Legal Aid, Sentencing and Punishment of Offenders Bill

Second Reading

3.07 pm

Moved By ***Lord McNally***

That the Bill be read a second time.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, this is a substantial and far-reaching Bill. Its breadth is a consequence of the scale of its ambition, which is nothing less than intelligent, radical reform of the justice system. It aims to reform our criminal justice system so that it protects and serves the needs of the law-abiding, especially victims. It recognises that, for many offenders, prison does work and clear, stiff punishments are the right response to serious crime. But it also seeks to meet the challenge of persistent offending by bringing on stream a rehabilitation revolution which, if successful, would be a win-win, saving future victims from the trauma of a crime and the taxpayer the cost of incarcerating the offender once again, at the same time introducing to society a productive citizen whose life is not wasted in the cycle of criminality.

The Bill's second goal is the long-overdue renewal of our system of civil justice. A modern system should resolve conflict as early as possible in the most cost-effective way. Yet the reality is that many ordinary users find going to law a slow, expensive and daunting experience that fosters rather than minimises litigation, often at the taxpayer's expense.

The Bill therefore seeks to remove certain areas from the scope of legal aid while encouraging a step-change in the use of mediation and other ways of resolving disputes. It also implements the recommendations of

21 Nov 2011 : Column 821

Lord Justice Jackson on reforming no-win no-fee funding arrangements, which have become dysfunctional and inflationary. We also propose to ban referral fees.

Underpinning these first two aims is our third intention; namely, to make a contribution to unavoidable and necessary reductions in public spending. We approach our task with a profound belief in the fundamental importance of access to justice but the system as it stands faces an unignorable problem of affordability. Therefore, Part 1 introduces major reforms to the scope of civil legal aid. Alongside this, the changes in Part 1 mean a fundamental shift in the way the legal aid and wider civil justice system works.

For those who say that those most in need must have legal help to support them when they have a serious legal problem, I agree. For those who say that people must have legal

help for whatever they want, whenever they want, I cannot agree. Access to justice is not the same as state-funded access to legal representation at court. We must do more to encourage people to use alternative, less adversarial means of resolving their problems.

We have approached our reforms of legal aid from first principles and have taken into account the relative importance of the issues at stake, the litigant's ability to present their own case, the availability of alternative sources of funding as well as alternative sources of help and advice. Our proposals seek to focus legal-aid funding on circumstances where a person's life or liberty is at stake, where they are at risk of serious physical harm, or where they face immediate loss of their home. Importantly, we are also retaining civil legal aid in cases where children may be taken into care.

The net effect of all this is significant change. Yet, in all, we estimate that the taxpayer will still spend the best part of £1.7 billion on legal aid each year after these reforms have been carried through. Prioritising critical areas of spend necessarily means taking a more radical approach elsewhere. That is why, for example, we have decided to remove taxpayer funding for legal representation in private family law cases and, instead, increase spending on mediation. Similarly, in areas such as employment, routine immigration applications and welfare benefits issues, legal aid will no longer be available. As noble Lords well know, the original rationale of the tribunals system was precisely to enable people to make their case without the intervention of a lawyer.

Although narrowing the scope of legal aid, we intend to provide a safety net. The exceptional funding scheme established in the Bill will provide funding for an excluded case where failure to do so would amount to a breach of a person's right to legal aid under the Human Rights Act or European Union law. We also intend to address worries about the future of the valuable work done by the not-for-profit sector. This is an important part of our alternative and we recognise the need for a strong sustainable body of advice providers.

The Government have already announced a £100 million transition fund for the not-for-profit sector. I can confirm that, as announced this morning, we are injecting an extra £20 million specifically for

21 Nov 2011 : Column 822

free advice services, as well as undertaking a cross-government review to ensure that people continue to have access to good quality free advice services in their communities.

Concerns have also been raised about the impact of Part 1 on children and women. Let us be clear from the outset: we have retained legal aid for child protection cases, civil cases concerning child abuse and those involving special educational needs. We have also made special provision to retain legal aid for child parties in family cases. The consequence is that the vast majority of support for children will be unaffected by our changes. In 2009-10, the Government provided £133 million in civil legal-aid funding to

child parties in all categories of law. Under our proposals, 95 per cent of that will continue.

In relation to women's access to legal aid, we are again prioritising those most at risk of harm, retaining legal aid for private law cases involving domestic violence, where we have broadened the range of evidence accepted. Applications for protective injunctions and associated advice will continue to be funded.

In addition, in private family cases, Part 2 extends the courts' powers to require one party to pay towards the other's costs. This will help significantly in cases in which there is an inequality of arms. In family law as a whole, the taxpayer will still be providing over £400 million, much of which will benefit women.

Of course, the dire economic situation that we inherited drives some of the tough choices that we have had to make. Indeed, noble Lords opposite were already trying to cut legal aid at a time when they were still telling us that they had cured boom and bust. We all agree that legal help for those facing serious legal difficulties is fundamental. On the other hand, substantial changes and reform are much needed. We believe that our proposals in Part 1 achieve this balance.

Part 2 implements reforms in civil litigation funding and costs, based on Lord Justice Jackson's recommendations. No-win no-fee conditional fee agreements were first introduced in England and Wales by my noble and learned friend Lord Mackay of Clashfern. Most observers believe that they succeeded in their goal of improving access to justice for those who were neither poor enough to qualify for legal aid nor wealthy enough to afford the costs of privately funded litigation. However, later changes tilted the balance much too far in favour of claimants. The Master of the Rolls, the noble and learned Lord, Lord Neuberger, said to the *Times* only last week:

"When you see the level of costs in some cases ... it is clear that the system is unsatisfactory, some would say worse than unsatisfactory, and something needs to be done about it".

This Bill intends to do something about it by ending the recoverability from losing parties of success fees and insurance premiums that drive up legal costs. This will be balanced against a 10 per cent increase in general damages for claimants. By taking these steps, we will restore common sense to the system and stop the perverse situation in which fear of excessive costs often forces defendants to settle, even when they know that they are in the right. This marks a return to the

21 Nov 2011 : Column 823

kind of arrangement that prevailed when the system was first set up by my noble and learned friend Lord Mackay in the mid-1990s.

I am well aware that a number of noble Lords, many of whom are sympathetic to the broad thrust of the Jackson reforms, have concerns about how this will impact on certain areas of litigation. I will listen to what they have to say both during today's debate and when we return to those matters in Committee.

I turn now to the third and final part of the Bill, which concerns our sentencing proposals. I want to start by making the point that these reforms are designed with the victims of crime very much in mind. As I have said already, for many, prison is necessary and it works. However, if it is truly to protect the public, it needs to do a much better job on tackling reoffending.

