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GENERAL COMMITTEES

Public Bill Committee

MODERN SLAVERY BILL

Tenth Sitting

Tuesday 14 October 2014

(Morning)

CONTENTS

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Saturday 18 October 2014

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

The Committee consisted of the following Members:

Chairs: Mr David Crausby, †Mark Pritchard

† Bradley, Karen *(Parliamentary Under-Secretary of State for the Home Department)*
† Bruce, Fiona *(Congleton)* (Con)
† Burns, Conor *(Bournemouth West)* (Con)
Burrowes, Mr David *(Enfield, Southgate)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Connarty, Michael *(Linlithgow and East Falkirk)* (Lab)
† Durkan, Mark *(Foyle)* (SDLP)
† Hanson, Mr David *(Delyn)* (Lab)
† Hinds, Damian *(East Hampshire)* (Con)
† Johnson, Diana *(Kingston upon Hull North)* (Lab)
† Kane, Mike *(Wythenshawe and Sale East)* (Lab)
† Lumley, Karen *(Redditch)* (Con)
† Mactaggart, Fiona *(Slough)* (Lab)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Pincher, Christopher *(Tamworth)* (Con)
† Smith, Chloe *(Norwich North)* (Con)
† Stunell, Sir Andrew *(Hazel Grove)* (LD)
† Teather, Sarah *(Brent Central)* (LD)
† Wilson, Phil *(Sedgefield)* (Lab)

Fergus Reid, Kate Emms, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 14 October 2014

(Morning)

[Mark Pritchard *in the Chair*]

Modern Slavery Bill

9.25 am

The Chair: Before I start, I would like to thank the doorkeeper for sorting out the monitors and to ask the Clerk to ensure that monitors are put on at least five minutes before the commencement of proceedings, not one minute before, by raising this issue with the office keepers.

Clause 40

Special measures for witnesses in criminal proceedings

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

The Parliamentary Under-Secretary of State for the Home Department (Karen Bradley): It is a delight to serve under your chairmanship again, Mr Pritchard. Clause 40 amends the Youth Justice and Criminal Evidence Act 1999 to extend certain statutory provisions on special measures in court to all victims of clause 1 and clause 2 offences. Those include provisions whereby witnesses in certain cases are automatically treated as eligible for special measures, unless they tell the court that they do not want to be eligible. Special measures apply to witnesses who are giving evidence in court. The measures include screening a witness from the accused, giving evidence by live link, giving evidence in private, removal of wigs and gowns, and video-recorded evidence.

Specific provision is already made in the existing legislation for trafficking victims. The clause extends coverage to slavery victims so that, for example, all victims of slavery and trafficking are automatically eligible for special measures. This important provision provides vulnerable victims with the protection and confidence they need to come forward and give evidence against their trafficker or enslaver. I therefore hope that Committee members will support the clause's inclusion in the Bill.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clause 41

Child trafficking advocates

Fiona Bruce (Congleton) (Con): I beg to move amendment 42, in clause 41, page 28, line 2, leave out "may" and insert "must".

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

Amendment 63, in clause 41, page 28, line 2, after "arrangements", insert

"to set up an independent body known as the child trafficking advocacy service"

Amendment 91, in clause 41, page 28, line 3, after "advocates", insert "and separated children advocates"

Amendment 92, in clause 41, page 28, line 4, after "trafficking", insert "and all separated children"

Amendment 99, in clause 41, page 28, line 4, at end insert

"or slavery if the person who has parental responsibility for the child fulfils any of the conditions in subsection (1D).

'(1A) The child trafficking advocate will act in the best interest of the child and be appointed as soon as any public authority or relevant body has a reasonable suspicion to believe the child is such a victim.

(1B) The child trafficking advocate will have powers to appoint and instruct legal representatives on behalf of the child in all matters relevant to the interest of the child.

(1C) The child trafficking advocate shall at a minimum have responsibilities to—

(a) advocate that all decisions relating to the child are made in the child's best interest;

(b) ascertain the child's wishes and feelings in relation to those decisions;

(c) advocate for the child to receive appropriate care, safe accommodation, medical treatment, including psychological assistance, education, translation and interpretation services are required;

(d) assist the child to access legal and other representation where necessary;

(e) consult with, advise and keep the child informed of legal rights;

(f) keep the child informed of all relevant immigration, criminal, compensation, community care, public law or other proceedings;

(g) contribute to identification of a plan to safeguard and promote a durable solution for the child based on an individual assessment of that child's best interests;

(h) provide a link between the child and various statutory and other bodies who may provide services to the child, accompanying the child to any relevant meetings;

(i) assist in establishing contact with the child's family, where the child so wishes and it is in the child's best interest;

(j) liaise with all professionals handling the child's case including immigration, police, social welfare, health, education and support services; and

(k) accompany the child wherever it is deemed appropriate to do so.

(1D) Subsection (1) shall apply if the person who has parental responsibility for the child—

(a) is suspected of taking part in the trafficking of human beings;

(b) has another conflict of interest with the child;

(c) is not in contact with the child;

(d) cannot be identified;

(e) is in a country outside the United Kingdom; or

(f) is a local authority.

(1E) A child trafficking advocate must have completed the training required in subsection (10) and may be—

(a) an employee of a statutory body except for an employee of a local authority;

(b) an employee of a recognised charitable organisation; or

(c) a volunteer for a recognised charitable organisation.

(1F) A person discharging duties as a child trafficking advocate shall not discharge any other statutory duties in relation to a child for whom they are providing assistance under this section.

(1G) The child trafficking advocate may request a public authority or relevant body to co-operate with them in any way that the advocate considers necessary and that is in the best interest of the child. A public authority or relevant body must so far as reasonably practicable comply with a request made to it under this section.

(1H) In subsection (1G) a "relevant body" means a person or organisation—

(a) which provides services to the child; or

(b) to which a child makes an application for services; or

(c) to which the child needs access in relation to being a victim of human trafficking; or

(d) any court or tribunal that a child engages with.

(1I) The Secretary of State shall by order—

(a) set out the arrangements for the appointment of a child trafficking advocate immediately after a child is identified as a potential victim of trafficking in human beings;

(b) set out requirements for the training courses to be completed before a person may exercise functions as a child trafficking advocate;

(c) set out the arrangements for the supervision of persons discharging duties as a child trafficking advocate;

(d) set out the arrangements for the provision of support services for persons discharging duties as a child trafficking advocate; and

(e) designate organisations as a "recognised charitable organisation" for the purpose of this section.

(1J) A person's appointment as a child trafficking advocate for a particular child under this section shall come to an end if—

(a) the child reaches the age of 21; or

(b) a durable solution for the child has been found based on an individual assessment of the best interests of the child."

The amendment provides for child trafficking advocates to be appointed for children who are believed to be victims of human trafficking and slavery so that their best interests are represented. The amendment sets out the minimum responsibilities of the advocates ensuring the advocates will have a strong and recognised statutory authority. The amendment includes the power for advocates to appoint and instruct the child's legal representatives where appropriate.

Amendment 100, in clause 41, page 28, line 5, leave out subsections (2), (3), (4) and (5).

The amendment is consequential on amendment 99.

Amendment 60, in clause 41, page 28, line 7, leave out "any person who" and insert "any organisation that"
Amendment 98, in clause 41, page 28, line 8, at end add

"and who must act in the child's best interests."

The amendment makes clear that the fundamental duty of any child's advocate is to act in the child's best interests, including where a child is not able to identify or articulate their own best interest (for example, as a result of being groomed and/or exploited).

Amendment 61, in clause 41, page 28, line 8, at end insert—

'(2A) A child trafficking advocate may be an employee of—

(a) an independent statutory body; or

(b) a recognised charitable organisation."

Amendment 93, in clause 41, page 28, line 11, after "advocates", insert "and separated children advocates"

Amendment 94, in clause 41, page 28, line 14, after "advocate", insert "or separated children advocate"

Amendment 95, in clause 41, page 28, line 15, after "advocate", insert "or separated children advocate"

Amendment 96, in clause 41, page 28, line 17, after "advocates", insert "or separated children advocates"

Amendment 97, in clause 41, page 28, line 19, after "advocates", insert "or separated children advocates"

Amendment 59, in clause 41, page 28, line 19, at end add—

'(e) requiring advocates to act for the child when he lacks the legal capacity to do so and also ensure that other service providers act in his best interests and provide him with the necessary services and support to meet the Government's obligations under the Council of Europe Convention and EU Anti-Trafficking Directive."

Amendment 62, in clause 41, page 28, line 19, at end insert—

'(4A) The Secretary of State must publish guidance that defines the role, functions and responsibilities of the child trafficking advocates."

Clause stand part.

New clause 26—

"Independent legal guardian for trafficked children

'(1) An independent legal guardian shall be appointed to represent the best interests of each child who is a separated child and/or may be a trafficked, enslaved or exploited person pursuant to this Bill if the person who has parental responsibility for the child fulfils any of the conditions set out in section 17(4).

(2) The Secretary of State shall establish an independent body to be known as "the Child Guardianship Service" which shall—

(a) by order set out the arrangements for the recruitment, vetting and appointment of a suitably qualified independent child guardian with the requisite professional qualifications immediately after a child is identified as a separated child and/or a potential victim of trafficking, enslaving or exploitation;

(b) by order set out requirements for the training courses to be completed before a person may discharge duties as an independent child guardian;

(c) by order set out the arrangements for the supervision of persons discharging duties as an independent child guardian;

(d) monitor the activities of the independent child guardians and by order provide an accessible individual complaint mechanism for all children under the Child Guardianship Service;

(e) by order set out the arrangements for the provision of support services for persons discharging duties as an independent child guardian; and

(f) by order designate organisations as a "recognised charitable organisation" for the purpose of this section.

(3) Under the supervision of the Child Guardianship Service, the appointed independent legal child guardian shall be responsible at a minimum for—

(a) ensuring that all decisions relating to the child are made in the child's best interests and, where reasonably practicable, are consistent with the child's welfare after ascertaining the child's wishes and feelings in relation to those decisions;

(b) advocating for the child, if a potential trafficked, enslaved or exploited person, to receive identification as such, appropriate care, safe accommodation, medical treatment, including psychological assistance, education, translation and interpretation services;

[The Chair]

(c) assisting the child to access legal and other representation where necessary, including, where appropriate, appointing and instructing the solicitor representing the child on all matters relevant to the interests of the child;

(d) consulting, advising and informing the child victim of the child's legal rights;

(e) keeping the child informed of all relevant legal and administrative proceedings;

(f) contributing to the identification of a plan to safeguard and promote the long-term welfare of the child based on an individual assessment of that child's best interests;

(g) providing a link between the child and various organisations who may provide services to the child;

(h) assisting in establishing contact with the child's family, where the child so wishes and it is in the child's best interests;

(i) where appropriate, liaising with an immigration officer handling the child's case in conjunction with the child's legal representative;

(j) accompanying the child to all relevant interviews, including those relating to police, welfare, immigration and compensation; and

(k) accompanying the child whenever the child moves to new accommodation.

(4) Section 17(1) shall apply if the person who has parental responsibility for the child—

(a) is suspected of taking part in the trafficking of human beings;

(b) has another conflict of interest with the child;

(c) is not in contact with the child;

(d) is a local authority; or

(e) is in a country outside the United Kingdom.

(5) In section 17(1), an independent child guardian may be an employee of—

(a) an independent statutory body; or

(b) a recognised charitable organisation.

(6) A person discharging duties as an independent child guardian shall not discharge any other statutory duties in relation to a child for whom they are providing assistance under this section.

(7) Where an independent child guardian is appointed under section 17(1), the authority of the independent child guardian in relation to the child shall be recognised by any relevant body.

