all be left in regulations, so we are not sure how that will operate.

Carolyn Uphill: Another area that is quite unclear is student tenancies. I notice that the Bill excludes halls of residence, but, in fact, about two thirds of students go out into general housing after their first year.

One part of my portfolio is student properties in Manchester. You will have a number of tenants living there, but students are very peripatetic and it is difficult to have a complete handle over who is staying in the property at any one time. You have an issue with student visas that may come to an end with the academic year, before the end of the tenancy period. The landlord would then end up with a council tax liability and a void that they were not expecting, so landlords could become very wary of taking on student visas.

The Chair: Please make this the last question, as I have three Members still waiting to ask questions.

Q103 Meg Hillier: Okay; I will wrap it up. A lot of my constituents move around and sofa-surf because of the challenges in finding homes. Perhaps you could pick up on that.

Crisis has raised an interesting issue with me about people who go through an agency to be put into the private rented sector, because they cannot get a council tenancy and go into permanent housing, perhaps through the homeless route. At the moment they are not exempted from these checks. I do not know whether you have any experience that you can talk about from your members of private landlords taking people through those sorts of schemes. Do you have any comments on that element of the Bill?

Caroline Kenny: Not on those specific schemes. However, we know that many tenants who sub-let through the PRS do so without their landlord's knowledge. They pay no tax on the income they earn. They defraud their landlord. They defraud the Inland Revenue, and this can in some cases be quite a big business and quite lucrative. We understand that it is still proposed, although it is not detailed in the Bill, that there should be negligible penalties for sub-letters and owner-occupiers who rent out rooms to lodgers within their properties of as low as £80 and as high as £500. However, a maximum penalty of £3,000 per illegal migrant could be imposed on letting agents and landlords.

Research suggests that there could be as many as 900,000 lodgers within the UK at the moment. That is an LV survey. An article just last month in *The Times* drew from the survey and showed that there are up to 3.3 million "ghost tenants", typically lodgers and sub-letters, who are not named on tenancy agreements. In our submission to the consultation, we specifically agreed that owner-occupiers and sub-letting tenants should be made responsible for immigration checks in the same way. We do not agree that it cannot be a very lucrative business to be either one of those. Therefore we do not agree with the proposed disparity in penalties between landlords and letting agents, and sub-letting tenants and owner-occupiers.

The Chair: I have 13 minutes left and Mr Baker, Mr Bain and Mr Kirby all wish to ask questions, so can I urge brevity upon you, please?

Q104 The Minister for Crime Prevention (Norman Baker): You said that 1.2 million landlords was the estimate. Is that the UK or just England?

Richard Jones: The UK.

Q105 Norman Baker: Okay. Secondly, Caroline Kenny, on the checks already made, I am not clear whether the checks you already carry out are comprehensive enough that there will be no extra burden involved, or whether you suggest that they are not comprehensive and there will be an extra burden. Could you just be clear on that point?

Caroline Kenny: At the moment, we check employment status. We carry out a credit check. We take a character reference. We take a previous landlord's reference, if they have rented previously. We take a copy of their passport. We take a copy of a utility bill locating them at their current address. If their passport indicates that they are here on a limited leave to remain, then it is up to us to make further inquiries into that, because we cannot recommend to our client landlords that they accept them into a tenancy. In my previous life as a letting agent I have called the Border Agency for advice

if I have not been clear as to the status of a particular tenant. As for ongoing checks, as I outlined before, we would recommend that our client landlords accept that tenant into a tenancy only for the period of their leave to remain.

Q106 Norman Baker: That is helpful. You mentioned you were concerned about potential reprisals. Surely a landlord who was housing a tenant who they believed was an illegal immigrant, or in this country improperly in some shape or form would, as you mentioned yourself, contact the authorities anyway. So in that sense, nothing changes.

Caroline Kenny: They may do, they may not do. I know that with the initial checks, what is proposed in the Bill is that it is left to the landlord's or the letting agent's discretion at that point. What is different here with the ongoing checks is that it becomes a legal obligation.

Norman Baker: But you would agree that if a landlord is housing somebody who they believe should not be here, they would have a moral duty apart from anything else.

Caroline Kenny: If you are asking me personally, I think it is a moral duty, yes.

Q107 Norman Baker: Lastly, you mentioned earlier this afternoon that you thought this could have an impact on ethnic minorities. You were concerned that there may be a reluctance among landlords to take on people who may present an administrative problem for them. Presumably, there are other people who are potentially problems in that sense, if you are correct, who are not ethnic minorities but people from other countries where visas are required. They need not be ethnic minorities, need they?

Caroline Kenny: Sorry, what was the question?

Norman Baker: You are identifying a group of people who may present a potential administrative problem for landlords, but why would they just be ethnic minorities? Why would they not be people from other countries who may also have visa problems?

Caroline Kenny: They could be. You are quite right that it is not necessarily linked to ethnic minorities, as such, it could be non-European economic area countries in general. Landlords may ask us not to invite tenants from those countries to view their properties. We need extremely clear guidance for letting agents, in particular, to know what to do in those circumstances. We know what they should do: they should completely disinstruct themselves from that instruction, because it is illegal.

Norman Baker: So it is not simply ethnic minority; it is non-EEA.

Caroline Kenny: Correct.

Q108 Mr William Bain (Glasgow North East) (Lab): Can we return to the costs of the provisions in the Bill? It would be very helpful to the Committee if we had absolute clarity about the panel's view on where the burden of those costs will fall. First, is it your view that any additional costs from the Bill will go into higher charges or rent faced by tenants? In respect of private tenancies through letting agencies, Ms Kenny will be aware that many private tenants are enormously frustrated at the scale of letting fees already. Can you clarify whether letting agencies will be charging higher fees as a result of the Bill?

Caroline Kenny: There will be resource implications. Letting agencies are businesses, and costs over and above what letting agents are doing now in the course of their business will need to be recouped. We do not know what the reaction will be in the industry, but the current state of affairs is that with referencing fees, for example, it is the usual practice that tenants putting themselves forward for a tenancy would be responsible for paying reference fees. There is a simple reason for that, namely that they have to prove that they are eligible to enter into a tenancy. We would envisage that if there are any additional costs involved, and it is down to the individual business whether they levy that cost, they will view it in the same way: that it is for the tenant to pay, because the onus is on them to prove their suitability to enter into a tenancy.

Another cost that concerns us is that if there are penalties involved with letting agencies not carrying these immigration checks correctly, we think it is inevitable that they will have to pay increased professional indemnity insurance premiums. There is a cost involved for businesses as well.

Carolyn Uphill: There will be a cost, and the cost will have to be paid somewhere. We deal with 40,000 landlords at the NLA, and they are incredulous that the Government are proposing to add to the red tape burden at a time when we are being told that they want to reduce the red tape burden. Landlords have already had to deal with the cost of tenancy deposits, licensing schemes in their area and increasing health and safety. This will be yet another cost that will have to be funded somewhere. Inevitably, there will be an upward pressure on rents. It can hardly go any other way.

Q109 Mr Bain: Would this be just for new tenants, or might it affect people who renew a tenancy in future?

Richard Jones: Yes, definitely. There are already issues around renewal fees that are charged, and it will add to the cumulative cost, as I highlighted earlier. Inevitably, it will be passed through. Landlords who do not currently charge administration fees will be tempted to do so, if they are self-managing and self-letting. Those who already do will add something on. We saw with the Newham licensing scheme recently that all Newham rents went up by £150 a year to reflect the fee that was being charged in that borough as a result of their comprehensive selective and additional HMO licensing. Exactly the same thing will happen, or in some cases it will inevitably feed through in higher rents, importantly in areas where the agent and the landlord think the market will stand it. Obviously it will inevitably happen in London, the south-east and other hot spots.