We have two key proposals to deliver this change. The first is to introduce reforms across the estate to make our prisons places of hard work, not idleness. Getting prisoners into the habit of work matters in its own right not only because unemployment is a major risk factor in reoffending, but because once you get offenders working, you can institute a much more effective system of reparation to victims and to communities. Accordingly, this Bill enables deductions to prisoners' earnings to pay for victims' services and puts a positive duty on the courts to consider handing down compensation orders, the proceeds of which can go direct to victims. These reforms will help to move prisoners from being a purely negative drain on the system to making a positive contribution and pay genuine reparation to the victims who their actions have affected so terribly.

Running parallel to the Bill, our second key proposal is paying by results those organisations which work to rehabilitate offenders. This is a truly radical reform with the potential to revolutionise the way a lot of rehabilitation services operate. Rehabilitation is the key theme that runs right through the Government's sentencing proposals. One need only look at this summer's riots, where around three-quarters of suspects had previous convictions, to see that existing punishments have so far failed to reform. I believe that we need punishment which is robust and proportionate but that is also accompanied by a determination to get offenders to face up to the causes of their crime. We are offering those who commit crimes a choice. For those who do wrong, you will be punished, but for those who choose to mend their ways, we are extending a helping hand. That helping hand includes freeing up courts to impose drug, alcohol or mental health treatment requirement programmes which are tailored to individual needs.

I can also announce today that the Government intend to introduce reforms to the Rehabilitation of Offenders Act 1974, the outdated operation of which inhibits rehabilitation. We intend to bring forward amendments to achieve the right balance between the need to protect the public while removing unnecessary barriers that prevent reformed offenders contributing to society. I pay tribute to my noble friend Lord Dholakia on his long campaign on this matter. We believe that punishment must be proportionate, flexible and productive, so let me turn to some of the key measures in the Bill which will ensure that.

The first of the measures is greater discretion. We are legislating to provide more flexibility for judges and magistrates to sentence appropriately. The Bill is a first step to unpicking the labyrinth of legislation governing sentencing and creating a single framework for the release and recall of offenders. We are also proposing a simpler, clearer duty on the court to explain the sentence it passes, enabling it to be understood better. The Bill also introduces greater flexibility and discretion by removing the so-called "escalator principle" of out-of-court disposals for under-18s, which forces young people arbitrarily into the criminal justice system, regardless of the nature of their offending. In this area of youth justice reform, we are also undertaking the important step of treating 17 year-olds as children for remand purposes, and giving "looked-after child" status to all young people aged under 18 who are securely remanded. This will enable, for the first time, care plans to be created for those young people who are remanded to youth detention accommodation.

In the wider system, we seek to take a tougher approach to waste and reduce unnecessary pressures. Our major reform here is our proposals on remand in Chapter 2 of Part 3. These focus the use of remand in custody on those who are likely to receive a custodial sentence if convicted, with an exception in domestic violence cases. While I recognise that this change will be unwelcome to some, continuing to remand into custody people who in reality have no prospect of being sent to prison if convicted is simply a wasteful use of expensive prison places. On the other hand, if you have committed a serious crime, you can expect a serious punishment, so Part 3 introduces a number of new criminal offences which ensure that the public have confidence in the system. These include: criminalising squatting in a residential building; minimum sentences for those aged 16 and over who use a knife or offensive weapon to threaten another person and cause an immediate risk of serious physical harm to that other person; and a maximum penalty of five years' imprisonment for causing serious injury by dangerous driving.

Lord Reid of Cardowan: Before we leave sentencing I would like to ask the Minister a question about indeterminate sentences, which he has not mentioned. In doing so, I declare my interests, as registered. The Minister may know that some years ago when I was Home Secretary, I gently reminded the judiciary of the premise behind the sentencing guidelines that people should not be sent to prison for offences that did not merit it but should be given community services, whereas people who were a serious danger to society should be retained indefinitely for protection, not for punishment. Could he say something about that relationship, in particular indeterminate sentences, before he moves on?

Lord McNally: Patience, my Lords. I will be turning to IPPs.

On knife crime, in particular, I understand the arguments of those requests and the desirability of minimum sentences. We have not taken this decision lightly but only after

careful consideration. The stark reality is that too many people are affected by this scourge and more often than not those targeted will be

21 Nov 2011 : Column 825

other children, whom we have a duty to protect. This offence will bite where this becomes most serious, where the knife is brandished and there is an immediate risk of serious physical harm to another person. I can say with some feeling that every parent of teenage children knows the worry that an innocent night out might end in an act of violence against their child, and I make no apology for acting to send the clearest possible message that this is unacceptable.

I now wish to turn to one of the Bill's most important reforming measures, namely reform of the current system of indeterminate sentences for public protection. IPPs are poorly understood by the public. They lead to inconsistent sentences for similar crimes. They deny victims clarity about the length of time an offender will serve. The previous Government estimated that there would be around 900 such prisoners in jail. There are now 6,500 and more than half of those are beyond their tariff. As of the end of June 2011, only 320 had been released.

IPPs clearly need major reform. We will replace the IPP with the new extended determinate sentence. Instead of serious violent and sexual criminals being released automatically halfway through their sentence, those receiving the new extended determinate sentence will have to serve at least two-thirds before they can be considered for release, and the more serious offenders will not be released at that point unless the Parole Board considers it safe to do so. Under our plans we expect that more dangerous offenders who commit a second serious crime will receive a mandatory life sentence. We believe this is a balanced reform, one where victims will have a clearer understanding of how long offenders will spend in prison and will be kept informed of progress and release plans. It is an attempt to deal with the real problem without compromising the public safety or ignoring legitimate concerns about serious offenders.

I am well aware, given the range of expertise in this House, that the sentencing reforms that I have outlined will be subject to scrutiny and debate, both today and in Committee. So, too, will our proposals on legal aid, on the Jackson reforms and the rehabilitation revolution. This is as it should be for this is a revisory and an advisory House of great wisdom and expertise, and I will listen. But we remain clear about the need to make hard choices and fundamental reforms in our justice system. If we get this right, the prize is a justice system that contributes to a safer and fairer society by tackling reoffending and by putting the victim at the heart of everything we do. Moreover, it will be a system that protects access to justice where it counts while keeping costs under control and ensuring the system has less waste and less delay. Our aim has always been to propose a balanced package and I can tell the House that that remains exactly what this is. This is a radical and reforming Bill and I commend it to the House. I beg to move.

3.29 pm

Lord Davidson of Glen Clova: My Lords, I thank the Minister for his measured introduction to the Bill. First, I should declare an interest as a practising member of the Bar.

21 Nov 2011 : Column 826

As the Minister indicated, the Bill is plainly a substantial piece of legislation. It makes major changes to the civil law, with consequences for access to justice. Our principal concern focuses on extensive cuts to legal aid and a dramatic switch in civil litigation to place greater financial burdens on winning claimants, hitherto treated as entitled to restitution for their loss and damage. As the House's Select Committee on the Constitution has observed-as if there were any doubt about the matter:

"There is no doubt that access to justice is a constitutional principle".

The section of the Bill on criminal justice is perhaps less sweeping and less controversial, encompassing as it does both sentencing reform, much of which we support, and the creation of new criminal offences, the latter for the main part having been introduced on Report in another place.

