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Legal Aid, Sentencing and Punishment of Offenders Bill Committee Stage Report

Bill No 235 of 2010-12

RESEARCH PAPER 11/70 20 October 2011

This is a report on the House of Commons committee stage of the *Legal Aid, Sentencing and Punishment of Offenders Bill*. It complements Research Paper 11/53 prepared for the Commons second reading.

The Bill covers a wide range of issues and has attracted much controversy. It would narrow the scope for legal aid (taking many types of case outside its scope) and pave the way for changes to eligibility criteria. It would also change arrangements for litigation funding and costs. It would introduce new offences of possessing a knife and using it to threaten someone and causing serious injury by dangerous driving.

In the Bill's remaining stages, it is likely that the areas that will prove most contentious will be the restrictions on legal aid, the introduction of new offences and possible Government amendments on squatting and self-defence and sentences of imprisonment for public protection.

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Research Paper 11/70

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Summary

The Public Bill Committee on the *Legal Aid, Sentencing and Punishment of Offenders Bill* published its call for written evidence on 30 June 2011 and met for 16 sessions in Committee between 12 July and 11 October 2011. In its first four sessions, it took evidence from numerous witnesses.

At committee stage, several Government amendments were made to the provisions on **legal aid**, although these were for the most part minor and technical or intended (in the case of two amendments relating to those types of housing case that would remain within scope for legal aid) to remove anomalies in the drafting of the Bill. The Committee agreed technical Government amendments to the clause providing for **damages-based agreements**.

The only substantive amendment made to the Bill's **sentencing** provisions was the withdrawal of **clause 71**, which would have repealed the uncommenced provisions in the *Criminal Justice Act 2003* increasing the maximum custodial sentence that could be imposed by magistrates from six months to twelve. Justice Minister Crispin Blunt explained that the summer riots had prompted the Government to review the adequacy of magistrates' sentencing powers and, in that light, it was not currently appropriate to repeal the relevant provisions of the 2003 Act (although they would remain uncommenced for the time being).

In relation to **bail,** there was heated debate on the new "no real prospect of imprisonment" test set out in the Bill. An Opposition amendment to restrict this test to suspects accused of non-imprisonable offences was negatived on division. Crispin Blunt did, however, express general support for another Opposition amendment that would have given the prosecution a right of appeal against a decision to grant a suspect bail. He agreed to look at the issue further and hoped that the Government might be able to table relevant amendments to the Bill before it completed its Lords stages, although he was unable to give any undertaking that amendments would be ready in time to form part of this particular Bill. The amendment was withdrawn.

In relation to **offences**, the Committee agreed a number of Government amendments to **clause 113** relating to the new aggravated offences of using a knife to threaten or endanger another. The amendments removed the proposed defence for the person in possession of the knife to prove lawful authority or reasonable excuse for having the weapon with him. Crispin Blunt explained that the Government was concerned that the defence could theoretically have resulted in a defendant being acquitted if he could argue that his initial possession of the article or weapon was lawful, despite the fact he had subsequently used it to threaten someone.

The Committee also agreed a new Government clause to create a new offence of causing serious injury by dangerous driving, which would be punishable by a custodial sentence of up to five years. Crispin Blunt said this would fill a long-recognised gap between the existing offences of dangerous driving, which has a maximum penalty of a two year custodial sentence, and causing death by dangerous driving, which has a maximum penalty of a fourteen year custodial sentence. The new clause was generally welcomed by the Committee, although some Members suggested that a better way to proceed would be to increase the maximum penalty for dangerous driving to five years rather than introducing a new offence.

There were only a few technical and drafting amendments to the provisions on the **release and recall of prisoners, prisoners' employment** and **out of court disposals.** Debate on Opposition motions covered a range of issues, including the lack of probation supervision for prisoners released after short sentences, the way the Government's idea of a "working

prison" would operate in practice, and the removal of some of the safeguards from out of court disposals.

1 Introduction

The *Legal Aid, Sentencing and Punishment of Offenders Bill* had its first reading in the House of Commons on 21 June 2011, as Bill 205 of 2010-12, and had its second reading on 29 June 2011. The Government also published Explanatory Notes.

The Public Bill Committee published its call for written evidence on 30 June 2011 and the Bill had 16 sessions in Committee between 12 July and 11 October 2011. In its first four sessions, the Committee took evidence from numerous witnesses.

Library Research Paper 11/53, prepared for the second reading of the Bill, discusses the background to the Bill and some of the controversy it has provoked.[1] The Bill page on the Parliament website (where all the Bill documents can be found) provides more information on the Bill's progress, as does the Government's Justice website. Members and their staff also have access to information about the Bill via the Bill Gateway on the Parliamentary intranet.

This research paper broadly follows the order of the provisions in the Bill, although for brevity's sake it takes a thematic approach and concentrates on those areas which have proved most controversial, whether in Parliament or outside. Unless otherwise stated, clause numbers refer to the Bill as introduced into the House on 21 June 2011.

2 Second reading debate

2.1 Legal aid

Part 1 of the Bill deals with legal aid. Unsurprisingly, given the reception which the green and white papers had received, debate at the Bill's second reading was intense. Elfyn Llwyd (Plaid Cymru spokeperson for justice) argued that, like Alice in *Through The Looking Glass,* the legal system would move one step forward and two steps back; the legal aid reforms would not make it fairer.[2]

Although there was some support for the Government's view that going to court should be a last resort, many concerns were expressed about the Bill's effects on the weak and the vulnerable. Helen Grant (Conservative) remarked that legal aid spending could not be ring-fenced but "we cannot pull the rug from under the feet of 500,000 people who have no genuine alternative".[3] She also noted that many people might not have the ability to represent themselves in court. Nor would the courts have the resources to assist increased numbers of litigants in person. Telephone advice (as the Government was proposing) might not meet the need.[4] Julie Elliott (Labour) argued that "everyone deserves their day in court".[5] Heidi Alexander (Labour) distinguished between reforming an imperfect system and decimating it,[6] while Andy Slaughter (shadow Minister for Justice) argued that cutting legal aid for housing, education, welfare benefits, debt and family cases would be a disaster: the Government's own impact assessments had (he added) shown that women, children, disabled people and minority groups would be disproportionately affected and Ministers had been like Marie Antoinette in their response.[7]

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1 P Strickland, G Garton Grimwood, C Fairbairn, S Almandras, P Ward *Legal Aid, Sentencing and Punishment of Offenders Bill*, House of Commons Library research paper 11/53, 4 July 2011 (amended 15 September 2011)
2 HC Deb 29 June 2011 cc1025-6
3 HC Deb 29 June 2011 cc1015-6
4 HC Deb 29 June 2011 cc1014-5
5 HC Deb 29 June 2011 c1016
6 HC Deb 29 June 2011 c1050
7 HC Deb 29 June 2011 c1058

The Lord Chancellor and Secretary of State for Justice, Kenneth Clarke said that the Government was working to improve the effectiveness of the advice services available to the public and would provide up to £20 million in additional funding in this financial year.[8] Nonetheless, a number of Members voiced concern that the reductions in legal aid would impose huge strain on law firms, law centres and Citizens' Advice Bureaux. Shadow Lord Chancellor and Secretary of State for Justice, Sadiq Khan argued that the changes would have a huge impact on the viability of many law centres. Legal aid spending could (he said) save the state money through early solving of problems.[9] Sir Gerald Kaufman remarked that the law centres in his constituency were already struggling[10] and Jack Dromey voiced concern that people needing specialist help with problems would have nowhere to turn.[11]

Several Members expressed disappointment that the Government had not adopted the alternative proposals for savings put forward by the Law Society and Sir Alan Beith (chair of the Justice Committee) pointed out that the Committee, in its report on the Government's proposals, had suggested other ways to make savings.[12]

2.2 Civil litigation

Lisa Nandy (Labour) raised the issue of the funding of claims "for the victims of human rights abuses committed by UK-based multinationals operating overseas", citing as one example of this type of case, the Trafigura case in Ivory Coast. She expressed concern that the proposals on civil litigation costs would make it "virtually impossible" to bring such cases in the future.[13] In response, Justice Minister Jonathan Djanogly confirmed that conditional fee agreements would still be available for group actions against multinational companies.[14]

A number of Members noted that the Bill did not include measures to ban referral fees. Former Justice Secretary, Jack Straw referred to a "racket in the motor insurance industry".[15] Kenneth Clarke said that the Government had been waiting for a report on the subject from the Legal Services Board.[16] (The Government has since announced that referral fees in personal injury cases will be banned).[17]

Simon Reevell (Conservative) considered there might be practical consequences resulting from a successful claimant having to pay part of their costs from their damages: "In practical terms it means that although someone wins their case, not all the steps around their house can have a ramp and not all the doors in the property can be widened".[18]

2.3 Sentencing

Most of the sentencing debate at second reading focused on what was not in the Bill rather than what was, in particular indeterminate sentences for public protection (IPP sentences).