The Chair: Your last question, Mr Bain.

Q110 Mr Bain: The Bill applies throughout the United Kingdom, but obviously in Scotland the issue of letting agency fees is devolved, and indeed letting agency fees have been abolished in Scotland. What discussions have you had with your colleagues north of the border about the implications of the Bill, and what talks are you having with the Scottish Government to determine what the possible outcome might be if the Bill were passed?

Caroline Kenny: So far, we have not had talks directly with the Scottish Government. However, I think you are quite right in highlighting Scotland. In fact, that was just the point I was going to make, because letting agents cannot recoup these additional resource costs through tenants, as premiums are outlawed. So they are additional costs within their business. Where will they need to recoup them from? We do not know, but it is likely that they may need to recoup them via their landlords. What would be the net result of that? We envisage, as you outlined initially, that it could result in an increase in rents.

The Chair: Thank you. One final question. Simon Kirby.

Q111 Simon Kirby (Brighton, Kemptown) (Con): As a responsible landlord myself, I would not want to see a property of mine let to someone who is here illegally, who is unable to work and who is unable to pay their bills. Does each of you agree with my straightforward position?

Caroline Kenny: Totally. Yes, I do agree with that.

Richard Jones: Yes. Clearly, I would also agree with that. However, as I have already said, the concerns are around the workability and the effectiveness of this, because you are a responsible landlord, as are quite a number, but there are those who will deliberately flout it and there are those who will not be aware of it, or, being partly aware of it, will then shy away from it. I think it is the unforeseen consequences, the unintended consequences of all this, that concern us.

Carolyn Uphill: With which I totally agree. Yes, you do not want to let to a tenant who is not legally entitled to be here, but on the other hand you do want to protect your business, not be burdened with red tape and not have these periodic checks, which could have serious consequences.

The Chair: That effectively brings us to the end of the time allocated for this session. So, Ms Uphill, Mr Jones and Ms Kenny, may I thank you very much indeed on behalf of the Committee for the benefit of your wisdom and experience? We are most grateful to you. Thank you.

Examination of Witness

Katharine Sacks-Jones gave evidence.

2.58 pm

The Chair: We now take evidence from Crisis and, for the benefit of the record, will you identify yourself?

Katharine Sacks-Jones: I am Katharine Sacks-Jones. I am head of policy and campaigns.

The Chair: Thank you very much indeed for joining us and for the time that you will devote to this very important session.

Q112 Mr Hanson: Thanks for coming in this afternoon to help us with our deliberations. Under schedule 3 to the Bill, a number of tenancies are excluded from the provisions that we have discussed with landlords today, such as, for example, social housing, hostels, mobile homes, student halls of residence, or even properties with long leases. Why do you think landlords have been picked on in this case?

Katharine Sacks-Jones: I do not know if I would say that landlords are being picked on. Our concerns centre around the fact that it is already very difficult for homeless people to access private rented accommodation, and we are concerned that the provisions in this Bill will make it even more difficult. We are talking about people who are either British citizens or who have a right to reside here, but who might struggle to have the necessary documents to prove that. Regarding exempt accommodation, we are particularly worried that not all accommodation used to house homeless people will be exempt. Ms Hillier mentioned earlier the accommodation provided through what is called private rented sector access schemes.

Those schemes work with people who would otherwise struggle to access private accommodation, because perhaps they do not have rent in advance, they do not have a deposit, they cannot find a landlord who is willing to take them. Those schemes will work with both the tenant and the landlord to find a property that is suitable for the tenant and to make that tenancy a success. It is already difficult work; landlords are already unwilling often to accept homeless people. We are concerned that, given that homeless people are less likely to have the necessary documentation, the Bill will make that work even harder.

Q113 Mr Hanson: Have you any assessment of the number of people you believe are currently renting who would qualify as not having status to remain in the country?

Katharine Sacks-Jones: No, we do not have any assessment of that.

Q114 Mr Hanson: Do you have an indication from your assessment of the potential impact of the legislation on British citizens?

Katharine Sacks-Jones: Yes, absolutely. That is the group that we are particularly concerned about. They are the people who are British or otherwise have a right to remain here. People who are homeless are moving around a lot; they lead quite transient lifestyles, which are often quite chaotic. That applies to people who are homeless and, for example, to women who are fleeing domestic violence. A lot of the people we work with do not have documents. They simply do not have a passport or birth certificate. If they do have it they often lose it quite quickly or it is often stolen from them. Homeless people are 13 times more likely to be the victims of crime than the general population, and often that crime is robbery. It is very common that they will have their documents stolen on the streets. We are worried when it is already very difficult. The provisions in the Bill will make it even more difficult for homeless people to get out of homelessness and into accommodation.

Q115 Mr Hanson: From Crisis's perspective, do you think that the clauses in the Bill should be deleted completely, or are there positive amendments that could be introduced to help ameliorate some of the poor effects that you believe the Bill has?

Katharine Sacks-Jones: We have concerns overall around the Bill. The provisions relating to access to housing will make it more difficult for homeless people to find accommodation and could lead to discrimination by landlords against people who appear to be non-British. That could be that they do not have a British accent or they are not white. We would be concerned, particularly in buoyant property markets where properties get let incredibly quickly and where landlords have the option of letting to different tenants, that they will favour the tenants whom they can immediately identify as being British. So we have general concerns. We do think that there are steps that can be taken and amendments brought that would improve the provisions in the Bill.

Q116 Mr Hanson: There is the opportunity, given that we are in the pre-Bill scrutiny and that this will come up next Thursday, to lay them on the table and have a discussion.

Katharine Sacks-Jones: There are a couple of things. One is around looking again at the list of evidence that landlords can check, and which will be counted as a statutory excuse if the tenant is later found not to have the right to reside here. At the moment we think that list is quite limited. We were pleased to see that some changes were made after Crisis and others fed into the consultation process, but we would like to see it go a bit further. At the moment, evidence of benefit receipt is only accepted in conjunction with a birth certificate. If someone is in receipt of benefit that necessarily means that they will have the right to reside here and that those checks have already been made by another agency. A lot of homeless people will already be receiving benefits. We would like to see that expanded so that that would not disadvantage people who do have the right to be here.

The other area where we would like to see changes is around the types of accommodation that are exempt. It is very welcome that consideration has been given to exempting some forms of accommodation that are used by homeless people. We are concerned that at present the list is still a bit restrictive. We would like to see more types of accommodation excluded. At the moment the Bill excludes hostel accommodation but it does not specifically exclude other types of emergency accommodation, such as night shelters. We have seen really horrific weather conditions over the past week; in those circumstances emergency provision is opened up. That can be existing night shelters, but it can be a range of forms of accommodation. Sometimes it is free; sometimes housing benefit will pay towards it, if the stay is over a longer period of time.

We are concerned that that kind of provision could be caught by the Bill and would like to see it set out explicitly that such accommodation will be exempt. It would be very concerning if we could not get people off the streets, particularly in the severe weather we have seen, because they were not able to prove their immigration status. As I mentioned earlier, we would also like accommodation provided to homeless people other than under the statutory duty—so accommodation used to prevent homelessness and accommodation provided by private rented sector access schemes—to be exempted.

Q117 Mr Hanson: You mentioned women fleeing domestic violence. Just for clarification, do you believe at the moment that women's refuges would be exempt from or covered by the legislation?

Katharine Sacks-Jones: As I understand it, at the moment they would be exempt. That has been set out specifically. However, women cannot always access refuges, particularly at the moment, as there have been really significant cuts to the number of refuge spaces available. So it might well be the case that they will try to access another form of accommodation, for example, a private rented flat. We would be very concerned if they could not access that flat because they did not have documents to prove that they had the right to be here and the landlord did not accept them.