It is the changes to both legal aid and civil litigation that have rightly attracted the most concern, the most representations from civil society and the most debate in another place. It should be clear from the outset that we oppose many of these changes. I know from speaking to certain of your Lordships that these concerns are shared by many here. My noble friend Lord Bach and I will advance arguments as to why those changes are both economically misguided and target the wrong people. They target, for example, the most vulnerable in the case of legal aid, including vulnerable families, and victims in the case of civil litigation reform.

Part 3 of the Bill contains a variety of fairly substantial changes to the criminal justice system, some of which we welcome. For example, the Government intend to divert away from custody people with mental health and addiction problems as well as young people. These proposals are both sensible and proportionate. The Government propose to end indefinite sentences for public protection, IPPs, which have attracted considerable criticism over the years. The plan to replace IPPs with extended determinate sentences and mandatory life sentences for the offender who commits certain specified offences twice will plainly require scrutiny in Committee, as the Minister anticipated.

The Bill also aims to change the way in which remand works in England and Wales by limiting its use where a judge rules that there is no probability of a custodial sentence. Our view on this issue is that there is of course merit in reducing the use of remand where it is unnecessary, but only if it does not put victims and the general public in harm's way.

Further, there are due process issues for a magistrate, who, without having seen prima facie evidence, is required to decide whether an offender is likely to be sentenced to custody. The Government have signalled their intent to bring forward in this House further changes to remand in response to campaigns such as that by the parents of Jane Clough, who was murdered by her ex-partner while he was on bail pending charges for her rape We expect that these will require considerable scrutiny so that we can balance keeping the use of remand while protecting the public.

The Bill also creates new, or possibly restated, criminal offences of threatening with a knife and squatting, alongside what the Government call a "clarification"

21 Nov 2011 : Column 827

of how much force can be used in defence of property. I expect that there will be constructive debate in this House on these issues.

I return to Parts 1 and 2 of the Bill, which correctly have attracted most concern. The cuts to legal aid set out in Part 1 and the reduction of damages that victims receive set out in Part 2 are contiguous assaults on access to justice for both the most impecunious in society and those of moderate means. The Government aim to make substantial cuts to social welfare legal aid and advice. Welfare benefits will be removed from the scope of legal aid. Education, advice and representation, except for matters dealing with special educational needs or discrimination, will be removed from scope, as will be debt advice, except where the client's home is at risk, employment advice and representation, except discrimination issues, and housing advice, except where the client's home is at risk. The Government apparently hope to save some £64.5 million by removing these areas of law from scope while, we say, adversely affecting the most vulnerable people in society. We say "adversely affecting" as these citizens will now have to navigate the first-tier tribunals on their own without advice or representation.

I appreciate the first-tier tribunals are meant to be more user-friendly to the unrepresented applicant than the courts, but they still rule on matters of law, which user-friendliness in itself does not assist. The Minister has indicated that today apparently £20 million will be made available in respect of free advice. I have one or two questions about this. It would be interesting to know, for example, whether this is free legal advice, because legal questions tend to require legal advice. I ask this question because we on these Benches have received little information about this proposal. I also ask whether this is possibly the same £20 million to which reference was made on 2 June this year.

The risk is that someone who has a learning disability or poor language or communication skills will receive no help at all. Answers to Parliamentary Questions reveal that those who appear before the tribunals with specialist advice are twice as likely to win as those without specialist advice. If we look at the data for the last year, taking advice away from those who won raises the question whether those 51,000 people who received advice and won their case would have in fact won at all.

The real concern is that people, who have meritorious cases, where advice would permit their cases to be pled cogently and persuasively, will lose out. We know that where the vulnerable lose out, their lives can sometimes tip over into ill health, homelessness and family breakdown. Of course, it is then, only then, that the state will be obliged to intervene.

It costs £150 per case of debt advice, but many thousands are required to be spent to resolve a case of homelessness. It can be tens of thousands of pounds-many tens of thousands.

The Civil Justice Council, the non-departmental public body that advises the Ministry of Justice on civil justice, states in its recent report on access to justice for litigants in person:

"It is hard to overstate just how difficult it can be-for the person, for the court, and for other parties-when someone self-represents".

21 Nov 2011 : Column 828

It goes on to say:

"The design of the legal aid reductions and changes will take away routes to accessible early advice (including by the damage done to the advice sector, which in turn damages access to wider pro bono legal services) and leave intervention too late or denied altogether. As a result we will find more cases started by self-represented claimants that need not have been started, more cases where self-represented defendants are involved for longer than need be, and more cases not starting when they should be started so that they can be resolved. We will find problems clustering, with increasingly wide and serious consequences for the individual, for families, and the state".

The Government's own assessments do not read particularly hopefully. They say the cuts to social welfare legal aid threaten to lead to reduced social cohesion; increased criminality; reduced business and economic efficiency; increased costs for other departments; and increased transfer payments from other departments, in particular higher benefits payments for people who have spent their savings on legal action.

These proposals merit considerable scrutiny by this House. I urge those who have not done so to read the *Hansard* record of the Committee and Report stage of this Bill in another place. Members from all sides have argued that these changes will do little to enhance our society. This House's Select Committee on the Constitution suggests an amendment to oblige the Lord Chancellor to,

"secure that legal aid is made available in order to ensure effective access to justice".

We consider that this is a necessary buttress to justice.

The second major change to the legal aid system is that to private family legal aid. Private family legal aid, which helps impecunious applicants with matters including divorce, custody or ancillary relief-payments and maintenance following divorce-will no longer be funded by legal aid unless the applicant has suffered domestic abuse. The Government have set out six forms of evidence that they will accept for the purposes of accessing private family legal aid.

We believe, as do many others including the Women's Institute, Rights of Women, and End Violence Against Women, that this evidential prescription will adversely affect women. In particular, the Opposition are very concerned that the evidential criteria adopted by the Government are too narrow. In fact, they do not even reflect best practice across government. The UK Border Agency's list of accepted evidence on domestic violence is broader than the Bill's treatment of someone seeking legal aid for divorce.

One is given to understand that the Government are worried that evidential criteria containing an element of self referral and their decision to make domestic abuse the gateway to legal aid will create a perverse incentive to claim abuse where they might be none. But this approach seems to create and foster institutionalised doubt as to the veracity of victims' claims in the first instance. Put colloquially, women will lie. We fear that it will disadvantage women and indeed men who leave a partner after sustained abuse. They may not have revealed their experience of abuse to others but they will be denied legal aid because they do not fit the set criteria. That is hardly an advance, noble Lords may agree.

Part 2 of the Bill deals with reform of civil litigation funding and costs. The Government believe that

21 Nov 2011 : Column 829

contingency fee arrangements-that is, no-win no-fee claims-require substantial reform. No-win no-fee is a mechanism allowing people of little or moderate means to access the courts without having to mortgage their houses or get into severe debt funding an action on a standard fee basis. No-win no-fee has worked remarkably well as a means of funding litigation. It limits liabilities for claimants and deters lawyers from taking on vexatious or spurious cases while enabling reasonable cases to be taken on, all through the awarding of success fees.

