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GENERAL COMMITTEES

Public Bill Committee

IMMIGRATION BILL

Third Sitting

Thursday 31 October 2013

(Morning)

CONTENTS

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Monday 4 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

Angela Patrick, Director of Human Rights Policy, Justice

Rachel Robinson, Policy Officer, Liberty

Saira Grant, Legal and Policy Director, Joint Council for the Welfare of Immigrants

Public Bill Committee

Thursday 31 October 2013

(Morning)

[Sir Roger Gale *in the Chair*]

Immigration Bill

Examination of Witness

Angela Patrick gave evidence.

11.30 am

The Chair: We will not sit in private. We are all know what we are doing, so we will get started straight away without the pantomime of removing the public to sit in private. That seems to me to be eminently reasonable. I welcome our first witness, who is from Justice. Would you like to identify yourself for the record?

Angela Patrick: My name is Angela Patrick. I am human rights director at Justice.

The Chair: Thank you for joining us.

Q186 Mr David Hanson (Delyn) (Lab): Angela, can you open the discussion by saying whether there are any elements of the Bill that you welcome and, if there are elements that you are concerned about, can you highlight them?

Angela Patrick: I will start by saying that the briefing that Justice has issued on the Bill is quite narrow. We have expressed concern about a number of areas, but we have deferred to others where they have greater experience. Our main concerns lie with part 2, relating to appeals and the consideration of human rights issues by our domestic courts.

Q187 Mr Hanson: Can you give an indication of your assessment of the current quality of Home Office appeals?

Angela Patrick: The statistics say it all. It is not unknown that for decades there have been complaints about the operation of what was the UK Border Agency and what is now UK Visas and Immigration. We will go to the statistics. In some cases, almost 50% of decisions are overturned on appeal. That simply says that this is a Department that is exercising its discretion badly.

Q188 Mr Hanson: To put some flesh on the Bill, can you give some examples of the type of issue that currently is upheld on appeal but which, if the Bill's provisions come into place, will be in effect without appeal?

Angela Patrick: What we are concerned about is that in effect what we are suggesting in the Bill is that we move away from a system in which administrative discretion, as has been the case for a long time, should be subject to external scrutiny—a check that the decision is correct, given that the decision maker has an interest in the outcome. We would be moving away from a simple system of statutory appeals to excluding statutory appeals for the bulk of cases unless you could raise a human rights point.

Our problem with that is simple. We think there will be three outcomes. For those cases that are excluded, which are ordinary cases, normally involving allegations of illegality, there will be three options. One is that you are likely to try to make your case fit a human rights mould—in most cases, there will be a claim that your private life is engaged at least—simply because you will then be able to argue that the decision is not in accordance with the law, and if it is not in accordance with the law, there is an issue that can be considered on appeal.

Secondly, there will be an option for judicial review. That is where Justice's real concern lies. We think that if judicial review is to be the foundation for all issues arising out of poor decision making by the UK immigration authorities, there is a risk that that will be unworkable and costly in practice or will lead to a lot of people not having a pragmatic and practical opportunity for reconsideration. What there will be is administrative discretion.

Finally, we have heard about administrative reviews, but we have very little detail and we do not think that is a viable alternative.

Q189 Mr Hanson: The Government's intention is that there will be administrative review during the passage of any—in effect—internal appeal in the Home Office. Do you think things could be done to improve the quality of administrative review? Could amendments be made to the Bill, if the Government, of whom I am not a member, continued with the current proposals?

Angela Patrick: The problem is that we do not think that administrative review is an alternative. When a Department is not taking its decisions well, is it really an alternative to an independent external check to have that decision looked at again internally? That is not an independent review. There are three reasons why we object to that—that is, going beyond the "Is it a good idea to get the Home Office to check its homework again?" model. The Home Office could have an administrative review now, but it does not. There is nothing to stop it, when an appeal is raised, saying, "Ah, look: we have checked our working. Hands up; we got it wrong." No, the appeals are pushed ahead, and, as we see, the success rate for claimants is startlingly high. What we have seen from practice in the points-based system operation of administrative review is not great. We have seen inspectors' reports that say it is not necessarily working. The Immigration Law Practitioners Association will be better placed to give you its view on that—I know it has done that in its written briefing.

Finally, if you have administrative review without any real opportunity for an individual to access effective judicial external oversight, where is the incentive for the Home Office to do better? Where is the judge on your shoulder?

Q190 Mr Hanson: Just for my benefit again, what would be the assessed cost of a judicial review to anybody who currently was liable for a potential appeal under the tier tribunal system that is in place now, but who would not have that right in the future?

Angela Patrick: There are two issues. First, if you move from the statutory appeal model to the judicial review model, it will be more costly. The fees are higher. You also have very different costs rules, so there will be a greater cost risk not only for the claimant, but for the immigration authorities, which could raise costs, and those costs are not costed in the impact assessment, which is worrying.

The second issue is the substantive impact on the quality of the oversight. If you have to seek a judicial review, it is not a merits review, which you would get on a statutory appeal. We all know that a judicial review is a supervisory jurisdiction. It is really a check that the Home Office has acted lawfully; it is not an opportunity for the individual to say, "The Home Office took the wrong decision. I am entitled to a better one."

Finally, our main problem—we hope that Parliament will bear this in mind—is the wider context of the Government's approach to judicial review and a growing antagonism across the board to judicial oversight of administrative discretion. We are all well aware of the ongoing consultations on judicial review—we have had three in the past 15 months proposing to restrict its scope. We have legal aid restrictions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and proposed new restrictions on the operation of solicitors providing advice on judicial review for those without means. Those are the three issues in respect of judicial reviews: it is more costly, more narrow in scope and, in our view, highly unlikely to be available to those who do not have independent means.

Q191 Mr Hanson: That was the point I was making. I welcome an assessment of the 50% who are currently having their appeals upheld. How many of that 50% would have the independent means on an average year to undertake the costly exercise of a judicial review?

Angela Patrick: Justice is not a specialist immigration organisation. Those questions are better answered by the Immigration Law Practitioners Association, and I know that it would be happy for me to get those figures from it, if it has an assessment, and then pass them on to you.

Q192 Mr Hanson: Finally, in relation to article 8 provisions in clause 14, could you give us Justice's view of what they will mean in practice?