Q118 Mr Harper: Thank you, Ms Sacks-Jones. I am very grateful for the work that your organisation has done. I know that DCLG officials met you as part of the consultation. Just to be clear, as Mr Hanson raised this matter, we are not picking on landlords. Local authorities already have to check the immigration status of tenants and are not eligible to let social housing to people without leave to be in the United Kingdom. This is a matter of extending that to private landlords as well.

I would like to probe the issue of documents a little more. As you know, following the meetings we had with you and with other organisations, we looked at broadening the range of documents. We have said, for example, that we will include receipt of benefits letters, as you said, because the Department for Work and Pensions will have conducted checks on people's right to be here. Can you give us more detail about whether you think that there is more that we ought to do in that area?

Can you also say more about exemptions of types of housing? That will probably be it then for my questions to you. We have already said there will be exemptions for housing provided to tenants where a local authority has checked a tenant's status—so where they nominate people to properties—and for homeless hostels. You have set out one or two examples of other types you think should be exempted, but a little more detail would be helpful for the Committee.

Katharine Sacks-Jones: You do set out that evidence of benefit receipt is acceptable, but only in conjunction with a UK birth certificate. We would like to see it be able to stand alone as evidence, because as you say people with that evidence will already have had to prove their immigration status to the benefit agency in order to receive it.

As for types of accommodation that we would like to see be specifically exempted, Crisis works with single homeless people, so typically they are people who are not owed the main homelessness duty. From the documentation, we are not clear whether other accommodation used, either by the local authority, by agencies commissioned by the local authority, or by other voluntary sector providers, will be exempt. That is a whole range of provision.

The one that I referred to particularly concerned accessing the private rented sector and the schemes that assist people in doing that. We have been given some funding by DCLG for 150 schemes over a three-year period. I speak to those schemes often, and we know the work they face: it is already very difficult to secure landlords who are willing to let to their tenants. We are concerned that as homeless people are less likely to have the documents needed the Bill will make those schemes' work even more difficult. So we think that form of

accommodation, which is used to prevent homelessness—either by the local authority or by another agency—should be exempt.

Finally, there are emergency shelters. The Bill is very specific at the moment about hostels. They are one type of emergency provision. They tend, actually, to be longer term. We are talking about very quick response emergency provision, be that night shelters provided by a church or another agency, or provision made available in very cold or extreme weather.

Mr Harper: That is very helpful, thank you.

Q119 Helen Jones (Warrington North) (Lab): Can I ask you to consider once again the problem of people fleeing domestic violence? Is it not the case that often women who cannot get a place in a refuge, particularly women without children, will not only seek to rent in the private sector, but may well stay with friends or sub-let and so on? At the moment, do you consider the provisions in the Bill would make that more difficult, because they often do not have their documents with them? If receipt of benefit was made a suitable condition without the passport, in your view would that assist victims of domestic violence in particular?

Katharine Sacks-Jones: Yes, absolutely. You are right. If you are someone trying to leave a violent relationship, you will do anything you can to get out of there. If you are able to leave, you will need somewhere to stay, and that is often very difficult because you get this incredibly short notice. So the accommodation that you try to access if you cannot get into a refuge could be a range of different accommodation. It could be the private rented sector, or it could also be staying with a friend.

I am not clear whether the Bill covers those situations, and if the woman fleeing violence was considered a lodger and was making some kind of financial contribution towards the household, whether that could be caught when she was staying with a friend. There is a risk that it could be, as the Bill is currently drafted. That would be very concerning indeed. Yes, absolutely, receipt of benefits being accepted alone would go some way to helping to address those issues.

Q120 Helen Jones: My second question concerns those who are here illegally, but maybe are in a violent relationship and are fleeing from it. I am thinking in particular of women who were brought here by their husbands, but may then find themselves the subject of domestic violence. What provision would you suggest for them, given that in these circumstances there does not appear to be anywhere for them to go without the immigration checks?

Katharine Sacks-Jones: That would be a very difficult situation indeed for them. They may be here illegally, but they are also victims of violence and are likely to be quite vulnerable. Those issues should be considered as well, because as the Bill stands, it would be quite difficult for them.

Q121 Helen Jones: Is there anything you can suggest that might improve the Bill on that?

Katharine Sacks-Jones: I have not really given it any consideration, I am afraid.

Q122 Meg Hillier: I am concerned about the British citizens, a number of whom you will be dealing with, who do not have any form of identification. You have highlighted them. On an approximation of figures it is difficult to be absolutely sure, but probably about 13% of British nationals living in the UK do not have a British passport. I guess that among those will be some of the people that you are dealing with. You have mentioned already some of the documents that you think would be helpful. It is already a very long list, but is there anything else that you think would be helpful for people to prove their identity? It is quite confusing and difficult as it is, but what would you suggest?

Katharine Sacks-Jones: I think that is right. We know from government figures that up to about 20% of people living in the private rented sector do not have a passport. That is particularly the case for groups who are not currently in the private rented sector, but are trying to move into more stable accommodation. They are far less likely to have documents. The emphasis needs to be on one on this list being enough, so not requiring a combination of documents, which is going to be more difficult, and simply saying that evidence of receipt of benefits alone will be sufficient.

The reasons why people do not have documents are probably quite common sense, but perhaps it is worth briefly rehearsing them. People sleeping on the streets get robbed. People move around from place to place. Even if people are able to secure a birth certificate one day, the chances are that by the time they have secured a tenancy a week later they may not still have it. It is a really transient lifestyle that a lot of people lead. The other thing to say is that properties are rented incredibly quickly in high-demand areas—often within a day. The Home Office line has said it will respond within 48 hours to inquiries from landlords asking for clarification of whether the documents are genuine, but 48 hours is a lifetime in buoyant rental markets, particularly in London and the south-east. It is already the case that if the people we work with cannot provide documentation very quickly, they will often lose properties that are on the market. We think that those problems will be exacerbated by the provisions.

Q123 Meg Hillier: I think the issue of domestic violence has already been covered, but I am interested in night shelters. There is a very good night shelter in Hackney run by a consortium of local churches and staffed by volunteers. You have mentioned churches, among other groups, but I am not sure that Hackney night shelter, for all the good work it does, would have people qualified to check ID, or that it would be practical for it to do that.

Katharine Sacks-Jones: Night shelters tend to be shorter term and emergency provision—I think that the Hackney one is just open over the winter period—but they often receive some kind of money, such as housing benefit, to keep them going, so I think they would be caught by the provisions in the Bill. You are right that they are not experts in making that check. Either that kind of emergency, first-port-of-call accommodation needs to be exempt from the legislation, as homeless hostels will be, or consideration needs to be given to how those checks could be made.

Q124 Meg Hillier: Can I perhaps draw you on the practicalities of that? If someone turns up at the shelter one night without documentation for whatever reason—they may be illegal, but they are more likely simply to be homeless for all the reasons you have mentioned—no one is going to come and find that out on the night. It is a lot of burden for very little potential "gain".

Katharine Sacks-Jones: We would be particularly worried about people who were paying rent, or where there was some kind of financial transaction, because they are the cases who would be caught by the legislation. There has to be some kind of payment in order for the provisions to apply, as I understand it. It is likely to be either British citizens or people who had other right to remain here who were paying housing benefit to stay in that accommodation who would be caught. I think it would be quite a worrying shift if people who were operating on a voluntary basis helping those who were incredibly vulnerable and in real dire need had to make checks before they could offer that basic assistance and get people off the streets.

The Chair: Thank you. If there are no further questions, may I thank you, Ms Sacks-Jones, for giving us the Crisis view and for the benefit of your own clear personal experience? We are very grateful to you.