The Government's plans, which we will examine in their technicalities in due course, propose major changes to the settled system that we have now. How will it affect those who find themselves needing recourse to litigation, often literally through no fault of their own? Winning claimants-that is, those who have been wronged-will lose out. They may have to pay up to 25 per cent of their damages to their lawyers excepting any award for

future care. It is true that to make up for part of these losses the Government plan a 10 per cent increase in damages for pain, suffering and loss of amenity, but not all damages awards. The simplest arithmetic shows that the increase is unlikely to replace the percentage paid to the lawyer.

Oddly, losing claimants, however, will gain. They will no longer have to pay the costs of winning defendants. That is part of the qualified one-way cost shifting scheme that the Government intend to introduce once the Bill passes. Local authorities and insurers are privately counselling that that will lead to an explosion in fraudulent small claims, typically slips and falls, where the authorities' costs of defending exceed the claim. Elsewhere, the Government say that they fear perverse incentives.

We also find that losing defendants-that is, the wrongdoers, those proven to have caused harm-will gain because they will not have to pay the cost of after-the-event insurance and the victim's lawyer's success fee thus limiting their and their insurers' liabilities. Winning defendants who successfully defend their cases will no longer be able to reclaim the cost of their defence thanks to qualified one-way cost shifting. Not all defendants, of course, are large companies or insured persons.

The gainers from this Bill are losing claimants and losing wrongdoers and their insurers. The losers are claimants who prove their cases and defendants who are held not to be at fault. Such outcomes are at best curious to those who prefer justice and fairness.

The majority of civil cases involve road traffic accident personal injuries and it is true that the Association of British Insurers and the right honourable Jack Straw have highlighted how so-called whiplash fraud is a real problem in this area. However, this Bill has consequences well beyond that problem, which can be resolved by a more focused approach. The effect of the Government's changes will be to render much of the law that protects the individual no longer practically accessible to many of our fellow citizens. If we take the acute area of clinical negligence, for example, the NHS Litigation Authority-hardly a claimants' advocate because it defends clinical negligence cases-identifies in its response to consultation that severely brain-damaged

21 Nov 2011 : Column 830

children and adults will find it hard to instruct a lawyer who is willing and able to take on their cases. People who have lost out to incompetent or fraudulent financial advisers, lawyers or accountants, will find that they will end up recovering less than they lost, despite having done nothing wrong. To lose 25 per cent of damages today connotes significant contributory negligence by the claimant. Under this Bill, the damaged-the blame-free-will lose out; and for what overriding public good? It would no doubt be crude sloganeering to suggest that this is for the protection of insurance company profits, but one is left puzzled seeking to identify the clear policy objective justifying such consequences. The Minister will no doubt assist the House with an explanation beyond what we have heard thus far.

I turn to another area of the adverse effects of this Bill: business and human rights. Cases such as Trafigura, the toxic waste to Africa case, will be most unlikely ever to be brought again in future, and that for cost reasons. The UN Secretary-General's special representative for business and human rights, Professor John Ruggie, of Harvard University, alongside campaigners such as, inter alia, CAFOD, Friends of the Earth, Amnesty and Oxfam, all urge a rethink. We join them.

Turning to employment law, it is already under assault in so many ways, whether from tribunal charges, legal aid cuts or so-called blue-sky thinking to remove the laws completely. If people are made redundant or sacked unlawfully and their entitlement to remedies is blocked, the result in many cases will be that the state has to provide the support for which otherwise the employer is liable. We note also that insolvency cases raise issues. HMRC and the Insolvency Service have stated that they are lobbying for an exemption, which is possibly not an example of a joined-up government. I should also mention concerns about defamation law. Your Lordships will be aware that the Joint Committee on the draft Defamation Bill has observed that this Bill's proposals do not put libel proceedings,

> "genuinely within the grasp of the ordinary citizen".

It is hardly an endorsement. Your Lordships will also be aware that the family of Milly Dowler are powerful advocates for the argument that the no-win no-fee system works.

Finally, I turn to industrial illness and disease, one of the most difficult areas. Many charities, including those that support the victims of asbestosis, have expressed real concern that this Bill threatens their ability to get access to justice. I will read a few excerpts from a letter written by Yvette Oldham, whose partner Trevor was a victim of asbestosis. She wrote:

"My husband Trevor and I were devastated upon hearing his diagnosis of mesothelioma in March 2010. We were just a normal couple with a grown-up son, leading busy lives at work, socialising and sporting activities. Trevor is in no way to blame for his condition and was exposed to asbestos between 16 and 24 years of age when he was an apprentice lift engineer erecting lifts on building sites ... This disease has affected our lives in every possible way and stress levels have been extremely high for both of us ... Trevor has been in pain since the condition showed itself, he is very sensitive to strong pain-killing drugs, so is unable to take more effective pain relief. Compensation would be eroded by having to pay legal costs plus insurance to cover defendants' legal costs, plus the worry of having to pay some fees upfront. This is an insult and will discourage people from making a claim to which they are entitled. This Bill should be designed to stop the

'ambulance chaser' brigade who contact prospective clients and advertise constantly, not workplace victims whose lives were put at risk by exposure to asbestos".

This Bill overturns central aspects of our civil justice system that have proved positive and progressive. The most vulnerable people in society and victims are being disadvantaged. Some say that the purpose is to attack a so-called compensation culture. Of course, there are abuses, as can occur in all systems, but there is no evidence-evidence, not headlines-of continuing pervasive abuse requiring this Bill's approach. We believe that the Government will struggle to justify the changes this debate will highlight. We can promise that the Bill will be subject to substantial scrutiny in Committee.

3.50 pm

Lord Thomas of Gresford: My Lords, one of the three great universal lies is, "I am from the Government and I am here to help you". I assure my noble friend Lord McNally that we are from the Liberal Democrat Benches and we are here to help you. I hope that by the time we have finished this process that will not turn out to be the fourth great lie.

Many aspects of this Bill are very welcome. The sentencing provisions demonstrate the enlightened views of the Lord Chancellor, who sees great merit in improving the system of retribution and reform by community sentences, not to mention the many millions of pounds that it will save in keeping offenders out of our great universities of crime. One client said to me not so long ago-he was a man of excellent character before he went to prison-"I don't need to work again. After what I've learnt in here over the last six months, my future is made", so that is one less on the jobless list. It is true that in this Bill the old devil is peeping out from the provisions for mandatory sentencing, but we shall deal with that in Committee. My noble friends Lord Dholakia and Lady Linklater will speak further on these matters shortly.

Once again, parts of this Bill have not been debated by our elected representatives and have passed through on the nod. I single out particularly the new crime of squatting. Are current civil powers of kicking out squatters and letting them go on their way not enough? Must we punish the homeless with fines and imprisonment as well? My noble friend Lady Miller of Chilthorne Domer, who wished to make this point today, is unhappily not with us but she will address this issue in Committee. This is certainly not hating the sin but loving the sinner; it is hating the sinner because of the chaotic person he usually is.

