

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## IMMIGRATION BILL

*Second Sitting*

*Tuesday 20 October 2015*

*(Afternoon)*

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Examination of witnesses.

Written evidence reported to the House.

Adjourned till Thursday 22 October at half-past Eleven o'clock.

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**The Committee consisted of the following Members:**

*Chairs:* MR PETER BONE, † ALBERT OWEN

† Blomfield, Paul ( <i>Sheffield Central</i> ) (Lab)	† Lewell-Buck, Mrs Emma ( <i>South Shields</i> ) (Lab)
† Brokenshire, James ( <i>Minister for Immigration</i> )	† McLaughlin, Anne ( <i>Glasgow North East</i> ) (SNP)
† Buckland, Robert ( <i>Solicitor General</i> )	† Newlands, Gavin ( <i>Paisley and Renfrewshire North</i> ) (SNP)
† Champion, Sarah ( <i>Rotherham</i> ) (Lab)	† Smith, Chloe ( <i>Norwich North</i> ) (Con)
† Davies, Byron ( <i>Gower</i> ) (Con)	† Starmer, Keir ( <i>Holborn and St Pancras</i> ) (Lab)
† Davies, Mims ( <i>Eastleigh</i> ) (Con)	† Tolhurst, Kelly ( <i>Rochester and Strood</i> ) (Con)
† Elphicke, Charlie ( <i>Lord Commissioner of Her Majesty's Treasury</i> )	† Whittaker, Craig ( <i>Calder Valley</i> ) (Con)
† Harris, Rebecca ( <i>Castle Point</i> ) (Con)	
† Hayman, Sue ( <i>Workington</i> ) (Lab)	Marek Kubala, Joanna Welham, <i>Committee Clerks</i>
† Hoare, Simon ( <i>North Dorset</i> ) (Con)	
† Hollern, Kate ( <i>Blackburn</i> ) (Lab)	† <b>attended the Committee</b>

Witnesses

Neil Carberry, Director of Employment and Skills, CBI

Lord Green of Deddington, Chair, Migration Watch UK

Harry Mitchell QC, Migration Watch UK

Ms Alanna Thomas, Migration Watch UK

Richard Lambert, Chief Executive, National Landlords Association

Eric Leenders, Executive Director for Retail Banking, British Bankers Association

David Smith, Policy Director, Residential Landlords Association

David Snelling, Chief Superintendent, Sutton Borough, Metropolitan Police

Stephen Gabriel, Strategic Manager, Homes and Communities, Sandwell Metropolitan Borough Council

Ilona Pinter, Policy Adviser, The Children's Society (also representing the Refugee Children's Consortium)

Kamena Dorling, Policy and Programmes Manager, Coram Children's Legal Centre (also representing the Refugee Children's Consortium)

Adrian Matthews, Principal Policy Adviser (Asylum and Immigration), Office of the Children's Commissioner

## Public Bill Committee

Tuesday 20 October 2015

(Afternoon)

[ALBERT OWEN *in the Chair*]

### Immigration Bill

#### Examination of Witness

*Neil Carberry gave evidence.*

2 pm

**The Chair:** We now move to the fourth panel of witnesses and will hear oral evidence from the CBI until 2.30 pm. May we informally refer to you as Neil?

**Neil Carberry:** Absolutely.

**Q74 The Chair:** Neil, may I ask you to introduce yourself for the record?

**Neil Carberry:** Yes. I am Neil Carberry, the CBI's director for employment skills and public services. For the record, I should say that I am a member of the Low Pay Commission and the council of ACAS, but all my comments today will be made purely in a CBI capacity.

**Q75 The Minister for Immigration (James Brokenshire):** Neil, thank you for coming to give evidence this afternoon. This is one of the rare occasions when I, as the Minister, get to ask some questions, so there is nothing unusual in this. On labour market enforcement, Sir David Metcalf, head of the Migration Advisory Committee, gave evidence to the Committee earlier today and commented that he hoped that the CBI would buy into the labour market enforcement director mechanism contained in the Bill. He was essentially extolling it and suggesting that the CBI should welcome it. In fairness to you, I want to put his perspective to you so that you can respond.

**Neil Carberry:** Ever since I was a student in the London School of Economics industrial relations department and Professor Metcalf was there, I have tried to keep him happy. The CBI's attitude to the labour market section of this Bill is probably a good place to start. We are interested in driving out some of the appalling practices that exist in parts of our labour market. It has always been the view of CBI members that empowering enforcement officers to kick a few doors down and bring some bad guys to justice is the right thing to do. To do that effectively, you need a risk-based, intelligence-led approach. To the extent that any Government of any political colour take that up, the CBI will be supportive.

In a sense, our attitude to the labour market enforcement director is that if that is what is on the cards here, we will support that work. It is important that we ensure that people who are not able to raise their own concerns, because of the situation that they find themselves in, have some method of support from state enforcement. The labour market director will hopefully do that. Our concern is whether that work will topple too far into

what we have perhaps seen in the past: tick-box approaches that actually fall more heavily on the compliant than on the non-compliant, who we would all agree need enforcement action.

**Q76 James Brokenshire:** So your call is for smart enforcement, using intelligence and drawing together all the different strands of information to target more rigorously the non-compliant.

**Neil Carberry:** I think that is right. My understanding of the role of the director as we have seen it so far is that this individual will work across agencies. It is important that this change does not draw agencies' attention away from their work. HMRC is still investigating every national minimum wage complaint that it hears and has also started to do some excellent intelligence-based, targeted work in key sectors. The introduction of the director will hopefully improve interaction with other authorities, but will not draw funding and work away from protecting people in areas such as payment of the national minimum wage.

**Q77 James Brokenshire:** What is the CBI's current assessment of labour market exploitation and non-payment of the minimum wage? How does your organisation seek to challenge that? In parallel with the Bill's provisions, what role do you see the CBI playing?

**Neil Carberry:** Broadly, our view is that compliance with employment law in the United Kingdom is good. Largely, non-compliance is inadvertent and we have excellent systems to allow people to raise their concerns about that. There are parts of the labour market—where, I am glad to say, CBI members tend not to be found—which are more open to abuse, where there are more interlinks with people trafficking, for instance, and which are not easily policed by traditional labour market means because these companies are not traditional companies.

**Q78 James Brokenshire:** And are you looking at particular sectors, or is that a more general comment about the labour market?

**Neil Carberry:** I would think that it clusters in three or four particular sectors, yes.

**Q79 James Brokenshire:** Such as?

**Neil Carberry:** The obvious one would be parts of agriculture.

**Q80 Sarah Champion (Rotherham) (Lab):** I look forward to serving under your chairmanship, Mr Owen. Mr Carberry, offences are already specified in the Immigration Act 1971 that are applicable to migrants who breach their immigration conditions. Do you believe that clause 8, which creates the new criminal offence of illegal working, is necessary, and do you think that it may have unintended consequences?

**Neil Carberry:** What we are particularly concerned about is that any criminal offence is genuinely used to go after criminal activity. Employment law offences are typically civil offences. As I have already said, breaches are largely inadvertent, or if they are not inadvertent they are due to lack of understanding on the part of an employer. The right place to police that is through education, the tribunal system, the advice that ACAS

offers and so forth. I am not a criminal lawyer. To the extent that the offence that has been created is to be used to go after employers where there is repeated, multi-faceted and exploitative treatment of workers, we are very happy for that offence to exist, so long as the businesses that are brought to justice are engaged in those steps. What worries us particularly is not the existence of the offence but the risk that there may be a general drift of employment law in the United Kingdom from the civil to the criminal, because that would be quite destructive for employee relations in general.

**Q81 Sarah Champion:** Just to unpick that, do you think that actually criminalising the workers is useful in changing practice?

**Neil Carberry:** I think that the critical issue is the action by employers. The CBI is not taking a position on criminalisation of workers; that is not within our vires as a business organisation.

**Q82 Sarah Champion:** I agree that if employers are employing people illegally, they should be accountable for that. Do you feel that the Bill goes far enough to enable that to be enforced?

**Neil Carberry:** I think that the critical issue is not the law in this case; it is the will to go after some of the very worst practices in the UK labour market. It is about co-operation between the police and other authorities in getting into some of these beds in sheds places and taking action. One of the lessons we have to learn from the experiment with the Gangmasters Licensing Authority is that the GLA has largely been a box-ticking licensing organisation that has increased costs on the compliant. There is relatively little evidence that the creation of a registration approach has actually done anything to prevent exploitation. From a CBI perspective, we would far rather that the Government had a strong offence, structured in a way that would stack up in the courts, and then used powers of prohibition, for instance, to drive out bad practice. Of course, that is what we had before the GLA was brought into existence—albeit that they were not heavily or effectively used.

**Q83 Sarah Champion:** Finally, do you believe that the director has the remit and the resources to prevent this from being a box-ticking exercise? Would they have the authority to make the necessary changes?

**Neil Carberry:** That remains to be seen. The director clearly has to develop an enforcement plan, which has to be approved by the Home Secretary and the Secretary of State for Business, Innovation and Skills. I would hope that that enforcement plan was well grounded in the effective work that some of the agencies are currently doing and would therefore be resourceable from within that. I had discussions last week with the HMRC team who are looking at non-compliance with the minimum wage; they feel that they currently have the resources to continue the good work they are doing.

**Q84 Craig Whittaker (Calder Valley) (Con):** I want to turn back to the evidence given to us this morning by Professor Sir David Metcalf. When he was discussing the CBI, he said that the regulation of the labour market proposed in the Bill would take away the cowboys and help your sector. He went on to say that it would go

a long way towards raising the welfare of British residents. Do you think he has applied a risk-based, intelligent approach to his assessment?

**Neil Carberry:** I think the proof of the pudding is in the eating when it comes to the director. On the existence of a labour market director to do this work, his assessment could well be the case. What worries us is less what is in the Bill as introduced than some of the discussion in the Government's consultation paper last week, which seems to suggest a broadening of a licensing approach. I think that would ultimately be a doubling up regulation on the compliant and would draw away from kicking down the doors of the non-compliant. From our perspective, there is every chance that the labour market director's role could be very beneficial to lawful companies and workers.

**Q85 Craig Whittaker:** On the face of the Bill then, it is a good thing.

**Neil Carberry:** Yes, I think so. We have never been against effective enforcement.

**Q86 Paul Blomfield (Sheffield Central) (Lab):** You talked about parts of the labour market where abuse happens. I am conscious that many of your members might have had their reputations tarnished by unwitting involvement through supply chains. Can you share your thoughts about the Bill in the context of the most effective way of helping your members to achieve supply chain compliance?

**Neil Carberry:** Any answer to that question will have to take account of some of the responsibilities that companies will take on under the Modern Slavery Act 2015. I actually had a long discussion last night with some of our members about the challenges of doing that effectively—many of them are currently wrestling with that. Of course, there is a limit to what companies at one end of a supply chain can do and assure themselves of, but there is a duty to do some work, as the Act makes clear.

The most important thing is to ensure that, where companies at the top end of a supply chain suspect that something illegal is happening, they are clear about the route to take to obtain assistance from regulators and enforcers, and also that there are simple routes for enforcers to take towards targeted action. We would see that as one part of the role of the director as set out in the Bill. For instance, we would expect them to look to establish ways in which a major retailer could raise concerns effectively and then feed into an intelligence-led action.

**Q87 Paul Blomfield:** You mentioned a situation in which companies at the top end of a supply chain have reason to believe that things are going wrong further down the supply chain, but the problem faced by many of your members is that it might be impossible to know what happens further down the supply chain. What more could be done to achieve effective enforcement of labour market standards down the supply chain and out of the sight of your members?

**Neil Carberry:** Clearly, it largely is out of the sight of our members. I will start from the test of what we want, which is something that brings an enforcement officer into the site where things are going wrong as quickly

and effectively as possible, with the powers to change the situation. We know that, largely, where we find national minimum wage non-compliance, we tend to find immigration non-compliance.

The first thing is to make sure that, whichever body is resourced to do it, there is a clear thought process about where we believe this is happening in the labour market; within that, then, that there is some intelligence-gathering about where the issues might be. There should then be live discussions with businesses in the sector about what they hear and what they see; then, police and enforcement agencies should have the capacity to intervene. That much more targeted approach, I think, is the only way to protect workers who do not have the capacity to raise concerns about their own treatment, especially if they are being exploited. I would much rather see that intelligence-led, almost police-style action than anything that looks like a process for companies in the sector, because I think that some of these non-compliant organisations would just ignore that.

**Q88 Paul Blomfield:** Do you think that there are sufficient resources, as the situation currently stands, to achieve the objectives you are talking about?

**Neil Carberry:** I mentioned HMRC's rule earlier. I think to do it effectively, it may be necessary to look at resources for other parts of the system. Having said that, one of our biggest challenges at the moment is enforcement agencies talking to each other. A case in point is that if a business moved out of a GLA-regulated sector, the employment agency standards inspectorate would still have prohibition powers. There should be more discussion taking place about, "If this business has had a licence removed by the GLA, what is the case for prohibition more broadly via EASI?"

**Q89 Anne McLaughlin (Glasgow North East) (SNP):** Good afternoon. Do you think there is a risk of the Bill making it harder for migrant workers to access the labour market because employers are afraid that they will be breaking the law, and don't understand how it works, so they err on the side of caution?

**Neil Carberry:** I think the section 8 checks that employers already do are largely embedded in companies' operation now, so the mere existence of a non-UK passport at hiring is an issue. There is some nervousness, I think, about the fact that the quality of forgery is now very, very high, and I think businesses would welcome more support from UKBF and others on identifying forgeries when they do those checks. Broadly, we have not seen evidence of a chill effect on migrants being able to find work yet, and the performance of the UK labour market over several years now suggests that opportunities are still being created both for UK citizens and migrant workers.

**Q90 Anne McLaughlin:** Would the CBI be willing to keep an eye on that? In my constituency, I have already had people coming to me who have been offered jobs and then the employers—and it is large employers—have backed off, saying that they want actual evidence; phoning the hotline is not evidence for them. I wonder whether the reason why I am getting quite a few people coming to me now is that they know that the legislation is going to change; it would be interesting to see if there was an effect once this came in.

**Neil Carberry:** I think the necessity of assurance for companies in hiring migrants becomes greater as the cost of getting it wrong becomes greater. I have been working on employment relations issues for the CBI for over a decade now, and the process is that every year it becomes more costly to hire migrants and more risky for companies. Particularly for some smaller and medium-sized companies, there is a concern there, and support structures for businesses are quite important.

**Q91 Mims Davies (Eastleigh) (Con):** I would like to ask about the role of the director, in terms of vulnerable workers, and more broadly whether that role could help the Government's agenda of redressing the balance on equality issues and addressing the gender pay gap, so as to shine a broader light on these employment issues.