Examination of Witnesses

Professor Colin Riordan and Jo Attwooll gave evidence.

3.18 pm

The Chair: We shall now hear oral evidence from Universities UK. For the benefit of the record, could I ask you both to identify yourselves, please?

Professor Riordan: My name is Colin Riordan.

Jo Attwooll: My name is Jo Attwooll, and I am policy adviser for Universities UK.

Q125 Helen Jones: Universities UK has expressed some anxieties about the Bill and suggested that it might deter some students from applying to UK universities. If that is correct, what provisions do you think would deter them and what changes would you like to see?

Professor Riordan: One provision that we think might deter them is certainly the requirement that landlords will have to check their immigration status, because we think that might lead to a situation in which not only potential students, but staff—a critical part of this as well—find it difficult to secure accommodation, particularly in advance of coming to the UK, and they may find it difficult to find somewhere to live when they are actually here as well. That may well put them off, because we have competitors around the world, such as Australia, New Zealand, Canada or the United States, where they might find that easier.

The other area in which we have had as an advantage previously is that we do not ask for health insurance. We are concerned that the NHS surcharge may have that deterrent effect as well.

Q126 The Chair: Ms Attwooll, do you want to add to that at all?

Jo Attwooll: Not in terms of the deterrent effect of the Bill, but we would like to flag up a couple of other issues, which perhaps we can consider later. Those issues are to do with the provisions in the Bill reducing appeal rights and setting immigration and visa fees.

The Chair: I am sure you will be questioned on those issues.

Q127 Helen Jones: Why do you think that a health surcharge would deter students when they are mostly paying quite high fees to start with? How high do you think the charge would have to be to deter them?

Professor Riordan: Well, it will be higher than nought, which is what it is now, so there will be an added reason for students to start asking whether the UK is the right choice. We are in an extraordinarily competitive business. Other countries in the world are doing whatever they can to attract students and we obviously wish to continue doing that.

Q128 Helen Jones: I accept that it is competitive, but do most students not have to have health insurance if they are going to university in many other countries? They do not access free health services without some insurance, do they?

Professor Riordan: No, but they do here, now, so there will be a difference.

Q129 Helen Jones: But not a difference from other countries where they may go to university.

Professor Riordan: No, that is true, but we currently have an advantage that we would lose.

Q130 Helen Jones: Have you any figures on how many people might be deterred from coming here?

Professor Riordan: We cannot tell exactly how many it might deter, because that would be an individual decision in each case.

Jo Attwooll: If we look at the UK compared to other countries and whether or not people are required to have some form of health insurance, it is certainly a requirement in the Australian and New Zealand systems, but it is not a requirement as part of the visa process in the American or Canadian systems, which are obviously some of our key competitors.

Q131 Helen Jones: I understand that it is not a requirement in America, but on the other hand they do not treat people for free if they happen to need health care when they are there, do they? Frankly, if someone is going to fall ill in the United States, they had better have some money behind them to pay the fees, so I am not quite sure I follow that argument.

Can I take you on to the housing provisions? In your experience, do most students need housing to be fixed up before they come to the UK, or do they do it when they get here?

Professor Riordan: On the whole, they would prefer to have it fixed up before they come, because it is obviously very difficult to arrive in a country with nowhere to live.

Q132 Helen Jones: And staff, of course, obviously. Do you think there is a possibility that students might fall into the hands of rogue landlords if the provisions are implemented? What would Universities UK suggest might prevent that?

Professor Riordan: Of course, rogue landlords exist in all kinds of aspects of the law relating to tenancy. We think there is a danger that students wanting to get somewhere to live will find that not enough landlords who are prepared to go to the trouble of checking their visa status are available. There may well be unscrupulous landlords who want to cash in on that.

Helen Jones: Thank you.

Q133 Mr Harper: Professor Riordan, I have a couple of questions on the health surcharge. The Universities UK consultation response said that the surcharge would increase the financial burden upon international staff and students given that the UK is one of the most expensive study destinations in the world. Clearly international students pay very high fees, which are of course set by universities, not by the Government. The surcharge is around 1% of the cost of studying. Are there any competitor countries outside the European Union that give students comprehensive free health care?

Professor Riordan: No. We currently have an advantage in that respect, which is helpful to us in recruiting students when they realise that other countries will charge them for health care. As Jo has just said, they do not necessarily do it as part of the visa process, but a university will usually insist that if a student is to be registered, they have to have insurance.

Q134 Mr Harper: In your response to Helen Jones, you said that as we do not charge currently, the charge that will be put in, although carefully calibrated to be competitive, will alter the relative balance. Do universities pitch free comprehensive health care in their marketing materials? Put me right if this is not correct, but I do not think they do, which means that the fact that we are imposing a charge of £150—which the evidence we received this morning suggested was modest—combined with increased openness about that giving you access to comprehensive health care, will probably improve our competitive position. I do not think we make use of the fact that people get access to an excellent health care system at the moment, unless you want to put me straight on that.

Professor Riordan: We would certainly mention it in FAQs and on websites and so on, because that is the sort of thing that students want to know about. The other issue with a modest charge of this nature is the extent to which we know that it will stay modest. Once that charge is there, presumably the potential is for that to be varied.

Q135 Mr Harper: On that point, we have been clear—no doubt we will reiterate this in the Committee—that we want it to be competitive. We want to attract students, but we think it is reasonable that they make a contribution.

May I pick up on your point about landlords and accommodation? First, we said that where students will be accommodated in university accommodation, the fact that the university has done the check on their right to be in the UK means that they will be exempted. We also made it clear that it will be possible to let from overseas ,as long as you check the student's documents when they arrive in the UK. Do you think that is adequate, or could we do more?

Professor Riordan: We think the fundamental issue that might arise is that private landlords may be averse to letting their property to overseas students or, for that matter, overseas staff—of course, post-docs will be paying national insurance and so on. That is the real issue that we worry about. We find that a substantial number of students cannot get private accommodation. In that case, we would be pretty well duty bound to put them up in our accommodation in the university, which would reduce the places available for home students, who would then be pushed out into the private market. We do not see that as a helpful state of affairs, particularly because all of this will be happening based on their residency status.

Q136 Mr Harper: On that point, may I ask either or both of you what the evidence is that overseas students and staff have difficulty in renting accommodation at the moment, over and above the fact that they may be trying to rent properties in markets in which there is lots of demand? They may have problems in renting, but are their problems greater, because of their status, than those of any other tenants trying to rent in a busy rental market?

Professor Riordan: Not that I am aware. As far as I know, there is no real distinction between home students and overseas students in trying to rent in the private market, and certainly not in the university. In fact, we generally try to ensure that first-year overseas students do have university accommodation, which is a help.

Q137 Mr Harper: So it is already the case for first-year overseas students that universities tend to put them into university accommodation, where the provisions would not kick in—that would be only once they were in the United Kingdom and looking for accommodation.

Professor Riordan: They tend to with first-year undergraduates, but that is a practice, not a rule.

Jo Attwooll: I would say as well that the Higher Education Statistics Agency's statistics on students in their first year of studies—either undergraduate or postgraduate—show that 28% of non-EU students were in private rented accommodation, so that is outside of private halls of residence, university-owned halls of residence and various other residences that they could be living in. Beyond the first year of study, I would expect that they may well be more likely to seek rented accommodation.

Q138 Mr Harper: Finally, if 28% are in private rented accommodation, does that mean that 72% are in university-provided accommodation, or does other provision also account for the difference?

Jo Attwooll: The rest is made up of a number of different scenarios, so potentially it is accommodation that is owned within their family, or it might be university-owned accommodation or private halls of residence as well.