(8) In section 17(7), a "relevant body" means a person or organisation—

(a) which provides services to the child;

(b) to which a child makes an application for services; or

(c) to which the child needs access in relation to being a potential victim of trafficking, enslaving or exploitation."

Fiona Bruce: I welcome the inclusion of clause 41 in the Bill as an indication of the importance the Government place on protecting and caring for trafficked children. My right hon. Friend the Home Secretary said on Second Reading that

"Child trafficking victims are exceptionally vulnerable and require specialist support and care."—[*Official Report*, 8 July 2014; Vol. 584, c. 178.]

I support amendment 42, which was tabled by my hon. Friend the Member for Enfield, Southgate, because there can be no doubt that trafficked children are among the most vulnerable victims of trafficking and among the most vulnerable of all children being looked after by our local authorities. Their situation and experience is different from those of other vulnerable children. They can be particularly isolated and alone, and the challenges they face require the support of someone with special expertise.

Children who have been trafficked are known to be extremely vulnerable to re-trafficking and to being manipulated or threatened by their abusers who coerce them into absconding from local authority care. In the pre-legislative scrutiny Committee, we heard from Barnardo's about a particularly sad case of a child who absconded again and again. The statistics on the number of children who have gone missing from care after being identified as potential victims of trafficking are disturbing. Data gathered over five years by the Child Exploitation and Online Protection Centre, between 2005 and 2010, found that 301 of the 942 children identified as trafficked—almost a third—had gone missing. Some charities estimate that the figure is much higher and nearer to 60%.

Greater levels of expert support at as early a stage as possible are essential to protect more of these children. I accept that there are ongoing trials for advocate schemes, but I think it unlikely that their findings will be vastly different from the research already commissioned by the Home Office and conducted by the Refugee Council and the Children's Society last year. That research, entitled "Still at Risk", demonstrated a clear need for a role such as a child trafficking advocate. It also recommended that the Government develop a system including provision of an independent trusted adult to

"ensure that their voice is heard in decisions that affect them and are supported effectively through the different legal processes that they are engaged in."

I know that many of us are acutely aware of how confusing legal processes are even for adults who have lived all their lives in this country. How much more confusing must it be for a child trafficking victim who has come from another land?

I followed the debate in another place with great interest, and I pay tribute to the tenacity of Lord McColl of Dulwich and Lady Butler-Sloss in repeatedly raising this issue, and to the constructive way in which the Government have engaged with this subject over the past year. I acknowledge that the Minister is looking at it seriously and in depth, and I know she will take seriously the research being undertaken, although I would rather that had been done earlier. Clause 41 demonstrates our commitment to providing the specialist support trafficked victims need. The enabling language in sub-section (1) seems weaker than the intentions expressed by the Home Secretary when speaking about the trials, and that is the nub of amendment 42. Changing the word "may" to "must" would set out clearly in law the Government's determination to provide the best possible protection for these extremely vulnerable children, as I am sure Committee members will agree. The trial schemes will provide useful information about the practical operation of the role on the ground. There is overwhelming support for such a provision. When we were discussing the draft Bill, the Joint Committee heard evidence from the Refugee Council and the Children's Society that led me to conclude that a vital need exists for such specialist support, which should be mandatory. I urge the Minister to accept amendment 42.

Amendment 99 draws on the child trafficking advocate clause in the alternative Bill proposed by the Joint Committee, of which I was privileged to be a member. It benefits from detailed consideration of the great deal of evidence submitted to that Committee. It addresses the need for a child trafficking advocate to act in the best interest of the child, and more besides. The Bill must be clear about what the role of a child trafficking guardian actually entails. Clause 41 does not rise to this challenge satisfactorily and amendment 99 does. It is informed by international best practice, which is in turn informed by an appreciation of the specific challenges that rescued trafficked children face. Without this clear, up-front definition, which draws on the wisdom and experience of many countries and experts, I fear that there is risk that the role of any resulting child trafficking advocate may, in practice, fall short of what is necessary. I am also very concerned about the scope for time-wasting debate and disagreement about what a child trafficking advocate should or should not do if we cannot agree this in statute.

To understand the importance of a more comprehensive definition, we must also gain a better understanding of the nature of the difficulties that victims of child trafficking encounter. I would be grateful if members of the Committee indulged me while I spend a little time putting on the record those difficulties, of which I know many are already well aware. The needs of victims of child trafficking are many. They are required to engage with multiple agencies, and to go through the trauma of repeating their story time and again to officials. That can be disorientating and soul destroying for a child. There is no one within the current support structure provided under the relevant legislation to accompany, support and speak on behalf of the child's interests in all those contexts. The child is, in many cases, adrift in an unfamiliar environment that they do not understand and may not trust.

The "Still at Risk" report showed that many children are being failed by the gaps between the support provided by social workers, independent reviewing officers and staff from other agencies. As I have already mentioned, these gaps in support make children vulnerable to re-trafficking by their exploiters. Time and again, looked-after children in care in this country complain of being transferred from one individual to another throughout their time in care. The advocate would provide a trafficked child with the continuing, stable and reassuring relationship with one person that they so need. The child trafficking advocate has a key role to play in filling gaps, walking alongside the child. More than that, they can proactively work for the best possible outcome for the child after their terrible ordeal.

If the child trafficking guardian is to rise to that desperate challenge—by the way, the function we are describing here is more important than the terminology used—we have to have clarity in the Bill about their role. That is provided by amendment 99, which is informed by best practice guidelines from the UN, UNICEF and the EU. That role can be grouped broadly into three headings: first, accompanying the child, advocating for them and assisting them in accessing services; secondly, acting as a link or focal point for all agencies and professionals engaging with the child; thirdly, speaking on behalf of the child where necessary. Those are all aimed at reaching a durable solution for the long-term interests of the child.

The child trafficking advocate can provide continuity for a child, accompanying them in all the different meetings and processes they will go through, helping them to understand those and what is happening in what can be a very confusing environment. They can advocate for the child's interests and ensure that they are given primary consideration in decisions to be made about the child. In addition to providing that support, they can ensure that a joined-up approach is taken by different agencies, building up strong channels of communication between them, better to promote the child's interests. As well as providing critical continuity when the child is moved from agency to agency, if the child trafficking advocate can speak on a child's behalf, the child will not have to speak and relate their story yet again if they do not want to. Amendment 99 ensures that child trafficking advocates would have legal responsibility to act for the child where needed.

Michael Connarty (Linlithgow and East Falkirk) (Lab): The hon. Lady has said she is concerned about the human rights of the child, as well as their interests, but where does the child get the choice in this regard? The hon. Lady said that the child would not have to speak, to repeat their story, but where does the provision enable the child to be asked, "Do you wish to speak? Do you wish to transfer your rights to this person again and again?" Through the process, the child might come to realise that they are not getting what they want because their advocate has a view of their interests that is not the same as their own view of their rights as a human being. The UN convention gives human rights to the child, as well.

Fiona Bruce: The hon. Gentleman makes an excellent point. I will refer later to the importance of expert training for these advocates so that they can ensure that they understand and speak in the best interests of the child. That is critical. Without a clear statutory foundation for the child trafficking advocate's functions, there could be confusion as to where responsibilities lie, and what authority the advocate has in speaking for the child and in engaging with other agencies. I again note that the EU handbook recommends that national law

"should include sufficiently precise legal provisions defining a guardian's duties and functions."

Perhaps the Minister could reflect on how that statutory function and authority can be provided for child trafficking advocates.

Sir Andrew Stunell (Hazel Grove) (LD): My hon. Friend is making an important point. On the question of retaining the existing system, does she not agree that often, the person who advocates for the child has an interest in the outcome? For instance, they might be employed by a local authority and if the decision goes one way, it will be costly to the local authority, and if it goes another it will not. Is not that yet another reason for making sure there is an independent person who can stick up solely for the child?

Fiona Bruce: My right hon. Friend makes an excellent point.

Aside from the functions of the advocate, there is one other fundamental aspect of the nature of the role that I want to highlight. It goes to the heart of what my right

[Fiona Bruce]

hon. Friend has just said. The advocate should be independent of organisations that have other responsibilities towards the child. The principle of independence set out in (1F) of amendment 99 is also raised in other amendments in this group, and is highlighted in the handbook published this summer by the European Union Agency for Fundamental Rights as part of a four-year EU anti-trafficking strategy. It is imperative that the child should have confidence, as my right hon. Friend has said, that their advocate will speak and advise them independently without any other conflicts of interest or policy consideration. I urge the Minister to consider strengthening the reference to independence in clause 41(2), which is currently qualified by the words, "so far as practicable".

I am not convinced that it is necessary to set up a separate body, as suggested in new clause 26 and amendment 63, to achieve the efficient delivery of assistance. The model adopted for the trials of a contract with a well-respected charity provides the opportunity for a cost-effective service, with the benefit of drawing on the existing expertise of that charity, without the cumbersome and expensive prospect of an independent statutory service with all the infrastructure requirements and costs that that would involve. Such a model has worked effectively for several years in relation to the support provided to adult victims, and it offers flexibility as well as the benefit of the greater wealth of knowledge of the charity sector. As has been pointed out in another place by Lord Wei, we train volunteer magistrates who undertake very serious roles with great responsibility.

The key differences that a trained advocate can make are as a constant support across all sectors. They understand the particular challenges faced by trafficked children, they can identify risk, and they can flag up others areas of concern. Amendment 99 allows for flexibility whether the advocate is an employee or a volunteer. As I stated earlier, it is clear that all child advocates must meet the same training criteria.

On a further point, amendment 99 extends the role of child trafficking advocates to victims of slavery. Given the focus of the Bill on all forms of modern slavery, it seems odd to restrict the provision of advocates to trafficking. Without jumping ahead to clause 42, I note that most other aspects of the Bill, including those relating to victims, apply to victims of all modern slavery crimes. I hope the Minister will be able to support these important amendments.

Diana Johnson (Kingston upon Hull North) (Lab): It is delightful to be back here debating the Modern Slavery Bill on its last day, Mr Pritchard.

On new clause 26, the hon. Member for Congleton has described how the debate around child guardians has been going on for some time. The basic fact, which the hon. Lady set out very well, is that trafficked children are extremely vulnerable and need special protection. I want to start by referring to an organisation that I met earlier this year. The Pacific Links Foundation is a US-Vietnamese non-governmental organisation that works with Vietnamese trafficking victims. It described to me a process whereby children are taken in by traffickers when they are very young from families that struggle to support them. The children then commence a journey across the world to Europe, but the journey often takes years.

A child might leave Vietnam at the age of about 11, travel through China, and then often through Russia and eastern Europe. They face all sorts of exploitation and abuse en route before arriving in the UK five or six years after they left Vietnam, by which time they are typically around the age of 15 or 16. All that those children know is a life with their traffickers. They know nothing about the customs or cultures of the United Kingdom and they might not even know which country they are in. The traffickers ingrain in those children a deep fear that extends to an understandable fear of the authorities they might come into contact with in the UK. It is a fear that is reinforced when those children, if they are found, are handed to the police and immigration officials. The children's view is to return to the people they know—the traffickers—as soon as possible.

9.45 am

It is clear that children who have gone through that kind of process are traumatised, unable to understand what is in their best interest or to fight for their rights or advocate for themselves. We know that those children find themselves in a legal loophole and are accommodated by local authorities under section 20 of the Children Act 1989, but local authorities do not, as I understand it, take full parental responsibility unless a care order is made in those cases. In the interim children are left in the care of often over-worked social workers who are perhaps unlikely to have an understanding of the culture that the children have come from or of what has happened to them as trafficking victims. What is more, they are often held in generic accommodation or accommodation close to where they have been trafficked. As the hon. Member for Congleton said, there are figures showing that up to 60% of trafficked children are lost from care and return to the people who trafficked them in the first place. That is why it is important that those vulnerable children have access to guardians to look after their best interests. It is important that we put a proper legal basis for legal guardians in the Bill.