**Neil Carberry:** I refer to my earlier answer. It is really important that we keep the exploitation agenda—there is deeply unsavoury activity taking place in parts of the labour market—separate from the civil employment law agenda. If you look at the gender pay gap, Ruby McGregor-Smith's Women's Business Council report concluded that it is a multi-faceted issue that requires a series of actions, primarily from business but also from the education system, to address. We would be more comfortable continuing to do that work in partnership with the Government Equalities Office, Ministers and the new Select Committee on Women and Equalities, than getting too drawn into a debate, as we have already discussed, about beds and sheds and some pretty exploitative practice.

**Q92 Mims Davies:** So you see them as clearly separate issues.

**Neil Carberry:** Where I would say there is some equalities benefit is that it is certainly true that minority ethnic workers and many women are more at risk of the kind of treatment that we are discussing.

**Q93 Mims Davies:** That is my feeling, and I am on the Women and Equalities Committee, hence why I asked that question. I hear what you say, but it worries me if we completely disconnect the two.

**Neil Carberry:** No, this action clearly has equalities benefits.

**Q94 Mims Davies:** Fantastic. Are you also able to expand on the CBI's concerns about the apprenticeships levy? It is obviously the Government's ambition to see apprenticeships grow. Will the levy affect your members, or the immigration skills charge? What is the impact that you see on businesses?

**Neil Carberry:** Apprenticeship levies are quite complex at the moment because there are two of them. They have become known in the CBI's employment team as the big levy and the little levy. There is the large apprenticeship funding model levy, which is a deep concern for the CBI.

On the question of the skills charge, although we do not welcome additional costs, we fundamentally disagree with the idea that immigration is used to resolve skills issues and to avoid training, because companies in the UK do extensive amounts of training—more than many other large western European competitors in terms of spending.

Having said that, if there is to be a skills charge, we need to make sure that it is effectively targeted, so that the money raised does go into apprenticeships that are training people towards the levels of skills that people who came in on a visa were helping to resolve the shortage of. More broadly, it is probably preferable to us that these charges exist than that we make changes to the pay bands for tier 2 migration. Additional cost for a visa is one thing, but being unable to get a person you need at any given point because of changes to the pay bands is more of a business problem. For us, in the grand scheme of things, although we do not like it, we would rather have an immigration skills charge than a much higher entry level of pay to bring people in.

**Q95 Gavin Newlands** (Paisley and Renfrewshire North) (SNP): In trying to target action against criminals who exploit workers, which is something we can all agree on, do you think the Bill blurs the lines between employment law and criminal activity?

**Neil Carberry:** I think that is a significant risk, less so around the role of the director than the recent discussion about expanding the role of the Gangmasters Licensing Authority. The role of the GLA so far has largely been an employment process. Since its creation the GLA has spent rather more time telling my members where the commas should be in employment contracts, which is an employment issue, than kicking down doors in parts of the country where doors need to be kicked down.

My sense is that we need to maintain that gap, for exactly the reasons that your colleague raised earlier, which are that employment law is a civil issue; most of its infraction is inadvertent or due to lack of knowledge, so it is really important that people are able to address that—there are routes for people to address that—and it is about the bit of the labour market where workers are not able to secure their rights, which should be at issue in the Bill. The CBI's test for this Bill, in practice, when it finishes its passage, is to make sure that the actions contained within it are about addressing those issues of exploitation.

**Q96 Gavin Newlands:** Do you think that it should be employers' or the Government's responsibility to prevent illegal working, especially given the move away from civil penalties to criminal charges?

**Neil Carberry:** I think employers should have a duty to ensure that their workforce have the right to work in the United Kingdom—that is probably accepted by our members—at the point of hiring. The issues that we have often faced are issues of establishing that fact in a timely fashion.

**Q97 James Brokenshire:** Just to come back on that last question, what is your assessment of the level of knowledge among your members, recognising that part of the role of the labour market enforcement strategy, which the director will obviously have a key role in developing, is to focus on advice to the Secretary of State about education and training? What further steps, in practice, should be undertaken around that, and what about the role of the director in that piece?

**Neil Carberry:** There is an analogy here, slightly oddly, with the process of automatic enrolment in pension schemes. The Pensions Regulator for many years dealt

with some very large companies, which had large defined-benefit pension schemes, kind of knew what they were doing and spent a lot of money on compliance. In many of our largest members, immigration compliance is a million pound a year commitment, because of the scale of it and the reputational risks that we have already discussed. We live in a world in which company size is gradually getting smaller, and has been for 20 or 25 years; the majority of firms are small businesses, and the majority of our members at the CBI are small businesses, often with limited HR capacity. The transition that, for instance, the Pensions Regulator had to make to talking to businesses that had never even heard of it and offering support—it is still struggling to get that right now, but progress is being made—is exactly the same transition that we need to make in this space. It really is helping smaller businesses to understand their duties and the support on offer to them that will be critical to making sure that illegal working action is effective.

**Q98 James Brokenshire:** So I suppose in other words, to draw out another comment in Committee this afternoon, you are suggesting that the focus on that awareness should be at the smaller business end, the SME end, and on the some of the challenges that might reside there. Equally, I am assuming that you would not say that the larger firms themselves have no potential issues, given the supply chain elements touched on previously—who your sub-sub-contractor is, who is on a building site or has been contracted into a particular job—and the need for alertness around those sorts of elements, from a reputational as well as a legal perspective.

**The Chair:** Just before you answer that, we have a couple of minutes. Will any other Member wish to ask a question in that short time? No. Neil.

**Neil Carberry:** I agree with that. We talked earlier about the capacity of a firm to know whether it was dealing with partners who are compliant. What I would point to is that in this space we should not look for answers that look easy in Westminster but are actually ineffective on the ground. Experience with, for instance, licensing models—we are concerned about the potential for part of the Bill to create the space for the Secretary of State to dial up or dial down the extent of licensing models—is that licensing itself does not actually give a company any assurance that the licensee is compliant or not. The record of the GLA in taking away licences shows that firms behaving improperly were licensed. It is much, much better to have rigorous enforcement, intelligence-led, and then high-quality advice and support for companies that are taking action under the Modern Slavery Act 2015.

**Q99 The Chair:** Okay. We are coming to the end, so if there are no further questions I will thank our witness for giving evidence today. If there is any other information that you would like to give to the Committee, please feel free to write in.

**Neil Carberry:** We are aware that we have not yet given you a written submission, but colleagues are preparing one that will arrive in due course.

**The Chair:** We look forward to receiving that. Thank you very much.

### Examination of Witnesses

*Lord Green of Deddington KCMG, Harry Mitchell, QC and Alanna Thomas gave evidence.*

2.30 pm

**Q100 The Chair:** Good afternoon. We now move on to the fifth panel of witnesses and we are to hear oral evidence from Migration Watch UK. To remind everyone, this session will finish at 3 pm. Can I call on the witnesses to introduce themselves?

**Lord Green of Deddington:** I have been chairman of Migration Watch UK, which I think it is quite well known to the Committee, for the last 15 years. Harry Mitchell, QC, is my honorary legal adviser and Alanna Thomas has done a huge amount of work on the Bill.

**The Chair:** You are all very welcome.

**Q101 Sarah Champion:** Thank you all for coming today. Lord Green, to give us some context, what is your estimate of the current size of the irregular migrant population in the UK?

**Lord Green of Deddington:** Yes, I am very glad to offer you some context, because I think we really have to see the Bill in the wider context. We realise that there are already 11 Acts of Parliament dealing with immigration and that there is a handbook of immigration law of nearly 2,000 pages. So we have that in mind, but, even so, the Bill in principle has our full support. We think it is a serious and intelligent attempt to tackle illegal immigration and the pull factors that drive it.

It has also come at a pretty opportune time. I need hardly tell you that immigration is the major issue of public concern, especially as the crisis in Syria and the middle east has led to the effective collapse of the borders of southern Europe. We have been lucky here in that, in recent years, we have had only 20,000 or 25,000 asylum claims, but I think we all remember when that number hit 80,000 and we found that there were half a million files lying around in a warehouse, which was appalling, especially for those who had genuine cases, but on any level that was appalling and must not be repeated.

In terms of context, it seems to me that we now need to get ahead of that curve, both in identifying genuine claimants and removing and deterring those who are in fact economic migrants. We think that the Bill can help in that task.

To answer your specific question about the probable size, in 2009, the LSE gave a central estimate of about 600,000. We looked at that and thought that a million was probably closer, but almost by definition it is impossible to be accurate. The conclusion to be drawn from those numbers is that it is absolutely inconceivable that the Government would introduce measures that removed a million people from the country by force. It cannot be done, would not be done and nobody would support it. That is why measures, including some of those in the Bill, are essential if we are to persuade people to make up their own minds and go home when they should.

It is worth mentioning in that context that the sheer scale of movement is not really widely understood. In any one year—I will take 2014—7.5 million tourist visas were issued. Clearly, some of those will be tempted

to overstay. Business visitors: 1.7 million. Students and student visitors: 270,000 in one year. So you are looking at an enormous flow of people and no way in which you can forcibly remove them if you need to. Indeed, we do not even know who they are, or even if they are here. As you probably know, exit checks were abandoned by the Conservatives to the EU in '94 and by Labour to the rest of the world in '98. So for nearly 20 years, nobody—the Government, the Home Office—has the slightest idea who has gone home and who has not. We are starting from an appallingly difficult situation and, as I said, the only way to approach it is to improve the likelihood of people deciding for themselves. Also, it is necessary to tackle the difficulties that have arisen in the removal process. In my view, they are not very widely understood, and when I first heard them, I was rather surprised.

It is the case, surely, that an effective removal capability is at the basis of the credibility of the whole system. If people think that they can stay indefinitely and not be removed, of course they will do that if it is to their advantage. I am afraid that successive Governments have sort of concealed the weakness of the system by conflating various figures, but if you look at the number of immigration offenders who have been removed, in the last six years the average has been fewer than 5,000 every year compared to the numbers that I have just given you for the inflow. It will be obvious to you that work is required on this front, and I hope obvious to you that this Bill will help with that.

**Q102 Sarah Champion:** To expand on that, at a practical level, you rightly said that there are 11 Acts of Parliament, and that we still do not know who is coming in and who is going out. Groups have said that if support to asylum seekers is withdrawn, there is concern that they might abscond from the system. On a practical level, what do you believe the Bill will add to existing legislation, so that we can deal with the problem? From my casework, I know that the biggest problem is that once the Home Office team has gone through the process to recognise that someone needs to be deported, it does not have the resources to deport them. On a practical level, I cannot see how the legislation will make that process more straightforward. Are there specific proposals in the Bill that will do so?

**Lord Green of Deddington:** Yes, and that is a very good question if I may say so. There is a huge amount to do, but I would pick out the appeal process, which has been leading to significant sources of delay, and is sometimes quite ruthlessly exploited by a bogus applicant, and is more likely to be so, and by some of the lawyers. The first-tier tribunal has considered 850,000 cases in the past seven years, so the provisions in the Bill that will provide for removal first and appeals later will be very important. Equally, it will be important that that provision is not applied when it should not be, and I am sure that you will be focused on that as a Committee. The reality, however, is that the legal system has been exploited to the disadvantage of the community as a whole.

So far, as I am sure that you know, the Government have reduced the number of kinds of appeal that you can make from 17 to four. When they applied the “removal first, appeals later” provision to foreign national offenders, they found that only 25% bothered to appeal

and of the total, only 1% succeeded. Of course, foreign national offenders are likely to have a much less convincing case than many others, but if we can find a way, consistent with human rights of course, to shift the burden of appeals, we can get the whole system moving more rapidly than it has in the past. And as I said at the beginning of my evidence, now is the time to do it, because we must have a system. The Government keep talking, and rightly so, about breaking the link between people getting to Britain and believing that they can stay here indefinitely. That amounts to the fact that we must have an effective way both of differentiating between economic migrants and asylum seekers and of swiftly removing the first of those two. There is a lot to be done, and I think that the Bill will help.

**Sarah Champion:** My final question—

**The Chair:** Very briefly.

**Sarah Champion:** In that case, I will let other people have a go.

**Q103 James Brokenshire:** Lord Green, there has been some questioning during the course of this session about the introduction of offences relating to illegal working, in particular the creation of an illegal working offence against employees. Could you share any thoughts and comments on how we can have a firm response and crack down on illegal working in all its different forms, as well as some of the draws that entice people into migration? How would you respond to the challenge that this may somehow prevent people from coming forward who may be victims of exploitation or trafficking, for example?

**Lord Green of Deddington:** I will keep my answers shorter in future, Mr Chairman, but I wanted to set out some of the basic considerations.

**The Chair:** Sure. It was a good opening exchange.

**Lord Green of Deddington:** Our view is that it simply has to be an offence to work illegally in this country. I cannot see how it can be otherwise. For starters, these people are unquestionably undermining the wages of British workers or immigrant workers, for that matter—legal workers. There is no question that they are undermining the wages of legal workers.

Wages in London are lower than anywhere else in the country. Why? Because in low-paid work there is an enormous number of people who are ready to work for very little and, of course, employers know they can get illegals for even less. It has to be an offence, and it is high time that it was. As you say, there has to be a balance. As you know, the Modern Slavery Act helps in certain cases if people will come forward, but the answer probably is stronger enforcement—in other words, lean on the employers in order to squeeze out the ability to do this.

**Q104 Byron Davies (Gower) (Con):** Lord Green, in response to an earlier question, you talked about an effective removal system. Could you expand on that and tell us what you think would be an effective removal system?

**Lord Green of Deddington:** First, it has to be quick. It has to be fair and it has to not be under the impediment of extremely complex procedures and legislation. I think the proposal in the Bill is right in addressing that. There are other issues, of course. They probably need more resources to do it. They probably need a bigger detention estate. With all those put together, one can work on improving the removals, but, as I say, you cannot remove 1 million people. You have to make sure they want to go themselves.

**Q105 Craig Whittaker:** Lord Green, you have already said there should be a duty on employers. I presume you put into the same category people such as landlords, whom the Bill specifically addresses. How can we better prevent illegal working without imposing additional burdens on business generally?

**Lord Green of Deddington:** I do not think you can, to be frank. There has to be a duty on employers and they have to fulfil it. They have to recognise that this is a serious matter of great public concern. It is a field in which some unscrupulous employers are making a packet at the expense of honest employers. They have to fulfil it.

**Q106 Paul Blomfield:** I wonder whether I could follow up on your answer to the Minister, Lord Green. You were saying that the criminalisation of workers would be helpful in achieving labour market compliance.