Professor Riordan: It is 33% who are in institution-maintained property—that is, university halls—while 28% are in other rented. Then there is a range of other possibilities. About a third of them are placed in halls in the first year.

Mr Harper: That is very helpful. Thank you.

Q139 Mr Hanson: Given that the provisions of schedule 3, as I read them, exempt halls of residence predominantly for the accommodation of students from the provision of landlord accommodation, does that in your view include all university accommodation? When I was at university, I did not live in a hall of residence; I lived in a student house, which may be defined differently. It would also be welcome if your statistics about the number of students currently taking up rented accommodation on first arrival or subsequently could be submitted formally to the Committee. At the moment, under the Bill there would be a discrepancy between the way that students are treated either in a hall—or, potentially, in other university accommodation—or in the private sector.

Professor Riordan: I would take the reference to halls of residence to mean all accommodation that is owned and run by the university. It is not always in a hall; it could be a house that is owned or something like that. The distinction would be outside. Quite a number of students are accommodated in what are effectively halls of residence, albeit run by the private sector. There is a large amount of that. Some universities have effectively outsourced all their accommodation, or the great bulk of it, to the private sector, so there would be a question about whether that would count. There are sometimes quite complex relationships between the university and the private sector where the university guarantees to fill rooms in accommodation. It would be important to inquire into exactly what the definition of "university-owned accommodation" would be, or halls of residence in this case.

Q140 Mr Hanson: Could you give us an idea of the total value of overseas student placements to the United Kingdom economy?

Professor Riordan: We think that in terms of fees and the amount of money they spend—

Q141 Mr Hanson: Fees, the money they spend, goodwill—what is your assessment of the value generally?

Professor Riordan: For the student part, the last figures we had were about £2.6 billion.

Q142 Mr Hanson: Over the next 10 to 15 years, do you anticipate a growth in that sector on current projections?

Professor Riordan: Yes. The projections that are in the Government's industrial strategy are around £10.2 billion in terms of the growth of this.

Q143 Mr Hanson: So you talking about a fourfold to fivefold growth in the number of overseas students?

Professor Riordan: Yes. The previous figure was from 2011.

Q144 Mr Hanson: You have indicated so far that you believe that the measures in the Bill, particularly on health, could slow that growth or would cause some difficulties in competition terms.

Professor Riordan: Yes, we would expect that. For the first time in 16 years the numbers have levelled off or dropped by about 0.4%. Other countries have been growing quite a lot more than that—by between 10% and 20%. There is an enormous growth in this area, which has now started tailing off in the UK.

Q145 Mr Hanson: Do you have any assessment internally within the universities of the extent of the problem of individuals who come here as students but potentially overstay or are here illegally in the first place? What checks do you undertake? What is your assessment of the level of the problem that the Government are trying to address?

Professor Riordan: In terms of non-compliance, the work that we did a year or two ago showed only 2% non-compliance in universities. We are sure that that number will come down because of the checks that we now carry out and the focus in this area. We do not believe that fraud or overstaying is a serious problem so far as university students are concerned.

Jo Attwooll: The figure of no more than 2% came from a Home Office study that looked at all elements of the education sector in terms of the sponsoring of international students. I think the study was from 2009 or 2010, and it concluded that no more than 2% of students sponsored by higher education institutions were non-compliant.

Q146 Mr Hanson: Balancing that 2% potential non-compliance against the potential for growth in the student economy, where do you think the Government and the Committee have to get the balance right? What would be your assessment of the changes, if any, that we should make to get the balance more in kilter?

Professor Riordan: The risks of non-compliance are extremely low. There are arguments around the NHS surcharge that you could make in principle, by saying that if you have not contributed to the NHS through your taxes, it is not unreasonable to make a charge. We do not believe that asking landlords to check on the immigration status of overseas students is necessary. We already do that. We have extensive checks. We monitor students. The record of non-compliance is low anyway. We are worried that the landlord checks will create a whole set of problems that we feel are unnecessary and will seriously disadvantage us.

Q147 Mr Hanson: Is it therefore reasonable for me to suggest that some examination of the definition of "student" in relation to "landlord" would be welcomed by you in helping to ensure that students are not put off by excessive checks?

Professor Riordan: Yes, I am sure that would help. It is really a question of added value, and the administration costs, which we think would be quite considerable, and whether they are worth the potential disadvantage.

Q148 Mr Hanson: What else could the Government do to reduce the 2% to 0%?

Professor Riordan: It remains to be seen exactly how far we have got with that, but UUK feel that the procedures we have in place in universities—through the certificate of acceptance for studies, and so on—and our monitoring processes are more than sufficient to ensure that university students stay within the requirements that are requested and imposed by the Government.

Q149 Henry Smith: Correct me if I am wrong, but I believe that you said a few moments ago that the number of overseas students coming to UK universities is levelling off. Surely that cannot be as a result of provisions that are not yet law.

Professor Riordan: No, that would be the previous provisions that have come in since 2010.

Q150 Henry Smith: Would you agree that the UK has, by most international standards, some of the top universities anywhere in the world and that people come here because of the quality of teaching and of research? They are not really going to be put off by a modest £150 health levy on their student visa.

Professor Riordan: I certainly think that is less of an issue than the landlord checks will be, but, as I have said, this is an extraordinarily competitive arena. Sometimes the problem is not with the measure itself; sometimes such things are misunderstood and are represented in the media in places such as India, Singapore and so on in ways that were never intended. That has a much greater effect because of the publicity, and we have seen that happen again and again.

Q151 Henry Smith: Finally, universities in the United States are well-subscribed to by foreign students and yet the cost of going to college in the US is among the highest in the world by some way. Does that not indicate that it is about quality of teaching, research and facilities at those higher education institutions rather than the cost? If somebody is looking to get a good degree or to further their university education through a masters, because it will allow them to access significant employment opportunities in the future, some relatively modest up-front charges should not really be an impediment to that.

Professor Riordan: The British Council has done some research that shows that foreign students do value high-quality education and have a desire to improve career prospects. Students from China value the cultural experience, Indian students value the career prospects and those from Pakistan appreciate the quality. However, the cost of application and the cost of living is, according to the British Council survey, becoming more important to students. The decisions are complex, but clearly cost is going to come into it. It is in the interest of the UK, if we want attract students—clearly, as UUK, we think our universities should be doing that—to recognise that cost is an issue.

Jo Attwooll: I think we need to look at the cumulative impact. As Professor Riordan said, there have been a huge number of changes to the system since 2010, and international students who are looking for a higher education experience somewhere other than their home country have various choices of where to go. They will be looking at the educational offer, whether there are post-study work opportunities and the cost of the visas. Postgraduate students who want to bring their families over will also be looking at the cost of that. For example, a PhD student who wants to come to the UK with a spouse and two dependent children will potentially have to pay a significant up-front cost for the family for the NHS surcharge, in addition to the maintenance funds—they must demonstrate that they can provide for themselves while they are here—and the tuition fees. It could potentially be a significant initial outlay.

Q152 Meg Hillier: My question is a simple one to Professor Riordan. You said earlier that people's belief in what is being put forward is important. In your opinion, what is the mood music? There is often a debate between different bits of government. One bit of government may encourage people to come to Britain, while another bit says, "Britain is closed for business." Can you give us some concrete examples of what other countries are doing? I know Australia has been telling everyone that it is easier to get in there than it to get in here. Hungary does medical degrees in English. The Netherlands has been attracting a lot of British, European and overseas students. What is your reading of the mood music, and how important is it relatively, compared with the detail of what we are going to be discussing in the Bill?