I declare an interest in that over the past 50 years I have made my living from legal aid, and I am proud to say so. The system has been due for revision and change for some years. It is a basic principle that:

"In the determination of his civil rights and obligations-

a person who can afford it-

> "is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

I am sorry, I made a mistake; Article 6 of the European Convention on Human Rights actually states that "everyone" is entitled to a fair trial.

The legal aid provisions of the Bill are not designed to increase access to justice; they are meant to save money. That is fair enough. Those lawyers who have

21 Nov 2011 : Column 832

grown sleek and fat on the rich pickings of advising the sick, the disabled, the unemployed, the homeless and the immigrant have no need to go to WeightWatchers; they can now slim effortlessly. The matrimonial courts and the welfare and immigration tribunals of this country will resound not with the arguments of dry-as-dust lawyers any more, but with the arguments of good, honest, grievance-holders who will present their concise cases with style and precision and smoothly win their way to justice. Those of us with practical experience of the court system have just the smallest hesitation in applauding.

In welfare, immigration and benefit law, one principle stands out, and it is a principle to which my noble friend Lord McNally referred in his opening remarks-that of equality of arms. There has to be equality of arms between the state and its offshoots and any person in dispute with the state. At the very least that requires legal advice, assistance and advocacy in the Upper Tribunal on appeals from the social entitlement and the immigration and asylum chambers of First-tier Tribunals to the Upper Tribunal and appeals from there to the Court of Appeal and the Supreme Court. It also means a focus on better decision-making at first instance in these areas and a far less adversarial and more co-operative climate where litigants appear in person in front of First-tier Tribunals.

For the moment, I shall say little about areas of law that are removed from the scope of legal aid, save that the argument to retain clinical negligence within scope is, in our opinion, overwhelming. The Lord Chancellor takes power to remove further areas of the law out of scope, but takes no power to return into scope those areas where, as we reluctantly predict, the courts and tribunals will quickly grind to a halt.

I must make this point too; we on these Benches are not committed to smaller government, and when the economy improves we will look to ensure that access to justice in all areas is guaranteed. However, if financial necessity demands savings, it is essential that advice services to the public are fully supported. My noble friend Lord Shipley will expand on that, but it seems to me that if the Government are stipulating that the only gateway to legal aid is initially through the Community Legal Advice helpline, they should think again. The legal advice centres, citizens advice bureaux and other voluntary advice organisations, whose very existence is threatened by the cuts in legal aid, are a national resource not to be lightly cast aside. Rather than expanding the CLA helpline, the Government should fund these organisations to use their considerable expertise and local knowledge in providing the independent telephone and e-mail advice, which will certainly be required.

In the course of the Bill, I intend to focus on the changes promoted to conditional-fee agreements and after-the-event insurance in Part 2 of the Bill. My noble friend Lord Phillips and I were hotly opposed to the alterations contained in the Access to Justice Act 1999 on the principle that a lawyer ought never to have a financial interest in the outcome of a case. I shall table amendments to continue that fight against the creeping advance of third-party litigation funding, which used to be called maintenance and champerty, to introduce regulation into a completely unregulated field.

21 Nov 2011 : Column 833

However, we have to sort out in the present provisions of the Bill not only the principle of whether the success fee and after-the-event insurance premium should be deducted from the damages of a claimant who has been injured by the negligence of the defendant, but the uncertainty introduced by the proposals for qualified one-way costs shifting, to which the noble and learned Lord, Lord Davidson, referred. The unintended consequences of the present proposals include much more satellite litigation: the destruction of after-the-event insurance in claims other than personal injuries, such as in environmental law where we have international obligations under the Aarhus convention, and in other complex and different cases where the ordinary man faces an industrial or commercial giant or the intransigence of local authorities. The concept of abolishing referral fees is to be welcomed, but it is another area that must be fully explored and the real abuses rooted out.

We are here for the long haul, and in Committee and at later stages we shall wish to put many things to the noble Lord, Lord McNally. We look forward to those stimulating encounters.

4 pm

Baroness Grey-Thompson: My Lords, I have a number of concerns about this Bill, specifically in the area of legal aid which has been outlined wonderfully by the noble Lord, Lord Thomas of Gresford. Like many, I have worried that we have been creeping towards a more litigious society. However, research suggests to me that instead of encouraging litigation, legal-aid advisers only recommend that clients go to appeal if they judge that there is a realistic chance of winning. They act as independent gatekeepers, keeping costs down.

The Bill proposes that legal aid should be provided for some alleged victims of abuse in private divorce and children proceedings, but not for the alleged perpetrator. This will almost certainly result in those alleging abuse, including disabled people and vulnerable adults, being cross-examined by the accused, creating significant risks to their welfare through the court process. The final report of the Family Justice Review points out that

protections are available to prevent vulnerable witnesses going through this ordeal in the criminal courts, but not in the family courts.

It was announced this morning that in Middlesbrough, the nearest large town to where I live, there were 4,500 reports of domestic violence in the last year. I am seriously concerned that many women, and some men, will be put in the vulnerable position of not taking cases forward because of fear of the system they are entering.

Disabled people are facing the biggest changes to the welfare system that we have seen in a long time. I think many in your Lordships' House would agree that reform is necessary, and I welcome a simplification of the system. Based on the Government's projection, approximately 250,000 households with a disabled person living there will be lifted out of poverty due to the introduction of universal credit. However, this could be undermined in the absence of appropriate legal advice that might prevent a disabled person

21 Nov 2011 : Column 834

taking up their entitlement. The Government have said that they want to protect those with the greatest need, but many hundreds of thousands of disabled people could have their support removed, and for many, the proposals in this Bill could act as a double whammy.

No benefits system is easy to understand. However, to push technical advice to volunteers or to Jobcentre Plus is not appropriate. Specialist advice is required in compiling evidence and also to meet the tight timescales in the appeals process. I am very interested in this area as I have an amendment to the Welfare Reform Bill, now in Grand Committee, which seeks to remove an extra step to the appeals process. One reason that I believe in protecting legal aid for disabled people is that in 60 per cent of appeals in which disabled people were eventually found to qualify for ESA, zero points had been allocated at the initial assessment. That is a massive turnaround, highlighting some of the problems with the assessment process, which quite rightly has been discussed elsewhere. However, it is clear to me that it is right to support people through the appeals process and this must be protected.

The Government's impact assessment shows that disabled people make up a disproportionate number of those who receive legal aid for welfare benefits cases: some 58 per cent. This translates to over 78,000 disabled people who could be denied specialist legal help if these measures go through. I have spoken many times about my desire to get more disabled people into work, but it is about getting the right advice and putting the right steps in place to encourage this to happen.