Angela Patrick: Our starting point is that it is entirely open to Parliament to do what it proposes to do in clause 14. Our main concern is: should it do it, and should it do it in the way that is proposed in the Bill? Our concern is that, obviously, article 8.2 involves a balancing exercise. We do not think that Parliament needs to do what it is proposing to do, and we think that the courts consider many of the factors that are included in clause 14 already. It is clear, from the case law and jurisprudence before the rules changes last year and after, that the public interest in immigration management and deporting those whom it is not in the public interest to allow to remain in the country looms large in judicial decision making. Equally, all the other countervailing factors that are outlined in clause 14 are factors that the judges themselves consider on both sides of the balance when looking at the degree to which an individual's private and family life is engaged, on the one hand, and the degree to which the public interest and the wider interests of the community in controlling immigration are affected.

The real question for us—this is where we think there might be problems—is in the areas of clause 14 where there is clear tension between the directions given and the existing jurisprudence. I know that the Committee has already considered a couple of specific examples—for example, the assessment of best interests of the child, as well as the imposition of the different categories applying to offenders and the consideration of the public interest in their deportation. It is those issues, where there is tension between the existing jurisprudence being placed on a statutory footing and that direction being given to judges, that we consider difficult. If that is attempting to suggest to judges that there is only one way of reaching a statutorily compliant solution to that balancing exercise, we think that will create a problem and could lead to incompatibilities with the convention. However, if the Bill is interpreted by the court in a way that allows it to continue to apply the law to the facts of each individual case before it, we think that that will be less problematic.

For us, there is an underlying point. The question is: will the judges be allowed to judge? That is, will they be allowed to continue applying the law—the framework that is in the statute and in the Human Rights Act—to the individual facts of each case that is in front of them? An article 8 assessment, like most qualified rights in the European convention on human rights, is incredibly fact-sensitive, and that is what judges are for. That is the job of judging: understanding how the facts of an individual case in front of you, difficult or otherwise, fit according to the legal framework. The only issue that we have with clause 14 is in those parts of the clause where there appear to be tensions between the statutory directions and the existing jurisprudence.

Q193 The Minister for Immigration (Mr Mark Harper): I would like to ask two or three questions on the points you have just finished on, Ms Patrick, on article 8. I absolutely agree with you that article 8, being a qualified right, is a balancing exercise, where the courts have to weigh the individual facts of the case against the public interest, but surely the question is: who decides what the public interest is and what weight you should put on various factors? What the Government are proposing is that it should be for Parliament to set out what the public interest should be. Then, when judges are balancing the public interest in the individual facts of the case, they know very clearly what Parliament has decided the public interest is on behalf of the British people. If we do not do that, who determines what the public interest is? Is that not an unfair burden to place on judges?

Angela Patrick: There are two ways to approach this. You could say that in all circumstances Parliament believes it is not conducive to the public interest for all people with red hair to be allowed entry into the country. I am using an obviously ridiculous example, because that would clearly be in violation of our obligations, not only under the European convention on human rights and various other international treaties, but under common law—and, to be quite obvious, common sense. The issue is whether Parliament is being asked to approve an interpretation of the public interest that is setting the court up to be in a position where there is a conflict between its ordinary understanding of how an individual's rights should be considered under the convention and the directions they are being given by Parliament. That is our concern.

Returning to your issue, it is obviously open to Parliament to say, "It is in the public interest in these circumstances that a person should be deported ordinarily," and it is entirely open to Parliament to say, "Here are the criteria

according to which we consider it will be legitimate for that person to be deported." The real question for us is the determination of the weight that sits on the other side of the scale. There is clear jurisprudence that shows that you cannot have a one-size-fits-all approach to determining the interests for an individual's private and family life. The jurisprudence that exists in both the domestic case law and the international case law shows that this is incredibly fact-sensitive.

That is not to say that there is not a wide margin of appreciation allowed to individual states in the management of immigration decisions. It is clear in most of the case law on, for example, the deportation of offenders that the Court recognises that there are serious public interest issues at stake, but even in such cases, as we have outlined in our brief, the decision has to be applied to the specific facts of an individual case. Different factors will be allowed different levels of weighting, according to the seriousness and the relationships that are being considered by the courts in, for example, a family life case. That is our problem. It is entirely open to the Government and to Parliament to set courts with a picture of how the public interest is to be determined in the interests of deportation, provided that the judges themselves retain control of the balance when applying that determination to the individual facts of any single case.

Q194 Mr Harper: I am not terribly clearer after that than I was at the beginning, because it seems to me, from reading the clauses in the Bill, that there are exceptions that allow judges to consider the specific facts of a case—the concern in your evidence was on there being a bright-line rule with no exceptions. All we are doing is setting out the weight that judges should place on the public interest in relation to certain factors, and the judges have asked us to do that.

When, as you know, we put the article 8 provisions in the immigration rules last year—both Houses of Parliament agreed those immigration rules unanimously—some judges, but not all judges, including Mr Justice Blake of the Upper Tribunal felt that the immigration rules were

"a weak form of Parliamentary scrutiny,"

and effectively invited Parliament, if it wished to do so, to make the rules clear in primary legislation. That is what Parliament is doing, so I am still not clear about your objections to this part of the Bill, given that there are exceptions and we are simply setting out the public interest—clearly, the private interest will be determined by the facts.

Angela Patrick: As we say, some points in clause 14 are more problematic than others. One point that has already been outlined, for example, is the approach to the interests of children in family life cases. The case law is pretty clear that the starting point is that you look at the best interests of the child and then consider whether there is a countervailing public interest that is sufficiently serious to outweigh those best interests.

The test set out in the Bill is obviously very different. The test is to consider whether there is an "unduly harsh" impact on children in particular cases. That is obviously a disconnect between the existing jurisprudence and the directions in the Bill. Clearly, if a court wishes to approach the interpretation of that to ensure consideration of the individual facts in any case where there is a serious impact on the best interests of any individual child, the court is allowed to consider the weighting as directed by the jurisprudence, which will not be problematic. The problem we see is if there is an impression that the rules in clause 14 are intended to be interpreted as a one-size-fits-all measure.

Q195 Mr William Bain (Glasgow North East) (Lab): Angela, can we pursue that point in a bit more depth? In what circumstances do you think the courts in this country might draw on human rights jurisprudence from the European Court of Human Rights and other countries, as they are entitled to do under the Human Rights Act? If the Bill is passed, would case law still otherwise prevail, and are there any points relating to the rights of the child—I am thinking about the UN convention on the rights of the child—that might lead the courts to such a conclusion?