Professor Riordan: As I said, it is very competitive. It was noticeable after the twin towers fell in 2001 that the US tightened its visa provisions. That led to a big drop-off in the number of overseas students. That was observed after a number of years, and big changes were introduced. A similar thing happened in Australia. It does have a big effect on things.

There is a symbolic significance to things such as the NHS surcharge, which may be represented as an extra cost to overseas students in their own countries. These things become stories, and the mood music may become, "The UK is becoming increasingly difficult to get into." There may be headlines about a stringent visa policy. Even if there is a £150 charge for a single student is, people may be put off not by the cost but by the mood music. As Jo said, if a student with a family has to pay up front for three years, it could be £2,400. That is a noticeable amount of money, and it might put them off.

Jo Attwooll: Recently, i-graduate conducted a survey that looked at the attractiveness of the UK from the perspective of education agents, who assist students with finding courses and places overseas. It compared the attractiveness of the UK with some of our main competitors. It demonstrated that between 2008 and 2009 the perception of the UK as a very attractive destination for international students went down by, I think, eight percentage points. In the same time frame the perception of Canada as a very attractive destination rose by something like 15 percentage points. So the mood music, certainly among education agents, indicates that they do not believe the UK is as attractive as it was.

Q153 The Chair: It is not the task of the Chairman of these Committees to ask questions, but you indicated earlier that there are matters you want to place on the record, Ms Attwooll. I am not entirely clear whether you have already done so, but if there is anything you wish to add, as you have been kind enough to take the trouble to come, please do so.

Jo Attwooll: The first point that we wanted to make was around the restriction of an individual's right to appeal a decision from something like 17 categories to four scenarios. We wanted to flag up that we have concerns around administrative review being the only recourse that a student applying for further leave to remain in the UK will have to challenge a decision. That goes for international staff applying for further leave to remain as well, not least because credibility interviews are being introduced, and they will judge the credibility of candidates. For more complicated cases, we have concerns that administrative review may be the only recourse that individuals have to challenge a decision. That may lead to individuals going for more costly scenarios, such as judicial review, to challenge a decision.

The Chair: Thank you. That is now a matter of record, which members of the Committee will no doubt wish to consider. Ms Attwooll and Professor Riordan, I thank you for taking the trouble to come. We are deeply grateful.

Examination of Witness

Adrian Berry gave evidence.

3.46 pm

The Chair: We will now hear oral evidence from the Immigration Law Practitioners Association and, for the benefit of the record, would you be kind enough to identify yourself to the Committee?

Adrian Berry: I am Adrian Berry, chair of the Immigration Law Practitioners Association.

The Chair: Thank you for joining us, Mr Berry.

Q154 Mr Hanson: Welcome, Mr Berry. Will you give your assessment of the current standard of the decision-making process in the Home Office for immigration issues covered by the Bill, which will remove the first-tier tribunal?

Adrian Berry: Yes. The adjustment to section 82 of the Nationality, Immigration and Asylum Act 2002 removes the right of appeal on points of law for the managed migration routes, which are the people who come in for work, for study and for family reunion purposes. The Home Office decision making in this area is extremely poor, as the appeals impact assessment notes. Some 50% of managed migration appeals are allowed on points of administrative law, and do not engage human rights or the refugee convention.

Q155 Mr Hanson: On that point, can you give us some concrete examples of the type of thing that is overturned on appeal?

Adrian Berry: Absolutely. At the moment, a tier 1 investor—someone who invests £1 million in this country—can apply for further leave to remain in order to achieve indefinite leave to remain. If their application for further leave is refused, they currently have a right of appeal to the tribunal on a point of law, not on a point of human rights or refugee convention compliance. If the measure goes through, they will have no appeal right. The likely consequence of that is that they will withdraw their investment and take it somewhere else.

Q156 Mr Hanson: Are there any other examples? I am interested in putting concrete flesh on what this means for the UK economy and to citizens.

Adrian Berry: Yes, absolutely. The same would be true for people who have limited leave to remain for the purposes of study and who apply for further leave. The same would be true for people who apply to enter the UK for the purposes of UK ancestry and, perhaps most surprisingly of all, there is an abolition of certificates of entitlement to the right of abode. That is the document that British citizens use to vindicate the fact that they are British citizens when they seek to rely on their British citizenship when overseas. It has nothing to do with foreign nationals.

Q157 Mr Hanson: What is the 50% figure you have given in numbers?

Adrian Berry: I do not have the precise figure, but we can send it to you in writing. It is 50% of all the managed migration appeals we have.

Q158 Mr Hanson: It would be helpful to have a figure on that and, if you have them, the figures over the past three or four years, so that we can see whether the figure has gone up and down and so we can see the average.

Adrian Berry: The figure that I gave you is drawn from the appeals impact assessment, which is one of the documents produced for the Bill.

Q159 Mr Hanson: You have said that if that right of appeal is removed—50% of appeals are currently upheld—there will be a consequence. What is your assessment of the numbers that would go on to judicially review, or simply abscond, or be lost to the system, or in some way cause additional complications to the desired effect, which is to ensure that people have a proper right of abode in the UK?

Adrian Berry: To be clear, these are not people who are illegal entrants or overstayers. These are people who seek to take advantage of the immigration routes that are prescribed for migration into the UK. If they are right, and they are coming here for work or study, it is public policy that they should be allowed to enter the UK. If they do not have a judicial remedy against bad decision making, they will either try for a very expensive, privately funded judicial review, or they will not bother coming to the UK. That includes people who are economic migrants, whom we are seeking to attract to the UK.

Q160 Mr Hanson: What would your view be on the economic impact of any change to the economy of the UK?

Adrian Berry: If you are an entrepreneur or an investor and you are thinking of coming to the UK, it would be negative. If you understand that halfway through your time in the UK on your route to settlement suddenly you have an administrative action that you regard as unlawful and you lack an effective speedy judicial remedy.

Q161 Mr Hanson: What steps would you take to ensure that the original decision making was much improved? Obviously, a 50% appeal rate is poor decision making in the first place, if those are on points of law. What improvements could you make to ensure that stronger decision making at first tier?

Adrian Berry: The improvements would be to invest more resources in training. You need to have a more senior standard of decision maker taking the decisions. You have to have a broader approach to acceptable evidence, with less rigidity and more flexibility to ensure that the substance of any particular rule is complied with. Ultimately, there is no substitute for the judge on your shoulder. That does not mean that you have an appeal, but when you appreciate that you might be subject to a judicial remedy you might make better first instance administrative decisions.

Q162 Mr Hanson: Is the judge on your shoulder being a member of the Home Office team dealing with the peer review essentially sufficient in your view to ensure improvements in decision making at a local level?

Adrian Berry: Not at all. Administrative review, which we have already had in relation to the points-based system, has not led to the kind of reversal of poor decision making that one sees when one has an independent and impartial judicial remedy. We have already trailed administrative review with the points-based system before, and it is no substitute for the rule of law, where you have independent judicial scrutiny of executive action.

Q163 Mr Harper: I did not spot in your evidence, though you just touched on it at the end there, administrative review. Why do you think it is better if there has been a caseworking error to resolve that through an appeal mechanism, which obviously often involves hiring a lawyer and can take at least 12 weeks, rather than dealing with it through a much more speedy administrative review process, which does not require hiring a lawyer?

Adrian Berry: Two reasons. One, administrative review in practice does involve hiring a lawyer, because you need somebody to advise you on why you got it wrong in the first place. Secondly, administrative review is part of good Government decision making; it is what they should be doing in any event. It often involves a process review, rather than a substantive reconsideration, and it often involves endorsing somebody in your own office or department who has made a bad decision in the first place. The advantage of a legal—judicial—remedy is independent and impartial consideration of Government action. That is the same for all spheres of life, whether it relates to migration, housing or any sphere of Government or local government activity.