**Lord Green of Deddington:** Sorry, I am not saying workers should be criminalised; I am saying that illegal work should be a criminal offence.

**Q107 Paul Blomfield:** Effectively, the Bill criminalises undocumented workers, does it not?

**Lord Green of Deddington:** If they are here illegally, yes. That is the point.

**Q108 Paul Blomfield:** In your evidence to the Migration Advisory Committee review of low-skilled work, you talked about the problem of fear in the workplace and of there effectively being a climate in which employees would not challenge their employers. Do you not think that creating a criminal offence assists the hand of unscrupulous and exploitative employers and gangmasters, and therefore negates the desire that we all share to achieve effective compliance in the labour market?

**Lord Green of Deddington:** Yes, there is clearly that possibility. You say, does it negate. I think not because the wider issue is that we must crack down on illegal employment, which is widespread. Another part of that is to enforce action against employers, very few of whom have actually been penalised.

**Q109 Paul Blomfield:** I wondered whether you were hesitating because you wanted to add to that answer.

**Lord Green of Deddington:** No, not for the moment.

**Q110 Paul Blomfield:** I wonder whether I can ask another question. Your evidence to the MAC review of low-skilled work also talked about the need for more effective enforcement of minimum wage compliance and other areas. Do you think that it is a problem

that the Employment Agency Standards Inspectorate only has nine full-time staff, and do you think that more resources need to be allocated for effective enforcement?

**Lord Green of Deddington:** I think pretty well without question. One of the problems about expanding the legal base, it has to be done as a starting point but, if it is not then enforced, it becomes a waste of paper. If I may say so, I think that this Government have not devoted the resources that are necessary to what is an increasingly serious problem. They need to look again. The amount spent on the whole immigration system is about £750 million a year, I believe—absolute peanuts. It is one of the areas of government—I am sure that there are other areas—that needs more attention than it is getting.

**The Chair:** We are just over halfway.

**Q111 Mims Davies:** I want to pick up on something that was raised this morning by the Refugee Council and Still Human Still Here. They were inferring that the reform of the support will affect asylum seekers, leaving children destitute and obviously affecting social services and local authorities. I wondered whether you had an understanding of the level of numbers that may be affected by that, and therefore the impact that could be anticipated, or whether that is in essence scaremongering?

**Lord Green of Deddington:** In terms of numbers, offhand I do not know. I would make a distinction between families where there are children present, which would surely affect the way in which they were handled, and those where there are no children. Where there are no children, when people come to the end of their process, they should go—end of story. We certainly should not have the taxpayer paying for them.

**Q112 Rebecca Harris (Castle Point) (Con):** Back to that point, there are two questions relating to what we were told early this morning by witnesses. On that point—namely, we were told that with a lack of resources, when people have finally lost their appeal, that would drive them further underground and they would cease to engage; it would not work and we would find that less people were leaving—can you comment on whether that is a fair assessment? Will that measure and the other measures in this Bill make it more likely that people go underground and less likely that they are going to come forward and engage, as we are told the term is, and come to the conclusion that they need to go of their own accord?

**Lord Green of Deddington:** Of course, it would depend very much on the individual cases. The overall statistics are very clear. First, of those who have applied for asylum—this is the average over the last 10 years, just to give you the broad scope—50% only did so when they were discovered. Secondly, when those cases were heard, 50% were granted. So the other 50% were refused, and of those only half were removed. So if you set foot in this country, as people are doing every day from Calais, and you say the word “asylum” you have a 75% chance of staying here. Of course, they know that—they have relatives, they have friends, they have mobile phones, most of them. If you are going to weight the system, which is the only thing you could do by legislation, then you have to weight it against bogus asylum seekers. That is my bottom line.

**Q113 Rebecca Harris:** Thank you. That takes me back to the other point, which is about making working illegal, in particular, although it equally applies to some of the other measures in the Bill. I put it to one of our earlier witnesses that quite a lot of potential migrants—even those who might be considered to be being trafficked or abused or taken advantage of when they get here—are quite well informed about the rules and the system here, and, as you said, their chances of remaining indefinitely. Would you say that they are more likely to know that it will be illegal and more difficult to work here, and will that, along with the other measures in the Bill, stop the draw factor? We were told this morning that it was unlikely that people who come from abroad would really know what the rules were here.

**Lord Green of Deddington:** I do not think that we should underestimate the intelligence of people because they come here illegally. For a start, there is very strong communication within communities, whether you be a Filipina maid or a Syrian carpenter. They all have friends and relatives, and communication is extremely good; they learn very quickly and they also learn the way round the system. I would not be too bothered about that. We need a system that is sensible, firm and fair, and they will either realise that that is the case or realise that it is not.

**Q114 Gavin Newlands:** I just want to ask for a quick clarification of an earlier answer to the Minister, in which you used the phrase “these people”. To be clear, can you define “these people” for the Committee?

**Lord Green of Deddington:** I am not sure what you are referring to.

**Gavin Newlands:** At the start of an answer to the Minister, you used the phrase “these people”.

**Lord Green of Deddington:** I do not know which answer you are referring to. Can you be a bit more specific?

**Gavin Newlands:** You might have been referring to asylum seekers or to migrants, but you gave the answer.

**Lord Green of Deddington:** I do not understand the question, I am afraid.

**Gavin Newlands:** You used the phrase.

**Lord Green of Deddington:** I use lots of phrases.

**Q115 Gavin Newlands:** My main question is, to what extent do you consider that the Bill carries the risk of encouraging everyday discrimination against people who do not appear to be British?

**Lord Green of Deddington:** Could you say that a bit louder, please?

**Gavin Newlands:** To what extent do you consider that the Bill carries the risk of encouraging everyday discrimination against people who do not appear to be British?

**Lord Green of Deddington:** What did he say?

**The Chair:** Lord Green, are you having difficulty with the sound?

**Lord Green of Deddington:** I am, rather, yes—and, if I may say so, that slightly different accent. I did not understand the question, I am afraid.

**The Chair:** Okay. You can try again, Gavin.

**Gavin Newlands:** Do you think this Bill carries a risk that it will encourage everyday discrimination against people who do not appear to be British?

**Lord Green of Deddington:** Does the Bill carry the risk? Ah, sorry, yes, I understand. Some aspects of it might—you are probably thinking of the tenancy provisions. There is that possibility and it would be foolish to deny it, but you have to balance that against the absolute scandal of beds in sheds and the exploitation of people—immigrants usually, but not always—by ruthless landlords. There are tens of thousands of beds in sheds, probably more, and appalling conditions. That has to be tackled. Yes, there is a downside, as there is to any kind of change of this kind, but let us keep our eye on the ball. There is a scandal going on in relation to the housing of many people and that needs to be tackled.

**The Chair:** There is a very crowded field and we have about seven minutes. Kelly?

**Q116 Kelly Tolhurst (Rochester and Strood) (Con):** Earlier on you mentioned some of the numbers and the applicants to stay here. To what extent do you believe that the opportunities and ease of obtaining illegal work in this country are a pull for people to continue to come here?

**Lord Green of Deddington:** It is a major factor, absolutely. The wages here are so much higher than in the countries from which many people come—indeed they may have no means of earning a living in those countries in current conditions. I mentioned earlier that 50% of those who apply for asylum do so only when they are discovered working—or are discovered, but they will be working when they are discovered. Clearly, from their point of view, their intention was to come and work and then, as a fall-back position, apply for asylum if arrested. So, yes, that is a major factor.

**Q117 Keir Starmer (Holborn and St Pancras) (Lab):** Mr Owen, it is a pleasure to serve under your chairmanship, and I apologise for arriving late.

I would like to ask the panel some questions about illegal working. At the moment, a number of measures can be taken in relation to both employers and employees where there is an inspection of premises and people are found to be in the country without proper status. The problem, as I understand it, has been the low rates of inspection and even lower rates of enforcement. That is the really critical issue. For that reason, steps have been taken to create a director of labour market enforcement and it is hoped there will be better strategy—streamlining and all the rest of it—but throughout those debates, and certainly when I was Director of Public Prosecutions, I cannot remember people saying that there was a problem with not having an offence that can be prosecuted. In other words, nobody has suggested, as far as I know, that there is a problem because there is not an action that can be taken against employees. There is obvious action that can be taken.

Do you know of any evidence of any cases that have not progressed because the offence of illegal working by the employee was not in place? In other words, there was an inspection, something was found to be wrong, but then there was a problem over not being able to bring a case because you did not have an offence against employees. I do not know of any evidence of that.

**Lord Green of Deddington:** Almost by definition it would not arise, because if there were no offence they would not be taking it further—

**Q118 Keir Starmer:** No, I am sorry to interrupt you, but there are plenty of examples throughout our criminal proceedings sector where something happens and a team will have carried out an inspection or arrest and realised that they cannot proceed any further because there is no offence that fits the action they are trying to deal with. That is not uncommon. Usually the response is to legislate to fill what is seen to be a gap in the available offences. I have never seen any evidence here that it is a gap in the available offences that caused the problem. It seems to be that there are not enough resources to carry out inspections to enforce the measures that are already there.

**The Chair:** Can I ask for briefer answers and questions, please, if we are going to satisfy everybody on the list? Thank you.

**Lord Green of Deddington:** On the first point, you may well be right, but that is more for the Home Office than myself. On your second point, enforcement is essential, and it is not happening. You mentioned this director of enforcement. I think that is probably a good idea, but I would say this. The civil service is not a Meccano set; it is a plant and you cannot keep digging it up to see if it is working or not. I think we need to be careful about reorganising, organising and reorganising. On this occasion, I think there is a case for it.

**Simon Hoare (North Dorset) (Con):** Lord Green, although I, too, cannot remember the context in which you used the phrase, I would like to support what Mr Newlands was saying. There was a very disparaging tone with regard to “these people”. It certainly jarred with me. On such a sensitive issue as this we all need to be careful about language.

What I did not follow in the logic of your response to an earlier question about the financial support provided to people who have had their applications refused and who have exhausted the appeal process was why there should be an exemption for those with children, or a different style of treatment for those who have children. It seems to me, and I would welcome your views, that if a parent is told that they do not have the right to remain, they are by definition responsible for the welfare of their child. If the child is going to suffer disproportionately because there is a lack of central Government or local government funding, the solution remains in their hands. They have exhausted the appeal process; they have no right to remain. Surely, to safeguard the future and wellbeing of their child or children they should return to their country of origin as quickly as possible. I did not follow the logic that you were deploying as to why there should be two separate streams merely predicated on the fact that people had children.

**The Chair:** Lord Green, I have one more Member, Anne, wanting to ask a question. If you do not finish your response, would you please give some written response to that?

**Anne McLaughlin:** I will try to be quick. In answer to an earlier question regarding asylum seekers, Lord Green, you said that they know that they have a 70% chance of staying—I am paraphrasing—and that some of them even have mobile phones. I wonder if you are aware of a detailed report from 2010 that Swansea University carried out for the Refugee Council on this very matter of whether asylum seekers set out to come to the UK. They said that the belief that many politicians have is not supported by the existing research evidence, much of which suggests that destinations are determined not by personal choices about lifestyle but by the practicalities and demands of the situation—

**The Chair:** Order. I am sorry to stop the hon. Lady in full flow. Lord Green, Mr Hoare and Ms McLaughlin have asked questions that are on the record, and if you could provide answers we would very much appreciate it. On behalf of the Committee I thank you for the answers you have given. If you have additional information that you want to supply to the Committee, please feel free to do so.

#### Examination of Witnesses

*Richard Lambert, Eric Leenders and David Smith gave evidence.*

3.1 pm

**Q119 The Chair:** Good afternoon. We are now hearing evidence from the sixth panel of witnesses, from the National Landlords Association, the Residential Landlords Association and the British Bankers Association. For this session we have until 3.45 pm. Could the witnesses please introduce themselves for the record?

**David Smith:** I am David Smith from the Residential Landlords Association, and I am the policy director.

**Richard Lambert:** I am Richard Lambert, chief executive officer of the National Landlords Association.

**Eric Leenders:** I am Eric Leenders, the executive director responsible for retail and private banking at the British Bankers Association.

**Q120 Keir Starmer:** May I ask the panel—but I think probably Mr Lambert and Mr Smith in the first instance—about the provisions in the Bill dealing with the duties on landlords to carry out checks before renting to, or allowing premises to be occupied by, a person without the right immigration status? Do you have concerns about those provisions, from the perspective of the landlords, and do you have any comment about the concern of others that there could be a default position leading to discrimination—in other words, landlords being so concerned, because it is a complicated exercise and they are not entirely sure what they are doing, that it is easier simply to default to a position where you rent to somebody who is pretty obviously British, or who has a British passport?

**David Smith:** We have four areas of concern, so yes to your first question and, actually, yes to your second as well, but in a different way. We are concerned about the

speed with which the second Bill has been brought forward when the first Act, the Immigration Act 2014, is not fully in force. It was announced only two hours ago that the pilot that has been evaluated in the west midlands will be rolled out across the country from 1 February. That pilot was held by the Immigration Minister to be a success, so we are not clear why there needs to be a set of criminal provisions on top of civil fines, which are, apparently, already effective. We would urge Parliament to take its time as it goes through implementation of the changes.

We are concerned about document discrimination—so not so much discrimination on grounds of nationality as discrimination on the grounds of people not having passports. Having a passport is far and away the simplest way to check somebody, so we are concerned that landlords, rather than just discriminating against people, will simply take the path of least resistance, especially as more pressure, potentially, is applied to them, with the possibility of ultimately going to jail. Indeed, I note from the evaluation that was published a few hours ago that one example was given, by one of the interviewees, of a situation of somebody without a passport being refused accommodation. So we are concerned about that.

We are concerned about the way in which the offences come into effect. The way the Bill is drafted, as soon as the Secretary of State has served a notice informing a landlord that they have illegal immigrants in their property, they are immediately committing the offence of having illegal immigrants in their property. It takes 28 days before you can possibly evict those people, so there are 28 days during which they are committing an offence. It has been suggested to us that the Home Office will not seek to prosecute, but it would seem to me that the only person who could give such an assurance is the person who is now filling your old job, Mr Starmer, at the CPS, the prosecuting body.

It would also be normal with offence of this type to have a provision that says that a landlord can establish a reasonable excuse—for example, if they have been severely ill or something like that—and that provision is not there.

The last thing is the air of confusion about two aspects in particular. First, the helpline has been described as a helpline, and was stated as such the other day. However, it has also been described to us as only being there to check for asylum seekers and people who do not have documentation. We would like to know which it is, and whether it will be fully funded as a helpline, so as to be effective.