Sadiq Khan queried the absence of anything on IPP sentences from the Bill when the Government had consulted on a new approach to them as part of its recent consultation *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. He said that Labour opposed the Government's preferred option of raising the minimum tariff to

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8 HC Deb 29 June 2011 c994
9 HC Deb 29 June 2011 c1000
10 HC Deb 29 June 2011 c1030
11 HC Deb 29 June 2011 c1039
12 Justice Committee *Government's proposed reform of legal aid* 30 March 2011, HC 681 2010-11
13 HC Deb 29 June 2011 cc1041-3
14 HC Deb 29 June 2011 c1064
15 HC Deb 29 June 2011 c1007
16 HC Deb 29 June 2011 c1004
17 HC Deb 9 September 2011 c32WS
18 HC Deb 29 June 2011 c1029

a 10-year determinate sentence before an IPP sentence could be imposed, saying that it would "water down the protection given to the public".[19]

In response, Jonathan Djanogly said that the Government would be reviewing IPP sentences with a view to replacing them with "a clear, tough, predictable system of long, determinate sentences".[20] He considered that these represented the best way to punish and reform criminals so they no longer posed a danger to the public. He indicated that the Government would complete its review by the autumn and would bring forward proposals then. The Government is expected to table a number of amendments to the Bill regarding IPP sentences. At the time of writing no further details were available. Library Standard Note SN 06086 offers an overview of IPP sentences.[21]

2.4 Bail

The proposed new "no real prospect of imprisonment" test provoked the Justice Secretary Kenneth Clarke to say he could not understand "why people are so incensed that people who are not going to be sent to prison might not be kept in prison awaiting trial".[22] He said that in 2010 more than 16,000 people were remanded in custody but were released when they appeared for trial and either pleaded guilty or were convicted. He said this represented "a very wasteful use of a very expensive place in our prison system".[23]

Jack Straw described the proposals as "wholly irrational", and argued that the court would not know whether there was a real prospect of imprisonment until it had heard the full case and mitigation.[24] Andy Slaughter said that limiting the use of remand would be to fundamentally misunderstand its purpose. It would undermine the discretion of the judiciary and appeared to be solely aimed at saving money.[25]

2.5 Offences

Most of the debate on proposed new offences focused on **clause 113**, which would introduce two new aggravated knife possession offences where the offender had used the knife to threaten someone. A few Members did, however, query why plans announced by the Prime Minister to criminalise squatting and clarify the law of self-defence did not appear in the Bill.[26]

Sadiq Khan described the Bill's knife crime proposals as "a Conservative broken promise".[27] He said that the courts already had the power to deal with offenders convicted of the conduct covered by the new offences and that the clause was therefore a "hollow proposal".

David Burrowes (Conservative) expressed support for the clause, saying that it would make it "crystal clear" that anyone who threatens another with a knife would receive a custodial sentence.[28] In response to an intervention from Nick de Bois (Conservative) he did, however, acknowledge that the fact the new offences would not apply to under 18s may leave a gap.

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19 HC Deb 29 June 2011 c999
20 HC Deb 29 June 2011 c1062
21 Pat Strickland, *Sentences of Imprisonment for Public Protection* House of Commons Library standard note SN 06086, 19 October 2011
22 HC Deb 29 June 2011 c986
23 HC Deb 29 June 2011 c991
24 HC Deb 29 June 2011 c1005
25 HC Deb 29 June 2011 c1060
26 These proposals were announced together with the new knife crime offences by the Prime Minister on 21 June 2011: a transcript is available from the Number 10 website.
27 HC Deb 29 June 2011 c996
28 HC Deb 29 June 2011 c1009

Philip Davies (Conservative) said that the proposed defence to the new offences was either a drafting error or a complete nonsense.[29] The clause would provide a defence for a person who could prove good reason or lawful authority for having the knife with him in the first place, but he queried how having an explanation for possessing the knife could possibly be a reasonable defence for proceeding to use it in a threatening manner.

In response, Jonathan Djanogly said that the new offences would send "a clear message" that those who use a knife to threaten someone could expect to face prison.[30] He said that the Bill's aim was to fill a gap in existing legislation, not to implement an all-embracing review of knife crime.

2.6 Release and recall of prisoners

The provisions on release and recall of prisoners were not debated much during the second reading, although Elfyn Llwyd (who had introduced a ten minute rule bill on the subject in February 2011)[31] did welcome the fact that some of the changes he had recommended were included in the Bill.[32]

2.7 Prisoners' work

Conservatives Amber Rudd[33] and Damian Hinds both welcomed the provisions on employment of prisoners and deductions from their wages. Mr Hinds hoped that the Bill could "facilitate an expansion and extension of payment by results" which would, he hoped, "help to integrate work within prison and on release as a specialist and intensive branch of the Work programme".[34] Kate Green also welcomed the intention to extend prisoner working, although she hoped that existing effective programmes would not be wound down, and that prison working for women could be improved.[35]

2.8 Out of court disposals

The provisions on out of court disposals were not discussed much during the second reading debate. However, Simon Reevell questioned whether encouraging greater use of cautions was justified, asking whether there was really a clamour from victims for this.[36]

The Bill was given a second reading following a division (by 295 votes to 212).

3 Legal aid

3.1 Lord Chancellor's statement and Justice Committee report on family courts

The Government's original proposals on means-testing – including the abolition of capital passporting and capital disregards, the minimum capital contribution and other changes relating to income eligibility – as they were published in the green paper *Proposals for the reform of legal aid in England and Wales*[37] are described in the Library standard note *Legal aid: controversy surrounding the Government's plans for reform.*[38]

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29 HC Deb 29 June 2011 c1023
30 HC Deb 29 June 2011 c1061
31 The *Criminal Justice (Amendment) Bill* – see HC Deb 16 February 2011 c 970
32 HC Deb 29 June 2011 c1025
33 HC Deb 29 June 2011 c1038
34 HC Deb 29 June 2011 c1050
35 HC Deb 29 June 2011 c1055
36 HC Deb 29 June 2011 c1027
37 Cm 7967, November 2010
38 Gabrielle Garton Grimwood, SN 05840, 27 January 2011

On 21 June 2011, Kenneth Clarke made a statement to the House on sentencing and legal aid, in which he announced one concession in response to the representations made:

> We have also decided not to abolish, as we originally proposed, the current capital disregards for pensioners and for equity in the main home in assessing an applicant's eligibility for legal aid. We will not now introduce a £100 contribution from capital for those assessed as having £1,000 or more disposable capital.[39]

As at second reading (and before that with the green and white papers), much of the debate at the committee stage centred on the impact of withdrawing many types of case from the scope of legal aid and the consequences for those seeking legal help.

3.2 The scope of legal aid

The Committee began with a lengthy discussion of how the Bill's reforms to legal aid might affect access to justice.

The Committee debated at length a group of Opposition amendments which would have inserted into **clause 1** a statement of the principles to which the Lord Chancellor would have to have regard in exercising his functions. In opening this debate, and responding to a question from Tom Brake (Liberal Democrat), Andy Slaughter said that Labour would have made other cuts than these: they agreed with some of the cuts being made and disagreed with others.[40] He did not (he said) resile from the difficulty in getting the balance right and ensuring reasonable access to justice.[41] Ben Gummer and Robert Buckland (Conservatives) took issue with amendment 89's provision that one of the Lord Chancellor's principles should be that proposals for reform should take account of, but not be dictated by, resources. Andy Slaughter argued that this would not entail any additional spending burden.[42]

In reply, Jonathan Djanogly said that the Government recognised that early advice might reduce the costs "further down the road" but, for a sustainable system, the priority for legal aid had to be those cases where life or liberty were at stake or there was a direct or immediate risk of homelessness; fundamental issues such as safety or liberty must take precedence over financial issues.[43] The amendment was negatived (by 8 votes to 10).

Clause 8 (which provides that legal aid may be provided if it is of a type set out in **schedule 1**) attracted lively debate in Committee, with Andy Slaughter describing the clause as a "triple whammy".[44] Elfyn Llwyd echoed concerns that the Lord Chancellor would have powers to remove but not to add types of case to receive legal aid.[45]

Jonathan Djanogly argued that the amendments ─ which (variously) would have removed the schedule, and removed the Lord Chancellor's powers to remove types of case from it, and allowed legal aid in any instance where an individual challenged a public authority ─ would "undermine our goal of focusing limited resources on the cases that need them most". The Bill would (he remarked) provide for legal aid for the most serious damages claims against

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39 HC Deb 21 June 2011 c165 onwards
40 PBC Deb 19 July 2011 c165
41 PBC Deb 19 July 2011 cc169-70
42 PBC Deb 19 July 2011 cc172-4
43 PBC Deb 19 July 2011 c245
44 PBC Deb 6 September 2011 c324
45 PBC Deb 6 September 2011 c325

public authorities.[46] The amendment enabling the Lord Chancellor to add types of case to schedule 1 was negatived on a division (by 9 votes to 11) and the others withdrawn.[47]

In discussing the schedule itself, Andy Slaughter and Elfyn Llwyd spoke to amendments which would (variously) have put clinical negligence back into scope for legal aid and allowed legal aid for claims of personal injury, death, assault or battery or false imprisonment where a person was in the care of a public authority.[48] Andy Slaughter argued that "legal aid for clinical negligence is the cheapest route for both litigating parties when looking at the alternatives" ─ even the NHS Litigation Authority (he pointed out) favoured keeping clinical negligence in scope ─ and this was one of the most serious defects in the scope changes.[49]

For the Government, Jonathan Djanogly argued that some clinical negligence cases would continue to receive legal aid funding through the exceptional funding scheme, if failing to provide funding would be a breach of the *Human Rights Act 1998* or EU law, and disputed that there would be no saving in taking clinical negligence out of scope.[50]

3.3 Eligibility for legal aid

Elfyn Llwyd tabled a probing amendment to initiate debate. In reply, Jonathan Djanogly argued that financial limits and thresholds for eligibility for legal aid had always been set out in regulations without the qualifications and limitations in primary legislation which the amendments proposed. The Government intended to replicate the existing position, with three changes: the abolition of capital passporting; a limit of £100,000 on the disputed assets that can be disregarded; and a "modest increase" to monthly income contributions from those with higher incomes. It had, though, abandoned its plan for a £100 capital contribution to civil legal aid for persons with disposable capital of £1000 or more and for tightening the rules on the equity held in a person's dwelling. Nor would it lower the threshold below which people would receive free legal aid (although there would be an annual review).[51]

3.4 Can legal aid at an early stage prevent a situation becoming a crisis?

It was argued in Committee that the provision of legal aid at an early stage could be a cost-effective way of preventing the situation escalating.