I want to turn now to the deficiencies of the Bill on that. As I said at the outset, we have been looking at the issue for some time. We know that there is a requirement in the EU directive around guardians for children and that, as the hon. Lady said, an amendment was made to the Immigration Bill in the other place by an overwhelming majority to introduce legal guardians. I also pay tribute to the work of Members of the other place who fought hard to ensure that the issue of guardians for children was debated in full and inserted into that Bill. When that measure came back to the Commons, the Opposition did not seek to divide the House on the matter again because of the assurances given by the Government that it would be addressed in the Modern Slavery Bill. Now we are faced with clause 41. It does not do what the amendment that was passed in the other place to the Immigration Bill did. I do not think it complies with the requirements of the EU directive either.

The fact that there are so many amendments in the group highlights the problem with the way that clause 41 is drafted. There are several issues I would like to consider. First, the clause does not guarantee that any system at all will be introduced. I am sure the Minister

will give strong assurances that the Government's intention is clear. If that is the case, perhaps she will agree that there is no reason not to accept amendment 42, which says that the Government "will", not "may", act in those cases.

Secondly, the clause fails to give a proper overview of how the advocates would work. It does not explain who would oversee guardians or advocates, and it does not really say what their remit or responsibilities are or who would employ or supervise them. In short, it does not contain the kind of detail that all hon. Members want to see to ensure that the clause does what we need it to do.

The other big issue that the hon. Lady mentioned is that the clause does not provide the proper legal basis for advocates or guardians. That is crucial in two respects. First, it does not provide the legal independence from the local authority or other statutory body that might be looking after the young person. As there is no proper separation of the legal authority, it is not clear what action the advocate could take if a local authority or other statutory body was failing to provide adequately for that young person. Secondly, it does not mandate the guardian or advocate to act in the child's best interest, rather than simply following the child's desires or instructions. The Government seem to have proposed more of a litigation friend, who can discuss the issue with a victim but cannot instruct solicitors or the courts.

The problem is illustrated clearly by an example from the Children's Society. A girl, "P", from a west African country was sent to the UK to live with family friends because she had Portuguese nationality through her family. However, those family friends consigned "P" to domestic servitude. When she escaped, she was placed by the local authority in bed and breakfast accommodation. Most children in that situation would find themselves back in the grip of traffickers, for the reasons I set out but, luckily, "P" was assisted by a charity and obtained a national referral mechanism decision. However, the local authority used that as a pretence to reduce subsistence because it was no longer covered by a section 20 order and had not got a care order. It was only because "P" had a solicitor who threatened judicial review that the local authority backed down and provided the support that that young person needed. That is the kind of representation that we want guardians or advocates to provide for young people but they will not be able to do that unless clause 41 is improved.

I will set out what we need and discuss new clause 26. We need provision in the Bill for legal guardians for trafficked children—certainty that they will be introduced and clarity about what they will do. More than anything, they need to have a strong, clear, statutory basis. Lots of the amendments in the group will help towards that end. Amendment 42 would ensure that at least something is introduced. Amendment 63 would ensure that a body is set up to deliver the advocates programme. Amendment 61 would make it clear that an advocate must be employed by a statutory body or a charity. Amendment 62 would force the Secretary of State to publish statutory guidance regarding the responsibilities of advocates. Amendment 99 would clarify the responsibilities and the role of the advocates. Amendment 98 would rectify the single biggest omission in clause 41: advocates do not have the legal authority to act in the child's best interest. "Best interest" is an established legal term. That needs to be clearly in the Bill.

Only new clause 26 does everything that hon. Members are trying to do in the group of amendments to clause 41. New clause 26 is drafted, very helpfully, by the Anti-Trafficking Monitoring Group and the coalition of charities that supports it. A near identical amendment was included in the Bill drafted by the Joint Committee and that, in turn, was almost identical to the amendment passed to the Immigration Bill. New clause 26 provides for the comprehensive system of legal support and protection that we need to address the deficiencies of clause 41 and give trafficked children what they need, enabling them to get the support they need and the rights they have under international law. I would like to test the opinion of the Committee on new clause 26 at the appropriate time.

Sarah Teather (Brent Central) (LD): I have tabled several amendments that would expand the scope of child trafficking advocates to all separated migrant children. I welcome the inclusion of advocates in the Bill, and I support amendment 42, which was tabled by the hon. Member for Enfield, Southgate and moved by my hon. Friend the Member for Congleton. That amendment would strengthen the clause to provide that the Secretary of State "must" make regulations for advocates. I also thank the Minister for writing to Committee members with an update on the Government's trial scheme.

The UN Committee on the Rights of the Child called for the establishment of guardianship back in 2005 in its "General Comment No. 6". It argued for a guardian to be present in all planning and decision-making processes to

"provide the continuum of care required by the child".

The presence of a guardian was also a specific recommendation to the United Kingdom in the UNCRC's state report in 2008. When I was in government, one of my responsibilities was child rights. The Whips will have been pleased to note that I have kept myself moderately quiet in some of the previous consideration of the Bill, but they will understand that I have a particular interest in this area.

It is really important that the best interests of children are considered at all stages of the decision-making process. Guardianship can, of course, take various forms, and it can be statutory or non-statutory. However, one of the lessons that was learned from the Scottish pilot was that a non-statutory system can lead to further problems and questions around standards and independence, so I am pleased that the Bill provides for a form of advocate.

Paragraph 156 of the explanatory notes states that the child trafficking advocates that may be created under the clause will be

"available to support and represent children who there is reason to believe may be victims of trafficking".

That wording is important because people in the sector tell us that identifying victims of trafficking is far from straightforward. The Committee will consider some of these issues when we debate clause 42, as well as the new clauses relating to the NRM. Trafficked children are frequently not identified as trafficked when they first

[Sarah Teather]

enter the country, and they may not disclose or acknowledge that until some time after they have been trafficked, which makes it difficult to ensure that guardians are allocated sufficiently early so that the children may get the support that they need. My amendments would ensure that all these children would be covered by the advocate scheme. They would also cast the net more widely to those children who may not have been identified as trafficked, but are inherently vulnerable because they are in the UK by themselves.

All the other European countries with advocates or guardians for trafficked children have a system that covers all separated children. In the Netherlands, for example, the Nidos guardians become the principal contact point for all unaccompanied minors and other parties involved in their cases. Denmark has a mixture of volunteer and professional guardians. In Belgium, immediately after an unaccompanied minor is identified—and before an age assessment is carried out, I hasten to add—an independent guardian is appointed, who is usually provided by Caritas or the Belgian Red Cross.

In contrast—my hon. Friend the Member for Congleton talked about this—unaccompanied minors in the UK are usually the responsibility of several different Departments and public bodies, including social services, which means that separated children often fall through the gaps. The children themselves do not know to whom they should be talking, and they can be distressed by the complex legal and social systems. When a Department or agency is not fulfilling its duty towards the child, there is not an individual who is tasked with rectifying the situation. Guardianship is an important way of addressing this.

Committee members will be aware that the Children's Society and UNICEF have assessed the costs and financial benefits of establishing a legal guardianship scheme that covers all unaccompanied and separated children. Their assessment found that for every £1 spent on the service, a saving of £1.25 could be achieved, including significant savings on legal expenditure, accommodation costs and expenditure for separated children once they reach the age of 18. I am very aware—the Minister will no doubt say this—that charities' calculations can sometimes be over-enthusiastic and over-optimistic, and I recall receiving similar calculations when I was looking at changes and recognised that all the internal costs of setting up a new system had not necessarily been counted. Nevertheless, the costs involved in chasing people around different agencies are no doubt significantly higher than they would be if one person were responsible for ensuring that somebody's welfare was considered at all stages of the process.

I have added my name to amendments 60 and 63, which were tabled by the hon. Member for Foyle. They would ensure that only a person who is independent of the relevant authority responsible for the child's care could act as an advocate. My right hon. Friend the Member for Hazel Grove has raised that point. The Bill currently states that the child trafficking advocate must be independent only of

"any person who will be responsible for making decisions about the child."

Therefore, an advocate could be, for example, a social worker from the same local authority sitting at a desk next door. That is not adequate and will not give the child confidence that their interests are being taken into account.

10 am

Amendment 60 would prevent that from happening by requiring the advocate to be independent of the organisation making the decision, and amendment 61 would require the advocate to be from

"an independent statutory body; or…a recognised charitable organisation."

That extra level of independence is important, not only to ensure that child victims of trafficking are represented by someone who does not have split loyalties, but to instil the trust between the advocate and the child that is essential if children are to disclose the kind of information that is necessary if we are to work with them over the longer term.

I have sympathy with the point my hon. Friend the Member for Congleton made about the fact that there may be more cost-effective ways of getting independence. Nevertheless, independence is critical, and I would be grateful if the Minister referred to it in her remarks and let us know what discussions she has had with the Department for Education about how it could be made real. The Refugee Children's Consortium found that trafficked children are understandably extremely fearful of authority. Without an extra level of independence, victims of human trafficking may find it even harder to trust the adults who are supposed to be representing their best interests. Amendments 61 and 63 would ensure that the truly independent advocates are part of a wider national advocacy service and are trained professionals with clear responsibilities and functions. My hon. Friend the Member for Congleton spoke about standards of training, and the amendments would not only ensure consistency of practice across the country, but allow for proper recruitment and oversight of advocates.

I support amendment 98—which was tabled by the hon. Member for Slough, with support from Members on both sides of the Committee—as a simple way of dealing with an important issue that people on the front line often face. It would make it clear that an advocate must act in the child's best interest, which is important because children might not always be able to express what is in their best interest, particularly if they have been exploited. The hon. Member for Wigan (Lisa Nandy), who worked for the Children's Society before being elected and has considerable experience of working with separated children, made that point clearly on Second Reading. She spoke about the case of an eight-year-old child who it is believed was brought to the UK for organ harvesting and who truly believed his trafficker was his daddy—that is what he told his lawyer, who was duty bound to make the case in court. That heartbreaking case shows clearly why the wording is critical. I hope the Government are prepared to move on that point, if on nothing else, in this group of amendments. That example shows why guardians must have a statutory basis and must be instructed to act in the best interests of the child. If the eight-year-old had had such a guardian, the lawyer could have been instructed otherwise, which would have made a significant difference to the child's life.

That example also highlights the issue of legal aid, which I hope the Minister will comment on. I and many members of the Committee want to see a strong system

of guardianship, in which children have people advocating for their best interests throughout the system. The hon. Member for Kingston upon Hull North described the system in the Bill as drafted as a legal friend scheme. However, it will not work unless people have full access to legal aid. Sometimes the only way to ensure that children receive the services they deserve is by taking legal action. That issue affects all victims of trafficking.

Before the summer recess, only 24 hours after the House of Commons gave the Bill its Second Reading, Parliament voted through the residence test for civil legal aid. The residence test catches many victims of trafficking, despite the Government's exemption. Although the exemption extends to certain immigration and employment cases, and actions against the trafficker, it does not cover claims for community care services, claims in tort, or damages claims for breach of human rights. It also does not extend to judicial review, which is currently the only way to challenge a decision that there are not reasonable grounds for considering that a person has been trafficked.

As the Committee will be aware, the residence test is in limbo after it was found to be ultra vires. If I had my way, the whole thing would be chucked out, but I hope that the Minister will at least take advantage of the enforced pause and have conversations with the Lord Chancellor to ensure that trafficking victims are able to access the legal support that they need. I hope that she will comment on that when she responds to the debate.