Angela Patrick: That is the first example we have been using but, equally, we have pointed to case law on the Strasbourg Court's approach to the deportation of offenders. That is pretty broad and allows a wide margin for appreciating individual domestic determinations, but it does not say that you can set bright lines. It states a number of factors that must be considered when balancing the public interest of the wider community in securing the deportation of someone whose presence is contrary to the public interest and the factual circumstances that pertain to the individual case, such as the strength of the relationship, the connection of the individual to the country to which it is intended to remove them, the length of time they have been in the country before committing the offence and so on.

Our concern is that if the judges treated the statute as a directive from which they may not depart—the "exceptional circumstances" means a return to exceptionality—that will create tension. We hope that there is enough scope in the Bill for judges to approach their duties in the statute and the Human Rights Act in a way that allows the balance to remain with the judiciary, but that is by no means clear, so Parliament is being asked to legislate into the legal framework for immigration something that could create tension and lead to the violation of individual rights.

We think that there is a bit of a disconnect if that is the intention. There is a disconnect between saying that we, as a country, believe in subsidiarity and want to get the law on the European convention right first time with our judges taking the decisions and applying the sensitive balances, while at the same time making it more difficult at home for our judges to have the first bite of the cherry on such discretion and decision making.

Q196 Mr Bain: Are you concerned that the Bill, and particularly the provisions on remedies, might lead to problems with article 46 of the ECHR, which provides the right to an effective remedy? One part of the Government—the Home Office—is effectively suggesting going towards judicial review, but the Ministry of Justice intends to restrict judicial review. Is there a danger that those two things together could put us in breach of our international obligations?

Angela Patrick: Under article 46, we are obliged to implement the Court's decisions when they are taken. I think you mean article 13, which is on effective remedy.

Case law is evolving on how far the effective remedy, when associated with other violations of human rights, is available. What is more interesting in terms of the international framework on access to independent decision making is that the Government are starting from article 6 of the convention, which is the right to a fair hearing by an independent and impartial tribunal, and are simply saying that the case law is fine and that because immigration is not a determination of your civil rights and obligations, article 6 does not apply. There is no consideration of the wider implications of the law.

We would go further and say there is an evolving body of case law under article 47 of the European Union charter of fundamental rights, which provides for access to a fair hearing without the limitation that that right applies to civil rights and obligations. There is every opportunity to explore that case law in immigration cases that engage EU competences. We think that is fertile ground for argument.

Justice's brief does not deal with any of that detailed argument about the international framework. Our concern about the changes to the appeals position is more simple: it is wholesale administrative discretion if we return to a position where simple statutory appeals are removed and the option is to rely on judicial review. In practice, our concern is that judicial review will not be available to a vast swathe of the population, simply because they do not have the means to secure a lawyer.

Q197 Henry Smith (Crawley) (Con): Given that there has been widespread public concern about some judgments on the basis of article 8 of the European convention on human rights, do you think it is reasonable for Parliament to seek to express those concerns—we try to do that democratically—by amending legislation in clause 14?

Angela Patrick: Obviously, there has been massive controversy about article 8, and it is a politically contentious part of the convention for some people. We have had high-profile issues around Catgate, not that we like to mention that. However, if we look at the controversy and publicity in that case, the criticism hooked on to one part of the judge's reasoning without looking in detail at what he was asked to do. He applied his reasoning to a wide range of circumstances in the individual's life and balanced that against the public interest. The cat was only one part of that complex balancing exercise—and a very minor part at that.

Of course, it is entirely open to Parliament, under the Human Rights Act, to state what the public interest is in securing our borders and to set out its understanding of the principles that should be applied to these decision-making exercises. However, at the end of the day, these are fact-sensitive decisions, and they are properly exercised by the judiciary, compatible with their obligations under sections 6 and 3 of the Human Rights Act to secure the effective measurement of whether an individual's rights in practice are sufficiently outweighed by the public interest, as set out in article 8.2.

Q198 Guy Opperman (Hexham) (Con): Can I clarify a couple of quick points? When you first gave evidence, you appeared to suggest that the changes would be more expensive than the existing judicial review process. Did I mishear you?

Angela Patrick: I think you did. I was suggesting that if you had to go to judicial review, it would be more expensive than a statutory appeal.

Q199 Guy Opperman: I am most grateful to you for clarifying that.

Do you accept that, given the comments made by Mr Justice Blake in the case you referred to—and by other judges, to be fair—this is fundamentally about Parliament addressing a flaw judges have identified with the rules?

Angela Patrick: It might be easier if you elaborate on the flaw you are concerned about. The rules are still being litigated; the highest decision we have is a Court of Appeal decision. If you are suggesting that it would be more effective, and that it would have a different impact, to put these things in a piece of primary legislation, that would clearly be a different exercise. In terms of not only the Human Rights Act, but statutory interpretation generally, the judiciary approach the interpretation of primary and secondary legislation very differently.

Q200 Guy Opperman: You rightly said you believe that our judges should be making the decision. I agree with you, but the reality is that that decision should be based on UK law, subject to interpretation under article 8. Are we agreed?

Angela Patrick: What I believe is that we should have a decision that applies UK law, but that UK law should be compatible with our international obligations under the European convention on human rights and otherwise.

The Chair: Order. I am sorry that I have to truncate the session, but we have come to the end of the time allocated for this witness.

Ms Patrick, thank you for taking the trouble and the time to come to see us today and for giving the Committee the benefit of your opinions.

Examination of Witness

Rachel Robinson gave evidence.

12.1 pm

The Chair: We will now hear oral evidence from Liberty. For the benefit of the record, could you please identify yourself?

Rachel Robinson: I am Rachel Robinson, policy officer at Liberty.

The Chair: Thank you very much for joining us.

Q201 Mr Hanson: Good afternoon, Rachel. Liberty has raised a number of questions about clause 1 in particular and the power of removal. That clause is linked to schedule 1, which relates to the reasonable use of force, as defined by the legislation. Can you outline your views on the impact of that clause and schedule?

Rachel Robinson: In terms of the use of reasonable force, our concern is straightforward. The Bill would, with any future immigration powers and any immigration power on the statute book, give immigration officials the right to use reasonable force.