Andy Slaughter dismissed the "bogus economics of cutting services that may end up costing the taxpayer, let alone the litigant, more in the long run".[52] Yvonne Fovargue (Labour) suggested that although late intervention in a housing matter could prevent a person losing their home, other earlier opportunities to solve the problem might be missed. Jonathan Djanogly restated the Government position, that the Government intended to focus legal aid on those cases where the client faced serious direct consequences and not on less important cases on the basis that they could indirectly lead to more serious consequences.[53]

3.5 Exceptional cases

Amongst the amendments was one tabled by Elfyn Llwyd which would have (in effect) reinstated the existing criteria for exceptional funding. Jonathan Djanogly argued that, as the whole legal aid scheme was being refocused, the exceptional funding criteria had to be

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46 PBC Deb 6 September 2011 c328
47 PBC Deb 6 September 2011 c330
48 PBC Deb 6 September 2011 cc330-7
49 PBC Deb 6 September 2011 c340
50 PBC Deb 6 September 2011 cc338-9
51 PBC Deb 8 September 2011 cc450-2
52 PBC Deb 19 July 2011 c171
53 PBC Deb 6 September 2011 cc373-4

adjusted too: public interest should be a feature of the merits test for individual in-scope cases and should not be used to bring tranches of cases back into scope. Mr Llwyd pressed the amendments to a vote, where they were negatived (by 9 votes to 11).[54]

3.6 The effects on clients and on providers of legal help

At an early stage in the Committee's deliberations, Andy Slaughter argued that there was no "Shangri-La of free advice and representation in our constituencies where one can walk off the street and immediately have all problems sorted out at no cost or inconvenience".[55] Jonathan Djanogly drew attention to the Government's funding for Citizens' Advice Bureaux and other independent advice agencies and said that the Government was considering the impact of wide reductions in their funding, of which legal aid was a part. He mentioned too that the Government was exploring client and provider research, to be conducted before the Bill's commencement, and there would be a review after three to five years.[56]

Amendments 84 and 85 (tabled by Kate Green) would have amended **clause 1** and required the Lord Chancellor to have a strategic plan for funding the not-for-profit legal advice sector and to ensure that the changes to legal aid would not create "advice deserts". Kate Green pointed out that the Legal Services Commission had already warned of "market failure" where law centres might have to close. The collapse of Refugee and Migrant Justice and later of the Immigration Advice Service had demonstrated that provision could be unstable.[57] A pause was needed (Andy Slaughter argued) to examine the consequences of the changes to legal aid; there were already advice deserts.[58]

Jonathan Djanogly, though, argued that the concern about demand for legal aid services had not been ignored and that the operational decisions to be taken when law firms closed were not a matter for legislation.[59] The amendments, he concluded, were unnecessary and they were withdrawn.

Clause 5 of the Bill provides that the Lord Chancellor may make different arrangements for different types of case, classes of person or parts of England and Wales. The Committee considered a number of amendments to this clause, including a probing amendment tabled by Andy Slaughter which (he said) tested whether this clause would create a level playing field or a postcode lottery and one tabled by Yvonne Fovargue which would have obliged the Lord Chancellor to consult the Law Society and the General Council of the Bar when revising remuneration. Jonathan Djanogly said that the Bill's provisions were intended to maintain flexibility but there was no intention to create a postcode lottery.[60] Yvonne Fovargue's amendment was negatived on a division (by 9 votes to 11) and some minor government amendments were agreed.

The creation of the post of Director of Legal Aid Casework (**clause 8**) was also discussed, with amendments proposing that (amongst other things) the appointment should be subject to a pre-appointment hearing by a select committee of the House of Commons and that a Legal Aid Tribunal should be established to hear appeals against the Director's decisions.[61] Jonathan Djanogly argued that the amendments were unnecessary and unattractive because they would make the Director less, rather than more, independent. The amendment dealing

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54 PBC Deb 8 September 2011 cc417-8
55 PBC Deb 19 July 2011 c185
56 PBC Deb 19 July 2011 c246-7
57 PBC Deb 6 September 2011 cc273-5
58 PBC Deb 6 September 2011 c276
59 PBC Deb 6 September 2011 c280
60 PBC Deb 6 September 2011 cc299-304
61 PBC Deb 6 September 2011 cc310-2

with the Legal Aid Tribunal was negatived on a division (by 9 votes to 11) and the others were withdrawn.[62]

3.7 "Equality of arms" in legal disputes

Amendments 79 to 82, tabled by Kate Green, would have amended **clause 1** by (amongst other things) requiring the Lord Chancellor to provide legal aid wherever a person was in dispute with the state (or an emanation of the state) about welfare benefits, employment, debt, housing, immigration, education or asylum support and to grant legal aid to people with learning disabilities, mental health problems or other disabilities who might find it difficult to protect their legal rights. Kate Green argued that these were needed, to maintain an "equality of arms" and so that people could assert their rights.[63] (In an earlier discussion of this clause, Elizabeth Truss (Conservative) suggested that, where in a divorce case there was an economic imbalance between a couple, rather than the state create an equality of arms, it might be better for the wealthier party to fund the less wealthy party).[64]

In reply, Jonathan Djanogly argued that the Government had already given a commitment to the Justice Committee that it would ensure that tribunals would remain informal and accessible. The concept of equality of arms could, he said, be misunderstood; what mattered was whether any imbalance in representation created obvious unfairness.[65] Amendments 79 and 80 were withdrawn and the others negatived on division (by 9 votes to 12).

The Committee also considered amendments to **clause 3** which would have required the Lord Chancellor (amongst other things) to ensure equality between legally-aided clients and those with the funds for their own legal advice. Jonathan Djanogly argued that standards in the legally-aided sector already compared favourably to the privately-funded sector, as standards (the specialist quality mark or the Lexcel standard) were mandatory. The amendments were withdrawn.[66]

3.8 The telephone gateway

Members of the Committee also raised concerns about the telephone gateway. Jonathan Djanogly stated that the Ministry of Justice had consulted on the mandatory single gateway to apply for civil legal aid, receiving legally-aided advice by telephone and paid-for advice, and would review whether there was a need for more consultation before extending the mandatory nature of the helpline for advice on debt, community care, special educational needs and discrimination to other areas of law.[67] Amendment 86, which would have removed the gateway's mandatory status, was negatived on division (by 9 votes to 11) and other amendments were withdrawn.[68]

3.9 Mediation

One of the tenets of Government thinking is that some cases are brought unnecessarily to court and there should be more resolution through mediation.[69] Andy Slaughter and Kate

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62 PBC Deb 6 September 2011 cc312-9

63 6 September 2011 cc258-61

64 PBC Deb 19 July 2011 cc170

65 PBC Deb 6 September 2011 cc267-8

66 PBC Deb 6 September 2011 cc306-9

67 PBC Deb 6 September 2011 cc295-6

68 PBC Deb 6 September 2011 cc282-90 and cc294-8

69 The Justice Committee, in its report on family courts, expressed concern that the Ministry of Justice might not have adequately provided for the increase in mediation: "With more than 200,000 people losing eligibility for legal help and representation, the Department's prediction that only 10,000 extra mediations will be required seems low (albeit more realistic than their initial estimate of 3,300)". Justice Committee *Operation of the Family Courts* 14 July 2011, HC581 2010–12: para 156

Green argued in Committee that mediation was not a panacea and some disputes would not be suitable for it.[70] An amendment would have set out the relationship between mediation and litigation (**clause 7**). This too was negatived (by 9 votes to 11).

3.10 Child abduction and family disputes

Other amendments sought to broaden the scope of legal aid to include domestic as well as international child abduction; to provide legal aid to enable an application to the court for an interim lump sum during divorce and separation; to make available options besides mediation and to promote collaborative law to resolve family disputes outside court. Again, Jonathan Djanogly argued that keeping all family disputes within scope for legal aid would undermine the Government's targeting approach to reform and would lose about £170 million in annual savings.[71] The only amendment to be pressed to a vote (Yvonne Fovargue's on child abduction) was negatived (by 9 votes to 10).

3.11 Domestic violence

There was more debate about the Bill's provisions relating to domestic violence and why the ACPO definition of domestic violence had not been used. Karl Turner (Labour) criticised the Bill's provisions as too restrictive and Andy Slaughter argued that the concessions the Government had made in response to the consultation did not go far enough.[72]

Jonathan Djanogly replied that the Government had to engage in a "difficult balancing act" in providing legal aid for genuine victims of domestic violence without encouraging false allegations. Forms of evidence to be accepted in these cases (which were based around state intervention and were as objective as possible) would be set out in regulations and the criteria had been widened following the consultation. Jonathan Djanogly also undertook to write to Kate Green about how the reduction in the number of domestic violence cases to be funded through legal aid under the Ministry of Justice's definition would compare with what might have happened using ACPO's definition.[73] The amendments that proceeded to a division were negatived (by 9 votes to 11) and the others withdrawn.