The Government's own research has found that the public will face poorer case outcomes, longer delays in the resolution of cases and a declining prospect of settlements, and vulnerable people with complex needs will be forced to present their own cases. The court system could be thrown into chaos by the increasing number of litigants in person. This process can be intimidating for the most articulate and informed of individuals.

There are several questions that I would like to ask the Minister. Citizens Advice has provided evidence to the Government that removing welfare benefits from legal aid will cost more in the long term. Can the Minister explain what account has been taken of that advice? The Government's own impact assessment has suggested that there could be increased costs for other departments due to these proposals. What are these costs, and which departments are involved? I accept that we are in difficult times and that tough choices have to be made. To redress the balance, the Ministry of Justice will rely on a proposed exceptional funding test as stated in Clause 9. However, the threshold for the test means that very few-only 5 per cent of cases-will likely be brought back into scope.

I also have serious concerns about the telephone gateway being proposed for community care law, debt, discrimination and special educational needs. The cases of disabled people are complex. A phone call will not take into account the nuances of the situation. If a disabled person has struggled to put their case forward in an assessment process, a phone call will not make it easier. In these tough times, I am concerned that local

21 Nov 2011 : Column 835

authorities may risk breaking the law at the level of care provided, hoping or even knowing that many people will not know the course of action open to them.

Data from the Civil and Social Justice Survey show that disabled people are more likely to report that they do now know their rights compared to non-disabled people: 69.2 per cent compared with 63 per cent. The 63 per cent figure also causes me concern, but perhaps it is not something to address here.

The Disability Law Service believes that this Bill will deny legal representation and advice to 650,000 people on low income, many of them disabled people. Where will these people go for help, advice and support, and the opportunity to get into work if more barriers are put in their way?

My final question concerns the consultation process. I understand that there were 5,000 responses and that around 90 per cent did not support the proposed changes. What notice has been taken of the consultation process?

4.04 pm

The Lord Bishop of St Edmundsbury and Ipswich: My Lords, Members on these Benches, like many noble Lords who spoke, have many serious questions about the legal aid provisions in Parts 1 and 2, but broadly welcome the sentencing provisions in Part 3, particularly the ending of IPP sentences. I recently spoke to a Crown Court judge who had not used to such a sentence for more than two years, and had found them very unsatisfactory before that. Questions remain about those who are in the system already under IPP sentences, and how some of the anomalies will be dealt with. However, that is something apart from the Bill.

It is not easy for those of us who are not lawyers to evaluate the claims and counterclaims made about the workings of legal aid. However, some principles from which we on these Benches work include the very clear concern for justice that runs right through the scriptures. In the Old Testament, the prophet Amos said:

"Hate evil, and love good, and establish justice in the gate".

Members on these Benches are aware not only of the widespread opposition in the legal profession to these changes but of the apprehensiveness of many voluntary organisations that work with less well-off recipients of legal aid.

There is a consensus that costs are too high in both the civil and criminal courts, but there is a lot of disagreement about the causes. We understand the problems that the Government face. A well known study by the University of York concluded that the high expenditure is driven by the high income ceilings on eligibility, although I realise that the Committee on Justice in another place concluded that the ceilings here were not very different from those in comparable European Community countries. There is also a wide coverage of different areas of law and a necessity for high-quality representation in an adversarial system. The committee also found that the comparatively high proportion of legally aided criminal cases was due in part to the higher rates of recorded crime and to the higher proportion of cases brought to court. Given this, some remedies lie outside the legal aid system, which cannot help being a victim of its success.

21 Nov 2011 : Column 836

It seems that the limitation on the types of cases eligible for legal aid, the changes to the criteria of eligibility and the extension of means testing will have drastic effects on many litigants and defendants. The Bar Council stated:

"If legal aid is withdrawn from substantial areas of law, many people will be unable in practice to enforce their legal rights".

The question is one of access to justice. The repeal of the duty to ensure that individuals have access to legal services that effectively meet their needs is regressive, as the Constitution Committee of the House noted. Surely there is the potential to swamp the courts with ill-equipped litigants in person. This would not only put extra pressure on the individuals but would extend the length of proceedings, thereby partly cancelling out the savings made by cutting legal aid.

I have particular areas of concern. There remains an anxiety that the Bill will have a damaging effect in family law cases, particularly where domestic abuse is involved. A number of children's advocates remain anxious about what has been curtailed in the way

of legal aid in this area. The Bill will limit the ability of people to seek compensation in areas such as clinical negligence. The proposal to amend defendants' cost orders looks like a blow to innocent defendants who choose to fund themselves. The exclusion of most immigration cases will affect people who often have no alternative means of resolving disputes and enforcing their rights. The provision of exceptional case funding for people in special need seems puzzling. Almost all cases should pass the proposed test, so why have exceptional funding in the first place?

As we heard, notably from the noble Baroness, Lady Grey-Thompson, disabled people are likely to be disproportionately affected. They tend to rely on benefits and are less able to represent themselves. If firms specialising in legal aid are put under financial pressure or go out of business, there will be considerable knock-on effects. The Bill may save money in one area at the expense of considerable social disruption and consequent expenditure in others.

As I said, it is difficult when you are not a legal expert; however, when we stand and listen to the debate, as Members from these Benches will do with great care, we remain hopeful that Parts 1 and 2 will continue to be heavily scrutinised and substantially amended by your Lordships' House. Our attention will be there.

4.10 pm

Lord Hunt of Wirral: My Lords, I declare my interest as a partner in the international commercial law firm DAC Beachcroft LLP and the other interests that I declare in the register. However, I would like to return to the speech of my noble friend Lord Thomas of Gresford, with whom I have previously worked. How right he is to criticise the changes that were introduced to the no-win no-fee system which made it exceedingly complicated but also benefited a number of groups, to which I will refer in a moment.

I also worked closely with him on the Legal Services Bill, to emphasise the need for access to justice. In that context, I want to refer to the recommendations of Lord Justice Jackson and to declare an interest in my

21 Nov 2011 : Column 837

pride at having been one of his original assessors. Lord Justice Jackson was set an almost impossible task by the Master of the Rolls. I recall that he was asked to find the best way of tackling the present unacceptable level of litigation costs and promoting access to justice at proportionate cost. I doubt whether anyone else could have produced a report which would have been received by the Master of the Rolls with the comments that it was,

> "clear and comprehensive in its coverage, thorough and fair in its discussions and imaginative and realistic in its proposals".

I strongly support those recommendations, but remind your Lordships that Sir Rupert started with a blank sheet of paper. He then spent four months gathering evidence and a

further three months in consultation, before examining that evidence, balancing all the special pleading that was introduced by various vested interests, and coming up with recommendations which were firmly in the public interest. It is that balance which we must insist we keep in view throughout the passage of the Bill in this House.

What Sir Rupert Jackson said-and I remind the noble and learned Lord, Lord Davidson, of this-was to advocate the return of the no-win, no-fee system that was originally introduced in 1995. I take this opportunity to praise the work of my noble and learned friend Lord Mackay of Clashfern, who as Lord Chancellor steered those reforms into law.