Fiona Mactaggart (Slough) (Lab): Members will know that I am not normally a minimalist—I want to change a lot—but amendment 98 is minimalist. I thank Members on both sides of the Committee who have supported it. I think that the words in the amendment are not in the Bill already because the Government are looking for ways to make Members of the other place happy, but I am certain that they will end up in the Bill.

Let me be clear about what I am seeking to do. If we look carefully at clause 41, we see that it sets out the Secretary of State's responsibilities. With respect to child trafficking advocates, subsection (2) states:

> "In making arrangements…the Secretary of State must have regard to the principle that, so far as practicable, a child should be represented and supported by someone who is independent of any person who will be responsible for making decisions about the child."

I simply wish to add the words

> "and who must act in the child's best interests."

I think that that is what the Secretary of State wants to do, but she is anxious about setting out in legislation that the authority comes with a duty to act in the child's best interests.

Why is it essential that that is in the Bill? I mean it when I say "essential"—we would be ashamed of ourselves if the Bill was enacted without that phrase—because a child advocate is not a child advocate unless they are acting in the child's best interests. Anything else would be something like a happy granny. They absolutely must have the authority and duty to act in the child's best interests, even when, as in cases we have heard about, the child is not aware of their own best interests. Someone must be given that duty so that they have the authority to disagree with a child who has been groomed into a position that disadvantages them, which is common among trafficked children.

The amendment is small, but it has found support from across the House. I really hope that the Minister accepts it because, like me, she knows that those words are going to get into the Bill at some point. Frankly, I am fed up of us leaving such amendments to unelected Members, rather than allowing them to be made by elected Members of this House who really do care about this issue. I am quite certain that a private poll of every single hon. Member would find that not even 1% think that the words in my amendment should not apply to someone to whom the Secretary of State for the Home Department gives the responsibility of being a child advocate.

Let us go for it this time. This is a tiny amendment. I am supporting more radical amendments, but I thought that we could all agree on a small one and feel that we could take positive steps—we had a positive letter from the Minister yesterday, which we should all celebrate—to make the Bill better. That is what is needed, because unless the Bill is improved, I am afraid that child trafficking advocates will not be effective advocates. They will be nice, helpful friends, but they will not be able to advocate for the child's best interests. If we agree to amendment 98, they will.

Mark Durkan (Foyle) (SDLP): It is a pleasure to serve under your chairmanship, Mr Pritchard. I will not rehearse the important points made by the hon. Member for Brent Central. I support amendment 42 and the case for it that the hon. Member for Congleton set out. I also endorse what my hon. Friend the Member for Slough said about amendment 98.

The issue of child advocates or guardians has mobilised the most attention and concern about the Bill, and that has come from people who want to optimise the Bill's effects. They know that the arrangements in the Bill, the changes that we hope the reconsolidation of existing laws will make and the casting of new services into the future will depend on whether child victims of modern slavery and human trafficking are properly cared for in all circumstances presented to them after their misery has been discovered. That is why people want child guardians. Although the Bill uses the term "child trafficking advocates", I prefer the term "child guardians" because it has a wider meaning and is more commonly used internationally, and therefore deemed more robust. However, my amendments are based on accepting the existing wording in the Bill, although my preference is one reason why I particularly support the Opposition's proposal to introduce the word "guardianship", as that reflects the wider, fuller concept that we want.

The hon. Member for Brent Central touched on several of the amendments that I tabled, but I want to draw attention to amendment 59, which is about ensuring that advocates have the legal authority to act for a child. It is all very well having advocates or guardians with a generic role, and hoping that they act in the best interests of the child and hold other services to the full consideration of the child's best interests, but all those arrangements will be deficient if, when it comes to it, the advocates or guardians do not have the legal authority to act for the child. If they lack legal capacity, they would be unable to instruct solicitors on behalf of the child and to represent the child's best interests, and such an ability is needed under the Bill.

[Mark Durkan]

The amendment would also give advocates the power to compel authorities to take action if a child is not receiving the services and support to which they are entitled. It would bring the Bill in line with obligations under the Council of Europe convention and the EU anti-trafficking directive. The change would ensure that guardians would have sufficient legal powers to be proper and powerful champions for the best interests of trafficked children right across criminal, immigration and children's proceedings. Guardians would be able to instruct a legal representative on the child's behalf, which could be essential at key junctures in the child's journey from slavery and trafficking. The amendment would also, when necessary, allow authorities to be compelled to take action when a child was not actually receiving the proper services and support to which they were entitled, although some people might say that that would be a luxury accessory when at this stage we are talking about basic aspects of the process.

10.15 am

The Children's Society has pointed to evidence from the evaluation of the Scottish guardianship pilot to show why advocates need these powers. The Children's Society would say that the evidence shows that when guardians did not have legal powers and were not on the same statutory footing as local authority staff, they sometimes struggled to ensure that local authorities provided trafficked children with the correct services. Because the service had no statutory footing, guardians often had to negotiate and renegotiate their position in order to assist the young people with whom they worked. If we are to produce legislation that provides children with meaningful guardian or advocate champions, we must provide them with adequate powers to do the job that they expect to be able to do. We do not want a situation in which guardians or advocates feel frustrated and report that frustration on behalf of the people whom they are meant to be helping.

That is one of the reasons why we have tabled amendment 62, which would give the Secretary of State the power to produce guidance in relation to a guardian or advocacy service. Elsewhere in the Bill, the Secretary of State can issue further guidance in all sorts of areas, and can monitor and respond to issues as they emerge and develop. There is, however, a gap when it comes to the advocacy arrangements, which is why I have supported amendments to establish an advocacy service, rather than just loose arrangements around guardians or advocates. That would ensure that there were standards of service. Advocates would be able to turn to the service, and local authorities would be able to engage with it at a corporate level to work out protocols and understandings. Such a service should also be subject to and supported by the Secretary of State's ability to provide guidance, to clarify positions not only for the advocacy service, but for all the other authorities and agencies with which it would deal.

Finally, I return to the basic point encapsulated in several of the amendments—not least amendment 98, but also strongly in new clause 26—which is the concept of best interest. I am conscious that my hon. Friend the Member for South Down (Ms Ritchie) recently asked the Prime Minister during Prime Minister's questions to specifically address that gap in the Bill. The Prime Minister said he would consider it, but I do not know the result of his consideration. My hon. Friend made the point that, in the context of all the rightful public concern about the Asyha King case and the terrible events in Rotherham—and, we now know, in other locations as well—one of the central, recurring issues in all those cases was the fact that authorities managed to conjure up considerations other than the best interests of the child as reasons for acting or failing to act in a particular way. We must ensure that no ulterior consideration, worthy or unworthy, can ever trump the best interests of the child when people make judgments or assessments about services and when they decide what to follow up and back up in any situation. On the basis of the screaming lessons from those terrible cases, we need to address this key deficiency in the Bill.

Sarah Champion (Rotherham) (Lab): I have listened to the debate, and I am heartened by the genuine cross-party support that seems to exist on such an important issue. I want to build on what my hon. Friend the Member for Foyle has just said; he has spoken most eloquently. I support all the amendments that we have debated this morning, but I am particularly supportive of new clause 26, because of three words that it contains: "independent", "legal" and "guardian". As my hon. Friend has said, I am currently living the horror of what happens when children—who are, of course, also victims—do not have independent legal guardians. The Rotherham victims were victims of child sexual exploitation, but also of trafficking, and they were provided advocates by the police and by the local authorities. What has become very clear is that those advocates were working for the police and for the local authorities.

We need to make sure that the children are provided with independent advisors and guardians who are only there for the child's best interest and that it is transparent to the child, but also to the statutory authorities, that they are only there for the child's best interest. It is also very important that they are legal guardians so that they can fight across the board for those children—that they are seen as an equal by the statutory authorities, rather than as someone who can just be ignored and passed over.

The other important point for me, from talking to various people, is that a good advocate leads to a good prosecution. If an advocate is able to support the child through all aspects of the situation, that leads to the best evidence, which leads to the best prosecutions that we need. I know that the Minister is piloting a scheme on advocates with Barnado's at the moment—I think it might be winding up. I wonder whether, at the very least, the Minister could look at including a legal guardian as part of that pilot.

Karen Bradley: I am grateful to right hon. and hon. Members for contributing to this debate and for tabling this group of amendments. The amendments relate to child trafficking advocates, and we are debating them alongside clause stand part. The majority of the amendments, including the proposed new clause, aim to add more detail to the child trafficking advocate role. Before turning to the detail of the amendments in the new clause, I would like to set out the thinking behind the child trafficking role and the content of clause 41.

Clause 41 allows the Secretary of State to make arrangements for the appointment of a specialist and independent child trafficking advocate to represent and support children who may be victims of human trafficking. I know that all members of the Committee share a desire to protect and support child victims of trafficking. These children are some of the most vulnerable people in our society. They have been preyed on by serious criminals. They may be without family and in the care of the state. The criminals who have targeted them may seek to re-traffick them even after they are found. We all recognise that we have not always done enough to support these children and ensure that when they are rescued or found, they do not fall prey to being re-trafficked. The examples of the Vietnamese children and others, which the shadow Minister cited, bring home graphically why we need specialist support for child victims of trafficking.

We all agree that the current system of support for children who are trafficked must be improved. The Government are determined to provide the best possible support, protection and care for these very vulnerable children. As the Committee knows, the Government are not waiting for a new law to start work on this. We are trialling specialist advocates for trafficked children across 23 local authorities for a period of 12 months. These trials have already started.

My hon. Friend the Member for Congleton made the point that the trials started later than she would have liked. I agree. They started later than I would have liked, but she will know that, because of the amendment that the other place made to the Immigration Bill, we had to pause the start of the trials, to ensure that we were doing them in a way that fitted with the law as it stood at the time. The problem with the amendment to the Immigration Bill was that it would have covered only immigrant children. We want to ensure that the trials cover all trafficked children, including UK nationals who are not immigrant children. It is unfortunate that we ended up with the pause, but the trials have now started. They are about a month in and we have started to see some of the results.

The specialist and dedicated advocates that Barnado's is providing for the purposes of the trial will be a consistent point of contact for the child, supporting children to navigate the complexity of the children's social care, immigration and criminal justice systems. The advocates will support public authorities to assess the needs of the child and make decisions in the child's best interest, taking full account of the child's wishes and needs. Promoting the safety and well-being of the child is an underlining principle of all their work. For the first time, this vulnerable group of children will be supported by specialist and dedicated contact with the capacity and expertise to address their additional needs as child trafficking victims, reducing the risks of the child going missing or being re-trafficked, which is something that I know we all want to see happen.

The trial has started across 23 local authority areas and I am pleased to confirm that the university of Bedfordshire has been appointed by the Home Office to evaluate independently the advocacy provision against the existing provision of care for this vulnerable group of children. The evaluation will be led by Professor Kohli, who led the evaluation of the guardianship scheme in Scotland. I mention that because I am really pleased that we have such an experienced, professional and, importantly, independent team of academics and sector specialists evaluating the trial.

Michael Connarty: Is the Minister putting on the record that the Government will follow the advice given?

Karen Bradley: I am delighted to hear from the hon. Member for Linlithgow and East Falkirk, but he should please not pre-empt my comments. When we last met, we were all concerned about whether his constituency would still be part of Great Britain. I am delighted that it is and that he is still here and will continue to debate with me on these very important issues.

Michael Connarty: I hope the Minister realises that, with English votes for English laws, I would not be here debating this issue.

The Chair: Order. The hon. Gentleman will have his opportunity later.

Karen Bradley: Please let us continue with the consensual nature of this Committee.