3.12 Housing

Two Government amendments were made which (Jonathan Djanogly said) did not change policy but gave better effect to that policy. These entailed removing the exclusions (set out in part 2 of schedule 1) for damage to property and breach of statutory duty in housing disrepair damages claims brought as counter-claims in rent arrears possession cases.[74]

3.13 Legal advice and assistance at the police station

In moving an amendment to **Clause 12**, Elfyn Llwyd said that, when he had represented clients in police custody, he had not understood why people of substantial means should be given free legal advice, but nonetheless he was concerned that the clause would deprive the weak and the vulnerable of the free advice that they needed.[75] Karl Turner expressed doubt about the Government's intentions in the longer term. He agreed with Elfyn Llwyd that the clause would undermine the commitment to free and independent legal representation enshrined in the *Police and Criminal Evidence Act 1984* and argued that means-testing

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70 PBC Deb 6 September 2011 c320
71 PBC Deb 6 September 2011 c346
72 PBC Deb 6 September 2011 cc351-56
73 PBC Deb 6 September 2011 cc358-9
74 PBC Deb 6 September 2011 cc378-380
75 PBC Deb 8 September 2011 c429

would be unworkable.[76] In reply, Jonathan Djanogly said the clause's provisions were about creating flexibility:

> I am not asking the Committee's permission to implement means-testing. I am asking for permission to introduce flexibility into the Bill, so that at a later stage it could be considered, subject to full consultation.[77]

PACE Code C would, he said, have to be to be amended if a means test were introduced. He again argued the case for means testing, which was already in place in Scotland and the Republic of Ireland.[78] The amendment proposed by Karl Turner was negatived on division (by 9 votes to 12) and the others were withdrawn.

Another contentious aspect of clause 12 has been whether it was a restatement of the previous government's policy. There was nothing in the Bill's Explanatory Notes to suggest that it was an old provision; indeed, they stated that "advice and assistance described in clause 12 is not currently means tested under the equivalent provision of the *Access to Justice Act 1999*".[79] At second reading, Kenneth Clarke had said "the Bill replicates a provision taken from an earlier Bill by the Labour party. (...) The last Government legislated to do that but never did it".[80] Jonathan Djanogly, in comments to the Legal Action Group's conference in July 2011, had similarly said that the clause had previously been put into legislation by the Labour government, to limit police station advice.[81] Kenneth Clarke wrote to Sadiq Khan on 2 August to confirm that the provisions in clause 12(3)(a) and (b) were indeed new.

3.14 Advice and assistance for criminal proceedings

After discussion, Elfyn Llwyd withdrew his amendment to **clause 14** which would have placed a duty on the Lord Chancellor to make provision for criminal legal services in certain circumstances and having regard to the interests of justice. Minor Government amendments were made to this and **clause 15** on representation for criminal proceedings.[82]

On qualifying for representation in criminal proceedings (**clause 16**), Jonathan Djanogly spoke against amendments which would have removed discretion in determining whether the interests of justice test had been met. The interests of justice test had, he argued, served well for 45 years and there was no justification for a radical departure.[83]

3.15 When will the secondary legislation be made?

More than once during the committee stage, Members remarked that much of part 1 of the Bill would be enacted through regulations and asked when those regulations might be published. Jonathan Djanogly stated that he could not give a timetable, but saw no reason why the regulations should be delayed.[84]

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76 PBC Deb 8 September 2011 c431
77 PBC Deb 8 September 2011 cc435-6
78 PBC Deb 8 September 2011 cc437-8
79 Paragraph 111
80 HC Deb 29 June 2011 c992
81 Catherine Baksi "Government will not remove police station advice, Djanogly pledges" *Law Society Gazette* 4 July 2011
82 PBC Deb 8 September 2011 cc442-3
83 PBC Deb 8 September 2011 c446
84 PBC Deb 8 September 2011 c442

4 Litigation funding and costs

In two sittings on 13 September 2011, the Committee debated (at some length) the potential effect of the proposed reforms to civil litigation funding. Andy Slaughter agreed that the intention of Part 2 "is perfectly sound, and it is one with which we have a great deal of sympathy". He welcomed the general approach of the Bill but argued: "first that the methods it uses are imperfect per se or are introduced at the wrong time in the wrong way and, secondly, that there will be unintended consequences of what are laudable aims".[85] He agreed that conditional fee agreements (CFAs) are not perfect.[86] He called for more information about the measures which did not require primary legislation and so were not included in the Bill. Karl Turner considered it wrong in principle to deduct a quarter of a bereaved family's or injured person's compensation and said that damages were intended to restore the injured party, as near as is possible, to the position before the tort that led to the claim.[87] In relation to various types of cases, members of the Committee argued that access to justice would be denied if claimants were unable to recover the CFA success fee and after the event (ATE) insurance premium from the losing party. A number of amendments were debated but no opposition amendments were agreed.

4.1 Matters not included in the Bill

Members debated some of the Government's proposed reforms to civil litigation which do not require primary legislation and so are not included in the Bill: for example, qualified one way cost shifting (QOWCS) and the test of proportionality in costs assessments will be dealt with through changes to the Civil Procedure Rules:

- QOWCS: Members queried why this would only be available in personal injury cases; Andy Slaughter asked whether it would filter out weak cases as efficiently as ATE.[88] Jonathan Djanogly replied that the Civil Justice Council had been asked to consider how QOWCS should operate. The Government were not persuaded that QOWCS should extend beyond personal injury cases: CFAs were a minority form of funding in non-personal injury claims and the Government would examine the experience of QOWCS in personal injury claims before considering whether the scheme should be extended.[89]

- the test of proportionality: Jonathan Djanogly said that there would be a new test of proportionality for recoverable costs and a new definition of proportionality, to be effected by a change to the civil procedure rules:

  > The requirement would be, first, to assess the reasonableness of the work done item by item; the court would then only consider the proportionality of the resulting total amount in accordance with the new test. If the total costs are deemed to be disproportionate, the court would make a reduction to a proportionate level. The new test will introduce the requirement for the courts to consider the proportionality of global costs as the dominant test in civil litigation, over either reasonableness or necessity. The new test will not only look at the sums at issue but also take account of the complexity of the litigation, the additional work generated by the defendant and wider factors such as reputation or public importance.[90]

- 10% uplift in damages: Members queried the figure on which the uplift would be based, particularly if a case settled; Jonathan Djanogly said that the senior judiciary had agreed

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85 PBC Deb 13 September 2011 c501
86 PBC Deb 13 September 2011 c536
87 PBC Deb 13 September 2011 c543
88 PBC Deb 13 September 2011 c516
89 PBC Deb 13 September 2011 c551
90 PBC Deb 13 September 2011 cc492-3

> to look at how to take forward the increase in general damages for non-pecuniary loss, such as pain, suffering and loss of amenity in tort cases, by 10%[91]

Jonathan Djanogly said that he hoped to introduce amendments to deal with referral fees at a later stage.[92]

4.2 Damages–based agreements: Government amendments agreed

Technical amendments to **clause 42** (damages-based agreements) were agreed. Jonathan Djanogly said that the amendments would clarify that rules of court would be subject to the negative resolution procedure in line with existing policy.[93]

4.3 Claims against multinational companies

Kate Green moved amendments intended to enable the Lord Chancellor, by regulation, to retain the recoverability of the CFA success fee and ATE insurance premium from the losing party in claims brought against multinational companies by victims of alleged human rights abuses in developing countries.[94] Cases would have to be certified as appropriate by a High Court judge. Kate Green said that the amendments were aimed at "the imbalance of power and the inequality of bargaining position between poor individuals and the large multinationals that they might seek to proceed against."[95] She argued that, without the amendments, it would be impossible to bring such cases in the future because lawyers would not take them on, and that it was important to protect access to justice.[96]

Kate Green also drew attention to the disparity between compensation and costs in such cases and said that the effect of the Rome II regulation 864/2007 was that compensation would usually be assessed in accordance with local law, which in developing countries resulted in a lower sum than a UK court would award. This would also have an effect on the separate proposal (not in the Bill) to make costs more proportionate to the damages awarded. She said that costs in multinational cases invariably exceeded the compensation awarded, but that they should still be regarded as proportionate, on the grounds of complexity and the importance of the litigation, or because the additional costs were generated by the conduct of the defendant.[97]

In response, Jonathan Djanogly argued that the amendments were not necessary or appropriate, and queried the uncertainty of some of the wording. He said that claims against multinational companies could still be brought and that there was no justification for giving claimants in developing countries an advantage over other claimants. Damages-based agreements would also be allowed. He reiterated that the Bill did not seek to address the validity of the claims "but the iniquity of a system that can allow legal costs to escalate significantly more than the related damages". Jonathan Djanogly pointed out that no other jurisdiction provided for recoverable success fees and ATE insurance premiums, with the consequence of high costs, and that the impact of the amendments "would preserve the unique threat of high costs against British firms that does not exist for other firms from other countries in the world. That cannot be good for British businesses operating abroad".[98] He also referred to the other reforms intended to assist claimants in the new regime, including, in

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91 PBC Deb 13 September 2011 cc491
92 PBC Deb 13 September 2011 c503
93 PBC Deb 13 September 2011 cc558-9
94 PBC Deb 13 September 2011 c474
95 PBC Deb 13 September 2011 c475
96 PBC Deb 13 September 2011 c477
97 PBC Deb 13 September 2011 cc482-5
98 PBC Deb 13 September 2011 c493

personal injury cases, the cap on the amount of damages that may be taken as a success fee under a CFA, and qualified one way costs shifting.[99]

The amendment was defeated by 11 votes to 8.