Q202 Mr Hanson: Do you have a definition in your mind of what reasonable force is?

Rachel Robinson: It is actually well established and I almost do not think that that is the main issue. I believe the definition is, "No more than is necessary in the circumstances", or something to that effect. Our concern is that while police officers get rigorous training and have safeguards on the use of reasonable force, we have

seen many high-profile examples with immigration officials of the use of force going seriously wrong. Before a blanket, open-ended power is added to the statute book—we know that the rate of immigration powers being added to the statute book has been high in recent years—that makes it okay for immigration officers to use reasonable force, we need serious scrutiny of how things are working in practice at the moment. We do not want to see more cases like that of Jimmy Mubenga. It is irresponsible to put such an open-ended provision on the statute book at this stage. I hope that that deals with our position on reasonable force.

Q203 Mr Hanson: Are there any safeguards, suggestions or amendments that are, given the Government's intention, worthy of consideration by the Committee?

Rachel Robinson: If the Government want to argue that reasonable force is necessary for a particular power, I do not think that Liberty would have any objection in principle or in a blanket way, but we want to see that happening on a case-by-case basis, so that the case for adding this new and potentially dangerous provision can be examined in detail by Parliament and the justification can be set out by the Government and scrutinised. Our main concern is the open-ended nature and the failure to justify, on a case-by-case basis, the need for reasonable force when the implications can be so serious if it is misused.

Q204 Mr Hanson: Do you have any other concerns that you wish to share with the Committee about clause 1 and the power of removal generally?

Rachel Robinson: Yes, we do. There are a number of concerns that we have with part 1 of the Bill, and they are all in the same vein—they are all about insulating Home Office decision making from effective challenge. We have serious concerns about clause 1, which I know you are particularly worried about. We are not 100% clear about what the intended impact of the provision is. It looks like there will be a decision on the refusal of a claim, but no separate decision on when an individual is to be removed. We are concerned about the provisions that appear to take away the requirement to give notice to an individual about removal. We are concerned that they will prevent challenges from taking place where necessary. We are concerned that people will not be properly informed about where they will be removed to, and we are concerned about the impact on the family members of those who are to be removed. The Bill specifies that provision for how people will be notified will be left to regulations, and we are concerned about what will come out of that.

We want to stress that when you are doing something as serious as removing somebody from the country, there has to be due process. It must be done in a proper procedural way, and it must be possible to challenge it when the authorities get it wrong. Although I will not labour the point, we know from the statistics that decision making within the Department is often wrong.

Q205 Mr Harper: May I probe the evidence that you submitted on the provision of services? You said in your evidence that

"banning the provision of services to those with irregular status,"—

by irregular, I presume that you mean people who are illegal immigrants and therefore breaking our immigration laws—

"represents an unwelcome interference with freedom of conscience."

Why do you think that it is unreasonable for Parliament to decide that people who are in the country illegally—in breach of the law—should not receive free treatment on the NHS nor access other services that enable them to stay here in violation of the law?

Rachel Robinson: We have to look at the issue in the round; it cannot be viewed in terms of isolated pockets of policy. Part 3 of the Bill, which concerns issues around landlords, NHS services, banks, driving licences and other areas of policy development such as legal aid provision, effectively specifies that whenever an individual attempts to access services that we all need to access in our daily lives, they will be expected to prove who they are. We believe that that will amount to a system that looks very much like the ID card system, to which, we are pleased to say, the Government had clear and justifiable practical and principled objections. The policy can be criticised for all manner of other reasons—it is unworkable; it will impose burdens on the private sector; it may impose burdens on professionals—but our key concern is that the Government are constructively creating an ID card system through this policy.

What happens next? If the Bill comes into force, it will apply to hospitals, legal aid and bank accounts. When will the Government start to push this in schools? When will we have to show ID to travel on a public highway? We are concerned not only about the concrete proposals, but about the trajectory along which the policy takes us. That is a serious concern for everyone, not simply those who are immigrants in the country.

Q206 Mr Harper: I think we will focus the debate on what is in the Bill, because that is what the Government have set out. You did not answer my question: if people are here in breach of the law, why should others—including, reading between the lines of your evidence, public servants who are dispensing services paid for by the taxpayer—be entitled to deliver public services at the taxpayer's expense to people who have no right to them? Why should preventing those individuals from doing that be an outrageous breach of their freedom of conscience? Why is it unreasonable to say that they cannot do that? I really do not understand the argument. That is what you said in the evidence.

Rachel Robinson: Yes, I understand that. I think that the specific part of the briefing that you are referring to is one very small point, which I am happy to explain. The Bill would impose those obligations on private people—on landlords—whatever view they may hold. There is a whole spectrum of views out there on immigration control, which private individuals are legitimately entitled to hold. If you start putting pressure on private landlords essentially to become immigration officials, that does create issues of conscience.

That is one minor issue, but there is a far wider concern, namely that the Government are moving away from British traditions of immigration control. The traditional British way has been to have immigration control at the border, with immigration powers enforced by trained professionals—immigration officials—but it seems to us that the Bill is moving increasingly towards a

situation in which immigration control is in the community, with professionals required to act as immigration officials and private individuals required to check up on other private individuals.

The Bill would bring immigration control into our communities. We are concerned about the implications of that for everybody, but particularly for people with certain characteristics that, in the minds of some, make them appear less likely to be British. We are concerned about the impact of the proposals, particularly the landlord provisions, on race relations. In a difficult rental market, where landlords are trying to cover their backs or get the quickest, most hassle-free rental, anybody who has certain characteristics that landlords associate with not being British will effectively be overlooked for housing. We should not underestimate the kind of tensions that that could create in our communities.

Q207 Mr Harper: I will have one last go. I still do not think that you have answered my question, although you answered a lot of questions I did not ask. On your point about freedom of conscience, we are not saying that people cannot continue to hold their views—they can continue to have whatever views they like—but Parliament sets the law on whether people should or should not have the right to be in the country.

Your brief talked not only about private services in relation to landlords, but the provision of public services. I do not understand what is unreasonable about saying to a public servant, delivering public services at the taxpayers' expense, that it is for Parliament to set out who is entitled to them. It should not be up to individual public servants to make judgments about who is entitled to public services in a way that is at variance with rules set by Parliament. Your evidence seems to say that it is appropriate for people to make such judgments, and that it is outrageous for Parliament to set the rules.