The other thing that is notable from today's announcement is that the provision is to be rolled out from 1 February, but it is not clear whether it will only apply to new tenancies commencing on or after 1 February, because it has also been stated to us in other meetings that it may apply to tenancies that are already in place on 1 February. It would be very nice to have some clarity on that, because it would be an extremely serious problem. I see that the Immigration Minister is shaking his head, which may give me the answer to that question.

**Richard Lambert:** We have concerns about placing this kind of responsibility on landlords, who are not trained for it and are not familiar with it. However, we have taken the view that we have to try to make sure that if this system is going to be introduced, it is as

straightforward and practical as possible for landlords to operate. That has been the level of our discussions with the Home Office and other agencies throughout the past year, since the previous Act was introduced.

On concern about discrimination, we were probably more concerned about discrimination when the original policy was announced, or at least I was more concerned at that time than I am now. That is partly as a result of my going round and talking to local landlord meetings, as I do regularly. Rank and file landlords in our organisation are very worried about this issue, and those outside the pilot area are more worried than those inside it. One of the things that really comes back to me is, "How will we be able to tell if somebody is British? You can't just look at them and say they are British. You can't see their name and say whether or not they are British. In this day and age, you can't even listen to their accent and say whether or not they are British." So what we find is that landlords are moving towards the assumption that, in the same way that employers now tend to check all identities regardless of nationality, landlords will check identification, to make they cover off this particular aspect.

**Q121 James Brokenshire:** I thank our witnesses for giving evidence this afternoon, and I also thank the relevant landlord bodies for their participation in the round-table sessions that we have had and will continue to have throughout the detailed implementation of the Bill.

I want to come on to one of the parts of the Bill that relates to the termination of tenancies. When landlords discover someone who is in the country illegally, they will be able to resolve that issue in a speedier fashion through the landlord and tenant legislation. Would that be welcomed by the sector?

**Richard Lambert:** Most definitely. Our big concern about the initial Act was what would happen once a landlord found they had a tenant who no longer had the right to rent, or who they thought had the right to rent but turned out not to have it. How could the landlord end the tenancy as quickly and as cleanly as possible, without necessarily getting into the whole court process? One of the problems with a court process is that it can be very protracted, yet the landlord is in the position of having committed an offence.

What we wanted to see was a process that moved that forward as quickly and clearly as possible. The provision in the Bill whereby the Home Secretary issues a notice once the Home Office has been informed that a tenant no longer has the right to rent achieves that. We have some concern about a power that has always been with the courts moving over to the Executive, but that is a constitutional principle for Parliament, ultimately, to decide. For our purposes, and looking at the practicalities, the power should work effectively.

**David Smith:** There are a couple of different points to make. First, it is generous of you to put in a provision to allow eviction of Rent Act tenants, but it is possibly not entirely necessary, as Rent Act tenants will have lived in the UK for so long that they are almost certainly entitled to stay here anyway, irrespective of how they entered the country.

The other part of it that I am a little bit more concerned about is with relation to assured shorthold tenancies and the power you have put in to evict. As I

read it, it would still require an amendment to the tenancy itself for that power to be exercised, in that ground 7A can only be used inside a fixed term if it is mentioned in the tenancy agreement. So that ground for possession would require a lot of landlords to change their tenancies, which it is obviously their responsibility to do, but there is obviously a substantial piece of education that will need to be done in the sector, which I accept is our responsibility—possibly more than it is yours.

The other point is the issue of transfer of tenancies, so where there is a group of tenants, some of whom are illegal immigrants and some of whom are not, there is a power for the court to transfer the tenancy. The first point is that it is easily got around by simply issuing proceedings for some other ground for possession as well, which is relatively easy to do. The other problem about it is: how will you deal with all the other side bits that go with it—for example, tenancy deposit protection?

If a deposit is registered in one group of tenants' names and the tenancy is transferred by the court to a different group of tenants' names, the deposit protection schemes will need to have the deposit re-registered, and something will need to be done to deal with that contractual position. So I am a bit concerned as to how that will work. In practice, I am afraid the mechanics are a little bit more complex in terms of shifting tenancies around between tenants.

**Q122 James Brokenshire:** The detailed input given thus far has been helpful in flushing some of those issues and, no doubt, those discussions will continue.

Given the time, I should ask Mr Leenders about the banking provisions. The new provisions in clause 18 are on existing bank accounts and the ability to take action. That may be linked to some of the other issues we have touched on in the session, such as proceeds of crime legislation, linked to the employee criminal sanction that was highlighted in a previous session. Will you comment on the practicality and operation of that?

**Eric Leenders:** Certainly. We have some experience through the Immigration Act 2014 of implementing the required database search for new accounts that customers might want to open. That has given us some experience and some learning. The three-stage process in the Immigration Bill is broadly similar in the sense that first there is the status check, currently through CIFAS. Then there will be notification of any matches back to the Home Office, which is the three-point match, and no fuzzy logic, which gives a clear indication of those particular clients that we might need to close accounts for. The differential is the action that is then taken.

Essentially, though, as we understand it, there are two ensuing actions. First would be an instruction to close the account. We are working closely with HM Treasury officials to understand how that might work in practice—if I may, I will come back to that point. Second would be some form of freezing order through the courts that might facilitate ongoing regular payments, potentially for rent and other things, if there are subsequent actions that the individual might need to take.

In the context of closing the accounts, some of the challenges I think we find are, first, which types of accounts? We know it is individual accounts, joint accounts, additional signatories, charities and some smaller accounts,

but is it all those instant access accounts or is it simply current accounts? That has been a challenge that we faced that was clarified, I think on the Floor of the House, with the Act.

There is also the treatment of balances, particularly of course for overdrafts. That has a bearing on the amount of time we would consider appropriate for actually closing the account. Currently, the default would typically be 28 days, but, if there is an overdrawn balance, we would probably like to see that paid and the account closed quicker to lessen the propensity for that overdraft to drift up again.

I think we have a bit of an issue where there might be knowledge of a disqualification but we might not hold the qualifying account. These days we tend to have financial services across a range of providers, and the extent to which our responsibility might be to disclose to those whom we feel might hold the account, or whether we do nothing, is a moot point just now.

The granularity of disclosure once we have given notice to close the account is something that we are working on with Treasury officials. Currently we are looking at whether that should include balances, additional parties to an account or details of regular payments, which potentially would include details of the originating account for that regular payment. That is not information that we would necessarily find easy to extract from systems, so that is an additional build for us.

In the Financial Conduct Authority we have obligations to treat customers fairly. We found with the Act that there are some cohorts of consumers where actually it is quite difficult, in the sense that those with no fixed address might not have suitable matching criteria to pass through the database, so then we should call them out. That of course creates a customer service issue. Elderly consumers are another area—perhaps they have not registered on the electoral roll and therefore, again, we might need to call them out. We need to get that referral process quite slick.

We will in parallel need to implement the payments accounts directive, which has a requirement that you are familiar with to do with account opening for citizens legally resident in the European Union, which is a different definition and criterion to work through.

In terms of the pragmatics, as we envisage what we call operationalising, we would see that first wave of checks across a database—it might be as many as 120 million-something accounts, so there will be a volume of activity. Thereafter, if we were to undertake checks quarterly, say, we would be very keen just to check any additions and amendments to a register, rather than to have to sheep-dip the whole database.

The final point of course is the timeline. We have had some useful clarifications, again, from Treasury officials that suggest that the first checks might not take place until the latter stages of 2017. Typically, banks need something of the order of 18 months to implement mandatory change processes and to go through testing and assurance internally. We might be able to foreshorten that—we are talking about a period of about, say, 12 months. Whatever we can do ahead of the detail in the secondary legislation would be very helpful to us.

**Q123 James Brokenshire:** Thank you for that detailed and comprehensive answer on the provisions, which is quite helpful and instructive on the level of detail that is

engaged here. Just briefly, perhaps you could reflect on the provisions of the Immigration Act 2014 and their implementation. What has been the practical experience? Clearly a lot of this quite detailed analysis was engaged there as well. What has been the situation to date?

**Eric Leenders:** On volumes, I think we have seen about 1.9 million searches go through the CIFAS database. From that we have identified some 14,000 matches against the database, and those have been referred back to the Home Office. That has in turn identified some of these issues such as people with no fixed address or those elderly consumers. So we can draw on that experience to inform our thinking around the Bill.

We consider that the CIFAS process is working quite well. The truncated timeline was difficult, frankly; there was an element of manual processing, and with manual processing there is, unfortunately, a higher propensity to or risk of error. So that is why we called for that slightly longer timeline—to ensure that as far as possible we can automate and therefore reduce the error rate within the process.

**Q124 Anne McLaughlin:** I want to talk about potential discrimination under the right to rent aspects of the Bill. Not everyone is as enlightened as Mr Lambert, and so not everyone believes that you cannot tell by a face, a name or an accent whether someone is British. I was very struck by a statement sent out by the Residential Landlords Association, which I am going to read from:

“Whilst the Residential Landlords Association condemns all acts of racism the threat of sanctions will inevitably lead many landlords to err on the side of caution and not rent to anyone whose nationality cannot be easily proved.”

How concerned are you that the Bill will allow some people to use it as an excuse for their racism and that others will inadvertently end up acting in a racist manner, not because they want to but out of fear that they may end up breaking the law if they do not?

**Richard Lambert:** How concerned am I that some will use it? Very. How concerned am I that some will use it inadvertently? Fairly, but our experience is that most of the concern about the provisions is from people who have not gone into the detail, are worried about what they might have to take on, are concerned that they do not have the expertise or knowledge and are very focused on the penalties, because what has been pushed hardest is not the responsibility or the practicality but the level of penalty for getting it wrong.

Having had a quick look, like my colleague, at the evaluation report that was published this morning—we had a chance to look at it before we came in here—something like 22 of the 26 landlords who responded said that it was actually relatively easy to undertake the checks and that there did not seem to be an obvious level of overt discrimination, although there is still an undertone, and in a few cases that does happen.

It is a real risk, but when I said what I did about awareness of the fact that we live in a multicultural, multiracial, multifaceted society, that was not me speaking—obviously, I believe that—but me recounting what has been said to me by landlords at local meetings around the country. They are very concerned about the practicalities of how you make this work, and they realise that you cannot make assumptions, from looking at somebody, about whether they have the right to rent

or whether they are a British national. The only way is to check and to check everyone. I recall anecdotally from my colleagues on the Home Office working group on the evaluation report that the largest level of resentment coming back from tenants was from the indigenous white British population, who did not understand why they were being asked to prove the right to rent. You actually get a counter-intuitive response.

**David Smith:** People who will discriminate would discriminate anyway, so in a sense people who are going to actively discriminate as a result of the Bill would have been actively discriminating before. Our biggest concern is what we have chosen to call document discrimination. Of the UK indigenous populace—or however you want to describe those people—17% do not have passports. If a landlord has two people walk through his door who want to rent the same property, and one says, “I have a passport and can do the right to rent check right now,” and the other says, “I do not have a passport but will come back tomorrow with two forms of identification off the secondary list,” the landlord is technically not breaking the law by taking the first person, and in practice I am sure that he will take that first person.

Our concern is that there are groups of people who are not in possession of passports and driving licences. As a lawyer, I have many such people as clients, because I have a large client base of elderly people or people who are in care. There are substantial numbers of those people, and a lot of them are renting, increasingly in the private rental sector, as there is a change from social renting to private renting. There is a potential difficulty with providing those people with proper identification.

We have called for a much simpler document for people who are on benefits and would already have been checked to receive benefits. Local authorities could provide a single document—perhaps watermarked or stamped—that landlords could be clearly told was acceptable as a single document. At the moment those people are going to need to produce two separate documents. They may not have them to hand, or it may take time to acquire them. The benefits letter has to be signed by a named official, and named officials may be reluctant to put their names on these documents. Our concern is that groups of people who should have no reason to be concerned by this legislation at all may find themselves being put through checks that they cannot easily meet.

**Q125 Craig Whittaker:** I declare an interest as per my declared interest in the Members’ register. For the record, I am probably what Mr Smith calls one of those in his sector who are amateurs and accidental landlords. One thing I know from experience, although I may be an amateur, is that the eviction process is incredibly burdensome for landlords. It is far too lengthy and hugely costly, and when you are going through the process, you do not get any rent from the tenant who is in your property. That is the current situation, whether they are an illegal immigrant or not. I cannot for the life of me understand, and neither can the members of Calderdale Landlords Association, whom I have spoken to, why on earth as an organisation you would be against something that is far better and makes it far quicker for a landlord to evict a tenant in these circumstances.

**David Smith:** In what sense?

**Q126 Craig Whittaker:** You said very clearly that you had some real concerns around the eviction process that was being proposed. You mentioned the 28 days, for example. That is a much quicker process than what is currently in place.

**David Smith:** I said that my concern was that as soon as the Secretary of State had issued a notice to a landlord, they are committing an offence, and it takes 28 days before they can even begin the eviction process. During those 28 days they are committing the offence of having an illegal immigrant in their property.

**Q127 Craig Whittaker:** But they are already committing an offence as the law currently stands, and the process of evicting a tenant takes much longer. What I would like to know is why on earth you are advising landlords that this element of the Bill is not particularly—

**David Smith:** I think there is a misunderstanding here. They are not committing an offence as the law is currently drafted, because it has not changed yet. If it were to be changed, what we are after is a situation where, provided that the landlord is proceeding diligently to carry out the eviction, they are deemed not to be committing the offence of having an illegal immigrant in their property—so they have what the Act has termed a statutory excuse. As the situation stands, as soon as the Secretary of State issues the landlord with a notification that the tenant in their property is an illegal immigrant, the landlord is instantly deemed to be committing an offence of having an illegal immigrant in their property, and they can be prosecuted for that.

**Q128 Craig Whittaker:** So the new eviction process in the Bill is a good thing. Is that what you are saying?

**David Smith:** Yes. I have no concern about that at all.

**Q129 Craig Whittaker:** Okay. Can I just ask you about document checks, which have been mentioned? I just wonder whether you guys actually understand what is going on in your sector. If you try to get accommodation from an agency, for example, as I recently did here in London, first, you have got to be there on the day to secure something, and if you cannot get down to London to physically go and see it, you will lose it. Secondly, if you do not have the checks, whether you are an illegal or a legal resident in this country, it is a very difficult process anyway, because that is what people demand. Have you considered for one minute that for the amateurs and accidental landlords that you refer to, the introduction of some form of check, as is happening in the Bill, will protect them in other ways as well as just against potential illegal immigrants?

**David Smith:** Well, I suppose there are two answers to that. First, the current guidance would imply that using checks in other ways might well be unlawful discrimination, because the document checks are for establishing the right to rent, so that would depend on the guidance that is issued.

**Q130 Craig Whittaker:** But we have that in place anyway. If I do not have those documents to prove to an agency that I am who I am when I want to rent a property, whoever I am, guess what? I do not get the property.