4.4 Recoverability of CFA success fees and ATE insurance premiums

Members moved a number of amendments intended to retain the recoverability of the CFA success fee and ATE insurance premium in a range of cases:

Privacy and defamation

Andy Slaughter pointed out that damages in such cases are quite small and that the success fee and ATE premium might "swallow up much of the damages and more". Taken with the introduction of a proportionality test, it might mean that meritorious claimants would not be able to find a lawyer prepared to take on the case. [100]

Professional negligence

Andy Slaughter referred to a briefing from the Professional Negligence Lawyers Association who had pointed out that no claimant in any civil litigation would recover any damages under the proposed system if their claim was equal to the success fees plus ATE premium; the claimant could even win the case and go into debt to their own solicitor and ATE insurer if their claim was less than the success fees plus the ATE premium.[101] The types of action which might be affected would include claims against surveyors, financial advisers, and solicitors. He said that the proposals did not recognise that wrongdoing defendants only have to pay high claimant success fees and ATE insurance premiums if they choose to fight strong claims. The proposed system would transfer the risk from these defendants to claimants.[102]

Insolvency

The next area highlighted by Andy Slaughter was insolvency claims (eg where an insolvency practitioner makes a claim to recover money from a wrongdoing director). Insolvent companies, by definition, are unable to pay a lawyer. R3 had briefed that insolvency practitioners would be discouraged from undertaking litigation if they were unable to recover the success fee and ATE insurance premium.[103] Andy Slaughter pointed out that this would affect the public purse because the state is the major creditor of many insolvent companies; the consequence might be that public money was retained by directors who had behaved improperly. He said that HMRC was lobbying the Ministry of Justice for an exemption.[104] R3 had estimated that the cost to the Revenue alone, if the proposals were not amended, would be £125 million.[105]

Clinical negligence

Andy Slaughter queried the workability of the Government's proposals in relation to clinical negligence cases, including shared reports on liability (would the claimant have confidence in a report commissioned by the defendant?); disbursement only ATE policies (would they be commercially viable given the high failure rate of clinical negligence claims?); and the removal of ATE premium recoverability (this might result in unmeritorious claims proceeding

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99 PBC Deb 13 September 2011 cc491-5
100 PBC Deb 13 September 2011 c517
101 PBC Deb 13 September 2011 c520
102 PBC Deb 13 September 2011 c521
103 R3 — Rescue Recovery Renewal, The Association of Business Recovery Professionals, describes itself as the leading organisation for insolvency, restructuring and turnaround specialists in the UK.
104 PBC Deb 13 September 2011 c524
105 PBC Deb 13 September 2011 c526

which might otherwise have been screened out by risk averse insurers; QOWCS might incentivise claims).[106] He said that the impact assessment had not accounted for the potential loss of successfully defending claims as a consequence of the introduction of QOWCS and that the NHS would also be unable to recoup treatment costs.[107] He quoted evidence from Action against Medical Accidents:

> We believe it is wrong in principle to force solicitors to eat into the damages that claimants need and deserve in order to pay for a new system that the Government is imposing…Not only does this go against the well established legal principle that the claimant is entitled to damages to compensate him/her for the injury but serves to increase the likelihood of a conflict of interest arising between solicitor and client. We strongly support the principle that the 'polluter pays'. Further, no account has been taken of the situation where past losses are held in trust for another, such as where there is a claim for past care provided by a relative, the so called 'gratuitous care' claim…If the proposal to pay for solicitors' success fees by allowing deductions from claimants' damages goes ahead, the increase in general damages needs to be considerably greater to cover the expected rate of success fee…The Ministry of Justice has so far failed to explain how it can guarantee an increase in general damages in any case.[108]

Small businesses

Although this is not an area of law, Andy Slaughter considered the potential impact of the reforms on small businesses, for whom, he said, CFAs provide, in many cases, the only way to get meritorious cases to court.[109]

Judicial review

Andy Slaughter noted that Lord Justice Jackson had recommended that QOWCS should be introduced for judicial review claims and commented: "He had an eye to the inequality of arms, so why do not the Government, particularly as these are matters in which they are likely to be the respondent in many cases?"[110]

Industrial illness and disease

Kate Green expressed concern about the implications for sufferers of asbestos-related disease. She said that the changes failed to recognise the costs and risks that are involved in claims regarding serious industrial disease. Without the recoverability of success fees and ATE insurance premiums, she considered that such cases would not be affordable.[111]

Environmental damage

Elfyn Llwyd considered that the reforms would make claims by private residents to protect their home life and environment against a corporate defendant prohibitively expensive.[112] He said that the primary objective of such claims was to secure an abatement of blight and that damages would not cover the ATE premium and success fee. He had also been told that before the event insurance was rarely available. He did not think that claimants in such cases should be treated less favourably than foreign nationals "pursuing toxic tort cases".[113]

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106 PBC Deb 13 September 2011 cc529-30
107 PBC Deb 13 September 2011 c531
108 PBC Deb 13 September 2011 c532
109 PBC Deb 13 September 2011 c534
110 PBC Deb 13 September 2011 cc535-6
111 PBC Deb 13 September 2011 c539
112 PBC Deb 13 September 2011 c541
113 PBC Deb 13 September 2011 cc541-2

Employment

Karl Turner moved an amendment intended to allow the recoverability of success fees and ATE premiums in claims against a person's employer.[114] He called on the Government to recognise that, just as clinical negligence cases are complex, other cases, such as those involving carbon monoxide poisoning or accidents in the workplace, often require expert reports at an early stage.[115]

Consumer

Karl Turner said that many people have their lives destroyed when goods or services are negligently sold by businesses that supply them.[116]

Government response

Jonathan Djanogly said that the intended scope of each exception was not entirely clear, that many of the proposed amendments appeared to overlap and that they were inappropriate and unnecessary. If they were to be taken together, the amendments would mean that the reforms would not apply to the overwhelming majority of claims in which CFAs are used.[117] He said that businesses were calling on the Government to take action and that the Federation of Small Businesses had indicated that its members use the small claims track in the county court more often than any other means of resolving litigation.[118] He reiterated the Government's intention to discourage unnecessary or frivolous claims and to make the cost of all civil cases more proportionate to the sums and matters at issue. Those objectives would not be limited to particular classes of litigation. The reforms would still enable people to bring cases on CFAs in areas where they are currently used, but the CFA arrangements would effectively revert to their original form.[119]

Jonathan Djanogly reminded the Committee that some of the reforms to civil litigation funding were not included in the Bill and would be implemented through amendments to the Civil Procedure Rules, and secondary legislation, and that referral fees would also be banned. He also set out the associated measures intended to help claimants pay success fees and, where necessary, ATE insurance premiums: the 10% increase in damages and, in personal injury claims, the cap on the success fee that a lawyer may charge, to be set at 25% of damages awarded, excluding damages for future care and loss.[120]

Jonathan Djanogly did not accept that access to justice for claimants would be compromised by making it fairer for defendants.[121] The Government did not consider that exceptions should be made to the proposed reforms for the different types of case which members had raised. The sole exception to recoverability would be for ATE insurance premiums for expert reports in clinical negligence cases, in view of legal aid changes.[122]

Jonathan Djanogly confirmed that the Government was aware of the impact of abolishing CFA recoverability in insolvency and related proceedings and said that he and his officials were still discussing the specific implications with the relevant Departments.[123] He refuted

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114 PBC Deb 13 September 2011 c544
115 PBC Deb 13 September 2011 c545
116 PBC Deb 13 September 2011 c545
117 PBC Deb 13 September 2011 cc546-7
118 PBC Deb 13 September 2011 c548
119 PBC Deb 13 September 2011 c549
120 PBC Deb 13 September 2011 c549
121 PBC Deb 13 September 2011 c550
122 PBC Deb 13 September 2011 c553
123 PBC Deb 13 September 2011 c553

the figures and arguments which suggested that the reforms would generally increase costs to the NHS Litigation Authority.[124]

The Government recognised the need for an expedited procedure for mesothelioma cases and a practice direction had been introduced to assist litigants through the procedure. Issues relating to environmental claims under the Aarhus Convention would be considered separately. Experts' reports in clinical negligence cases, where the issue was more one of opinion than fact, were different from experts' reports in other cases.[125]

Amendments defeated

Andy Slaughter said that some of the amendments had been probing amendments but pressed for a division on the amendments relating to employment liability; industrial disease; professional negligence; insolvency; and clinical negligence. The amendments were defeated by 11 votes to 8.

4.5 Costs in criminal cases

There was very limited debate on **clause 52** and **Schedule 6** relating to the reimbursement of legal costs for acquitted defendants.[126] The Committee considered an amendment moved by Elfyn Llwyd that would have enabled an acquitted defendant to recover costs from central funds in respect of trials in the Crown Court, as well as costs incurred in the magistrates' court or in the Crown Court on appeal (as currently provided for in Schedule 6). He said that it was "unfair and illogical" to prevent an acquitted defendant from recovering such costs.

In response, Jonathan Djanogly said that Government policy was that where legal aid was available to all individuals, as it was in Crown Court trials, then there should be no provision for legal costs to be paid from central funds. Costs from central funds should only be available where legal aid was not available to all individuals, as was the case in magistrates' courts.

Andy Slaughter said that the minister had objected to similar proposals by the Labour Government when he was a shadow justice minister, and asked why he had changed his mind. Jonathan Djanogly said the Government had realised it could not afford the luxury of a system that paid legal costs at three to four times higher than legal aid rates, and that it could not afford to fund "dream team defences" engaged by wealthy people to defend relatively minor cases.

Elfyn Llwyd said that he remained "uneasy" about the provisions but withdrew his amendment.

5 Sentencing

5.1 Restorative justice

Helen Goodman moved an amendment to **clause 53** that would have given the courts a new statutory duty to consider making an order for an offender to participate in a restorative justice course, taking into account the views of the victim in determining what form the order should take.[127] She said that restorative justice was "one of the areas of the criminal justice system where we will achieve long-term savings if we make a bit of short-term investment".

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[124] PBC Deb 13 September 2011 c554
[125] PBC Deb 13 September 2011 cc546-557
[126] PBC Deb 13 September 2011 cc560-562
[127] PBC Deb 15 September 2011 cc565-576

Justice Minister Crispin Blunt said that restorative justice was one of his three personal priorities (the others being work in prison and payment by results) and that the Government was formally committed to increasing its use and availability. However, he said that the courts already had powers to consider its use in sentencing and restorative justice was "not about imposing rigid legal duties". He went on to say that the criminal justice system's capacity for restorative justice was only in its early stages and that it was important to deliver it on a sustainable scale. He said that he would keep the question of widening the application of restorative justice via legislation under review as the Ministry of Justice continued to build capacity.