Rachel Robinson: I know exactly the part of the evidence you are referring to, and it relates specifically to the provisions about landlords, and expressly to the fact that the people are private individuals. The provisions are a real incursion or step into the private domain, and a real burden. We are imposing on private individuals obligations that may run contrary to their conscience. Liberty does not take issue with a fair and proportionate system of immigration control that is properly enforced by the appropriate authorities, but there are real issues of conscience, as well as many other issues detailed in our briefing, about imposing this on private individuals.

The Chair: We have gone from having a dearth of interest to six Members, including a Minister, seeking to ask questions in 15 minutes. For the moment, will you confine yourselves to one question each? If we have some time at the end, you may have another bite at the cherry.

Q208 Mr Pat McFadden (Wolverhampton South East) (Lab): You talked about reasonable force, but I want to ask you about reasonable time. My experience as a constituency MP is that immigration cases not uncommonly last for a decade or more. Is that unreasonable? From the taxpayers' point of view, is it reasonable to impose a time limit on decisions, so that applicants get an answer in a reasonable time, and taxpayers get the appropriate action, if the application is refused, in a reasonable time?

Rachel Robinson: I think that we can probably all agree that these kinds of decisions should be made within a reasonable time. Often, but not exclusively, the issue is about delays and inefficiency at the administrative end, as I think everybody would agree.

To answer your question, I do not think that we would want to set in stone a time limit that can never be altered, or be inflexible in the particular circumstances of an individual case. Cases involving problematic and contentious areas of law will unavoidably take a very long time to resolve, but that certainly should not be the norm. We understand that it is in everybody's interest for these things to be resolved quickly and efficiently.

In line with the findings of the recent report by the Select Committee on Home Affairs on the UK Border Agency, or its new manifestation—it is back within the Home Office—I think there are probably things that might be done administratively to promote efficiency within the agency, and that would be in everybody's interests.

Q209 The Minister for Crime Prevention (Norman Baker): I want to pick up on the suggestion that this is somehow a creeping identity card. As you will recognise, there is considerable opposition that concept, at least on the Government side of the Committee. There is surely a difference between an ID card, which is proof of who someone is, irrespective of circumstances, and people providing sufficient information in order to secure the particular public service that they want. People provide information about themselves if they want an Oyster card, for example; and to be on a GP's list, a person has to tell the GP who they are and where they live. There is nothing particularly peculiar about the provision.

It would be extraordinary for a landlord to let someone have access to their property without knowing who they were and where they came from; they must find that out now. Indeed, we heard evidence from the UK Association of Letting Agents about the rigour that letting agents apply to finding out who people when potentially letting properties. I do not really believe that asking for information in order to give access to a particular service is somehow a stealth way of getting to an ID card.

Rachel Robinson: I know that on Tuesday the Committee heard evidence from health professionals, who addressed the issue of how the scheme was to be applied in practice, and how we would manage to keep health care professionals out of it—and Liberty certainly agrees that health care professionals should be kept out of it, if the proposal is implemented. What do we do in these circumstances? How do we have a system where we can identify that you are who you say you are, and are of the nationality that you say you are of—all the kind of information that will be necessary to determine who falls within the scope of charging provisions and who does not? The health care professionals who appeared before the Committee made the point that we will have to have something like a health care ID card.

Health care, of course, is a vital service that people access throughout their lives, and cannot avoid accessing if they are here in the long term, but then we start to introduce the provisions to other services that people

routinely use, and back that up—with formal rules, burdens, penalties if appropriate checks and balances are not applied, and requirements on landlords not just to check at the start of a tenancy, but potentially to make checks on some tenants periodically throughout their tenancy. Then we introduce a situation whereby solicitors are required to ascertain quite detailed information before people can access legal aid. Those kinds of formal prescriptions are being built up in relation to vital services—services that people cannot avoid accessing. Structurally, that will give a system that looks like an ID card system.

I understand that this Government have taken an incredibly principled stance on ID cards, but we would argue that the same principled considerations that applied to Government opposition to the ID card system apply here. This is not something that will affect only people who are here illegally or people who do not have a long-term immigration status; it will affect every one of us. If I am looking for a private rental, I will be asked to establish who I am and my nationality. That raises questions about what people do if they cannot readily access documents that validate their nationality, and what position they will be in when they try to do very basic things, such as access housing.

Q210 Meg Hillier (Hackney South and Shoreditch) (Lab/Co-op): I am a bit puzzled about the issue of bringing in ID cards, given that 80% of British people have passports. Having sadly lost my ID card, I quite often have to carry my passport around to prove my identity. Given that section 14 of the Identity Cards Act 2006 explicitly stated that there was no requirement for an ID card to be presented to access a public service—it explicitly ruled that out, so that people did not have to have one to access a public service—and given that the proposal in the Bill is that people be required to provide certain documents to access some services, would not a voluntary ID card be a better, more efficient and cheaper process for the Minister to adopt?

Rachel Robinson: I certainly would not advocate a return to the failed ID card policy, but I would certainly echo the point that even back then we could not envisage people being asked to produce their ID card in these kinds of situations, because it is so offensive to British traditions of liberty.

Q211 Jackie Doyle-Price (Thurrock) (Con): I want to turn to the concerns you have expressed about sham marriages, and the application of the Bill to the Anglican Church. Obviously, if someone presents themselves to their local vicar and says that they want to get married, the Church has an obligation to marry them. Equally, it is incumbent on the officiating cleric to satisfy themselves that the marriage is legitimate. When we get into the issue of mixed marriages involving different nationalities, we are putting the Anglican clergy in the difficult position of making a judgment. Do you not think that it is an improvement that we are giving them more protection under the law? I have certainly spoken to vicars who found a conflict between meeting their obligations to marry people in their parish who wish to marry, and being clear in their mind that the marriage is legitimate.

Rachel Robinson: I think our real concern with part 4 of the Bill is that in a couple where one person is a non-European economic area national, before that individual can access marriage in the Anglican Church, they must now go through civil preliminaries. We believe that that is a step change. It will be the first time that the Anglican Church, in this regard, has been effectively brought under the immigration rules in this country. Without going through civil preliminaries, which involve a referral to the Home Office and consideration of the genuineness of the marriage, they cannot access a church marriage. We are concerned about what that means for the freedom to marry, particularly given that we are talking about something that should clearly be separate from state immigration controls—religious marriage in the Church of England.