The evaluation will help us better to understand the difference to the system that specialist independent advocates make in providing support, advice and guidance to children who have been trafficked. It is crucial that we properly evaluate the system so that we know we are providing the best possible support to these incredibly vulnerable children.

Clause 41 takes account of trafficked children's particular vulnerability and need for support. It enables the Secretary of State to provide specialist independent advocates with the status and powers they need both to steer the child through the complexities of the social, immigration and criminal justice systems and to support those systems to work in the child's best interests. The clause includes all those elements of the advocate's role that we feel are necessary to include in primary legislation. The clause also enables other, specific aspects of the role to be set out in regulations. Clause 42, which we will debate later, requires the Secretary of State to provide statutory guidance and identification of support for victims.

Importantly, clause 41 enshrines the principle that, so far as is practicable, the advocates will be independent. I would like to be clear on this. Advocates must be independent of the local authority. I am aware of briefings received by the Committee which state otherwise, which is something to which I will return to later. The Government intend that regulations made under this clause will require public authorities to co-operate with and provide information to the advocates. Our intention is to ensure that, when making key decisions in relation to the child, all public authorities will seek the views of the advocate. Not only will child trafficking advocates be able to ensure that the child's voice is clearly heard, but as specialists in trafficking they will be able to ensure that proper account is taken of the risks faced by trafficked children and the particular support they need.

It will of course be important to stipulate the functions of the advocates in greater detail. The clause allows the Secretary of State to do so through regulations under the affirmative procedure, thereby ensuring that both Houses are content with the detail of those regulations

[Karen Bradley]

before they are made. It is right that we look at the independent evaluation of the evidence from the child before seeking to set out the detail of the advocates scheme.

To reassure Parliament of the Government's commitment to prompt and decisive action to help trafficked children, we have also in this clause committed the Secretary of State within nine months of Royal Assent to lay a report before Parliament setting out the steps that will be taken in relation to advocates under the powers conferred by the clause. Lessons learned from the trials will be detailed in the report, at which point we will be in a better position to assess what works best to support and protect these vulnerable children. I have absolutely no doubt that we all wholeheartedly agree that there is a fundamental need for child victims of trafficking to receive the very best support we can offer. The clause is about providing children with support to help them to overcome the trauma of being trafficked.

I am grateful to everybody who has spoken in today's debate and in particular to those who tabled amendments. They give me a helpful opportunity to set out the Government's thinking and, I hope, persuade everyone in the Committee of our shared commitment to deliver improvements in the care of trafficked children.

Amendment 42 proposes to turn the enabling power in the clause into a duty. I share the conviction of my hon. Friend the Member for Enfield, Southgate that the provision in this clause—a truly independent voice in the system advocating for the child in the way that a parent could—will result in a step change in the prospects of these incredibly vulnerable children. I am determined that the changes we make deliver the best possible outcome for trafficked children. We already have a complex and comprehensive set of child protection arrangements in this country to protect the most vulnerable, and credit should be given to my hon. Friend the Member for Brent Central for the role she played in that when she was a Minister in the Department for Education. We need to make changes to the system based on real evidence about what will work best. To push through change without properly testing, as the amendment would force us to do, risks damaging protections we already have in place.

The Committee will remember the view expressed by Andrew Wallis of Unseen during pre-legislative scrutiny. He said:

> "I think the case for guardianship is unproven at the moment…I would like to see a commitment to seeing social services trained, the correct application of the Children Act, and appropriate accommodation. Then let us review whether we need a guardian…I fear that full-blown guardianship will be stuck on the top of the system that is failing, and then we will wonder why we have guardians of missing kids and precisely what we are paying them lots of money to do."

I will talk about that again later, but the point of the trials is to see what happens in various local authorities, some of which are better than others. We want to see whether, if we run the advocates alongside local authorities, those advocates make a real difference to good local authorities, where children have a good outcome, and to the poor local authorities. We want to see whether adding that extra layer helps.

10.30 am

Sarah Teather: The point that the Minister is making is important, but she was asked in an intervention a minute ago whether the Government would commit to enacting what the review comes up with, and I want to be clear that all parts of the Government will commit to that. It is no good if the answer from the trial is that, as structured, the advocates are not working well because of fundamental flaws with how the child protection system is working. I want to be clear that she will not simply abolish advocates, but will work closely with Ministers in the Department for Education to ensure that all parts of that system are changed to ensure that children are protected.

Karen Bradley: I will give the Committee additional comfort on our commitment to this issue shortly, but we absolutely want to get it right. We cannot leave this vulnerable group—trafficked children—alone and not helped. We need to ensure that they have support, but we are just not certain at this point what that support should be. That is why we are trialling the advocates.

Sarah Teather: I do not know whether the Minister understood my point—

Karen Bradley: I was coming on to it.

Sarah Teather: Will the recommendations go both to her and to the Minister responsible for child protection, or just to her? I want to be clear that the lines of authority for enacting changes go across both Departments.

Karen Bradley: I can assure the hon. Lady that the Home Office is in close discussion with the Department for Education. We will be looking at this issue across Government to ensure that we put in place the right protections. If she will forgive me, I will come to the comfort I can give shortly.

On the doubts about the right way to do this, the Centre for Social Justice's report of March 2013, "It Happens Here", states that

> "viewing a guardian as a 'magic bullet' who would automatically safeguard a child and prevent them from going missing is dangerous and 'while recommendations are often made for an independent guardian…this cannot replace the need for each service to develop its own protocol and service delivery plan, with its own designated key workers allocated for face-to-face work with the young people'. A system of guardianship also risks further separating the protocols for trafficked children from those for other at-risk children—something the CSJ would not advocate."

I know the hon. Lady is concerned about that separation.

Diana Johnson: I just want to be clear. The pilots are just of advocates, and are not about comparing and contrasting advocates and guardians and coming up with recommendations. That is correct, is it not?

Karen Bradley: The hon. Lady is correct. I will come to the point about terminology shortly, but if she will forgive me, I will just complete my point about the right way to do this. Andy Elvin, the CEO of Children and Families Across Borders, stated in evidence to the Centre for Social Justice that

> "while recommendations are often made for an independent guardian…this cannot replace the need for each service to develop its own protocol and service delivery plan, with its own designated key workers allocated for face-to-face work with the young people".

My point is that we need to test the measure and trial it. We need to see how the advocate improves the service

for children. If it does not do that, we will have to look at what we then need to do to improve the service. We all hope and believe that the advocate is the right way to do things, but we need to test that and see that it is the right thing to do. Until we have that evidence, I would not wish to be compelled to introduce a costly system that does not deliver the changes we need and the support we all desperately want to see for these children.

Michael Connarty: I apologise as a Scot commenting on the state of English local government, but my wife was head of education in an English local authority for a time, before going back to Glasgow as a director. I see a series of social work departments in shambles. In the 22 years that I have been here, every case that has come before Parliament about a child being failed seriously has shown the endemic problem of people in social work departments having multiple responsibilities and not being able to deal specifically with the child's needs.

What we have here is a set of unaccompanied, trafficked children and rather than continuing to put them into a department in local authorities that clearly has a structural problem, everyone has argued that they would benefit from an independent organisation, separate from the local authority structures. The local authorities would also benefit and UNICEF says that that would save money for the country.

Karen Bradley: I do not think that we have time to debate the failings or otherwise of social services and children's protection services in local authorities. That is clearly a wider issue, which I am sure will be debated at length. We all want to provide additional support for trafficked children; we just need to know the right way to do that so that they get the support they need. We are trying advocates because we believe that they are the right way to achieve that, but we need to see the evidence to be absolutely clear.

Sarah Teather: I am sorry to intervene on the Minister again—she is being generous. On the evaluation by the university of Bedfordshire, it would be helpful if she would make clear how we will measure success. Will she put into the public domain—or at least before the Committee—what the university will be looking at? To come back to my earlier intervention, there is a real risk, as I have seen before, that when an evaluation done by one Department is taken too literally, a scheme that with minor changes elsewhere in government could work effectively is scrapped, because the literal conclusion of that evaluation is that the scheme is not working.

Karen Bradley: I have discussed the review's terms of reference with my hon. Friend outside the Committee. I need to confirm what I can put in the public domain, but I will disclose what I can and I am happy to discuss with her outside the Committee her specific concerns, if she will allow that.

We all agree that the current arrangements need to be enhanced, which is why we have part 4 of the Bill. We are working as quickly as possible through the trials to get the evidence about what enhancements work, but we must take this short period of time to assess properly what works best in improving the lives of children.

I am concerned that the amendment could create additional, unintended risks of litigation when the focus should be on working together to help vulnerable trafficked children. However, I have listened carefully to the debate and I want to ensure that everyone in Committee is left in no doubt about the Government's commitment to child advocates. I stress that I respect and share the sentiment behind the amendment, so I will commit to look again carefully at the clause to see if there are ways to give Parliament a greater influence over what happens after the trials. While I do not believe that agreeing today to create a duty is the right response to this serious issue at this time, I stress the Government's commitment to advocacy and our openness to looking at changing the clause during the passage of the Bill.

I do not want anyone to be in any doubt about our commitment to that or our willingness to change the Bill, so I confirm that the Government will table amendments on Report to strengthen Parliament's role in deciding whether the provision is to commence after the trials have been completed and evaluated. In other words, I will ensure that the clause is amended so that Parliament has a say over whatever decision is taken by the Secretary of State, given the evidence, to ensure that it is happy with the decision, and there will be a vote to confirm that.

I am grateful to the hon. Member for Foyle for tabling amendment 59, which would require the advocate to act for the child where he or she lacks the capacity to do so and to take responsibility for ensuring the response of other service providers to his or her needs. I am determined that any advocate system introduced is the best it possibly can be to provide these vulnerable children with the service that they deserve. The trials that are under way will give us a clearer indication of how best this role can support child victims of trafficking. This is one of a number of amendments that seek either to restrict the role, add specific responsibilities, or define the role much more closely. I have reservations about taking this approach before we have seen the outcome of the trials.

The clause deliberately allows the Secretary of State to make regulations that can further specify the functions of the advocate's role. Both Houses must agree those regulations, giving us the chance to define the role more closely once we understand what the best the looks like, in terms of furthering the best interests of trafficked children. I am happy to consider whether specific powers must be conferred on advocates to allow them to undertake their role as I have described it today, but I am not persuaded that they should be. Advocates already act as children's litigation friends in legal proceedings, for example, where the child in question is not of an age and competence to instruct their own lawyer.

We must not confuse responsibilities for the child. It will be the advocate's role to defend the rights of the child and to ensure that decisions are taken in their best interests, but the statutory obligations of local authorities must remain clear. We must not create any sense, however unintentional, that trafficked children are someone else's problem and that local authorities can neglect their responsibilities in relation to this group of particularly vulnerable children.

On statutory support services available to children, it may help if I confirm that under clause 42 the Secretary of State must provide guidance to public authorities on

[Karen Bradley]

how best to support victims of trafficking, which will include specific guidance on support for children. The Government have also provided training to a range of front-line professionals and are exploring what further training would help in further improving the response to all victims.

My hon. Friend the Member for Congleton commented on the statutory function in EU law. The requirements regarding provision of a guardian/representative for child victims, which are contained in the EU directive on preventing and combating trafficking in human beings, are already met in the UK by existing child protection legislation and provided through social workers. Under clause 41, advocates provide tailored protection for these extremely vulnerable children that goes beyond our EU obligations.

Amendment 60 relates to the principle of the independence of the advocate and would ensure that such a provision is effective in setting out the principle that the advocate should be independent of public authorities such as local authorities. Discussing the amendment gives me an opportunity to clarify that, in accordance with the definition of "person" in the Interpretation Act 1978, the reference to being independent of any person not only covers individual people, but includes a body of persons, corporate or unincorporated. Amendment 60 is not needed, because the principle of independence already covers organisations such as local authorities and their staff responsible for making decisions about the child.