Q164 Mr Harper: If we look at where we already use administrative review, which is in our overseas operations, where we complete 90% of those reviews within the 28-day target, and where we overturn 21% of the decisions, why would we not be able to implement that sort of system here? It would actually give a significant number of applicants much faster and more cost-effective decisions than they get at present through the tribunal system.

Adrian Berry: Certainly, Governments should always reconsider poor administrative decision making internally. It is a false opposition to contrast administrative review with judicial oversight of Government action—21% is not 50%. If 21% of decisions are overturned through administrative review, but 50% of economic managed migration appeals are allowed, you can see the difference that independent and impartial judicial scrutiny makes. I am not suggesting that we should not have an administrative review stage, but it is not a substitute for independent and impartial judicial oversight of Government action.

Q165 Mr Harper: My final point is that we are not removing judicial oversight: if the administrative review process is not adequate, people will still have legal remedies. If we look at the—admittedly initial—response to the removal of the family visit visa, which was effective from 25 June, in the first three months, we have seen only three judicial reviews from people for whom we refused a family visit visa. Does that not suggest that the processes we have put in place for administrative review are successful and will not force people to follow the expensive judicial review avenues that you suggested?

Adrian Berry: As you know, if you are getting advice on article 8 issues involving the right to respect for family life, there is no longer any legal aid for that, so the low incidence of judicial review is not an indication of the workability of administrative review overseas. As you will be aware, judicial review is a procedural remedy, which looks at the way in which a decision is taken and not at the substantive outcome. The difference with an appeal on facts and law is that one is able to adduce evidence that allows the decision to be substantively overturned, rather than be a running commentary on the way in which the decision is taken.

Q166 Helen Jones: Thank you for coming, Mr Berry. May I ask you about the bail provisions? In certain circumstances involving a person who is due to be deported from the UK, the Home Secretary has to consent to bail. In your view, how does that stand with the current law, particularly the application of the European convention on human rights?

Adrian Berry: If consent is refused, it removes bail from the jurisdiction of a judge who can consider granting bail, and turns it into an unlawful detention case that would be brought in the High Court. If you do not have a right to bail or to seek to apply for bail, you end up having a judicial review-type proceeding about whether withholding that consent was lawful. A High Court judge or upper tribunal judge who has to consider that has to look at compliance with our unlawful detention provisions in the common law and with article 5 of the European convention on human rights. It is a blunt instrument to achieve liberty when you have a quick and effective right to apply for bail under the current arrangements. What happens is that, where consent is refused, the question of whether you can apply for bail is displaced and turned into an unlawful detention hearing in the High Court. It is the displacement of an issue, rather than a solution.

Q167 Helen Jones: Is your contention that that might involve people in a much longer and more costly legal action?

Adrian Berry: Yes. Of course, as the Committee will be aware, the High Court jealously guards the right to liberty and will examine unlawful detention cases with forensic scrutiny to ensure that liberty is preserved. Is that really what we want to do—to displace bail hearings from the first-tier tribunal to the High Court and the upper tribunal?

Q168 Helen Jones: The provisions apply where, to sum it up, a person is due to be deported within 14 days. In your experience, how many removals from the UK in those circumstances take place within the 14-day timetable? Do you have any evidence that might help the Committee?

Adrian Berry: I do not have any immediately to hand, but I can let you have what we have in writing, following this hearing. My experience is slightly skewed in this respect, because people come to me when they have secured a solicitor to assist them in the first place, so I get the problems that people wish to solve, rather than the ones that are below the radar.

Q169 Helen Jones: Yes. Clause 3 will also change the right to re-apply for bail within 28 days

"unless…there has been a material change in circumstances."

In your view, what, legally, would constitute a material change of circumstances?

Adrian Berry: One would be if there is no reasonable prospect of removal for one reason or another, which can relate to practical as well as legal considerations. It may be that there is a change of circumstances in the proposed country of removal that makes it impractical. It may be a simple want of documentation. It may be that a question of the right to respect for family life about a family member or a child is suddenly taken into consideration, and the interests of that child have to be protected. There may be a number of legal and factual scenarios. But the question is: who decides whether there has been a material change of circumstances? If the tribunal refused to see that there was one, again it would become a question of unlawful detention litigated in the High Court. Once again, it is a question of displacement from the practical tribunal to the impractical remedy in the High Court.

Helen Jones: Thank you. That is helpful.

Q170 Guy Opperman (Hexham) (Con): Mr Berry, can you help me? I am now a non-practising judicial review lawyer. Judicial review effectively did not exist until approximately 45 years ago. It has mushroomed beyond belief in those past 45 years. Agreed?

Adrian Berry: There is a greater incidence of decision making that has been subject to judicial review, absolutely.

Q171 Guy Opperman: I accept that. The consequence of that is that if you or I were to go along to the Royal Courts of Justice on the Strand, we would be acutely aware that, at present, huge numbers of cases are taken up, in relation not just to this type of practice but to all types of state action, that constitute judicial review of state action. Correct?

Adrian Berry: Yes.

Q172 Guy Opperman: Would you also agree that numerous Lord Chief Justices, Masters of the Rolls and senior judiciary have bemoaned the fact that the High Court is clogged up with a large and ever-expanding proportion of judicial reviews?

Adrian Berry: The administrative court has an ever-increasing work load. The question of why that is, is probably the next point you are going to come on to.

Q173 Guy Opperman: That, sadly, is a wider point about why the state does or does not make mistakes on decisions in various aspects of the law. What I want to try to establish, though, is that this is an expanding form of judicial process. Are we agreed?

Adrian Berry: Yes.

Q174 Guy Opperman: You talked about judicial review as being fundamentally a procedural reassessment of an original decision, and I accept that. But would you not agree that when you and I—in the bygone days when I did your job—are progressing a judicial review claim, we have ample opportunity to add further evidence to the original evidence put forward to expand on the claim?

Adrian Berry: No, I do not agree that evidence that arises after the date of decision demonstrates an error of law made by the decision maker. In fact, it is very difficult to get that kind of evidence admitted, precisely for the reason that you are moving the goalposts.

Q175 Guy Opperman: I absolutely endorse the fact that you cannot, unless you are alleging bias or whatever, produce further evidence in that context. What you can do though, would you not accept, is explain matters with further evidence, which is admitted by the court? The idea that no further evidence is admitted is not correct, is it?

Adrian Berry: The High Court, on administrative review, is largely concerned with controlling past abuses of power. It is not concerned with granting substantive remedies to grant further leave to remain and the like. The remedies available from judicial review are simply an asset to catch out the poor decision making that prevents someone from being granted further leave to remain—something that can be solved in substantive tribunal hearings at present.

Q176 Guy Opperman: But you accept that further evidence can be added.

Adrian Berry: Not for the proposition that you suggest. Further evidence does not allow a substantive remedy to be granted in the High Court that grants someone leave to remain. That is a misunderstanding of the function of judicial review.

Guy Opperman: We will have to agree to disagree.

Q177 Mr Bain: As someone who was trained in the law in Scotland, I know that judicial review has been a part of the Scottish legal system for centuries. It even predates the formation of the United Kingdom. That is a useful point to put on the record to Adrian.

May I turn to clause 14 of the Bill? All of us want to see foreign criminals deported from the United Kingdom. We already know that article 8 of the European convention on human rights is a qualified right and that judges already have the flexibility to balance up the right as it applies to individuals against the wider public interest. What practical effects does clause 14 have? Is it not simply declaratory of what is already the position available to judges? What effects do you see it having at all?