We also have broader concerns about how part 4 will apply to other kinds of marriages. We have concerns about the fact that it will impact every single marriage conducted in this country, because the notification period for all marriages will be extended significantly. We are concerned that in marriages involving one non-EEA partner, the response will be immediate, whereas at the moment, we have a suspicion-based approach: if suspicions are aroused, cases can be referred. Every single marriage involving an EEA national and a non-national will be viewed through the prism of suspicion. We think that that is really a great shame.

Q212 Mr Bain: Turning to clause 11 and the provision on the restriction of statutory appeal rights in immigration and asylum cases, is it Liberty's contention that the provision would enhance the state's power above that of the judiciary and the individual? If so, what are your views on how we might correct the half of all decisions made by the Home Office that must, at the moment, be reversed by the first-tier immigration tribunal?

Rachel Robinson: Yes, that is a very important point. This is one of the very problematic provisions in the Bill. The shrinking of avenues of appeal against immigration decisions is particularly inappropriate, because we know that so many decisions are made incorrectly. We know that appeal rates are very high—up to 50% in some types of cases. I refer the Committee again to the Home Affairs Committee's recent report on failings in the Department. Where we know about systemic and cultural problems with decision making in the Department, the answer is not to remove avenues of appeal, or the process by which mistakes are highlighted and corrected by the independent judiciary, in order to keep them in-house and prevent them ever from coming to light. That way lies greater impunity, and it creates no imperative for decision makers to improve their decision making.

We are particularly concerned about clause 11. Where individuals seek to challenge the lawfulness of a decision—where their contention basically is that the Home Office has the law wrong—they will not be in a position to challenge that decision in some circumstances. I know that the previous witness discussed at length what that will do, in terms of channelling claimants into judicial review proceedings, and the difficulties due to the wider picture of restrictions around judicial review and legal aid funding. This certainly is a huge cause for concern.

A tribunal system, which is a low-cost, very practical means of ensuring independent judicial oversight of the system, is a great solution to the problem. It is a way of creating the imperative for decisions to be made fairly and effectively. In clause 11, it is, at the very least, extremely concerning to see the removal of lawfulness grounds from the appeals system.

Q213 Guy Opperman: Ms Robinson, you indicated to a colleague that it was only in relation to landlords that you regarded the measure as unprincipled and as an unwelcome interference with freedom of conscience. Paragraph 53 of your organisation's evidence—the passage to which he referred—says:

"It is also unprincipled to place requirements on landlords, lettings agents, healthcare professionals, lawyers and others to actively enforce the Government's immigration policy…banning the provision of services to those with irregular status, represents an unwelcome interference with freedom of conscience."

May I invite you to correct the record? Your assertions go wider than simply landlords; you are talking about all public servants. As part of that, do you accept that there is nothing fundamentally wrong with asking people to comply with the law, and that this is not in reality an issue of freedom of conscience?

Rachel Robinson: Could I ask you to point me to the paragraph again?

Guy Opperman: Paragraph 53—the first two lines and the last two. You indicated that your point related only to landlords, and it clearly does not. Secondly, you indicated—in a broad answer, I accept—that this was an issue of freedom of conscience. I invite you to correct the record and, secondly, accept that there is nothing wrong with asking people to comply with the law, and that this is not a freedom-of-conscience issue.

Rachel Robinson: Thank you for pointing me to the paragraph. I do not want to get into a detailed discussion about the minutiae of this, but at the start of paragraph 53, we say that it is unprincipled to place these requirements on individuals. That is a different issue from whether it is a freedom-of-conscience issue—something that is discussed later in relation to individuals being asked to impose these kinds of conditions. If you are asking whether I accept Liberty's position that it is unprincipled to put these kinds of obligations on individuals and professionals across the board, then yes, we think it is an approach that carries significant problems of principle. There is no issue about that.

I do not suggest that people cannot be required to enforce the law, but let us look at the kind of law that we are trying to make people implement. Let us look at the kind of obligations that we are trying to place on people who should legitimately have nothing to do with the immigration system. These are health care professionals and private people who work, on a very small scale, as landlords. What kind of things should we ask them to do, in terms of enforcing our immigration laws? Liberty believes that it is not a principled approach. It is not the right thing to do to ask these private individuals and professionals to act as immigration officials.

Q214 Henry Smith: You highlighted the importance of due process in your submission. I do not think anybody in this Committee Room will disagree with you on that. Do you think it is in the interests of due process that it should be balanced? I mention that with particular reference to clause 14, which deals with rebalancing article 8 rights under the European convention on human rights.

Rachel Robinson: That due process should be balanced?

Henry Smith: Balanced in the public interest in relation to article 8.

Rachel Robinson: We absolutely think that wherever an article 8 issue is approached by the courts, it should be on the basis of a balancing exercise. I do not think that this has ever been seriously in contention. Of course, a balance needs to be struck between the rights of the individual and wider social interests. Our concerns with clause 14 are around the extent to which there is an attempt to skew judicial decision making. In the human rights sphere, decision making has to be done in a fact-sensitive way, as the previous witness told you. We are concerned about any provision that tries to impose a judicial straitjacket, and we think that this provision attempts to do that.

We have specific provisions in the Bill on the minutiae of what is considered to be in the public interest. In terms of what is in the financial interests of the UK and language aptitudes, of course there will be people whom we would rightly expect to be able to speak English, but there may be other situations. For example, what about a woman entering the UK from a country where women do not have access to education? It may be that she came from a certain socio-economic background that meant that she could not access education, or there could be strong factors that indicate that it will take her longer to learn the language than another individual. That is a crude example, but what I am trying to get at is that, in the complex reality of life, these things apply to different people with different force. That is what we asked the judges to do in our constitutional settlement: to apply laws capable of general application to the individual circumstances of a case.

The Chair: I am afraid that that brings us to the end of the time allocated to Liberty. Thank you for joining us this morning, Ms Robinson.

Examination of Witness

Saira Grant gave evidence.

12.31 pm

The Chair: We now take oral evidence from the Joint Council for the Welfare of Immigrants. For the benefit of the record, will you identify yourself, please?

Saira Grant: My name is Saira Grant; I am the legal and policy director at the Joint Council for the Welfare of Immigrants.

The Chair: Good afternoon, Ms Grant. Thank you very much for joining us.