Amendment 61 would ensure that the advocate can be the employee of an independent body or a charity. I reassure my hon. Friend the Member for Brent Central that clause 41 already allows for child trafficking advocates to be employees of independent statutory bodies or recognised charitable organisations. The only limit in the clause on who can act as an advocate is the principle regarding independence, which is there to protect and promote the independence of the advocate. The advocates in the current trial are employees of the charitable organisation, Barnado's, and we have no plans to restrict such a possibility in any regulations made under the clause.

The hon. Members for Foyle and for Rotherham, along with the shadow Minister, commented on naming and terminology, and asked why there are "advocates", not "guardians". The term, "guardian", has a number of legal meanings, including guardians who care for children if their parents pass away; children's guardians who act for children in family law proceedings; and special guardians who care for children by family court order. "Guardian" being used in this respect could cause confusion, particularly as special guardians and testamentary guardians have parental responsibility for children. The post-legislative scrutiny Committee stated that it preferred "advocate", because it best expresses the key purposes of the role.

With regard to amendment 62, I agree that it is important that the functions of child trafficking advocates are properly set out and defined in both regulations and guidance. Further to the regulations provided for in clause 41, the role and responsibilities of child-trafficking advocates will be set out in the statutory guidance required under clause 42. My hon. Friend the Member for Brent Central is concerned about how this evaluation would apply to other children. Clearly, we are considering specific circumstances of the vulnerable group of trafficked children, but I understand her concerns about other unaccompanied children. We will, I am sure, learn a great deal from this evaluation about unaccompanied children, how they are supported by advocates and whether the advocacy service does—we believe it will—encourage greater awareness of trafficking among professionals.

10.45 am

Sarah Teather: To clarify, I tabled these amendments for two reasons. First, it seems to me that unaccompanied migrant children have exactly the same vulnerabilities as trafficked children, so they would benefit from this system. Secondly, in a more narrow vision of the scheme, there are difficulties in identifying which children are trafficked and which are not, so at the very least providing guardians or advocates—whatever we call them—to a wider group would meet the Minister's objectives more clearly and possibly save money.

Karen Bradley: I understand my hon. Friend's concerns. This is a trial of trafficked children advocates, but I am sure that it will assist us both with higher identification rates and in examining how we look at all children. Given where we are with the trials and so on, perhaps she will allow us to take this issue outside the Committee and discuss how best we can use the results of the trials to ensure that we are better informed for all unaccompanied children.

Amendment 63 would require the Secretary of State to set up an independent body to administer an advocacy service as a precondition of making arrangements to make child trafficking advocates available. I am concerned that that could prevent a scheme from being set up with regard to lessons learned from the ongoing trial. There will be a range of delivery options. For example, the current provision of support to adult victims through the national referral mechanism is run by a charitable organisation, rather than an independent body. We should give careful consideration to the best way to deliver the service with regard to the evidence from the trials.

I am grateful to my hon. Friend the Member for Brent Central for tabling amendments 91 to 97, which we have already touched on and which are designed to widen the group of children supported by advocates to include "separated children". I recognise that separated or unaccompanied children are vulnerable. In recent years, we have seen a number of shocking cases demonstrating how important it is to get support and safeguards right for that group.

The Government are committed to improving our support for all unaccompanied children. That is why in July the Department for Education published revised regulations and statutory guidance for local authorities on the care of unaccompanied and trafficked children. The revised guidance sets out the steps that local authorities should take to plan for the provision of support for

looked-after children who are unaccompanied, asylum-seeking children. However—I think that we have already touched on this point—unlike child trafficking victims, many unaccompanied or separated children come to the UK without experiencing any form of exploitation, so although it is critical that those vulnerable children are appropriately safeguarded, they will often not have the same needs as child victims of trafficking. In particular, child victims of trafficking are at significant risk of re-trafficking.

A number of charities that have briefed this Committee argue that there are likely to be victims of trafficking who have not been identified and that some of those children may be unaccompanied children. We have taken action to improve the identification of victims. That includes action in this Bill. Examples are the statutory guidance required to be issued under clause 42 and the inclusion of the identification of victims in the remit of the anti-slavery commissioner. It also includes non-legislative means such as training, guidance and specialist teams at the borders to ensure that children do not slip through the net and are identified as potentially trafficked.

The point is that we all agree that the situation to date has not been good enough. That is why we have introduced the Bill and the comprehensive strategy to support victims, child and otherwise, of trafficking, slavery, servitude and forced or compulsory labour. The national referral mechanism review, which we will discuss about under clause 42, is an important part of that work.

The Bill responds to the need for a tailored response for child victims of trafficking. I am concerned that widening the scope of the child trafficking advocate role would risk diluting the advocates' skillset and expertise and that spreading that expertise too thinly would result in those especially vulnerable children not receiving the support that they need.

I am grateful to hon. Members for introducing amendment 98, which has considerable support—it is easy to see why. The principle of upholding the child's best interests is fundamental to the role of all professionals supporting trafficked children, including any advocate. I am aware that children's charities have expressed concerns that there is some ambiguity in the role. The concern is, I believe, that the advocate might be able to advocate only for what the child wants. In some cases, the child may wish to rejoin the trafficker, so the advocate must be able to advocate for what the child needs in order to serve the child's best interests. I fully understand the concern and I would like to reassure the Committee that in this context, the advocate is expected to act in the child's best interests. There would be no question of their having to support the child's wishes—

Fiona Mactaggart *rose—*

Karen Bradley: If the hon. Lady will forgive me, I might be getting to the point she is looking for. There would be no question of their having to support the child's wishes where what the child wanted would evidently be damaging to their welfare—for example, if the child wished to return to the care of a trafficker. The job description for the child trafficking advocates in the trial made it clear that a key part of the role would involve taking the child's best interests into account. My hon. Friend the Member for Brent Central mentioned the example used on Second Reading by the hon. Member for Wigan (Lisa Nandy). We all agree that that was an incredibly powerful example and it is such an important part of this role.

Although I do not believe that the Bill strictly need to include a reference to best interests to enable child trafficking advocates to perform their role supporting trafficked children, I recognise the strength of feeling on the issue and the proper concerns from charities with experience in this area about leaving any possible ambiguity. I want to demonstrate to all Committee members the seriousness with which the Government take issues that Members raise. I will therefore commit today to the Government introducing an amendment on Report to ensure that there is no doubt that child trafficking advocates will act in the best interests of the child.

Fiona Mactaggart: Is the Minister saying that a Government amendment will include in the Bill—not in regulations—a duty on a child advocate to act in the best interests of the child?

Karen Bradley: I am saying that. Yes—a nice, simple one-word answer.

I am grateful to the hon. Members who tabled amendments 99, 100, 121, 122 and new clause 26, which seek to specify in detail the role of the child trafficking advocate. We have already debated many elements of the amendments, and I have spoken of our determination to get this right and of the importance we place on the trial to inform us of the best way to protect these children. I share Committee members' conviction that having a truly independent voice in the system, advocating for the child in the way that a parent could, will result in a step change in the prospects of these incredibly vulnerable children, ensuring that they receive the support and protection that they need and deserve.

A key challenge of tackling child trafficking and modern slavery more broadly is that despite the severity of the crime and the vulnerabilities of the victims, it has not received appropriate focus in the past. The Bill is one of a number of Government measures set to change that. The Bill and the child advocate trials mark the beginning of a journey to improve our response. Our understanding of modern slavery, including how best to support victims of child trafficking, is limited. This important Bill should allow us to take the action needed in the best interests of victims of child trafficking.

The shadow Minister asked about local authorities not taking full parental responsibility under a care order, with children housed in standard accommodation. I want to put on record that local authorities are bound by statutory guidance to safeguard and provide suitable accommodation for those vulnerable children. If the local authority has any concerns that a child voluntarily accommodated is at risk of suffering harm, it has clear statutory duties to investigate and if necessary, initiate proceedings to obtain a care order and with that, parental responsibility. We expect the child trafficking advocate trials to inform whether the current system works in the interests of those children and how advocates could make the system work better.

I want to touch on a question asked by the hon. Lady about whether advocates can instruct lawyers in their own right. Advocates will be able to act as a child's

[Karen Bradley]

litigation friend under existing arrangements. That means that advocates will be able to make applications to court on behalf of children and to run the proceedings for them. Children under 18 cannot make their own applications to court or run their own cases unless the court orders that they have the capacity and understanding to do so. In the shadow Minister's example, an applicant would be able to make a judicial review application in the child's name as their litigation friend.

To touch on the point about legal aid mentioned by my hon. Friend the Member for Brent Central, child victims of trafficking, as she knows, have access to legal aid for judicial review, in relation to local authorities and relevant care and accommodation matters. However, I take her points about legal aid and will ensure that they are made to the Attorney-General.

Sarah Teather: The key point is that a person cannot challenge whether there are reasonable grounds to state whether or not they have been trafficked, except via legal aid. If we are to make the system coherent, that key point needs to be addressed.

Karen Bradley: I take my hon. Friend's point and I will make sure that conversations are had about it.

The specialist dedicated child trafficking advocates will be both experts in trafficking and also independent of the local authority. Their functions will include steering the child through the complexities of the local authority social care system, as well as the immigration and criminal justice systems, and ensuring that the child's voice is heard. They will have the capacity and expertise to address the additional needs of the child, including immigration issues, in particular reducing the risk of the child going missing and being re-trafficked.

The child trafficking advocate trial is now under way and will be critical in helping us better to understand the difference a system of specialist independent advocates could make in providing support, advice and guidance to children who have been trafficked. We need to use the findings from that trial to ensure that we understand what works before further defining the child trafficking advocate role. To bind the role of the advocates completely in the legislation at this stage would be premature, undercut the value of the advocate trial and restrict our ability to refine and improve the role in order to respond to an improved understanding of what works to support victims and how best to tackle the threat of re-trafficking.

It is also not usual procedure to contain extensive provisions for such roles in legislation. For example, provisions that set out details about the role of children's guardians in some family law proceedings are not in primary legislation, but in the family procedure rules. Similarly, the detail of the role of independent mental capacity advocates is set out in regulations, as is proposed for child trafficking advocates.

Regulations made under clause 41 with regard to child trafficking advocates will be subject to the affirmative procedure, meaning they will be subject to debate in both Houses. I have also been clear that the Government are listening. I say again that we will table an amendment on Report on the issue of the advocate acting in the best interests of the child, ensuring that concerns about the definition of the best interests of the child are met. I am looking at how we might strengthen Parliament's role in deciding what to do after the trials are complete.

Given that reassurance about the Government's commitment to both advocacy and the important role of Parliament in how the provision is taken forward, I hope that the amendments will not be pressed and that Committee members feel able to support the clause's inclusion in the Bill.

Fiona Bruce: I thank the Minister for her response. I know she has not just heard but listened to many of the concerns expressed across the Committee. I have heard her considerable assurances and the spirit in which she has given them. She stated that she is committed to developing a child advocate scheme in the best interests of the child, that she will carefully consider the wide-ranging trials being undertaken and that she will look to amend clause 41 during the Bill's passage. In view of all of that, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 41 ordered to stand part of the Bill.

Clause 42

GUIDANCE ABOUT IDENTIFYING AND SUPPORTING VICTIMS

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

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

New clause 22—

"National referral mechanism

'(1) The Secretary of State must by order establish a mechanism for the identification and protection of victims of modern slavery offences as defined in Part 1 of this Act.