Adrian Berry: Clause 14, which deals with article 8 of the European convention on human rights, seeks to put down a legislative marker as to what factors should be considered in the public interest. In so far as it does that, Parliament has the right to specify what it considers to be in the public interest. Whether it should specify the measures that are specified in clause 14 is a different question. We have concerns about the way in which it has gone about that task. So long as power is reserved to the judges to decide substantively whether there has been a violation of article 8, which is a task granted to them under the Human Rights Act 1998, there may be a sufficient safeguard. In its operation, however, clause 14 directs attention to some measures at the expense of others.

To give you the most obvious example, the best interests of the child must be considered as a priority and must be considered first. The question is not whether the impact on the child is unduly harsh. The question is: what are the best interests of the child, and is there a sufficient public policy interest to swing against that? Clause 14, as currently drafted, is not compatible with that formulation, which is prescribed by the Supreme Court in the case of ZH (Tanzania).

Q178 Mr Bain: The Minister has made a statement declaring that, in his view, the Bill is compatible with the ECHR. Do you see any problems with the current framing of clause 14 and our obligations under article 8 of the ECHR?

Adrian Berry: It is not just our obligations under the convention directly; it is the judges' responsibilities under the Human Rights Act. If they have discharged their responsibilities under the Human Rights Act to judge whether there has been a substantive violation of article 8 as it takes effect as a domestic schedule to the Human Rights Act, the Bill will allow them to take into account Parliament's view of the public interest, but none the less to decide on the jurisprudence—on the case law—whether there has been a substantive violation.

The additional point I would make is that the question is not whether Parliament can give a view of the public interest; the question is whether it should formulate it in the terms that are currently drafted in clause 14.

Q179 Mr Bain: Clause 14 will insert proposed new section 117A into the Nationality, Immigration and Asylum Act 2002. Subsection (2) of that new section states:

"In considering the public interest question, the court or tribunal must (in particular) have regard"

to a sequence of points that are listed. That does not bind the court, however, does it? Are there other indications of the public interest—perhaps developed through jurisprudence—that the court could still examine and that might counter the provisions that clause 14 would put into law?

Adrian Berry: As you will be aware, article 8 of the ECHR does not use language about the public interest at all. It talks about a legitimate aim and the justification advanced for limiting a right. Talking about the public interest is domestic language. The question of whether the public interest accords with a legitimate aim of sufficient weight to override the private interest will still be a task for the judiciary, in the final analysis. The judiciary already give weight to the public interest and determine rights substantively in individual cases. The real difference is: does this parliamentary statement of what the public interests means move the position on from the Executive policy contained in the immigration rules introduced last year, which purport to define the public interest in article 8 cases?

Q180 Mr Bain: And, in your view, does it?

Adrian Berry: In so far as Parliament speaks with democratic authority, it adds Parliament's view. Whether Parliament should say this is a different question. There is a nothing wrong, in a society based on self-rule, with specifying the public interest. The question is whether you should do it in such a way as to cause variance with the convention rights as they are understood and applied under the Human Rights Act.

If I can return to the example of the best interests of the child, it should not be about whether the impact on the child is unduly harsh. It should be: what are the best interests of the child, and is there a sufficient public policy interest to override them? Introducing alternative formulations, variable geometry in legal tests and a series of terms that are being loaded with meaning creates circumstances in which lawyers will pick over those meanings rather than simply applying article 8 in order to understand the first question—has the statutory meaning been satisfied?—before coming on to the second question: what does article 8 require?

The Chair: A final question from the Minister.

Q181 Mr Harper: I want to pick up on Mr Bain's point. I want to be clear about the purpose of putting this measure in primary legislation. The immigration rules were not an Executive statement. Both Houses of Parliament unanimously agreed the immigration rules last year when we set out the article 8 judgments, but some judges have decided that that was not an appropriate level of scrutiny and have said explicitly that unless Parliament sets the measure out in primary legislation, they will carry on doing their own thing, to paraphrase. We are putting the measure in primary legislation to make clear Parliament's judgment about where the balance of public interest is. We can go into a debate about what the rules should say, but do you agree that putting the rules clearly in primary legislation will alter the decision making of judges in the tribunal and in the upper courts?

Adrian Berry: The way in which it is written here is different from the way that the public interest is expressed in the immigration rules. The courts always have regard to the view of what the public interest is, either by way of the justification given for an individual decision, by way of the formulation in the immigration rules or by way of the new formulation with primary legislative authority. That does not mean that this is a "get out of jail free" card or can override individual rights in an individual case; it means that the public interest is weighed in the balance against the private interest, as article 8 requires. Weight, in terms of expertise and democratic authority, will be given by the judiciary as they discharge their task in an individual case under the Human Rights Act. To that extent, of course it will be taken into consideration.

Q182 Norman Baker: I want to be clear on this point, because it is an important one. I want not to put words in your mouth but to understand what you are saying. Are you saying that clause 14 is ineffective in changing the present legal landscape?

Adrian Berry: No. It changes the way the way in which the public interest has been shaped. I do not agree that simply because the immigration rules were approved by Parliament, as the Minister put it, they have the same degree of democratic authority as a Bill that is debated in Committees such as this one and then voted on as primary legislation. I think there is an extra marker of democratic accountability in primary legislation.

In terms of whether the clause changes the landscape, what I would say is that it will not alter aspects of the way in which the balance is struck if article 8 requires certain matters to be taken into consideration, such as the best interests of the child. What it will do is change the shape of the public interest that is taken into consideration when the balance comes to be struck.

Q183 Jim Dowd (Lewisham West and Penge) (Lab): I have a quick question on what you have just said. Are you saying that there are two categories of law in this

country, that which is passed as primary legislation, and that which is passed as secondary legislation and otherwise, and that the applicability of the second type is not ranked at the level of the first?

Adrian Berry: The immigration rules are not rules of law made by Parliament. Whether or not they are subject to parliamentary approval, they are statements of Executive policy. If the Minister consults those behind him, he will find that there is clear authority on this.

Jim Dowd: But they need the power of primary legislation to make them.

Adrian Berry: They are made pursuant to the Immigration Act 1971, but they are statements not of rules made by legislatures but of policy made by Governments. There is a difference between rules made by the Executive as policy and rules made by Parliament, which are legislation. The immigration rules are not legislation.

Q184 Guy Opperman: I am going to try one more time. It is quite clear that the ILPA does not agree with the reduction of appeal rights to what is proposed. That is patently clear. Can I ask one question? Do you accept, as a body or individually, that Parliament is right, if we approve the Bill, to reduce the grounds for appeal down from 17?

Adrian Berry: No, because if you get rid of certificates of entitlement for British citizens, which is one of the rights of appeal that you have got rid of, I fail to see how that affects foreign nationals. If you get rid of the appeal rights of the people who wish to come to work and study on leave to enter and leave to remain, I fail to see how that deals with the problem of illegal entrants or overstayers. You have hit the wrong target, frankly.

Q185 Guy Opperman: So your evidence, just to be clear, is that we should not be reducing the number of appeals at all.

Adrian Berry: You have left rights of appeal for illegal entrants to apply on human rights grounds. What you have taken away are the rights of the ordinary Joes, who play by the rules and seek leave to enter and leave to remain, on ordinary administrative law points when they receive duff decisions. It is an extraordinary reversal of priorities from the intention to the outcome.

Guy Opperman: I can do no more.

The Chair: On that note, thank you very much, Mr Berry, for your assistance this afternoon.

Ordered, That further consideration be now adjourned. *—(Anne Milton.)*

4.15 pm

Adjourned till Thursday 31 October at half-past Eleven o'clock.

Written evidence reported to the House

IB 01 Migration Watch UK
IB 02 Residential Landlords Association
IB 03 British Medical Association
IB 04 Crisis
IB 05 Academy of Medical Royal Colleges