This is now very much his view of how litigation should be funded, and I thought, until the noble and learned Lord spoke from the Opposition Front Bench, that it was based firmly on his Scottish roots. The system which the noble and learned Lord, the then Lord Chancellor, introduced and which Sir Rupert now advocates, is still no-win, no-fee. It worked perfectly well, both for the severely injured and for those with lesser injuries. It also worked in other areas of law, such as human rights litigation and insolvency. It was never intended to be like the US style of contingency fees. Although Sir Rupert advocates the introduction of contingency fees, that certainly does not mean that we are introducing a US style litigation culture as a consequence.

I do not think that there is anything in the idea of the client contributing towards the costs incurred on their behalf that would be against the established principles of our English legal system. Historically, there has always tended to be a difference between the cost which any litigant could recover at law from the opposing party and the total cost that they were liable to pay their own solicitor. Of course, there is a great debate about whether we have a compensation culture in this country, but Sir Rupert clearly thought that our legal costs culture had gone too far and, for my part, I strongly agree with him.

I shall give one example, which has been given in another place by Mr Straw and was referred to by the Lord Chancellor. At present, over 570,000 people present claims for whiplash. That is up 32 per cent in the past three years. That is the equivalent of one person every minute of every hour of every day. The number of such claims notified increased by 72 per cent between 2002 and 2010 against a background of a reduction of 16 per cent in the number of car

21 Nov 2011 : Column 838

accidents notified to the police in the past three years. Criticisms have been voiced of Part 2 and Sir Rupert Jackson's work. Referring for a moment to the Transport Committee in another place, when dealing with referral fees, it made it quite clear that the system had gone wrong because substantial fees were now being paid to,

> "insurance firms, vehicle repairers, rescue truck drivers, credit hire firms, claims and accident management firms, law firms and medical experts".

How on earth can anybody be complacent about a system that has brought that about?

All I would say to my noble friends is that we have to listen critically to any claims from any vested interests here, but let us concentrate on the hard facts as, indeed, Sir Rupert did in his excellent report.

4.15 pm

Baroness Scotland of Asthal: My Lords, I declare my interest as chair of the All-Party Parliamentary Group on Domestic and Sexual Violence and founder and patron of the Corporate Alliance Against Domestic Violence and the Global Foundation for the Elimination of Domestic Violence.

Many elements of the Bill have already been alluded to in part and are meritorious of our anxious consideration and concern. For my part, I wish to concentrate on the provisions that affect domestic violence. The noble Lord said that they were to be preserved in relation to private law concerns, but I have to say to him that the preservation that has been retained does not adequately meet the needs of domestic violence victims. I also wish to say straightaway that throughout the years when I had the privilege of addressing the House from where the Minister now sits, I was always confident that I would have on domestic violence the total support of all those who now sit on the Benches opposite. Nothing ever divided us. Indeed, I do not see the Chief Whip in her place, but many in this House will remember her trenchant support. Indeed, she was very much my comrade in arms.

I understand that the provisions that are now coming before us are coming before us because it is felt that the fiscal position we now find ourselves in is such that drastic reform has to be made. I also understand what the noble Lord has said, on this occasion and in the past: that hard choices have to be made. However, may I say that hard choices have to be made but they should be the right choices? They should be made on principle and with a proper understanding of what is just and proper. It is right for us to remind ourselves, as the Constitution Select Committee has reminded us, that these issues are of constitutional importance. I draw the House's attention to what the committee said in its report. At paragraph 7, it reiterates the comments made by the late Lord Bingham:

"In his book, *The Rule of Law*, the late Lord Bingham forcefully argued that one of the ingredients of the rule of law itself was that 'means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide disputes which the parties are unable themselves to resolve'. He went on to say that 'denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the rule of law'".

21 Nov 2011 : Column 839

When we say that we cannot afford legal aid, we should think very carefully about whether we are saying that we cannot afford justice. Justice should be available in times of good and ill. In times of ill, it is more necessary than ever.

I accept that there has to be some modification, and that cost is a matter of importance. However, I have acute anxiety about the provisions in this Bill. They do not display any proper understanding of the nature of domestic violence, which I find acutely disappointing and, I have to say, surprising. These provisions reduce in both scope and extent the nature of legal aid that will be available to those who suffer from domestic violence. As your Lordships will be only too well aware, one in four women and one in six men are subject to domestic violence in our country. Eighty-nine per cent of victims are women; the repeat victimisation is of women.

It is well known that many victims, through shame and other matters, do not come before the courts with any degree of speed. They are reluctant and resistant and quite often do anything other than go to law. Any suggestion that we have to restrain or restrict the applicants seems misplaced. A woman will normally be assaulted 39 times on average before she will come forward. As your Lordships will know, some women will come forward straightaway but the majority will not, and sometimes they will suffer hundreds of assaults before they do.

These provisions restrict the legal aid given to victims in a number of significant ways. First, the definition of domestic violence is far narrower than the definition that we have all come to accept, which is accepted across government and by practitioners in the field. Secondly, there is a time limit of one year on when the person can come forward; one has to have either obtained an injunction or indeed got a conviction against the perpetrator within a year. Your Lordships will know that quite often abuse goes on for more than a year; for example, if a perpetrator is sentenced to five years' imprisonment and comes out after two and a half years, he may still present a threat to his wife but that conviction will be more than 12 months ago and therefore the proposed litigant will not get legal aid. Finally, the victim has to have been identified as high risk by the multiagency risk assessment criteria. Your Lordships will know that that means that the victim has to be at risk of either death or grievous bodily harm. Many victims who are in that condition never get to make an application for legal aid. The important thing is to assist individuals long before they get to that stage.

I know that Members opposite care deeply about these issues. I ask the Government to think very carefully indeed about the economic cost of these provisions. Your Lordships will know that as a result of the proper application of a joined-up approach, we have been able to reduce domestic violence in our country by 64 per cent and have saved £7.5 billion in economic costs. Each murder has a cost to the system in excess of £1.1 million. In London alone, from 2003 we reduced domestic homicide significantly. In 2003 there were 49 such homicides. In 2010, when we left government, that figure had been reduced in London to five. If £1.1 million is saved with each murder that is

21 Nov 2011 : Column 840

prevented, your Lordships can see very quickly that it will not be very long until we have enough savings to more than pay for the legal aid that is now being withdrawn.

There are many things that we should do, but I say to the House very strongly indeed that the provisions on domestic violence are not one of them. This is a cut that we cannot afford, both in human terms and economically. I will be asking the Government to think again. There are so many provisions to look at, but I ask the Government to give these provisions particular and anxious consideration.

I will add just one more word, if I may, on the welfare claims. We know that the Government are currently minded to remove the Administrative Justice and Tribunals Council. The noble Baroness, Lady Grey-Thompson, has already indicated that over 650,000 cases are dealt with by the tribunal system. If we are not to have legal aid, and if we are not to have the supervision and oversight of the AJTC, how do the Government think that justice can be preserved?