(2) In establishing the mechanism the Secretary of State must have regard to the desirability of making provision for the following matters—

(a) the means and process for the identification and referral to the mechanism of potential victims of modern slavery;

(b) the provision to a child of an advocate in accordance with section 41 of this Act, if no such advocate has already been appointed upon identification of the child as a victim or referral to the mechanism;

(c) the appropriate stages in the formal identification process of a victim of modern slavery, the tests to be applied at each stage, and the timescales within which each stage must be completed;

(d) the suitability, qualification and necessary training of a person or organisation to fulfil the processes at paragraphs (2)(a) or (c);

(e) the principle that an organisation whose functions include determining asylum and immigration is unsuitable to deal with the matters referred to in paragraph (c).

(f) the care assistance or services which shall be provided as a minimum to all potential and formally identified victims of modern slavery;

(g) the provision of an internal review and appeal of a decision under paragraphs (2)(a) or (c)."

New clause 27—

"General duty to identify, assist, support and promote the welfare of victims

'(1) Public authorities have a general duty—

(a) to take all reasonable steps to identify persons who are, may be, or may have been, trafficked, enslaved or exploited persons;

(b) to take all reasonable steps to provide assistance and support (including to refer persons to other agencies for assistance and support) on a consensual and informed basis, and to promote the welfare of persons who are, may be, or may have been, trafficked, enslaved or exploited persons, including, as a minimum the provision of—

(i) standards of living capable of ensuring their subsistence, through such measures as the provision of appropriate and secure accommodation, psychological and material assistance;

(ii) access to necessary medical treatment;

(iii) translation and interpretation services;

(iv) counselling and information, in particular regarding their legal rights and the services available to them, in a language that they can understand;

(v) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; and

(vi) access to education for children;

(c) to make arrangements for ensuring that any services provided by another person for the purpose of discharging the public authority's function are provided in accordance with the general duty in section 16(1) above; and

(d) to have due regard to the fact that an individual is, or may have been a trafficked, enslaved or exploited person when making decisions affecting that individual."

New clause 28—

"Establishment and function of the National Referral Mechanism ("NRM")

'(1) The Secretary of State must establish an NRM to—

(a) identify trafficked, enslaved or exploited persons within the United Kingdom;

(b) provide assistance and support to a person who may have been trafficked, enslaved or exploited from the time at which that person is first referred into the NRM until such time as a final and conclusive determination is made that they are not such a person; and

(c) ensure that the rights of such persons are protected and promoted in a manner which discharges the Government's obligations under the Trafficking Convention and the Trafficking Directive regarding the identification and protection of victims, including measures for assistance and support including, at a minimum, the measures referred to in section 16(1).

(2) The Secretary of State must, in regulations, specify the procedures to be followed to implement the NRM and the procedures to be applied by the NRM including to give effect to the right to a renewable residence permit provided for in sections 16(11) and (12) below.

(3) The regulations must provide for a right of appeal by an individual in respect of a decision in the NRM process that they are not a trafficked, enslaved or exploited person.

(4) A person (including a child) must give their free and informed consent to being referred into the NRM before a referral is made on their behalf.

Additional protections - renewable residence permits

(5) A person who is determined in the NRM process to be a trafficked, enslaved or exploited person shall be entitled to a one year renewable residence permit permitting them to remain in the United Kingdom where one or other, or both, of the following situations apply—

(a) a competent authority in the NRM considers that their stay is necessary owing to their personal situation; or

(b) a competent authority in the NRM considers that their stay is necessary for the purpose of the person's co-operation with the authorities in connection with their investigations or criminal proceedings.

(6) A residence permit for child victims shall be issued where it is in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

Duties in relation to children

(7) The protection, assistance and support provided to trafficked, enslaved or exploited children (including those to whom the presumption of age applies) in accordance with the provisions in this Bill shall be at least equivalent to the protection, assistance and support provided to adults, save that where other legislation provides for greater protection for children that legislation shall, to the extent of any inconsistency with this Bill, prevail."

New clause 29—

"Identifying and supporting victims

'(1) The Secretary of State shall make regulations about the arrangements for determining whether or not a person is to be treated as a victim of slavery or human trafficking and shall in particular make provision—

(a) about the process for the referral of potential victims of slavery or human trafficking for such a determination;

(b) about the process and tests for determining whether a person should be treated as such a victim; and

(c) for an individual to have access to an internal review and appeal of a decision made about them under subsection 1(b).

(2) The Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about indicators that a person may be a victim of slavery or human trafficking.

(3) The Secretary of State may, from time to time, revise the guidance issued under subsection (2).

(4) The Secretary of State must arrange for any guidance issued or revised under this section to be published in a way the Secretary of State considers appropriate.

(5) The Secretary of State must ensure that—

(a) a person about whom a referral has been made under subsection (1)(a) is provided with assistance and support in accordance with this section for—

(i) if there are no criminal proceedings, ninety days,

(ii) if criminal proceedings take place, ninety days after criminal proceedings are completed; or

(iii) until there is a conclusive determination under the processes established by subsection (1) that a person is not to be treated as a victim of slavery or human trafficking,

(b) if the family of a child identified as a victim is resident in the United Kingdom it be entitled to assistance and support under this section,

(c) assistance and support provided under this section—

(i) is not conditional on the willingness of the person to act as a witness;

(ii) shall be provided with the person's agreement;

(iii) shall take due account of the victim's need for safety and protection, including the opportunity to receive assistance from a person of the same gender;

(iv) shall be provided to assist victims in their physical, psychological and social recovery; and

(v) shall meet minimum standards for such support as shall be set out by the Secretary of State by order.

[The Chair]

(6) For the purpose of this section, "assistance and support" may include but not be restricted to—

(a) appropriate and safe accommodation;

(b) material assistance, including that required by a person with special needs arising from pregnancy, physical or mental health conditions, disability, or being the victim of serious psychological, physical or sexual violence;

(c) medical treatment, including psychological assistance;

(d) counselling;

(e) information, including on a reflection and recovery period, the possibility of granting international protection and refugee status, a voluntary return, welfare entitlements and accessing employment;

(f) translation and interpretation services, as required;

(g) access to education for child victims and children of victims;

(h) legal counselling, either through legal aid or other means;

(i) legal representation, either through legal aid or other means;

(j) assistance in applying for compensation; and

(k) provision of services (including travelling and other expenses) to assist a victim of trafficking in human beings, and children of victims, to leave the United Kingdom and to settle in a new place of residence."

This New Clause ensures the arrangements for determining if a person is a victim of slavery or human trafficking are established in regulations and contain a formal process for review and appeal and requires the Secretary of State to set out in guidance the indicators that suggest a person may be trafficked. The New Clause sets out the clear types of assistance which a victim can receive and enables the Secretary of State to establish minimum standards for the provision of that support. The New Clause sets out a ninety day minimum period for which a victim can receive support.

Sarah Teather: The debate on the previous clause was very positive: I wonder whether we can have an equally positive one now. I feel a lot more cheerful than I did when I arrived this morning.

Proposed new clause 22 is one of three that have been tabled that seek to place in statute a referral mechanism for victims of human trafficking. The current NRM was introduced in 2009 to meet the UK's obligations under the trafficking convention. However, there are various concerns with how the current system works and its fairness and effectiveness. The Government announced a review of the NRM almost a year ago, in October 2013, and that was followed by a call for evidence. Over the conference recess we received the interim report, and I am grateful to the Minister for ensuring that it was available to the Committee before today's debate.

Once the Bill is enacted, the NRM will play a key role in determining whether it is a success. So many of the Bill's aims depend on victims coming forward. To do so they need to know that they will be treated with dignity, compassion and respect. For that to happen, the NRM—or whatever it gets called in the future—must be able to identify potential victims of trafficking. It currently fails to do that, an issue that has been raised pretty consistently during the course of the Committee thus far. I know the Minister is very aware of the current system's failings and is committed to tackling those.

11 am

Part of the problem is that many on the front line are not aware of the NRM or are not routinely looking out for signs of trafficking. Putting an improved NRM on a statutory footing would help to solve that. Currently, too many trafficking victims who come into contact with public bodies are not identified, and instead wind up in prison or immigration detention. The POPPY project, through the Immigration Law Practitioners' Association, gave an example of a woman who spent a total of 336 days in both prison and immigration detention without being properly identified as a trafficked person. I was not on the pre-legislative scrutiny Committee, but I have spoken to a number of Members who were and they were profoundly affected by the evidence they heard. Of those 336 days, 49 were spent there after the referral had been made and three were after the positive reasonable grounds issue had been considered.

My hon. Friend the Member for Enfield, Southgate is not here today but has been very active in the Committee; he and I are both serving on a panel of parliamentarians calling for an all-party parliamentary inquiry into immigration detention. During our first evidence session, we heard directly from a young man via a phone link. At the time, he was being held in Colnbrook detention centre. He told us how he had been trafficked from his home in Cameroon to Hungary, where he was put in a basement, beaten, raped and tortured. He eventually managed to escape and, because he spoke some English, was taken to Heathrow. When he came to the UK, he was arrested for using false papers and given an 18-month custodial sentence. That was in 2010. For the next four years, he was transferred from a prison to Colnbrook, Haslar immigration removal centre, Harmondsworth IRC and then back to Colnbrook. At no stage was he identified as a victim of trafficking, despite having a diagnosis of post-traumatic stress disorder. When he spoke to us, he had been referred for cognitive behavioural therapy three times within Colnbrook without receiving it. I have met this gentleman and a number of the people who have been supporting him on a voluntary basis inside Colnbrook, and they were very distressed by the lack of care he received. The good news is that, since speaking to the panel, he has been granted bail. However, this young man has been seriously failed by the system for several years. Rather than being treated and supported as a victim, he has been prosecuted as a criminal and that has significantly increased his trauma.

Another issue with the NRM is that a victim of trafficking cannot refer themselves; they must be referred by one of the first responders. That creates an extra layer to the NRM, whereby the first responder weighs up whether an individual is a victim of trafficking. Evidence shows—frankly, this ought to be common sense—that having repeatedly to recount stories of ill treatment and abuse to multiple organisations, without any kind of counselling, is detrimental to the individual concerned. It does not allow them to move on; they simply get stuck in the trauma. When we discussed the previous clause, my hon. Friend the Member for Congleton made that point specifically about children, but the same applies to adults—both men and women.

The situation is further compounded by the lack of clarity regarding the training and expertise needed to be a first responder. As the interim report on the NRM notes, the training courses that are available are not compulsory and

"there is no system of standardisation or approval."

This means that victims have to wait for first responders to make a decision, increasing the time that they are without support. If a victim is referred to one or two competent authorities, they face the "reasonable grounds" stage, which is the gateway to support. However, victims have no access to support before that, including free legal advice. That is yet another block and invariably mirrors the referral stage, despite evidence suggesting that there is usually no contact between the original referrer and the competent authorities. That needs to change.

If the NRM is to have the confidence of victims, its decisions need to be both transparent and consistent. At the moment, they are neither. As the Joint Committee's report showed, the two competent authorities with decision-making powers in the NRM have very different records, and that is part of the reason why the UK Border Agency's successor organisation, UK Visas and Immigration, must be stripped of its competent authority status. UKVI's grant rate is only 20%, whereas the UK Human Trafficking Centre's rate stands at 80%, and there is no obvious explanation for that vast discrepancy.

The Joint Committee also heard numerous examples of individuals waiting far longer than the 45-day reflection period for a decision to be made. The evidence shows that the UKVI is unable even to follow the NRM process correctly. It has a disproportionate focus on victim credibility; gives too much weight to police evidence; incorrectly believes that independent verification of victims' stories is needed where it actually is not; and frequently conflates NRM and asylum decision-making processes. It is not as though asylum decision-making processes are a particularly good model to follow.