The amendment was negatived on division by 9 votes to 8.

5.2 Compensation orders: establishment of a compensation fund

The Committee considered a number of Opposition amendments and new clauses relating to **clause 53** that would have established a new compensation fund to administer payments due to victims under compensation orders. Helen Goodman said that at present compensation orders were frequently paid only in part or not at all and that something needed to be done to speed up payments to victims. The functioning of the fund would have been set out in regulations, but she gave a brief explanation of how it could work:

> This is not an additional public spending commitment; it is a re-profiling, which is what victims want. We are not saying that the state should pay; we propose a system in which the state underwrites the payments to speed them up, and then recovers them, which could be done in several ways. The voluntary sector groups that gave evidence to us said that they wanted 100% of the money up front, but we could give people 50% at the outset and 50% five years down the track, thereby at least introducing some certainty into the situation.[128]

She considered that "putting the compensation through the Ministry of Justice accounts" would make enforcement of compensation orders a higher priority for Ministers and officials.

Crispin Blunt said the approach had superficial attraction, but could potentially result in sentencers imposing much higher sums under compensation orders if they were confident that the victims would receive the money from the Government regardless of an offender's ability to pay. If this happened a growing shortfall would develop between the amount paid by the state and what could sensibly be recovered from the offender. He also said that discussions between the Ministry of Justice and the Department for Work and Pensions were ongoing to try and improve the collection of compensation orders by way of deductions from benefits or attachment of earnings.

The lead amendment was negatived by 10 votes to 8.

5.3 Duties to give reasons for sentence

There was lengthy debate on **clause 54** regarding the court's duty to give reasons for and to explain the effect of a sentence.[129] Key areas of debate that resulted in divisions or undertakings are set out below.

Written notification of sentence

The Committee considered two separate amendments tabled by Helen Goodman and Elfyn Llwyd, both of which would have required the court to provide certain people, including victims, co-defendants, legal representatives and media representatives, with written

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[128] PBC Deb 15 September 2011 c579
[129] PBC Deb 15 September 2011 cc587-612

notification of an offender's sentence. They argued that this would improve transparency and provide victims with better explanations of how offenders were being dealt with.

Crispin Blunt raised concerns about the costs of doing this and the increased workload that would be created for judges and court clerks. He said that the court service had already agreed to make transcripts of sentencing remarks in cases involving deaths available to the family of the victim, and that the Government was considering televising sentencing remarks in the Court of Appeal.

Helen Goodman's amendment was negatived on division by 12 votes to 7.

Duty to take dependants into account

Helen Goodman moved an amendment that would have given the courts a statutory duty to take the effect of the sentence on the offender's children or dependants into account when imposing a custodial sentence, a fine or a community order.

Crispin Blunt described the amendment as "well intentioned" but considered that it was unnecessary and overly prescriptive, as the courts already took the offender's caring responsibilities into account when considering mitigating circumstances.

The amendment was pressed to a division but was negatived by 12 votes to 7.

Exemptions to the duty to give reasons

The Committee considered an amendment tabled by Elfyn Llwyd that would have removed the proposals to give the Lord Chancellor order-making powers to prescribe cases in which the duty to give reasons should not apply.

Crispin Blunt said that this power in fact already existed under the *Criminal Justice Act 2003* and that the Government was taking a "safety-first attitude" in carrying it through in the Bill. However, he said that he had been unable to find any examples of it having been used since it was introduced. He therefore agreed to look at the power again and to consider removing it if officials could not come up with any examples of where it might be useful.

5.4 Breach of community orders

The Committee considered two Opposition amendments to **clause 56** that would have removed the Bill's proposals to enable courts to punish breach of a community order with a fine of up to £2,500.[130] Helen Goodman raised three objections:

> First, it undermines the community order regime; secondly, it will privilege the very wealthy who might come into contact with the criminal justice system; and thirdly, we have doubts about the efficacy of the fining regime.[131]

She also referred to the "unsatisfactory record of collecting fines", and queried whether a fine would be an appropriate penalty or deterrent if it was unlikely to be paid.

Crispin Blunt clarified that paying the fine would not have the effect of cancelling the community order. The order would continue to be in place, and the fine would therefore be an additional punishment rather than a substitute one.

The amendments were withdrawn.

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[130] PBC Deb 15 September 2011 cc612-618
[131] PBC Deb 15 September 2011 c613

5.5 Suspended sentence orders

Duration and parallel community orders

Helen Goodman moved an amendment that would have kept the maximum length of a suspended sentence order at the current 12 months, rather than the two years proposed by **clause 57**.[132] She also spoke to a related amendment that would have retained the current requirement for a parallel community order to be imposed alongside a suspended sentence order.

She expressed concern that increasing the maximum length might mean suspended sentence orders would start to be imposed in respect of more serious offences. She drew attention to statistics indicating that a small number of people convicted of child abduction, sexual assault and rape had received custodial sentences of between 12 and 18 months, which under clause 57 would in theory be capable of being suspended. Robert Buckland said that care needed to be taken in jumping to any conclusions that increased discretion in suspended sentence orders would "somehow lead to unduly lenient sentences being passed in serious cases".

In response, Crispin Blunt said that the judiciary had indicated it was unlikely to impose many long suspended sentences, but that the option to do so would be useful to deal with the full range of cases before them. He said that the Government did not expect there to be many cases in which a long suspended sentence would be justified, but thought it a useful extension of sentencing powers. Andy Slaughter intervened to say that there was nothing on the face of the Bill to restrict long suspended sentences to exceptional circumstances.

Crispin Blunt went on to say that a suspended sentence order without a parallel community order "does not mean that the offender has got off". He emphasised that the sentence would be recorded as a custodial sentence and the threat of imprisonment would hang over the offender for the duration of the suspended sentence.

Helen Goodman concluded by saying that if an offence was serious enough to warrant a two-year custodial sentence, then suspending it would not be appropriate.

The amendment was negatived on division by 12 votes to 6.

Fines for breach

Clause 58 of the Bill would enable the courts to penalise breach of a suspended sentence order with a fine of up to £2,500. Helen Goodman said that this could effectively mean people convicted of serious offences would ultimately be punished with a fine, rather than prison:

> In essence, by including serious assaults, robberies, frauds and violent crimes against children in extended sentence orders, the Minister is proposing to allow breaches of these suspended sentence orders to be penalised with a fine. (...) It is not an appropriate way in which to deal with the breaches if people have committed offences for which they have received a two-year sentence. It demonstrates that the Government are not taking a serious view of the impact of serious crime on communities.[133]

In response, Crispin Blunt said that the court's usual response to breach of a suspended sentence order would be to give effect to the custodial sentence unless it would be unjust to do so in all the circumstances. He said that if the court decided against giving effect to the

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[132] PBC Deb 15 September 2011 cc618-627
[133] PBC Deb 15 September 2011 c629

custodial sentence, it must at present make the suspended sentence order more onerous by either amending the community requirements or extending the supervision or operational period of the order. His view was that giving the courts a new option of punishing breach by a fine would give sentencers a wider discretion to decide on the appropriate penalty for breach in each case.

The clause was ordered to stand part on division by 11 votes to 6.

5.6 Requirements imposed under community orders and suspended sentence orders

There was detailed discussion of **clauses 59 to 64**, which would amend the various requirements that the courts could impose as part of a community order or suspended sentence order. The Opposition supported clause 61 (foreign travel prohibition requirement) but the Committee considered a number of amendments and objections to the other clauses. Key areas of debate are set out below.

Curfew requirement

The Committee considered two Opposition amendments to **clause 60** (curfew requirement).[134] The first would have removed the Bill's proposal to increase the maximum curfew length from 12 hours to 16 hours, and the second would have introduced a statutory duty for the court to consider the risk of physical or mental harm to or by the offender or an "associated person". For these purposes associated person would have been given the meaning set out in section 62 of the *Family Law Act 1996*.

In relation to the first amendment, Helen Goodman argued that a curfew of 16 hours would effectively prevent someone from working or attending a training course. She also said that the Government was "sailing close to the wind on civil liberties", given that the Court of Appeal had held that in the case of control orders an 18-hour curfew would breach human rights. In response, Crispin Blunt said that the new 16 hour period would introduce flexibility, and was intended to act as a maximum rather than as a new default period: for example, a person could be curfewed for 12 hours during the week to enable him to work, and for 16 hours at the weekend. He also dismissed the comparison between community order/suspended sentence order curfews and control order curfews, saying that the key difference was that control orders had involved people who had not actually been convicted of any criminal offence.

In relation to the second amendment, Helen Goodman said that this would strengthen the existing requirements under the *Criminal Justice Act 2003* for the courts to have regard to the effect of the curfew requirement on relations with other members of the family. This was particularly relevant in domestic violence scenarios, whether the offender was the perpetrator or the victim. Crispin Blunt rejected this argument, saying that the court already had to consider the effect that the curfew might have on others living at the curfew address. He also said that the "associated person" definition was inappropriate as it covered too wide a range of people.

Both amendments were negatived on division by 11 votes to 6.

Mental health treatment requirement

During the clause stand part debate, Helen Goodman raised concerns that **clause 62** would remove the requirement for the court to take evidence from a registered medical practitioner approved for the purposes of section 12 of the *Mental Health Act 1983* before deciding

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[134] PBC Deb 15 September 2011 cc636-643

whether to impose a mental health treatment requirement.[135] She described this proposal as "risky" and said that it could result in people who should have mental health treatment not getting it, and vice versa.