Q215 Mr Hanson: Good afternoon, Saira. It is clear from your written submission that you are against many aspects of the Bill. Given your broad opposition, I am keen to focus on whether the Committee could examine any positive amendments. I will talk through three areas quickly. First, we have clause 1 and schedule 1 on the removal of individuals from the United Kingdom. Do you have any suggestions to improve the Government's proposals in that area?

Saira Grant: Our general concern is having non-suspensive appeals on deportation. We simply do not think that that should be the case, so there is nothing positive that one can do with that provision; it should simply not be there, and I will explain why.

In deportation cases, I understand the Government's concern that these are foreign criminals who do not have a right to be here and ought to be removed. However, deportation is an automatic process for sentences of more than 12 months, which means that the people we are talking about are not necessarily hardened criminals. You can receive a 12-month-plus sentence for possession of false documentation. We are talking about deporting somebody without giving them the chance to have their appeal heard here in the UK, unless there would be irreversible harm, but how does one identify that? Not allowing people the chance to have their appeal heard here, but removing them first, goes against fundamental principles of the rule of law in this country.

Q216 Mr Hanson: I accept that the objection is there in principle; I just want to see if there is anything that we can look at.

Saira Grant: On that point, no.

Q217 Mr Hanson: The second issue is the landlord checks to be introduced by the Government. I find some difficulties in that, but I would be interested in whether you could make any suggestions that might assist the Committee to table amendments to help the Government achieve their objectives in a more fair and just way.

Saira Grant: Mr Hanson, I struggle to provide you with what you want because I so fundamentally oppose what is being attempted in this area. If the Bill is to go through as drafted, I suppose I can make one minor suggestion, although I do not think it will assist that much, which concerns clause 28, on discrimination.

The Government, in their response to the consultation, accept that the provisions have the potential to cause significant discrimination and that vulnerable groups will be affected. What they say in response, however, is that a code of conduct will be created, but that code will have no civil or criminal liability attached. If there is to be one change, and if you accept that provisions will cause discrimination and that people are meant to follow a code, that code must have teeth. Expecting people to adhere to a code for which there are no consequences for failing to adhere to is a meaningless proposal.

Q218 Mr Hanson: The Opposition have several concerns about the measures, but I want to know whether things can be done to any measures in the Bill to help the Government meet their objective while providing some protection around some of the issues that we might both be concerned about. This is about scrutiny of the Bill as much as it is about its principle. Are there are any amendments that you would want the Committee to consider that would assist the Bill?

Saira Grant: Apart from actually attaching force to the discrimination measures, which are in clause 28, I can offer little on most of the provisions, because there are fundamental flaws in the principles and policies. I can articulate clearly them for you, but I will struggle to assist you at this stage with positive amendments. I will, however, give that some consideration and perhaps put a few in writing. With both the landlord and NHS provisions, the Government are not achieving what they seek to achieve or what they have stated that they want to achieve. They are actually including provisions that will cause further significant problems, which I am happy to talk through.

Q219 Mr Hanson: This is my final point. On the NHS provisions, is it fair for the Government, potentially with the support of Parliament, to levy a charge on an individual who is coming to this country to study or to work but who has not paid taxes to contribute to the funding of hospitals, such as St Thomas' hospital, across the river from this building?

Saira Grant: No, it is not. Taking a step back, because it is important that the Committee understands our view, when the NHS charge provisions were debated, the Government clearly stated that they intended to create a hostile environment for illegal migrants and to ensure that such people did not have access to services to which they were not entitled. After a consultation, to which JCWI and others contributed, I am pleased to say, and I am grateful, that the Government have not implemented many of their original proposals, one of which was to extend charging to primary care services.

The two NHS provision clauses in the Bill put a charge on migrants—the levy that you mention—but that will not in any way tackle the issue of those who are here unlawfully accessing NHS services. The proposal will have no impact or bearing on them. It will, however, charge people who come to work in this country with legitimate, legal visas, who, by coming here, already contribute to taxes and to national insurance, much of which goes to the NHS. They are effectively being asked to pay twice. They pay through their taxes and they have a levy on top.

We must remember that the Government have said that there must be a fair contribution to the NHS, and that the point is that migrants who come here for a short period of time should therefore contribute further. The two extremes of age utilise our NHS system the most—children and the elderly. You do not contribute as a child, but you contribute through taxation once you reach working age. Migrants of working age who come here for economic reasons and who have not used the NHS previously start contributing from the day they arrive. They are also, on the whole, a healthy group of people who do not use the NHS as much as other groups. They are already here and are contributing, and we need them to come, but the Bill is proposing to levy those people further, making Britain less attractive to economic migrants and investors.

Additionally, we need to look at the figures. I am perplexed by the figures that I have heard publicly announced by the Home Office, and having looked at the impact assessment. The last figures that were publicly announced, which I have here, dealt with the health tourism aspect. I will come on to that, but it is not what the Bill targets, which is migrants. There is a figure out there: if migrants made a contribution, we could make £200 million. However, £200 million off the NHS budget, which is £109 billion a year, would be 0.18%, so this levy, in the scheme of things, is a drop in the ocean of the NHS budget. It is also unfair, because, as I said, we are charging people twice, and they were not the target group for the Home Office. They have not been the Government's target group of people when these provisions have been debated and discussed, so why are they not

doing anything about those who should be paying for secondary care? Why are there not provisions to obtain the money we can formally recoup?

The EU cost is more than £305 million, but we are not enforcing the reciprocal agreements and recouping that. The non-EEA figure is £156 million. The secondary health care provisions are already in law. The Government need to try to recoup that money. There has been a lot of evidence from the health professions on the workability of that, but that is a separate issue, because this Bill is not talking about any of that—the law that already exists. This Bill is talking about a new levy for a specific group of migrants who, in my opinion, for the reasons I have explained, are not the target and should not be the target.

Q220 Mr Harper: Just by way of clarification on your point about health, you will know, Ms Grant, that there were two consultations on health. One was by the Home Office and related to these provisions, and the Department of Health did a separate consultation, to which your organisation also responded. On some of the issues that you have raised, quite rightly, in relation to the current rules and being more efficient at collecting money and things like that, I would like to reassure you that the Department of Health will be bringing forward proposals to deal with those, which is why they are not in the Bill.