The UKVI also suffers from the same affliction as many of the Home Office decision-making bodies: a culture of disbelief, an issue consistently raised by organisations working with people who are often the most vulnerable. A reformed NRM must be independent of the Home Office. I welcome the commitment from the Minister that the issue of ensuring that no authority that decides an individual's immigration status will also be responsible for deciding whether the person is trafficked will be included in the final review. Perhaps she will confirm that for the record.

The 45-day reflection process also needs to be lengthened. That would allow victims properly to reflect and recover, and the decision maker properly to consider cases and to undergo an internal review system. A longer reflection period would be in keeping with that in other countries, including Chile, Canada, Norway, Germany, the Czech Republic and Denmark. Any reformed NRM must also include a proper appeal process for which legal support is available. The current situation, in which the only way to challenge a negative decision is through judicial review, is simply not suitable. If the Government eventually find a way to bring in their residence test for legal aid, the ability to challenge a decision will be restricted yet further, in reality making it almost impossible.

In her letter to the Committee, the Minister said she would consider the right of appeal in her final review. I again urge her to ensure that there is a full appeals process for which legal aid is available. To ensure that there is a proper distinction between trafficking decisions and any related immigration or asylum case, the right of appeal should be to a tribunal other than the immigration and asylum chamber. Any appeal should also suspend any scheduled removal, in line with the UK's obligations under the Council of Europe anti-trafficking convention.

The Bill is ambitious in its aims but, the current review notwithstanding, for it to be successful it must include a mechanism for identifying and supporting victims. The current NRM has been shown to be lacking in many areas. The Minister has a chance to correct that. I understand that we will not get the full review in time for us to consider it, but anything the Minister can say to reassure us will be gratefully received. I wanted to get those remarks on the record in the hope that they will be carefully considered when the revised system is brought in.

Diana Johnson: The Opposition obviously support the inclusion of clause 42 in the Bill. It was not in the original draft Bill, so we are pleased to see that it has made its way into this version. However, which public bodies does the Minister expect to issue guidance to concerning their roles and responsibilities? Will she issue guidance to individual bodies, or general guidance that can be used across the public sector and agencies?

In tabling new clauses 27 and 28, we are not seeking to remove and replace clause 42; rather we believe there is a need to supplement it. New clause 27 expands on the provisions in clause 42 to create a general duty on public authorities to identify, assist and support victims of human trafficking. It is very similar in its aim to new clause 29, which is also in this group.

I hope we will get further assurances from the Minister that the Government intend to provide statutory guidance to public bodies most commonly in contact with victims, including local authorities, the police and the Prison Service. However, I stress that unless the Minister intends to issue guidance to a plethora of different bodies, we need a general provision that recognises that victims come into contact with a huge range of public agencies, not only the ones to which I have just referred. A whole range of other organisations—the hon. Member for Brent Central referred to them—needs to be identified in terms of the health needs of these groups, for example.

I have mentioned the police and I should also mention immigration officials. We need to reflect on the criminal justice system. As the hon. Member for Brent Central said, many trafficking victims are first identified when they are on remand or in an immigration removal centre. They need support in those situations and we have to provide a mechanism to enable them to assert their right to support when public bodies are not acting. Indeed, we hope that the passing of the general duty outlined in new clause 27 would change the behaviour of public bodies, negating the need for action on behalf of victims or separate regulations.

While new clause 27 seeks to ensure support for victims, new clause 28 is about putting the process for identifying victims and offering them support on a statutory footing, an aim shared with new clause 22. I want to echo to some extent what the hon. Member for Brent Central said about the current problems with the National Referral Mechanism. I am sure the Minister will accept that some of the problems clearly identified in the Home Office's internal review of the NRM do exist. While I welcome the review, I do not think that its existence, or anything in the recent interim report, negates the need to put the NRM on a statutory footing.

[Diana Johnson]

I think the whole Committee will agree that the interim report shows a system that is failing. It identifies numerous bureaucratic problems, discrepancies in the way EEA and non-EEA cases are handled, co-ordination problems and big problems with training of staff. There are also difficulties with good practice being identified across the country and implemented. Even where victims are identified, there are huge discrepancies in the support offered. I am sure all Committee members who have struggled on their constituents' behalf with bureaucracy, delays and confusion at the UKBA will identify with what the interim report says. I find it shocking, for example, that 9% of referrals are refused simply because signatures are missed off the form. It is clearly a system more interested in ticking boxes than in supporting victims.

Although the interim report highlighted some systematic failings in the functioning of the NRM, it is worth pointing out what is not in it and which I expected to be there. The report makes no attempt to assess the accuracy of NRM decisions or to consider what redress is available to victims, or indeed to other agencies when there is a disagreement between the NRM and the original referring agency. Nor does it seek to explain the discrepancies between the number of positive decisions made by the UK Human Trafficking Centre and those made by UKBA, to which the hon. Member for Brent Central also referred. The report alludes to delays and discrepancies in the time it takes to get decisions, but it does not actually seek to quantify those delays. That is surprising, because there are already several sources of information on this point.

11.15 am

The Anti-Trafficking Monitoring Group's report "Hidden in Plain Sight" illustrates a problem with delays that varies between referring agencies. It says that

"the Salvation Army, the service provision managing contractor, stated in written evidence to the Home Affairs Select Committee enquiry into Human Trafficking that the average number of days for reasonable grounds decisions is 37 days. The Poppy Project stated that the average time was 39 days from a sample of 49 cases. Other service providers reported that they had waited between two and seven months for reasonable grounds decisions. The Salvation Army stated that the average wait for conclusive grounds decisions was 104 days after delivery of the reasonable grounds decision whilst the Poppy Project stated that across 30 of its cases the average was 154 days. Other service providers reported between five months to even one year.".

Finally, the interim Home Office report does not look at the attitude of UKBA staff towards dealing with victims of human trafficking. That issue has been raised before. In the report, "Hidden in Plain Sight", a service provider said:

"I managed to get through to [the case owner] and I said you know, this woman, her mental health is being severely impacted upon because you are not making [an NRM] decision".

She said that the opinion of the person at the other end of the telephone was,

"well, what's her problem? She's got a roof over her head; she's in NASS accommodation, in G4S.".

The service provider said that she found that attitude "quite disturbing".

If the Home Office report, of which we have an interim, was really looking at the functioning of the NRM, it would have been done by an independent body and would have looked at all the factors I outlined as well as considering the issue before us today: should the NRM be put on a statutory footing? The problems identified in the interim report, and those not mentioned, could be prevented and the system made simpler and perhaps cheaper if we put the NRM on a statutory footing and create a single, independent, transparent system to support all trafficking victims. Our amendment would recognise the particular needs of children and ensure they are accounted for within the NRM system.

Setting up that way of operating does not have to physically come out of the Home Office, but it does have to be separated out of the mess of conflicting systems that are currently in place. That is the intention behind new clause 28, which would cover the creation of the NRM, the duty of the NRM to provide support and assistance to victims and, crucially, give a right to appeal, which is desperately lacking in the current arrangements. We would give the NRM the right to issue renewable residency permits; that is crucial for convictions. Several agencies tell me that they can wait months for residency permits, during which time victims are left in limbo, unable to work or access support, and often end up being exploited again. That not only causes the system to fail victims, but means that potential witnesses are not able to stay in the country. The Minister has said on several occasions that she is keen to ensure that we see more convictions arising from the Modern Slavery Bill. Adopting the new clauses would help to secure more convictions in the long run, by putting the NRM on a statutory footing.

Fiona Bruce: Clause 42 is clearly a step forward, which I welcome, but I would like to speak to new clause 29, which is in my name and that of my hon. Friend the Member for Enfield, Southgate. If we are to have a Modern Slavery Bill that lays a new foundation for addressing the issue of identifying and supporting victims in the 21st century, it needs to recognise that victims are at the centre and to make provision for them. I pay tribute to the excellent speech by my hon. Friend the Member for Brent Central, who recounted a heart-rending story of a victim that really brought home how important the issue is.

The inclusion of measures focused on victims in part 4 is a welcome addition since the draft Bill, making more convincing the claim that this is a credible Bill on modern slavery. Nevertheless, I suggest to the Minister that the provision of guidance on identifying and supporting victims under clause 42 does not move us far enough forward. Guidance is most effective when outlining how statutory mechanisms should work. It can be flexible and react to changing circumstances, which can be of great benefit, but guidance is not the place to establish core principles.

New clause 29 would establish core principles and create a stronger legal framework for transparent and efficient processes in the formal identification of victims and the delivery of high-quality care and support, in accordance with our duties under international treaties. I am sure the Minister will refer in her response to the ongoing review of the national referral mechanism, which is of great importance, but that review should not prevent our discussing the core principles.

The first core principle is that the process for formally identifying victims should be consistent and transparent. The Joint Committee on the draft Bill heard evidence from many non-governmental organisations that the fact that the NRM is established only in policy and guidance creates a lack of transparency, which Anti-Slavery International described as resulting in

"arbitrariness of application and access for victims".

As a member of the Joint Committee, I also heard about levels of inconsistency in the quality of decision making under the NRM. Particular concern was expressed about decision making by UK Visas and Immigration—and previously the UK Border Agency—which is responsible for making two thirds of decisions under the NRM. The Centre for Social Justice report "It Happens Here" also noted evidence from many NGOs expressing a lack of confidence in the decisions made by the UKBA under the NRM.

The Anti-Trafficking Monitoring Group report of October 2013, "Hidden in Plain Sight", quotes providers of support to victims as saying about UKVI that

"little information is sought from service providers to assist in decision making and negative decisions are taken without consulting interested parties, as required by the Home Office guidance."

That suggestion that the existing guidance is not being followed consistently indicates that a more formal framework is required for decision-making processes that have such an impact on a victim's life and access to services.

The statistics provided by the Anti-Trafficking Monitoring Group are extremely worrying, and suggest differences in decision-making procedures and the inconsistent application of criteria between the two competent authorities, UKVI and the UK Human Trafficking Centre. Creating an identification process in regulations with clear statements of the tests and criteria to be applied would make the NRM more accessible and transparent for victims.

Sir Andrew Stunell: May I suggest to the hon. Lady that what she is describing is another example of the conflict of interest I mentioned earlier? UKVI has an objective of admitting as few people into the United Kingdom as possible, which is clearly affecting its decision making.

Fiona Bruce: The right hon. Gentleman makes an extremely pertinent and valuable point, for which I thank him.

Related to the question of transparency in the process of identification is the ability for a victim to challenge a negative decision. There are currently only two ways that a negative decision under the NRM can be reviewed. The first is judicial review, which is a costly process and, more importantly, does not reconsider the merits of a person's case. Secondly, an organisation providing support to the victim may make an informal request to the relevant competent authority for the case to be reviewed, but such a review is informal and discretionary, and, according to the Anti-Trafficking Monitoring Group, access to it is "inconsistent and unequal". Such a haphazard approach is unsatisfactory. All victims should have the same opportunity to have a negative decision reviewed. Establishing a mechanism for appeal in regulations about the identification process will provide that equal access.

All my recommendations echo those made by the Joint Committee in our report. Without prejudicing the results of the NRM review, will the Minister consider establishing identification on a more formal basis?

I turn to support and assistance, which is currently provided to victims of trafficking on a 45-day reflection and recovery period. Such support is currently provided on a policy basis, but it does not appear in statute. As I have said, clause 42 is a welcome step forward, but it does not offer to victims firm assurance of the availability of assistance or of the form such support would take. In its 2012 report, the Council of Europe's group of experts on action against trafficking in human beings—GRETA—invited the UK to enshrine the right to record—

11.25 am

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

Adjourned till this day at Two o'clock.