Crispin Blunt said that the reasoning behind this proposal was to remove the reliance on senior clinicians, who tended to deal in secure mental health services rather than with lower severity cases that could be dealt with in the community. He argued that it would enable a wider range of mental health specialists to carry out the offender's initial health assessment, thereby enabling assessments to be carried out promptly and reducing court delays.

On division the clause was ordered to stand part by 11 votes to 6.

Drug and alcohol rehabilitation requirements

The Committee considered two Opposition amendments relating to **clauses 63 and 64** that would have removed the current requirement for the offender to consent to the imposition of either a drug or alcohol rehabilitation requirement.[136] Helen Goodman said that the Government "should take into account the massive cost of people who refuse to give their consent to drug rehabilitation orders", which she put at some £60 million based on Ministers' answers to parliamentary questions. In relation to alcohol requirements, she said that these often took the form of behavioural programmes (e.g. teaching people how to control their drinking and avoid drink-driving) and did not involve any medical treatment. It did not make sense to "negotiate" with offenders about their participation in such programmes.

In response, Crispin Blunt said that compelling people to take part in drug or alcohol rehabilitation requirements could be counter-productive, as an individual's willingness to undertake and comply with treatment was essential to his rehabilitation and recovery. He also stressed the general legal principle that a person should not be subjected to medical treatment without his consent.

The amendments were withdrawn.

5.7 Youth rehabilitation orders

Curfew requirement

The Committee considered two Opposition amendments to **clause 67**, which would have had the same effect as the Opposition amendments relating to **clause 60**: namely removing the Bill's proposal to increase the maximum curfew length from 12 hours to 16 hours, and introducing a statutory duty for the court to consider the risk of physical or mental harm to or by the offender or an "associated person".[137]

Andy Slaughter said that the proposed increase in maximum curfew length was of particular concern in relation to children on two grounds. The first was that it would limit their capacity to engage in rehabilitative activities, and the second was that it would contain them in premises that might be unsuitable or where they might be at risk of experiencing or perpetuating abuse, neglect or criminal behaviour.

Crispin Blunt said that a new 16 hour limit would provide increased flexibility so that a young offender could be curfewed for a shorter period during the school week and a longer period at weekends. He also said that the youth offending team already carried out a risk assessment of possible harm to the young person or family when completing a pre-sentence report for the court.

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[135] PBC Deb 15 September 2011 cc644-648
[136] The current requirements are set out in sections 209 and 212 of the *Criminal Justice Act 2003*
[137] PBC Deb 15 September 2011 cc654-660

The amendment regarding curfew length was pressed to a division but was negatived by 10 votes to 5.

Mental health treatment requirement

During the clause stand part debate on **clause 68**, the Opposition raised the same arguments against removing the reference to section 12 medical practitioners as it had against **clause 62** in relation to adult offenders.[138] Andy Slaughter said that a proper mental health assessment was particularly crucial for young people as "their minds are still forming in a way that is far more profound and immediate than adults'".

Crispin Blunt again answered this with the argument that the clause would simplify the procedural requirements for a court to impose a mental health treatment requirement.

The clause was ordered to stand part by 10 votes to 5.

5.8 Magistrates' courts' sentencing powers

Crispin Blunt said that he would not be asking the Committee to support **clause 71**, which would have repealed the uncommenced provisions in the *Criminal Justice Act 2003* increasing the maximum custodial sentence that could be imposed by magistrates from six months to twelve.[139]

He explained that the summer riots had provoked further debate on magistrates' sentencing powers, and that in that light the Government no longer thought it appropriate to repeal the relevant provisions of the 2003 Act at this stage. They would therefore remain on the statute book (still uncommenced) while the Government looked at whether there was a case for increased sentencing powers.

The Opposition supported this position and the stand part debate was negatived without division.

5.9 Custody plus and intermittent custody

During the clause stand part debate on **clause 72**, Helen Goodman asked the Minister to reconsider the proposals to remove the uncommenced provisions in the *Criminal Justice Act 2003* relating to custody plus and intermittent custody from the statute book. She said that even though these provisions had not yet been implemented, they were sensible and could be a useful future tool for tackling reoffending by those given short custodial sentences.

Crispin Blunt said that the provisions had not been commenced by the previous Government because they were unaffordable, and that this continued to be the case. If they were to remain on the statute book they would continue to complicate an already complex sentencing framework. He said that the Government would be piloting other ways of successfully rehabilitating offenders.

The clause was ordered to stand part on division by 11 votes to 7.

6 Bail

6.1 No real prospect of imprisonment

Schedule 10 would amend the *Bail Act 1976* so that the exceptions to bail set out in Schedule 1 to that Act would (in most cases) no longer apply where there was no real prospect that the defendant in question would be sentenced to imprisonment at the

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138 PBC Deb 15 September 2011 cc660-662
139 PBC Deb 11 October 2011 cc673-675

conclusion of criminal proceedings. This "no real prospect test" would apply to those accused of both imprisonable and non-imprisonable offences.

The Committee considered two Opposition amendments that would have limited the no real prospect test to suspects accused of non-imprisonable offences.[140] Helen Goodman argued that imprisonable indictable, either-way and summary offences – which might include sexual assault, robbery and burglary – were so serious that it would not be sensible to use the no real prospect test in these cases. She said that non-imprisonable offences were by definition the only offences where the court could be certain that there was no real prospect of imprisonment, and that the new test should therefore be limited to this category of offence.

Andy Slaughter criticised the no real prospect test on the grounds that it would require the courts to decide the defendant's likely sentence at a very early stage of proceedings. On a related point, Kate Green considered that it would be "dangerous" to ask decision makers, particularly lay magistrates, to determine whether there was a reasonable prospect of custody without a substantial rethink of the training they were currently offered.

In response, Crispin Blunt said that the amendments would be fatal to 99 per cent of the underlying intentions behind the no real prospect test:

> In general, defendants should not be remanded in custody when it is apparent to the court that there is no real prospect of the defendant being imprisoned if they are convicted. The court is not expected to engage in a sentencing exercise before the trial; the provision only affects cases in which it is clear at the outset that the alleged crime is not serious enough to warrant a custodial sentence. When that is the case, remanding the defendant in custody is generally disproportionate and it is not a sensible use of prison, as that sort of defendant does not pose a serious threat to public safety.[141]

The lead amendment was negatived by 11 votes to 8.

6.2 Prosecution right of appeal

Helen Goodman moved an amendment that would have introduced a new right of appeal for the prosecution in cases where a defendant was granted bail rather than being remanded to custody.[142] The amendment proposed that appeals against a Crown Court decision to grant bail would be appealable to another Crown Court judge. She explained that the amendment had been prompted by the case of Jane Clough, who was murdered by her former partner eight weeks before he was due to stand trial for her rape and sexual assault. He had been granted bail despite both the police and the Crown Prosecution service having argued against it.

The amendment received cross-party support, although concerns were expressed about its drafting: in particular that it would give one Crown Court judge appellate capacity over another of equal seniority. Robert Buckland suggested that this could be cured by making it an appeal to a High Court judge, rather than to another Crown Court judge.

In response, Crispin Blunt said that the Government supported the general thrust of the amendment and would therefore be looking at resources and other practical implications (e.g. estimates of the number of times this right of appeal might be used by the prosecution) before drafting the necessary legislative amendments. He expressed hope that this would

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[140] PBC Deb 11 October 2011 cc686-694
[141] PBC Deb 11 October 2011 c688
[142] PBC Deb 11 October 2011 cc695-701

take place during proceedings on the Bill, but could not give the Committee any undertaking that amendments would be ready in time.

On that basis the amendment was withdrawn.

7 Remands of children otherwise than on bail

The Committee expressed general cross-party support for the thrust of **clauses 74 to 89** and they therefore attracted relatively limited debate.[143] A number of minor and technical Government amendments were agreed and a number of probing amendments were considered (none were pressed to a division).

Elfyn Llwyd moved several probing amendments that would have raised the lower age limit for electronic tagging under **clause 77** and remand to youth detention accommodation under **clauses 81 to 84** from 12 years to 14 years. He queried whether it was appropriate for such provisions to apply to children aged 12 and 13. In relation to tagging, Crispin Blunt replied that if the courts were unable to use electronic tagging for 12 to 13 years olds remanded to local authority accommodation this might have the unintended consequence of more young children being remanded in secure accommodation. In relation to remand to youth detention accommodation, Crispin Blunt said that it was the case that 12 to 13 year olds sometimes committed serious offences and that in such cases this was the most appropriate option. He drew a distinction with 10 and 11 year olds, who he said rarely committed serious offences and were unlikely to present a risk that could not be managed in the community.

The Committee considered four probing amendments tabled by Andy Slaughter that would have removed the "offence condition" from **clauses 81 to 84**. He asked the Minister how the Government would respond to criticisms that these clauses limited judicial discretion. In response, Crispin Blunt said that removing the offence condition would effectively widen the scope of the clauses and enable more young defendants to be remanded to secure custody. This would undermine the Government's intention that only those young people alleged to have committed particularly serious offences should be remanded to youth detention accommodation.

8 Offences

8.1 Squatting and self-defence

The Government has indicated that it intends to introduce amendments to criminalise squatting and clarify the law on self-defence. At the time of writing no further details on the drafting of these amendments were available. For a general overview of these topics, please see the following Library Standard Notes:

- SN/SP/355 *Squatting in residential premises*
- SN/HA/2959 *Householders and the law of self defence*

8.2 Knives and offensive weapons

The Committee agreed a number of Government amendments to **clause 113** relating to defences to the new aggravated offences of using a bladed or pointed article or offensive weapon to threaten or endanger.[144] As introduced, clause 113 would have provided a defence where the defendant could prove lawful authority or reasonable excuse for having the weapon with him. Crispin Blunt explained that this defence was available in respect of the existing basic possession offences and it had therefore been carried through to the

[143] PBC Deb 11 October 2011 cc705-723
[144] PBC Deb 13 October 2011 cc803-811

drafting of the aggravated offences in clause 113. However, on reflection the Government was concerned that this could theoretically result in a person accused either of the aggravated offences by using a bladed or pointed article or offensive weapon to threaten and endanger being acquitted if he could argue that his initial possession of the article or weapon was lawful. The Government amendments therefore removed this defence from the clause.