**Richard Lambert:** To be fair, I think that that is custom and practice through tenant checking rather than a strict legal requirement. The other difficulty is that in some elements of the private rented market, lower-income people, people on benefits, vulnerable people and people who are very transient simply do not have that kind of documentation to hand.

**Q131 Craig Whittaker:** Okay. Let me just ask one final question, because I think I have made my point on that one. My question is to you, Mr Lambert, because you mentioned an undercurrent of discrimination in the system. May I point out that no evidence at all from the pilot—which, okay, was only published this morning—suggests that there is a discrimination there? You said that you have heard hearsay from people you have spoken to, but may I ask whether you have any physical evidence to suggest that there might be some form of discrimination in the system?

**Richard Lambert:** If you read the full report, I think it mentions one or two examples in the focus group that refer to what could be interpreted as minor levels of discrimination.

**Q132 Craig Whittaker:** So there is no real evidence—

**Richard Lambert:** That is what I am saying: there is no strong evidence of discrimination, although there is the potential there, and some minor level of concern may emerge in the focus group.

**Q133 Chloe Smith:** Will the panel give us their assessment of what numbers might be involved in the area of policy that we are talking about? Do you have any assessment in particular of how many prospective tenants might present themselves to your members, or how many bank accounts in the case of Mr Leenders?

**Richard Lambert:** We can talk about how many households are in the private rented sector—there are about 4.4 million at the moment—and I think there is a turnover rate of about 25% to 30% a year, so we are looking at just over 1 million to 1.25 million new tenancies a year.

**Q134 Chloe Smith:** Of those, do you have a sense of how many might fall under the provisions of the Bill?

**Richard Lambert:** None whatsoever.

**David Smith:** In a sense, they should all be falling under it, because landlords are required to check every new tenant, so one would assume that 1.2 million of them will require checks. How many of those people will then be found to have established the right to rent is perhaps one of the most hotly contested questions before this Committee, I would have thought.

**Q135 Chloe Smith:** That is exactly what I am driving at. Could you give us your view on it?

**David Smith:** We have no information, clearly, as to how many unlawful immigrants there are within the private rented sector. The reality, as I think has been established before, is that landlords who are routinely and knowingly renting to illegal immigrants are probably breaking the law in a vast range of other exciting ways and are therefore intentionally well below the radar. Landlords who do not know that they are renting to

illegal immigrants do not know that they are renting to illegal immigrants. Therefore, the information is extremely hard to come by.

**Q136 Chloe Smith:** Just sticking with the two landlords, if I may, before coming to Mr Leenders on the same question, your organisations are membership organisations, clearly, and you know how many members you have. Do you have any sense of how many members you do not have? In other words, how many landlords are under the radar, to use your phrase?

**Richard Lambert:** That again is difficult to say—for under the radar. I estimate that there are probably about 100,000 landlords in all the landlord associations throughout the country—ours and the many little local landlord associations that exist. So there are probably about 1.4 million landlords who are not in landlord associations. It is then about what you mean by “under the radar”. If you mean the people who are completely illegitimate, who are renting beds in sheds and are probably landlords incidentally, because actually what they are is organised criminals and the housing element just comes in as part of that, they are more interested in prostitution, people trafficking, money laundering and so on, who knows? We could not tell that. What we do know is that there are probably about 1.3 million to 1.4 million people renting out property who are not directly engaged with our organisations or any other organisation. Our concern is always where they get their information from, how they know that what they are doing is the right thing, and how they learn about what is best practice or, indeed, about changes in the law.

**David Smith:** You should be aware that of landlords not in our organisations a significant number will be using letting agents who, themselves, are perhaps not always perfect either—a significant percentage of them do not fall under any professional body. A goodly percentage of them are aware of their responsibilities and will no doubt learn about them as they go forward. In a sense, there is a force multiplier effect by engaging landlord organisations, which can capture a good percentage of landlords, and by engaging letting agent organisations, which will pick up a lot of landlords who choose not to join a landlord membership body.

**Q137 Chloe Smith:** Mr Leenders, any reflections?

**Eric Leenders:** I think we can identify 123 million instant access accounts. If we were to apply the experience from the Immigration Act of roughly 1% of searches being referred to the Home Office, that would potentially lead to a working assumption of about 1 million or 1.2 million searches being referred to the Home Office. That, in itself, surfaces an operational point about the readiness of the Home Office to deal with that volume in the initial wave of searches in the first quarter of the implementation of the Act. That is just one of those technical issues that we would like to work through. We might be able to find mitigants to that. For example, we might be able to strip out those who currently hold UK passports, but that is detail that we can work through in secondary legislation. I would not see that as a primary legislative point at all.

**Q138 Sarah Champion:** I have two small, mopping-up questions. Mr Leenders, you went through the customer service and administrative burdens that the legislation

puts on you, but are you largely in favour of it? Are there any unintended consequences of the legislation that we should be aware of?

**Eric Leenders:** We do not have a policy position on the Bill, nor did we on the Immigration Act 2014. There are some customer service points that give a little cause for concern. Referring customers with a seven-day service level agreement to the Home Office leaves them, effectively, in limbo for a period, and that customer might, quite justifiably, be entitled to an account. We do not feel that is the best experience, so we would want to work through one or two details like that. We would certainly want to have a period of testing—we are already encouraged by the Treasury giving some consideration to its own pilot exercise—presumably during the formulation of the secondary legislation, such that the customer impacts are minimised so far as possible.

**Q139 Sarah Champion:** Mr Smith and Mr Lambert, I was surprised by how small the sample size was in the west midlands pilot results. Of the 67 respondents who are tenants, 60 are students. My assumption is that students are much more likely to have passports and letters of authority from their institutions. Do you believe that this is a skewed sample?

**Richard Lambert:** The evaluation period could have been better. It could have been a lot longer. We would have said, ideally, a year to 18 months because most tenancies last more than six months. In order to understand how this process works, you have to give it that length of time so you can see tenancies coming to an end, and limited right to remain coming to an end and you can see how that renews. It also took place at what is probably the slowest time of the year so, inevitably, there were not going to be a lot of tenancies turning over. Then there were the difficulties of contacting the population. It is interesting that in a university area, most responses to the request for tenant respondents came from students who are possibly more likely to be active in some of the social issues and more aware of these things going on.

**David Smith:** Students are also, to a large extent, exempt from checks. Students are nominated into accommodation by their educational institutions so any student in a hall of residence is effectively exempt from checks anyway. Given that areas around Dudley and West Bromwich are not substantial student areas—parts of my family come from the area—it is a shame that there was such a high student sample. I would have liked to have seen a sample that more adequately represented a wider spectrum of social demographic groups. We remain concerned about the effects, not so much on, for example, Members of Parliament renting homes, but on people in the lower social demographics who increasingly are coming into the private rented sector, will have difficulty with this legislation and are often driven into the arms of less salubrious landlords.

**Q140 Gavin Newlands:** I know from your written evidence that you call for a clearly understood and properly resourced helpline for landlords. Will you share your members' experiences of the helpline during the pilot? A recent written answer from the Minister, for which I am very grateful, revealed that there were two full-time equivalent staff for the helpline. Was that sufficient for your members?

**David Smith:** We have not had any particular feedback. We have certainly had calls to our member helpline from members. I do not know whether that means that they were not happy with what they got. We are concerned about whether the helpline will continue to be resourced as a helpline once we are talking about all of England. That is not clear yet—I am looking at the Minister to see whether he nods or shakes his head. I can tell you that we run a member helpline and that more than two people staff it. It is that simple. Two people will not be enough to cover all of England, but I am not clear about the plans for widening the helpline.

If the helpline is not adequately staffed, there is little point in having it, I suspect. We would like more online resource. I note that, in the evaluation—the guide that was published today—the Government have highlighted the European PRADO database, but it covers only EU documents, not EEA documents. My members are not familiar with Liechtenstein passports, not that they would necessarily see a great many of those. However, many members are likely to believe that countries such as Ukraine are in the EEA, which they are not. We are therefore concerned about people both ignoring countries of which they should take account, and thinking that countries that they have seen in the news recently, which are around the fringes of the EU, must be in the EU.

We are also concerned about the potential for forgery that is opened up on list B. Several documents on there are potentially prone to forgery with a laser printer and we are very worried about the risk our members run of prosecution for not being the most adept spotters of forgeries. Immigration officers frequently examine passport documents and they are highly trained in that. My members are not equipped with UV scanning lights or skilled watermark detection systems, and I am afraid that many of them would not know a watermark if you asked them about it anyway. I am therefore concerned about how they will detect the more sophisticated forgeries, and what the break point is for what they should detect. I am not worried about sellotape.

**Q141 The Chair:** Can we just get the questions and then we will have the answers?

**Kelly Tolhurst:** Mr Smith, you mentioned earlier businesses or associations that are part of your organisation, and you said that landlords who wilfully engage in this sort of activity will fall under the radar. Do you agree that the tougher penalties in the Bill target those very people?

**Simon Hoare:** I wondered whether Mr Smith wanted to reflect on his comment that there were not many students in Dudley. That will come as a shock to Dudley College, which has worked closely with the University of Wolverhampton since 1999, offering, among other courses, a PGCE and a Certificate in Education post compulsory education, and has six campuses. That suggests to me that there are quite a lot of students in Dudley.

**David Smith:** In which case, I immediately withdraw any suggestion that Dudley is not a substantial student town, with my apologies.

**Simon Hoare:** So the corollary is that the baseline with the data that the evaluation mentioned is possibly a little more bona fide than you first indicated.

**David Smith:** It is still the case that there is a large number of student responses, and I would have liked to see data that drew on groups of people who were absolutely not students. I am prepared to accept that, yes, there may be more students in those areas than I envisaged, but that does not change my primary concern, which is that, from what I can see, having looked at the evaluation briefly, there are a lot of students in the responses. That potentially skews the data and I would like to see a study that was drawn from outside the student population, if possible.

Ms Tolhurst, I am not immediately convinced that increasing penalties in and of itself will smoke out bad landlords. Bad landlords are already subject to a raft of housing legislation with varying penalties. I do not know whether many people saw the story in *The Times* on Saturday, which was based on freedom of information data that my organisation obtained. They show very poor enforcement by local authorities. I do not know what level of enforcement of this legislation there will be through the Home Office. If it is actively enforced against bad landlords, then, yes, I would agree with you—if.

**The Chair:** That brings us to the end of the time allocated for the Committee to ask questions in this session. On behalf of the Committee, I thank the witnesses for their evidence. Again, if there is anything they feel they need to add to the answers they have given, please write to the Committee Clerks.

#### Examination of Witnesses

*Chief Superintendent David Snelling and Stephen Gabriel gave evidence.*

3.46 pm

**Q142 The Chair:** Good afternoon. We are now on the seventh panel of witnesses and we will have oral evidence from the Metropolitan police and from Sandwell Metropolitan Borough Council. This session will go until 4.15 pm.

Could the witnesses please introduce themselves for the record?

**Stephen Gabriel:** My name is Stephen Gabriel and I am the strategic manager at Sandwell Council with responsibility for private sector housing.

**Chief Superintendent David Snelling:** Good afternoon. My name is David Snelling. I am a chief superintendent from the Metropolitan police, but my role here is that I am chair of the National Police Chiefs' Council—which has replaced ACPO—Vehicle Recovery Group.

**Q143 The Solicitor General (Robert Buckland):** I want to ask Chief Superintendent Snelling some questions about the provisions in the Bill relating to driving. An issue has been raised that somehow the progress being made by the Metropolitan police in particular in dealing with some of the problems relating to stop-and-search measures will be, in effect, hampered by the introduction of provisions relating to the search of vehicles that might be used by illegal immigrants. What do you say to that suggestion?

**Chief Superintendent David Snelling:** Perhaps I can give a theoretical example from an operational perspective of how this practice is most likely to be employed. It is

most likely that we will have come across something by a vehicle that we would have had some reason to stop, which would then enable us to do a check on ownership of the vehicle using the police national computer. At that stage, what we would probably do then is speak to the driver and ascertain his or her details. Again, we would then again do a check on the national police computer about them, but at the same time we would also carry out a driving licence check. That would give us some indication of the type of driving licence they held, if any at all.

So, regarding what we would call the traditional stop-and-search provisions whereby we see somebody acting suspiciously in the street, we go and question them—stop and search them—our interactions would be merely reactive, following on from cause to stop a vehicle and then ascertaining other provisions about the driver from there.

**Q144 The Solicitor General:** So this is intelligence-led policing, as opposed to what I will frankly describe as some of the random stops and searches that we know disproportionately disadvantage people from the black and minority ethnic communities.

**Chief Superintendent David Snelling:** If I were perhaps to take out some of the language from there and talk about this particular instance, yes, we would have had cause to stop a vehicle, and we would have done further checks on the driver of that vehicle, which would enable us to deal with them in whichever way is appropriate.

**Q145 The Solicitor General:** On the new power relating to the detention of a vehicle relating to a person unlawfully here in the United Kingdom, how will that dovetail with existing powers to detain vehicles?

**Chief Superintendent David Snelling:** We have a variety of powers to detain vehicles. We have a power to stop any vehicle to ascertain ownership and driver details. What we would then do is inquire into whether the driver has authority to drive that vehicle. The power we use most often at the moment would be stopping vehicles where there is no insurance or the driver is driving otherwise than in accordance with their licence—we find a lot of people with provisional licences who are not driving with L plates. In that respect, I would see it as a staged process: we would stop the vehicle, then ascertain the circumstances of the driver.

To fall within the provisions of the Bill, we would most likely need to do a further check with the immigration authorities, which at that stage would give us reasonable grounds—whether or not you could use the term “proof” is another thing—based on a search on the immigration database, to believe that that person is driving as an illegal immigrant. That would fall within the provisions of the Act—should the Bill be made an Act of Parliament. At that stage we would have the power to seize the vehicle, as we would currently do under driving without insurance.

**Q146 The Solicitor General:** So the extra dimension is then the ability to check the Home Office database?

**Chief Superintendent David Snelling:** Yes, that is something we would require to actually exercise the powers proposed in the Bill.

**Q147 The Solicitor General:** Are you satisfied that these provisions will not cut through or cut across the excellent work being done by the police service on reforming stop and search and having a much more intelligence-led approach to it, as opposed to the random problems that we all acknowledge we saw in the past?

**Chief Superintendent David Snelling:** In terms of the example I have given, it is a series of steps that we can say objectively are what have led us to form the suspicion. We would be referring to an authorised database, owned by a Government agency. That should allay the view of various members of the public that we would just be, to use your terms, stopping people on speculation.