Let me deal with the specific point about the charge. Obviously, students, who make up quite a significant proportion, are not necessarily working or paying taxes here at all, so I do not think it is unreasonable, but you were worried about our competitive position. Could you tell me which other countries outside the European Union allow students to go to their countries and receive free health care from the moment they arrive? I am not away of any.

Saira Grant: I was obviously talking about migrants. Students are a different category. I heard the evidence on Tuesday from Universities UK about how it felt about this. I do not have a very strong view on whether it will be a disincentive to students if they have to pay an extra levy. The universities have their view; the evidence has been heard on that. My position is that although they do not pay taxes, they do contribute to the economy through rent for accommodation and expenditure generally. They are contributing. It is not right to say that just because they do not pay taxes, they are not contributing to the economy.

I think the universities' position is that we have done a lot in the recent past that has made us appear very unattractive to students, and we are trying to rebuild the trust in our British education system and Britain's attitude to foreign students. This sort of levy—£150 was the proposal—is a drop in the ocean, because we are talking about less than 0.13%, if my maths is correct. It is such a token increase in the budget that the message that we are giving the outside world, as part of the package of measures in the Bill, is, "Here's another charge on students."

I take your point, Minister, that other countries have insurance schemes and so on and do not provide free health care, but again we need to look at the cost-benefit analysis. Will this proposal benefit the British public purse sufficiently and not deter people? As the universities said, this is one of those things that students have in their checklists. They think, "Well, this is one advantage of going to Britain, among others." You have to decide; the Government have to decide. I do not have an answer for you, but I would submit that it is not a correct balance in how we portray ourselves.

Mr Harper: We have clearly reached a different conclusion. I think I am right in saying the Committee did not necessarily find the evidence from the universities enormously compelling regarding the balance between the cost of university education and a modest health levy that remains competitive, but we will have to disagree on that. It never ceases to amaze me how witnesses always manage to talk about hundreds of millions of pounds as if that were a trivial sum.

Q221 Henry Smith: My constituency casework includes quite a lot of immigration cases. I frequently come across people who have paid a significant sum to solicitors to help them with their case and who may not have received a fair service. Do you welcome the Bill's provision for tighter regulation of those who give advice on immigration issues?

Saira Grant: In the past five years, we have seen increasingly tightening provisions on immigration practitioners. There are two separate schemes. The Law Society runs its own accreditation system for immigration practitioners, with regular exams, which qualified solicitors must repeatedly take to ensure they are up to a certain level. That is onerous on practitioners. I have sat the exams myself, and you have to renew them every three years. But we do that to ensure that legal practitioners offer a certain quality and are not rogue practitioners. The Office of the Immigration Services Commissioner sets its own exams. I am not very familiar with the current OISC scheme, because I do not fall within it.

The measures in place are already fairly rigorous and sufficiently onerous on legal practitioners. I do not necessarily think the provisions in the Bill will assist in weeding out—if that is the aim—further rogue practitioners, but they will add to what is already a difficult time for immigration practitioners, given the hurdles they have to go over and the extreme legal aid cuts they face, which mean that practitioners are being squeezed out of work. This is just another burden on them, which is not necessary.

Q222 Guy Opperman: Ms Grant, if I heard correctly, you discussed at the outset of your evidence how a 12-month-plus criminal sentence should, in theory, result in automatic deportation, subject to other matters, but that there was then a separate legal process to assess whether there was to be a removal. Is that correct?

Saira Grant: No. For all 12-month-plus sentences, the deportation process kicks in automatically.

Q223 Guy Opperman: Your criticism was that the changes would take away the process that then considers whether there should be removal.

Saira Grant: Yes, the appeal right. At the moment, if you are subject to a deportation order, you have the right of appeal on that order—on removal, if you like. I was making two separate points. First, I was trying to say that the thinking behind this is that foreign criminals should, as the Secretary of State said, be removed first,

and then they can appeal later. She was talking about foreign criminals, and I was simply making the point that, because we have an automatic deportation process, we are not talking just about hardened criminals. For using false documentation—obviously, I am not condoning that—you can get a 12-month-plus sentence.

Q224 Guy Opperman: I used to be a criminal barrister, and I did more than 300 criminal trials. Would you not agree that a 12-month sentence from a judge, particularly for a first offence, is a pretty major sentence?

Saira Grant: It is a long period.

Q225 Guy Opperman: Yes. Are we not in agreement, as well, that if we allow a judge, by reason of the changes in the rules, to assess the issues on only one occasion, the judge would, in determining whether to give a 12-month or 11-month sentence, for example, be aware of the changes in the rules? The defendant's legal aid advocate would most definitely know that the implication of a 12-month sentence was that automatic deportation was much more likely. Do you accept that?

Saira Grant: I do understand your point, but forgive me, I am not a criminal practitioner and I do not know what the sentencing provisions are and what guidelines judges have to follow, so I do not know how much discretion judges would have. Nor do I know how persuasive a case could be made by a lawyer saying, "If you give my client more than 12 months, they will be subject to automatic deportation, and therefore you cannot give that sentence", because I think the sentencing guidelines are fairly clear.

Q226 Guy Opperman: But are we not always in favour of giving judges more power?

Saira Grant: Well yes, but that is changing the criminal law, which is not part of the Bill's provisions.

Q227 Guy Opperman: I am possibly being slightly sardonic. The point, I would suggest, is that a judge still has control of the sentence and the consequences that flow. Do you accept that?

Saira Grant: Not in all cases, no. I do not think they do in all cases; I think they are obliged to give a sentence according to the sentencing structure that there is.

I think that you and I are making two separate points. If a person is going to be removed from the country that they are living in, they are going to be deported. That is quite serious, especially as in many cases, they will have family in the UK. I think that it is only right and proper, in a democratic society that abides by the rule of law, that that person is given a chance to be heard here first, has that right to appeal, and is not removed and then allowed back should they win their appeal. Even in deportation cases, 30% of appeals are successful. I maintain that the Bill's provision that it is only if there is irreversible, serious harm that you cannot deport somebody is not sufficient, because how do you identify that?

Guy Opperman: You have made your point. Thank you.

The Chair: If there are no further questions from Members, that brings us to the end of the business for the morning. Ms Grant, thank you very much indeed for joining us; we are most grateful to you. The Committee will take further evidence this afternoon at 2 o'clock.

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

12.51 pm

Adjourned till this day at Two o'clock.