8.3 Causing serious injury by dangerous driving

The Committee agreed **new clause 15** moved by Crispin Blunt.[145] The new clause would amend the *Road Traffic Act 1988* and the *Road Traffic Offenders Act 1988* by inserting a new either-way offence of causing serious injury by dangerous driving punishable by a custodial sentence of up to five years. "Serious injury" would be defined as physical harm amounting to grievous bodily harm for the purposes of the *Offences Against the Person Act 1861* (in respect of England and Wales) or severe physical injury (in respect of Scotland).

Crispin Blunt said that the new offence would fill a long-recognised gap between the existing offences of dangerous driving, which has a maximum penalty of a two year custodial sentence, and causing death by dangerous driving, which has a maximum penalty of a fourteen year custodial sentence. He referred to campaigners who argued that the gap between these current maximum sentences was too wide and made no provision for victims who receive very serious life-changing injuries but do not die. He acknowledged that there was an argument that the courts should focus on the standard of the driving rather than its consequences, but said it was important to strike a balance between the level of criminal fault on the part of dangerous drivers and the consequences of that criminal fault for the victim. He considered that the new offence with its five year maximum sentence would enable the courts to reflect these consequences in appropriate cases.

A number of Members, including Karl Turner and Anna Soubry (Conservative), welcomed the clause but suggested that a better way to proceed would be to increase the maximum penalty for dangerous driving to five years rather than introducing a new offence.[146] Concerns were raised about the difficulty of assessing "serious injury", and of the inadequacy of a two year sentence in cases where extremely dangerous driving had taken place but no injury (or only minor injuries) had actually occurred.

In response, the Minister said that the Government had considered raising the dangerous driving penalty from two years to five, but had found no evidence to suggest that the two year maximum was too low in the vast majority of dangerous driving cases. He said the new clause presented a more targeted approach to addressing the consequences of bad driving.

The new clause was given a second reading without division.

9 Release on licence

Clauses 90 to 99 are intended to rationalise the very complex statutory provisions governing the release and recall of prisoners, and to correct some anomalies. The only amendments made to these clauses were a few Government technical and drafting amendments.[147]

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[145] PBC Deb 13 October 2011 cc815-821. New clause 15 now appears as clause 114 of the Bill.

[146] Karl Turner had previously introduced a ten minute rule bill on this issue in May 2011 and initiated a Westminster Hall debate in June 2011: see HC Deb 17 May 2011 c192-194 and HC Deb 22 June 2011 c134-142WH for further details.

[147] to **clause 91** (which deals with the crediting of periods of remand on bail), **clause 92** (which deals with consequential amendments), **clause 97**(supervision of young offenders after release) and **clause 98** (miscellaneous amendments on release and recall)

9.1 Probation supervision for those with short sentences

Helen Goodman moved an amendment to **clause 93** which would have required a person sentenced to between four and 12 months to be supervised by the Probation Service after release; currently those sentenced to less than a year are not supervised when they are released. The Labour Government had legislated for a scheme called "Custody Plus" under the *Criminal Justice Act 2003* which would have introduced supervision on licence for short term prisoners, but this was never brought into force, primarily for resource reasons. The Bill is due to repeal these provisions, as part of its rationalisation of the legislation in this area.

Ms Goodman argued that giving those on short sentences adequate supervision would probably save money overall by reducing reoffending.[148] Mr Blunt responded that unfortunately the Government did not have the additional funds which would be required in the current climate.[149] Ms Goodman withdrew the amendment.

9.2 Local cooperation to help ex-prisoners

Ms Goodman also moved an amendment to **clause 98** which would have required the Secretary of State to promote cooperation between local authorities and other bodies to reduce reoffending and manage the transition from prison into the community. She cited examples where women with children had been released without any housing having been organised, and where mental health issues had not been sufficiently addressed either in prison or in the community. Mr Blunt argued that the amendment was unnecessary, given existing statutory provisions and partnership arrangements already in place to reduce reoffending.[150] The amendment was negatived on division by 11 votes to 9.

9.3 The discharge grant for mothers with infants

A further amendment to clause 98 moved by Ms Goodman would have increased the discharge grants for offenders with infants who had been held in a prison mother and baby unit. She argued that the present grant of £46 was insufficient to buy items which were essential to look after a baby.[151] Mr Blunt pointed out that the current grant level was not set out in statute, and that prison governors already have discretion to make additional payments.[152] The amendment was negatived on division by 12 votes to 8.

10 Prisoners' employment

Clause 103 covers prisoners' employment, and represents part of the Government's desire to develop a "working prison" where prisoners work a full working week and where deductions are made from their wages, both for purposes which would benefit the prisoner, and for making reparations to victims. Accordingly, this clause would create new powers to make rules about employment, pay and deductions.

10.1 "Working prisons" and deductions from earnings

The Government made a small drafting amendment to clause 103, but the debate centred on two Opposition amendments, which were withdrawn. The first would have *required* the rules on reductions to prisoners' payments to make provision for payments to victims and communities, and for rehabilitation purposes. As it stands, the Bill merely permits the rules to make such provisions. The second Opposition amendment would have ensured that prisoners' earnings could be used for the benefit of their dependants, as well as the other

148 PBC Deb 11 October 2011 c728
149 PBC Deb 11 October 2011 c732
150 PBC Deb 11 October 2011 c742
151 PBC Deb 11 October 2011 c745
152 PBC Deb 11 October 2011 c746

purposes set out in the Bill. In the course of the debate, Helen Goodman asked detailed questions about how the Government's plans for "working prisons" would be implemented, including where the capital investment would come from, what degree of choice prisoners would have, whether the prisons would create unfair competition for local businesses, and what wages prisoners would be paid.[153] She also asked about targets for increasing the numbers of those working. Kate Green reiterated her questions about how work opportunities for women in prison could be improved, and what sanctions would be applied to prisoners who did not wish to work.[154]

Responding, Crispin Blunt made it clear that very few prisoners were currently involved in what he would describe as "serious commercial work" and that increasing the numbers of those that did presented "significant challenges".[155] Prisoners could not be employed in prison by a business in the same way as people outside prison, but he wanted "tens of thousands of prisoners to be working productively in our prisons". Investment might be provided by turning the current prison industries directorate in the National Offender Management Service into a trading fund, and various businesses had expressed support.[156]

11 Out of court disposals

Clause 106 and **schedule 14** would allow the police to set up schemes whereby they could issue penalty notices with an "education option", so that recipients could discharge their liability to be convicted by paying for and completing an education course related to the offence.

Clause 107 would remove the existing requirement that before a police officer can issue a conditional caution, he or she must refer the matter to the Crown Prosecution Service (CPS) to decide if there would be sufficient evidence to charge the person with the offence.

11.1 Penalty notices for disorder

Schedule 14 would make various amendments to the existing provisions on penalty notices for disorder in the *Crime and Disorder Act 1998* including removing the requirement for the police officer giving the notice to be in uniform and for the notice to be given at a police station. Helen Goodman, moving an amendment to omit these new provisions from the Bill, expressed concern about the potential for impersonation. Crispin Blunt replied that these requirements were unnecessary and could cause operational difficulties.[157] The amendment was negatived on division by 11 votes to 9.[158]

11.2 Conditional cautions

There was also a division over the clause stand part debate on **clause 107**. Helen Goodman said that removing the requirement to refer the conditional cautions to the CPS "could be dangerous as it would effectively allow the police to sentence the offender, as well as being responsible for his arrest".[159] This in turn could result in inappropriate conditional cautions being given without adequate scrutiny, for example to those with learning difficulties or mental health problems. Responding, Crispin Blunt said that the existing requirements created "unnecessary bureaucracy for both the police and the Crown Prosecution Service".[160] The clause was ordered to stand part of the Bill. There was a similar debate over the

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153 PBC Deb 13 October 2011 c758
154 PBC Deb 13 October 2011 c761
155 PBC Deb 13 October 2011 c765
156 PBC Deb 13 October 2011 c767
157 PBC Deb 13 October 2011 cc780-1
158 PBC Deb 13 October 2011 c786
159 PBC Deb 13 October 2011 c786
160 PBC Deb 13 October 2011 c788

involvement of prosecutors in Youth Conditional Cautions under **clause 109**, and again the clause was ordered to stand part following a division.[161]

[161] PBC Deb 13 October 2011 c803

Members of the Committee

Chairs: Philip Hollobone, Jim Sheridan

Crispin Blunt (Parliamentary Under-Secretary of State for Justice)

Tom Brake (Liberal Democrat)

Robert Buckland (Conservative)

Mike Crockart (Liberal Democrat)

Alex Cunningham (Labour)

Jonathan Djanogly (Parliamentary Under-Secretary of State for Justice)

Yvonne Fovargue (Labour: Opposition whip)

Helen Goodman (Labour: shadow Minister for Culture, Media and Sport)

Kate Green (Labour)

Ben Gummer (Conservative)

Damian Hinds (Conservative)

Jessica Lee (Conservative)

Elfyn Llwyd (Plaid Cymru: spokeperson for Justice)

Jonathan Reynolds (Labour/Co-operative)

Andy Slaughter (Labour: shadow Minister for Justice)

Anna Soubry (Conservative)

Elizabeth Truss (Conservative)

Karl Turner (Labour)

Ben Wallace (Conservative)

Dave Watts (Labour)

Jeremy Wright (Conservative: Government whip)