**Q148 Keir Starmer:** Chief Superintendent Snelling, can I follow up on the questions about driving? You have talked us through the way in which a vehicle would be stopped at the moment, using current powers. I think a number of licences have been revoked as the result of the exercise of existing powers, and of course when you find someone in a car who is not legally allowed to be here or has an irregular immigration status, there are various enforcement actions that can be taken in any event. Have you, on behalf of the chiefs' council or in any other capacity, asked for a further offence of driving while not having a regular immigration status? In other words, have you identified a gap in your powers that has led you to ask for further offences to be considered because you have found a problem?

**Chief Superintendent David Snelling:** Can I give you a short answer?

**Keir Starmer:** Yes, please.

**Chief Superintendent David Snelling:** No.

**Keir Starmer:** Thank you.

**Chief Superintendent David Snelling:** If I can slightly flesh that out—or have I been cut off by the Chair?

**The Chair:** No, you have not, but please be brief.

**Chief Superintendent David Snelling:** We have been involved in discussions with the Home Office that have proposed this power, but to the question whether we approached the Home Office, the answer is no.

**Q149 Sarah Champion:** Mr Gabriel, do you believe the provisions in the Bill covering landlords and the new responsibility of landlords to effectively become immigration experts are going to put a strain on community relations and perhaps lead to more discrimination?

**Stephen Gabriel:** We speak to landlords on a daily basis. Some of the landlords are not saying that they feel it is an extra burden. The point was made earlier that some landlords have already been looking for and taking information such as copies of people's passports or other forms of identification, so the good landlords would have been doing checks anyway. Also, some landlords have said that where they felt a bit nervous about asking for proof, the pilot gave them a legitimate reason to ask for and get that information before they could move further with any contracts.

A point was raised earlier about the indigenous population having access to identification, and that could be a challenge. As we know, migrants or asylum

seekers who are looking for accommodation will normally come with the relevant documentation. I think there is a point around the indigenous population having the right documentation. As was raised earlier, if two people come along at the same time and one has the documentation but the other does not, the landlord is likely to go with the one who does.

**Q150 Sarah Champion:** As you said, good landlords are going to welcome this because it gives them more support to ask for documents to prove legitimacy and protect their tenancy. The group that I am concerned about are the accidental landlords, who just see this as another burden when they did not particularly want to be in this situation, and who may withdraw themselves from the market. I am concerned about the potential for bad landlords to fill that gap, offering substandard accommodation and not asking for the right documents, so that people could fall off the radar and people who choose to fall off the radar could go even further off.

**Stephen Gabriel:** Bad landlords have always been out there. Even with the introduction of this legislation, in the area that I cover in Sandwell, we are still picking up landlords who are not fulfilling their obligations. I talk about the grey economy of landlords, and I think there is still a lot of work to do to identify those landlords. In Sandwell, we have undertaken a proactive approach for one of our neighbourhoods that we know has a high turnover of newcomers. We are finding some real challenges in relation to the quality of properties that people are living in, particularly properties above shops. We have tried to go there with colleagues from environmental health and housing to take a holistic approach to those buildings, so we can get up and see what is happening above the shops. We found on one occasion two elderly people aged over 80 living in a property that I would describe as—well, not very nice.

**Q151 Sarah Champion:** Unfortunately, I have areas like that with private landlords, and those properties tends to be occupied by migrant workers but also trafficked people coming over. What could be in this Bill that is not there already to target those bad landlords?

**Stephen Gabriel:** From my perspective, it is about what we do on the ground operationally and how we work with our enforcement colleagues. We have now opened up the channels of communication with the Home Office and the Gangmasters Licensing Authority. We have undertaken one joint enforcement activity in Sandwell, and other enforcement activities are coming through now. I am also aware that across the other authorities affected by the pilot, the increase in that relationship in sharing information, sharing data and going out on joint enforcement visits has really raised the profile of the work that we are doing among landlords.

Another thing is how we raise the profile among tenants. One of the things that we have done in the region is recently to launch a mobile app, which is called "Check Before You Rent". One of the questions in the app is: is your landlord accredited, and have they asked you for any information about the immigration checks?

**Q152 Mims Davies:** I must declare an interest in the road safety aspect, because that is an area I have worked in previously. Chief Superintendent Snelling, in terms

of people killed or seriously injured, have you identified communities where there is a difference in the culture regarding drink or drug-driving? Have the police identified that as a concern?

**Chief Superintendent David Snelling:** In wider issues such as drink and domestic abuse and domestic violence, we have identified some communities that are more prone to that. That would be the remit of a local police chief superintendent. I am Sutton borough commander, so I have a good idea of the make-up of my communities within the area that I police. Were there to be specific community concerns or tensions, we would seek to look into it either through education or through enforcement.

On the road safety side, in Sutton we are working closely with Transport for London to raise awareness of safety among schoolchildren. For the wider population, we would hope that the provisions of the Bill would be widely publicised. As I have highlighted with the scenario for stopping, we have run certain operations nationally with the immigration service and we have worked with them to target areas of concern. They, like us, would be feeding into their community representatives to ensure that they would have an understanding of why we have exercised those powers.

**Q153 Mims Davies:** Have you identified a spike in certain areas where people have been killed or seriously injured by people who do not have the right documentation or perhaps the right driving licence or insurance?

**Chief Superintendent David Snelling:** The short answer is no. We would tend to look locally at some of the problems. For example, in London I am aware that there has been a recent slight rise in the number of failed to stop collisions. We tend to think the reason for that is because people did not have the appropriate driving licence or insurance, which is why they would not stop. Again, some of our work would be reactive and some would be proactive.

**Q154 Mims Davies:** Finally, in terms of people identified and the information that you highlight, is this a timely piece of legislation?

**Chief Superintendent David Snelling:** I think there is an area, yes, that we could address—some areas that would tighten up some of the current provisions. Although the police have not asked for the authority, working with the Home Office I can see where that could assist us.

**The Chair:** We are just over halfway through this session. A brief supplementary from Keir, and then I will come to Byron.

**Q155 Keir Starmer:** Chief Superintendent Snelling, can I come back to you on a different aspect of driving? The proposed offence is driving a motor vehicle when a person is not lawfully resident in the UK. As I understand it, that means that somebody who overstays can commit the offence once they have lost their lawful right to be resident in the UK. In other words, you can have someone who is entitled to drive, has a valid driving licence, proper insurance and so on, and then on a

certain day, if they overstay or go beyond their permitted residence here, they have become a criminal offender for driving a car. Do you know—if you do not, tell us—in such circumstances, is their otherwise valid insurance immediately invalid, so that they are also an uninsured driver?

**Chief Superintendent David Snelling:** The short answer is no. I think we would need a detailed approach to the insurance company. We often find at the roadside that some of the provisions of the legislation would still allow them to be covered as far as the legislation is concerned, although other offences may have been committed.

**Q156 Keir Starmer:** Do you know what the situation is here?

**Chief Superintendent David Snelling:** I have not looked into it in enough technical detail.

**Q157 Byron Davies:** Mr Snelling, leading on from the Minister's questions—it is perhaps a little out of context now—on this fear about the stop and search issues, do the immigration authorities have access to the police national computer? Can they flag up on the PNC whether somebody is an illegal immigrant?

**Chief Superintendent David Snelling:** I am afraid I do not have that level of detail about immigration authorities' access to the police national computer.

**Q158 Rebecca Harris:** I would like to go back to the question of discrimination in housing. Mr Gabriel, you said something quite interesting, which was that you found that quite a lot of tenants quite liked the idea that they would have to be asked for documentation—they would not have that awkwardness, because it was mandated. I noted, looking at the findings of the report into the trial, the mystery shopping survey found that a higher proportion of black and minority ethnic potential tenants were asked for their documents, but in the ultimate findings a higher proportion of them were given tenancies compared with white British. Does that make any sense to you? Does that surprise you? Can you give any interpretation of that?

**Stephen Gabriel:** Just to clarify, my point was about how landlords felt that, with the legislation coming in and the right-to-rent pilot, they then had the ability to ask the questions, not the tenants. In relation to discrimination, I think the point that I made earlier, the issue around the indigenous population is the biggest thing. If you have got the requirement—the passport or the driving licence—you are less likely to be discriminated against than someone who has not.

**Q159 Rebecca Harris:** So it could be beneficial in that regard.

**Stephen Gabriel:** Yes.

**Rebecca Harris:** Thank you.

**Q160 Craig Whittaker:** Mr Gabriel, you mentioned the grey economy of landlords and spoke about more collaborative working. I think you touched on the issuing of notices of compliance and things such as that. Do you feel that you already have sufficient powers to deal

with the grey economy? Would you say that the powers in the Bill around the checks that landlords have to do will actually overall enhance your job regarding that particular economy?

**Stephen Gabriel:** There is more that we can do around trying to understand where the grey economy is, but I think that the Bill and the work that we have been doing go some way to beginning to address that—in particular, the collaborative working between organisations. That is the point to be made here. Previously, it was very difficult for local authority enforcement teams to work with the Home Office and the GLA, but now there is a real impetus for us to work together to deal with some of these enforcement issues, and we are seeing that on the ground.

**Q161 Craig Whittaker:** So the new powers in the Bill, around the landlord checks, for example—will they enhance that role as well?

**Stephen Gabriel:** That is right, yes.

**Q162 Gavin Newlands:** Mr Gabriel, the Bill removes support for a majority of failed asylum seekers. Do you have concerns that through this aspect of the Bill, the Government are in effect devolving to local government responsibility for the support of refused asylum-seeking families through its responsibility to accommodate children? At this time of great restraint in local government funding, do you feel that this is an area that might be looked at again?

**Stephen Gabriel:** It is a challenge. One of my concerns in Sandwell is that we are part of the West Midlands strategic migration partnership and there is the need for local authorities to have parity in numbers in the families whom they are supporting. Yes, in Sandwell our percentage is higher than in some of the other local authorities in the area, so if the Home Office stops supporting those families, that will potentially have a negative impact on the local authority. That could be a challenge for the local authority.

**Q163 The Chair:** We have approximately seven minutes. Does anyone else want to ask a question?

**Q164 Rebecca Harris:** Mr Gabriel, I often find quite a lot of anger from people who are waiting on housing lists, because they have a certain conviction in their own minds that people are getting housing ahead of them, whether private rental or whatever—that they are being squeezed out of the market because of vast numbers of illegal immigrants, whether that is true or not true. In your professional opinion, do you think that the measure will give people more reassurance that there is not that injustice, and that they will know that it is not possible?

**Stephen Gabriel:** The ability to carry out the checks and to be seen to be doing more to make sure that those members of the community who do have a right to stay here are being checked from a housing perspective is a tool that will allay some of those fears, I think.

**The Chair:** Do any other Members wish to ask questions? If there are no further questions, I thank both witnesses for their evidence, and we will move on to our final panel. Thank you very much.

## Examination of Witnesses

*Ilona Pinter, Kamena Dorling and Adrian Matthews gave evidence.*

4.10 pm

**The Chair:** Good afternoon. We will now hear oral evidence from the Children's Society, Coram Children's Legal Centre and the Office of the Children's Commissioner. As I indicated, this is the final panel, and we can go up to 5 pm. May I ask the witnesses to introduce themselves for the record?

**Ilona Pinter:** I am Ilona Pinter. I am policy adviser at the Children's Society and co-chair of the Refugee Children's Consortium.

**Kamena Dorling:** I am Kamena Dorling. I am head of policy and programmes at Coram Children's Legal Centre and co-chair of the Refugee Children's Consortium.

**Adrian Matthews:** I am Adrian Matthews. I am the policy adviser to the Children's Commissioner for England on immigration and asylum-related matters.

**Q165 Sarah Champion:** To all of you, please—if you could answer briefly—what do you perceive to be the risks for children's welfare of the provision to remove support from families who have been refused asylum under clause 34? May I start with Ms Pinter?

**Ilona Pinter:** We think the risks for children from this provision are very serious indeed. Essentially, it would see families becoming destitute—they would no longer have accommodation and financial support under asylum support. That obviously brings with it a whole range of risks, from families being street homeless to families having to move around, potentially for short periods of time, to stay in potentially unsafe accommodation. The research broadly, including the Children's Society's research, shows that children who are currently destitute are at a heightened risk of being exploited, as well as at risk of remaining in circumstances where they are facing domestic violence. Obviously, some of the evidence that currently exists from serious case reviews highlights the real child protection risks for children of having no support.

**Adrian Matthews:** Could I add that some families will no doubt go into the woodwork? That actually creates all sorts of problems, because parents will then, in order to feed their children, resort to very unsafe practices—unsafe childcare practices and unsafe working environments, and so on and so forth. The other effect is very clear: a lot of families will turn to local authorities for support, and whether they are given that support or not I think is almost immaterial in the end. The fact is that it will massively increase the burden on local authorities in terms of processing applications and claims from families who are destitute and street homeless.

**Kamena Dorling:** I would echo what both Ilona and Adrian have said. A key concern is, as Adrian has mentioned, this shift of the burden on to local authorities. We are already seeing local authorities struggling to support the number of families currently in the UK with no recourse to public funds. This would look to increase that pressure, and one of the results we are seeing of that pressure is very low levels of support for families that are turning to local authorities, if they are getting anything at all, but also quite high levels of gatekeeping, where often families are turned away anyway.

Then we are just going to see either children visibly destitute and homeless or going missing entirely from services, and that will presumably have a knock-on effect on their access to education, access to healthcare and all the problems that we are already seeing for children in families who are undocumented at the moment.

**Q166 Sarah Champion:** Looking at current practice, from your experience, how are children's best interests currently being assessed by the Home Office? How would this play a role in a decision to deport a family under the clause?

**Ilona Pinter:** The first thing to say is that there is currently no mechanism by which children's best interests are decided, considered or assessed. That has implications not only for support, but for how families' substantive decisions within the asylum process are taken into account. The United Nations High Commissioner for Refugees did a piece of research in 2013 that highlighted a lot of failings where children's best interests under the protection claim were not considered, which has consequences down the line. The Home Office's own evaluation of the family returns process highlights that most families involved in the process feared returning home. Reasons include families fearing what will happen to them and their children if they are returned. We believe that the provision to end support for families to encourage them to go home will not work, because they still have those remaining fears about the consequences.

**Adrian Matthews:** The current practice of Home Office decision makers in taking into account the best interests of children is patchy, to say the least. We had a good example last year that we were involved in as the Children's Commissioner, in which the Home Office had removed a mentally ill Nigerian mother with a six-year-old who had been born here. She did not survive in Nigeria. She only survived through the foster parents, who had been fostering the child for six months and supporting her while the legal process was going on in the UK. Eventually, the upper tribunal decided that the Home Office had acted unlawfully in not taking into account the child's best interests and returned the family to the UK.

**Q167 Sarah Champion:** So building on that, the potential in the Bill to deport before appeal presumably raises concerns.

**Adrian Matthews:** Yes, exactly.

**Kamena Dorling:** I was going to say that when we look at a range of provisions within the Bill, there appears to be an assumption that children's interests will be considered as a matter of course. From our day-to-day practice and at Coram Children's Legal Centre, where we represent children and families in such situations, at best we get lip service paid to children's interests. Quite often, there is no detailed analysis of how any immigration decision would affect a child in a family or on their own, which is really concerning. There is a huge absence here both when we are talking about changes to support for families in the asylum system and when we are talking about the extension of the deport-first appeal. Children are absent from later provisions. There is no consideration of the impact on children.

**Adrian Matthews:** I would very much like to echo that. One of the most serious aspects of the appeal provisions is the test of "serious and irreversible harm"

but that is applied to the person who is to be removed, excluded or refused entry, depriving the child a voice in proceedings. Under the current arrangements, in an in-country appeal under article 8 human rights grounds there is at least the potential for the child's voice to be heard. The change specifically excludes children who are settled or who are UK citizens from having a voice in the proceedings about how they will be affected by the removal or exclusion of a parent. That is a serious concern that engages the UK's obligations under the United Nations convention on the rights of the child, particularly article 12, which requires the state party to allow the child to have a voice in such proceedings.

**Q168 Sarah Champion:** The Government believe that they are compliant with the European convention on human rights and that there is no conflict with any children's legislation. You would disagree with that.

**Adrian Matthews:** I would not agree with that.

**Sarah Champion:** Okay. To the rest of the panel, do you think that the legislation complies?

**Ilona Pinter:** It is notable that on the provision to withdraw asylum support, for instance, there is no mention of the section 55 duty on the Home Secretary to safeguard and promote the welfare of children in relation to all of the functions, including asylum support. There is no mention of how many children would be affected specifically by that provision.

**Kamena Dorling:** If we look broadly at the UN convention on the rights of the child, as has been already mentioned, article 12, which is about the voice of the child, is key, but so is article 3, which requires us to take the best interests of the child as a primary consideration. We have had a number of cases go to the Supreme Court on that, and we have got very good guidance from the Supreme Court about how the interests of children should be examined.

One of the findings of the Supreme Court is that children should not be blamed for the actions of their parents. Again, what we seem to see in this Bill is this idea that any immigration behaviour that is deemed undesirable can result in a policy of forced destitution, for example, which seems to me a very stark means of punishing children for the action of their parents. So there are a number of concerns.

**Sarah Champion:** To reassure the panel, I will point out that we are blessed with a Minister who has always been a child advocate and campaigner, so I am sure he will look very closely at these matters.

**The Chair:** I am sure that was put on the record.

**Q169 Keir Starmer:** I have a question for all members of the panel, which really follows on from that point. In your experience and with your background, can you think of any circumstances in which the Home Office could argue that it was in the best interests of the child to remove support? Did the Home Office ever make a decision that it was in the best interests of a child to remove support?

**Ilona Pinter:** I think it is difficult to say that by specifically removing support, if there are no other mechanisms, that children would be protected. There are obviously some circumstances—a lot of the cases

that we deal with are very complex—in which there are child protection issues. However, that would need to follow child protection proceedings. We do not believe that removing support from families will be an effective way of getting families to leave the country, and that has been shown through evidence time and time again, through the Home Office's own evaluation.

**Q170 Keir Starmer:** Perhaps I should just nuance the question. Are there any circumstances where support is removed in which the same support, or similar support, is not simply picked up by another agency that could ever be argued to be in the best interests of the child? Obviously, if things just swap to another agency and somebody else just picks up the bill and provides the service, it is a bit of a pointless exercise.

**Adrian Matthews:** Well, it either swaps to another agency or the parent puts themselves in a precarious position in order to support the child. So I think that the short answer to your question is no, there are not really any circumstances in which withdrawing support is in the best interests of the child.

**Kamena Dorling:** But of course what this Bill is trying to achieve, as I read it, is to increase the numbers of families returning. What we are trying to advocate is that we have a family returns process, so why not put more effort and resources into increasing the capacity of that process, through which ideally families might return? Then at that point you would be withdrawing support, because you would have already put steps in place for them to depart the UK.

**Adrian Matthews:** To reinforce that, if you read the reports of the independent family returns panel you see that there is quite a lot of evidence that there has been a vastly greater uptake of the voluntary return packages that are available through consistent and careful engagement by family engagement managers with those families, addressing their fears and so on and so forth. That is a much more realistic, and in the end productive, way to go, rather than simply using punitive methods of withdrawing financial support and accommodation.

**Q171 Keir Starmer:** Thank you. I have a similar question in relation to the proposal on appeals, which is “remove first, appeal later”. Can you think of any examples where it is in the best interests of the child to remove first and appeal later?

**Ilona Pinter:** The difficulty is that, as I said before, there is not a best interests determination process, so we do not know what the best interests of the child are. However, that is not the same as saying that families or children should never be removed; that is not our position. Our position is that if you do not know what the best interests of the child are first, how can you do that balancing? There are obviously lots of circumstances in which it would be fine for families to return to their country of origin, and even children who have been born in the UK and grown up here would be able to adjust to another environment. It is not about never being returned but about how the process is best dealt with. To engage with children's welfare there needs to be a conversation with families. As Adrian said, the returns process is working. The first report of the family returns panel showed that around 50% of returns did not need an ensured return. The next time the panel reported,

76% of returns did not need an ensured return. Families are co-operating, but there is a need to address those barriers to return, and that can be dealt with only with co-operation with the families, through working and engaging with them.

**Q172 Keir Starmer:** To be clear, absent that co-operation and support, in a simple case of deport first and appeal later, is your answer as I understand it, namely, that it is simply impossible to assess whether deportation is in the best interests of the child because the exercise is never carried out?

**Adrian Matthews:** I would add one thing. There are enormous practical difficulties in appealing from abroad, particularly for families who have been destitute in the UK. They will be going back with virtually no resources at all; questions about how you organise an effective appeal from abroad in those circumstances need to be answered. But I do not think it will be, because once they are out of the country, they are out of sight and out of mind. Appealing from abroad is a really tricky problem.

**Kamena Dorling:** Presumably you can envisage a situation in which there is a mind to remove a parent or a family from the country so that they can appeal from abroad, and we would move the family unit as a whole. That might not be detrimental to the child. Families move all the time. I could remove my son from the UK with me and that would still be in his best interests. I go back to the point that we do not have an assessment of the impact on the children so we do not know.

**Ilona Pinter:** To put this into a little perspective, one thing that is often overlooked is that deport first, appeal later is going to affect a range of families, including those in which the children are British, those who have status, those who do not have status or those who have an irregular status. We know from the University of Oxford that 120,000 children are undocumented in this country and over half of those were born and have grown up here. Many will not have the language of the country that they are being returned to; they may have never been there, as they have grown up here. Effectively they will be going to a country to which they have never been before.

On the point about British children, which is important, we have had cases in which families have been removed where we believed that the children were British. Because there is no system for finding out the best interests of the child, or even for checking details such as whether the child is British, or whether they would be stateless if returned, there is a real risk that those families would be removed and find themselves in very difficult circumstances.

**Q173 The Solicitor General:** You are making an assertion that the best interest of the child is not part of the consideration of the decision maker—for example, in this provision relating to certification of whether a deport first, appeal later procedure should be adopted—but is that actually right? Is not the evidence that, on a case-by-case basis, each individual family situation will be assessed? There may be occasions when it is in the best interests of the whole family to deport the entire family, and there may be instances when it is better for the child to remain in the UK while the subject of the application is deported. Is it not really an issue of

looking at matters on a case-by-case basis, rather than the blanket suggestion that the best interests of the child simply do not come into it?

**Ilona Pinter:** I think we agree that it is on a case-by-case basis. We are saying that there is no assessment of children's best interests. The UNHCR report highlights strong examples in which children's best interests were not taken into account in the decision making.

**Q174 The Solicitor General:** Forgive me, but that is different, is it not? There may be some cases in which the view of the Commission is that the child's best interests were not put front and centre, but that is different from saying that there is a blanket approach of not taking children's best interests into account.

**Adrian Matthews:** There are cases, clearly, where it may be in the child's best interest for the parent to be removed from the country—for example, if the child is affected by domestic violence. That takes individual consideration but, excluding those cases—the UN convention covers this—it is normally the case that it is in the best interest of the child to be brought up by both parents unless it is in their interest not to be. The sorts of circumstances you are envisaging would address that. Of course, decision makers will need to look at those factors but, in general, it is in the interest of the child to be brought up by both parents. We recently did some research on the family migration rules, and I was genuinely shocked to find out that missing parents for what might be considered, from an adult point of view, a short amount of time—a matter of months, but sometimes years and sometimes longer—has a profound effect on young children at a time of their life when they are forming bonds with their parents. It is essential that the state does not interfere with those early things, because that could be what you would regard as irreversible and serious harm.

**Q175 The Solicitor General:** Which means that sometimes it will be in the interest of the family for the entire family and the children to temporarily leave the country together.

**Adrian Matthews:** It may be, but that would be very circumstance dependent. Of course, the immigration authorities have no power to remove a British citizen from the country. That might be in the family's control, and families do make decisions to do precisely that.

**Kamena Dorling:** I think it comes down to a question of the current decision making that we see. We are not saying that there is a blanket disregard. I just do not think that in a lot of decision making there is meaningful engagement with what effect a decision will have on a child. As we have seen in guidance from the Supreme Court, you are first meant to assess what is in the best interest of the child before looking at competing considerations. No other considerations, not even immigration control, automatically trump what is in the best interest of the child. We do not really see that level of engagement in decision making; we see what I would call lip service: "We have a section 55 duty. Obviously we have considered this and it is fine." I am paraphrasing, obviously.

There needs to be more onus on proactive assessment, and we have provided a case study in which the child was actually British—we were looking at the decision to remove that child—and because the mother could not

show evidence that the child was British, she was going to be removed with that child. It was only in the process of the in-country appeal that the tribunal ordered the Home Office to look into the status of the father. It was then confirmed that the child was British and should not be removed. It is about that kind of proactive engagement.

**Adrian Matthews:** Part of the weakness of the system—you might be right that there is some consideration of the best interest of the child subject to immigration control—is that there is no consideration of the best interest of the child who is not subject to immigration control. That could be a settled child or a British national child. The decision-making process, because it is geared towards immigration, is not set up to look at the wider effects. A clear example is that the Home Office does not know how many children are affected by the family migration rules. It does not know how many British children and settled children are affected by the exclusion of a foreign national parent. The Home Office does not count them.

**The Chair:** That was an interesting and important exchange. I am conscious that Simon has been waiting patiently, and then I will bring in Anne, Craig, Mims and Kelly.

**Q176 Simon Hoare:** I have two questions that I hope you can deal with reasonably quickly. The first might just be a yes or no answer. Do you understand the rationale and the public demand that sit behind this Bill?

**Adrian Matthews:** Yes.

**Kamena Dorling:** If it can be yes or no, then, yes, I understand.

**Ilona Pinter:** *indicated assent.*

**Q177 Simon Hoare:** We heard from Lord Green and I think one or two others that people who are seeking asylum or refuge in this country are usually pretty well linked in terms of communication and understand what is going on through the use of mobile telephones or established relationships with friends or relatives already in the country. So they know broadly what the new "regime" is going to be all about. If that is the case—I will be interested to know whether you dispute that—casting forward to the future again, someone would know that under the criteria they are bogus, for want of a better phrase, and would know that their application could not be successful, because they do not qualify under any criteria. So why would a caring or loving parent want to put their children through the mill of being destitute while they are trying to prove a point that they know is unprovable? I appreciate that it is a different kettle of fish for those who are here now, but as a signal for the future I wondered whether you think that parents, irrespective of where they come from, would be prepared to put their children at risk in order to make their point.

**Adrian Matthews:** It took me a number of years of studying law to understand the asylum process. I think the assumption that parents are well acquainted with the rules and regulations is very overstated. If you go to the camps in Calais at the moment there is absolutely no information about the British asylum system. Lawyers who have been there have found that people are really

misguided and really do not have a sound understanding of what they are coming to when they intend to come to the UK.

**Ilona Pinter:** I agree. The idea that people know what they are coming to is not realistic. It is certainly not the experience that we have with the families that we work with. Actually, they are incredibly vulnerable and the fact that families would remain here destitute, rather than returning, is a sign of the difficulties that they would face being returned. Again, this is highlighted in the evaluation of the family return process—most of the families cited fear of return as one of the issues. It was shown that financial incentives and reduced re-entry bans were not helpful in persuading families to leave, because they had an overwhelming sense of what the risks would be for them and their children. While I appreciate the public rhetoric around this, the reality is very different for these families. They are willing to survive on so little because of the risks that they face if they return.

**Q178 Simon Hoare:** Risks in their judgment though?

**Ilona Pinter:** In their judgment, of course—but in that respect they are doing what they believe is in the best interests of their children, because they believe at the end of the day that remaining in the UK will give their children the best life chances. Whether that is an accurate interpretation is debatable, but that is what they believe, and it is not about—as it is often characterised—trying to frustrate the system. What we see are very desperate families trying to do the best by their children.

**Kamena Dorling:** I agree entirely. It is not our experience that families and children arrive in the UK with any kind of detailed knowledge of the asylum system, nor with a detailed knowledge of the asylum support system. We certainly do not see people coming here simply for that level of support.

I wanted to add a little bit, because I think it is an important point about the rationale and the public drive behind the Bill. Presumably, in wanting to respond to that, we want changes that will bring in the change that the Bill purports to be introducing. One of the points that we have made is that taking away asylum support from families has demonstrably been shown not to incentivise them to leave the country. You make children destitute and homeless, but you do not achieve your intended aim, which is for more people to leave the UK. If we accept that—and the Home Office has conducted its own evaluations that show that—all we see, really, is punishing children for their parents feeling that it is best for them to remain in the UK. I think that that is problematic. If we have legislation, we want it ideally to achieve its purpose.

**Adrian Matthews:** I would echo that. I think it is an absolutely legitimate aim of the Government to remove failed asylum seekers if they have been through a fair and proper process. That is it, really; I do not have anything to add to that. It is simply about the method that you use to go about it. I sincerely believe that what is proposed in the Bill is not going to achieve the Government's aims, and that there are better ways to do it through an established and workable family returns process that has proved that it is capable of increasing the take-up of voluntary departure, which is greatly preferable to enforced removals.

**Q179 Anne McLaughlin:** I presume that you will continue to campaign and lobby against parts of the Bill. From what you are saying, one of the biggest things for all of you is the inclusion of children in the groups that will not receive support if their or their parents' asylum claim has been refused. I do not know whether you were watching earlier, but I wanted to alert you to the fact that you have a supporter in Lord Green of Migration Watch UK. I think he is quite a valuable supporter to have, given that he did not seem overly keen on having too many asylum seekers in the country. He seemed quite surprised that children might lose support. He said we have to make a distinction between those who have children and those who do not, and that they would have to be treated differently. If I were you, I would contact him and get him to support any campaigning that you are doing.

I wanted to ask whether you agree with me that rendering families destitute will shift the financial burden not simply on to local authorities and charities, but on to the health service. I am not sure what the situation is in England these days, but I know that in Scotland, those who have had their asylum claims refused can access free healthcare. I do not know whether it is the same here, and I do not know what Wales and Northern Ireland are like. Do you agree that the health of these families will be so significantly impacted that there will be an increased cost for those services that provide healthcare?

**Adrian Matthews:** And not only to the families. There is a public health issue if you deprive the children of the right or the means to go to hospital or to visit their GP, or if their parents are too scared to do so. That public health issue affects all of us, not just the families.

**Ilona Pinter:** I agree. This was the subject of the previous Immigration Bill, where issues around health were debated at length. Like immigration control, public health is a public interest, as are child protection and international protection. There needs to be a review of those and more debate, particularly around other public interests.

Costs shift to health services. We already see in families who are awaiting their asylum decisions, particularly where parents have poor mental health because they have suffered trauma already and because of the pressures that the immigration process brings to bear on them, parents being sectioned under mental health provisions and children being taken into temporary foster placements as a result. One of the ways in which costs could shift to local authorities is through children being taken into care. If families are made destitute and parents have to rely on working without permission, provisions in the Bill will mean that the parents will be criminalised, which will again mean that children need to go into care. There are other considerations to take into account.

**Adrian Matthews:** I understand you are going to be hearing from local authorities and they will evidence the fact that during the section 10 pilots in 2004-05, a number of children were, in fact, taken into care as a result of what the Government were attempting then, which was to withdraw support and accommodation, so it does not work.

**Q180 Craig Whittaker:** I want to come back to the Minister's earlier point. The point about assessment is that the children's best interests forms a part and is an

integral part of that process. I think it was Kamena—I apologise if it was not—who said children should not be blamed for the actions of the parents. However, they are in this situation because of the parents. For those families who have exhausted their appeals rights, those who could and should leave the UK, how long do you feel we should give support? Do you think it should be indefinite?

**Adrian Matthews:** It has to be case sensitive and based on the best interests of the child. Take, for example, a child born in this country. If you are going to send them back to another country, they will need to be returned with certain things that can prove their identity—establish or re-establish their identity—so they will need an original birth certificate and their medical records; they will need documentation from the embassy to show that they have legitimately travelled from the UK to the country of return. All these things are case sensitive. A lot of different factors would need to be taken into account. So I do not think there is an answer to your question in terms of a set time or limit. It has been done on a case-by-case basis.

**Q181 Craig Whittaker:** Sorry to cut you short, but the Minister has already made it clear that it will be done on a case-by-case basis. My question to you is: when families that include children get to the point where they should leave the UK, how long do we continue to support them? Indefinitely? Until they decide to go? I am a little confused by what you say.

**Adrian Matthews:** In the system currently in operation, families are given a lot of opportunities. They are encouraged to take up voluntary return and they go through various stages. If they do not, there is a required return stage where they are given a ticket and are expected to turn up at the airport. If they do not do that, they enter a stage of enforced return, so they will get a visit from the immigration service, who will take them from the house and to the airport, or take them to Cedars, pending their return. So the answer to your question is that we already have structures in place to ensure families get removed if they come to the end of the process.

**Ilona Pinter:** On the returns process, one helpful point might be that at the moment there are set time limits between family conferences, but information from Barnardo's, for instance, highlights that for families that go through the returns process, it can take around a year for those families that go through Cedars. There are other estimates for how long it can take.

We do not advocate for families being on asylum support any longer than they need to be. Asylum support is incredibly low at £5 a day per child, and it has been reduced recently through regulations. Children are already living in very difficult circumstances. It makes it very difficult for families to afford food and clothing and be able to take care of their children. Also, parents cannot work on asylum support, so it is in the interests of children to be taken off asylum support as soon as possible either by families having their determination and being able to integrate or move into employment or other benefits, or, if they do not have a right to remain and if there are not risks for them on return, making that process as short as possible.

**Q182 Craig Whittaker:** But if they are going through the returns process, one would presume that it has already been determined that they need to leave the UK.

**Ilona Pinter:** This is the problem that we have tried to highlight. A lot of the families come to the end of the process, but because they have not had a fair chance to have their claim considered, they have existing fears of return. That is highlighted by the fact that 40% of families that entered the family returns process are actually granted leave to remain. It means that families are not getting proper access to legal advice. They are not having a proper chance to have their claim considered, and more needs to be done on improving the decision-making process in the Home Office.

**Q183 Craig Whittaker:** So it is more about the decision-making process, rather than what is in the Bill, which proposes to remove them or cut off the support once a decision has been taken. Is that correct?

**Ilona Pinter:** I am not sure what you are asking.

**Q184 Craig Whittaker:** What you are saying to me is that it is more about the robustness of the decision-making process rather than the elements in the Bill that say that once you get to the end of that process, we pull support.

**Ilona Pinter:** Yes.

**Q185 Craig Whittaker:** If the decision-making process was robust, you would support this process?

**Ilona Pinter:** We would not support making families destitute, no.

**Craig Whittaker:** But that is not what I am asking; I asked you a specific question.

**The Chair:** Craig, Ms Dorling is trying to respond.

**Kamena Dorling:** I think it might address the question as well—

**Craig Whittaker:** No, I do not want to adjust the question. I want the question answered; it was very specific.

**Adrian Matthews:** If we have robust decision-making—

**The Chair:** Order. One at a time, please. Ms Dorling is being patient.

**Kamena Dorling:** There are two things that need addressing. One, as Ilona has addressed, is the decision-making process at the beginning of the asylum process. The other is how families are engaged with at the end of the process. We are advocating that more energy be put into that family returns process. I appreciate that we do not want a situation whereby families are on asylum support indefinitely, but if they are part of that process and they are being worked with, either through assisted voluntary return—although funding is being cut for that—or through the family returns process, of course, they should be supported within that, and there are timescales as to how long return takes. I suspect you are talking about the families that do not engage with anything at all, which is a very tricky area, and I am not sure that we have cracked it, but given that we know that cutting off support will not encourage those families to return, it seems more practical to think how we would engage with those families.

**Q186 Craig Whittaker:** What I am getting at is that a process is in place, which families will go through. I understand and accept that you are arguing that the process is not robust enough, but the great British public cannot understand, once a decision is made to deport somebody in this country, why it takes forever to do so. Let me just ask this question: what is a reasonable time that people should expect it to take for someone to be deported forcibly?

**Kamena Dorling:** I do not feel I can answer that, but I do feel it is a question to go back to the Home Office, because there is an enforcement question there, is there not?

**Q187 Craig Whittaker:** The Home Office has come up with the Bill and that is why I am asking. You do not think the Bill is acceptable.

**Kamena Dorling:** But we know that the great number of people who are here in the UK, who the Home Office believes should not be here, are not being removed by the Home Office. The independent chief inspector of borders and immigration has already pointed to the fact that that enforcement process is not working well enough. I am not sitting here advocating that families are all removed immediately, but I think there is a question there. We are saying put more energy into the family returns process and assisted voluntary return, but also that there is something for the Government to think about, which is that if you think that more families need to be removed, then address enforcement. Do not just withdraw support in the hope that they will go. That does not answer your time issue, because I do not know how long that should take.

**Craig Whittaker:** Does anyone—

**The Chair:** I am sorry, but we are going to move on now. A number of people are indicating that they want to speak. I have Mims and Kelly down, but the Minister and Sarah want to make a brief intervention on this point.

**Q188 The Solicitor General:** I was interested to hear the point about engagement in the process of deportation. Would you agree with me that there is an opportunity to do that, because people who are in a position of having had their leave refused and their asylum-seeking status rejected can apply for an extension of support from the Home Office, if they show that there is a genuine obstacle to their being removed; for example, ill health or a failure by the home state's embassy or high commission to provide documentation? Do you think that mechanism is an opportunity for both sides to engage with each other, explore the obstacles and find a way forward that allows families to be deported?

**Adrian Matthews:** My understanding is that the precise conditions would be set by regulations. Is that correct?

**The Solicitor General:** Yes.

**Adrian Matthews:** It is very difficult to answer your question without seeing how those regulations will be set. The indication from the consultation was that they would be on fairly restricted grounds. You are correct that there was a mention of health but my experience is that—particularly where the Home Office engages with mental health issues—you are asking caseworkers to

make decisions on things that they are really not competent to make decisions about such as the mental health of parents. We end up with quite a lot of distressing situations where the mental health of the parent might be a genuine obstacle but it is not recognised as such.

**The Solicitor General:** Yes, but my question was: is it not an opportunity for both sides to look at the evidence and come to an informed decision? I agree that people cannot make decisions on mental health unless they have evidence in front of them. If there is evidence that the applicant has a mental health problem, that should guide the decision making, should it not?

**Q189 The Chair:** With a panel of three it is always difficult because each wants to give an opinion, so if we have one question to them, we will get the responses quickly. We only have four minutes. Two people want to ask questions and Sarah wants to make a brief intervention, so do not feel that you all have to respond to the questions.

**Ilona Pinter:** Can I make a point?

**The Chair:** Very briefly.

**Ilona Pinter:** The big problem is on decision making. The Asylum Support Appeals Project highlights that 65% of asylum appeals are successful. The section 95A provision does not have a right of appeal, so it will be very difficult for families to extend that grace period, which I think you are referring to. If the Home Office makes an incorrect decision, which happens often, families will not be able to challenge it. That is one of the big worries. Sorry, this is not short. This has not been set out yet. The Home Office proposes 28 days of a grace period. We think that is far too short. We have highlighted what we think it should be or, at least, some considerations and the evidence to take into account on what the grace period should be.

**Q190 The Chair:** We have three minutes. I will take the three questions and we will see how we get on with the replies.

**Mims Davies:** The issue that you see is the decision-making process and resources in terms of impact on potentially destitute families. I am really keen to know what level of families we are talking about. Are they clustered in certain areas? How much will that be a resource issue on other children in communities, where people are then putting pressure on those local resources because of these impacts?

**The Chair:** We will just take Sarah and Kelly, and then we will try to get some responses in two minutes, I am afraid.

**Sarah Champion:** The panel responded to all the questions by talking about families. Does the Bill have any implications for unaccompanied children?

**Kelly Tolhurst:** I represent a constituency in Kent, where the issue of unaccompanied minors has caused great pressures over the past 12 months. It is already a burden on the local authorities and the local people.

I wonder whether you think there are any measures that are not in the Bill that would discourage families from allowing their young people to travel here on their own?

**The Chair:** We are time-restrained. If you can give brief answers, I will bring all three of you in.

**Ilona Pinter:** Shall we answer all the questions in one go?

**The Chair:** Try.

**Ilona Pinter:** I am not sure about the question on geographical concentration but I imagine that there may be greater concentrations in the dispersal areas and urban areas, where most undocumented migrant families live and where there are more communities in which those families would get support.

The question about unaccompanied children is important. There is nothing in the Bill that says how unaccompanied children who come here, including care leavers—over 18-year-olds who would be subject to some of these provisions—will be treated. This is a really important point because, as the Bill is drafted currently, the deport first, appeal later provision could apply to care leavers who came here as unaccompanied children. These are children who have grown up here. They may be orphaned and they may be at risk—

**The Chair:** The third point—

**Ilona Pinter:** What was the third point?

**The Chair:** Okay, it does not matter. I will go on to Ms Dorling.

**Kamena Dorling:** I cannot answer very helpfully about certain areas, but of course you see families dispersed in the process of getting asylum support. So, with more knowledge about where those dispersal areas are, you could envisage that, when that support is cut off later down the line, those are the local authorities and regions that will be impacted more than others.

On accompanied children, as Ilona said, we are very worried that the extension of deport first, appeal later would affect those who arrived as unaccompanied children and did not get granted asylum but did get granted what was called UASC leave—temporary leave until you turn 17.5. There is huge concern there.

The other point I quickly want to make is that we have also raised concerns about changes to what is

currently called temporary admission and replacing it with immigration bail. There is a suggestion that, as part of that, that could include a prohibition on studying, which for children who arrive and claim asylum and have not had their decisions dealt with, for example, would mean that they would be here and unable to go to school or college or higher education. That is in our evidence, but it is another thing to raise.

**Adrian Matthews:** There are probably about 15,000 individuals, split between about 5,000 who are currently on section 4 support and about 10,000 who are currently on section 95 support. The section 95 support obviously includes parents and children. There is some information in the immigration statistics. I think they will have a disproportionate impact on Wales, which is one of the dispersal areas, and also on Scotland and some of the urban areas of England. That is the answer to that.

On your question about whether you can stop parents sending their children, if you look at the profile of the countries, with one or two exceptions the majority of unaccompanied children who come to this country come from the most war-torn and dangerous areas in the world—Afghanistan, Syria, Iran, Eritrea and so on and so forth. They are the big refugee-producing countries in terms of unaccompanied children. From their point of view, those parents are making the decision and raising the money to send their children here to protect their children's lives. Until we get changes in those countries, and they are more stable, I am afraid that those children will keep coming.

Are there provisions in the Bill that I am concerned about that have not already been mentioned? Yes. I am concerned about clause 30, on 3C leave, which is the extension you get when you are awaiting a further decision. That will have a disproportionate impact on unaccompanied children when they hit 18.

**The Chair:** The session started early and has finished late. I will take the rap for that. It was very interesting, and if there is anything that the panel feels they have not given us in their very technical answers, they can supply that to us in writing. I thank the witnesses for your evidence and Members for their questions.

*Ordered, That further consideration be now adjourned—(Charlie Elphicke).*

5.3 pm

*Adjourned till Thursday 22 October at half-past 11 o'clock.*

**Written evidence reported to the House**

IB 01 David Smith, Policy Director, Residential Landlords Association

IB 02 NSL

IB 03 Recruitment and Employment Confederation

IB 04 Coram Children's Legal Centre

IB 05 Tony Smith CBE, Former Director General, UK Border Force

IB 06 Scottish Federation of Housing Associations

IB 07 Adrian Matthews, Principal Policy Adviser, Office of the Children's Commissioner for England

IB 08 Immigration Law Practitioners' Association (ILPA)