4.26 pm

Lord Dholakia: My Lords, much has happened since the introduction of the consultation paper, *BreakingtheCycle*. I shall leave it to the lawyers to deal with Parts 1 and 2 of the Bill. I shall concentrate on Part 3.

I trust the Minister will not be surprised if the thrust of my contribution relates to the rehabilitation process. I welcome the Bill and the fact that many of its provisions will help to reduce this country's entrenched overuse of prison custody. This country currently has 154 people in prison for every 100,000 in our general population, compared with 96 in France and 88 in Germany. Eighty of our 132 prisons are overcrowded and this overcrowding severely hampers prisons in their attempts to provide rehabilitative regimes. We send many offenders to prison to serve short sentences which are too brief for a sustained attempt at rehabilitation but are long enough for prisoners to lose their homes and jobs, which in turn makes them more likely to reoffend.

Several of the Bill's provisions will give courts greater ability to use non-custodial and suspended sentences. For example, the Bill will allow courts to suspend sentences of up to two years, rather than sentences of up to one year as at present. It gives courts more options when dealing with offenders who have breached conditions of community sentences. For example, courts will now have the option of fining the offenders and allowing the order to continue. The Bill will allow referral orders for young offenders to be used more often and more flexibly. All these changes should help to reduce the unnecessary use of custodial sentences.

I have one reservation about the proposed changes to non-custodial sentences and this relates to curfew requirements. The Bill increases the maximum period of a curfew from 12 to 16 hours a day and extends the period for which a curfew can last from six to 12 months. Confining offenders to their homes for such an extreme length of time could result in extreme family tensions in homes which are often overcrowded and

characterised by chaotic lifestyles. In some cases it could increase

21 Nov 2011 : Column 841

the risk of domestic violence. In other cases it could set offenders up to fail by requiring them to comply with restrictive conditions for such lengthy periods that the temptation to breach the curfew order could be overwhelming.

The Bill includes some welcome provisions to reduce the number of prisoners who are unnecessarily remanded in custody. Around 40 per cent of defendants remanded in custody are either acquitted or given non-custodial sentences. Of course, in some cases the offender receives a non-custodial sentence because the court takes into account the fact that he or she has already been held in custody on remand. Nevertheless, to deprive someone of their liberty when they have not yet been found guilty of a crime is an extremely serious matter. It is surely right to ensure that we are not using custodial remands where the severity of this measure is disproportionate to the seriousness of the alleged offence. I therefore strongly support the Bill's provision that defendants should not be remanded in custody when there is no real prospect that they will receive a custodial sentence if they are convicted. Those who have studied the use of remand in custody at international level will concur with the Government's approach.

The Bill also puts right a serious anomaly in relation to defendants aged 17. At present, 17 year-olds are treated as juveniles for sentencing purposes but as adults for the purpose of bail and remand arrangements. This is indefensible and illogical, and I am pleased that the Government are ending this anomaly and putting the matter right. In common with the overwhelming majority of people involved in the penal system, I am delighted to see the back of the sentence of imprisonment for public protection, referred to by many noble Lords. The sentence has been a disaster for criminal justice and a disaster for the prison system, which is now clogged with more than 6,000 IPP prisoners with no certain release date, as the Minister has mentioned. It is particularly unjust that many prisoners who have passed their tariff dates are on lengthy waiting lists to start offending behaviour courses which could reduce their risk and make them good prospects for release.

While I welcome the abolition of the IPP sentence, I have some reservations about the measures which the Bill proposes to replace it. The first is the automatic life sentence for a second serious offence. Mandatory sentences always tend to produce injustice by preventing courts from taking into account all the circumstances of the individual case and tailoring their sentences accordingly. However, I acknowledge that this measure is much more restricted in its scope than the IPP sentence. It is limited to cases in which both the previous offence and the current offence merit sentences of at least 10 years and courts will not have to impose the automatic sentence if they consider that the interests of justice require another sentence.

I also have reservations about the proposal that offenders receiving extended sentences should have to serve two-thirds of their custodial term in custody compared with one-half as at present. At present, the point of an extended sentence is not to increase the period

which offenders spend in custody. Extended sentences are currently intended to make sure that when serious offenders are released they are subject to

21 Nov 2011 : Column 842

a long period of post-release supervision on licence. This means that they are subject to restrictive conditions and controls alongside constructive help for the offender. If they breach the conditions of their licence, they can be recalled to prison.

However, the Bill would increase the time which an offender given an extended sentence spends in prison. This means that the time which he or she spends under supervision will correspondingly be reduced, which makes little sense. Can the Minister explain why the Government have decided that a court wishing to impose an extended period of post-release supervision will be able to do so in future only if it passes a sentence which also increases the length of time spent in custody before release? If a court does not want to increase the time the offender spends in prison but wants to make sure that he or she has an extended period of supervision on release, why should they not be able to order this as they can under the current provisions for extended sentences?

Clause 63 replaces the current complicated requirements on courts to explain the implications of and reasons for their sentences with a simpler requirement that they should explain the sentence in ordinary language. This is a welcome simplification of the court's duties at the sentencing stage. However, I have one concern about this change; namely, that it abolishes the requirement for courts passing prison sentences to explain why they consider that the offence requires a custodial sentence. Depriving offenders of their liberty by passing a custodial sentence is a uniquely serious decision that is in a different category from imposing even the most restrictive and intensive community sentences. The discipline of having to give reasons for passing a custodial sentence helps to concentrate the sentencer's mind on the gravity of that decision. It is designed to help ensure that custodial sentences are imposed only when there is no reasonable alternative. I hope that the Government will think again and decide to retain this important requirement.

I have never believed in miracles, but I am delighted that the noble Lord has indicated his wish to bring amendments on the rehabilitation of offenders, and I certainly welcome this. Reform of the Rehabilitation of Offenders Act 1974 would enable many offenders who have left crime behind to apply for jobs without fearing that they will be rejected on the basis of old and irrelevant convictions.

Reform of the Act would reduce crime by removing some of the obstacles that face former offenders who are seeking to live productive, law-abiding lives. This reform is in line with the Government's stated intention in this House and in last year's Green Paper, *Breaking the Cycle.*This is the right thing to do. It is right that those who wish to lead a law-abiding life are assisted to do so. I shall study the Government's amendments with great interest. In the mean time, it is right that I record my thanks to my noble friend Lord McNally.

4.35 pm

Lord Pannick: My Lords, the exceptional quality of all the contributions that your Lordships have heard so far in this debate confirms-as if there were any doubt-the importance to the rule of law of the issues raised by this Bill. I want to focus my comments on

21 Nov 2011 : Column 843

Part 1. To put these issues in context, your Lordships may find it of assistance to look back at the speech of Sir Hartley Shawcross, the Attorney-General, when he introduced the Legal Aid and Advice Bill in the other place in December 1948. His concern and the concern of the Labour Government in those days was that the doors of the courts were in theory open to ordinary people,

> "just as the grill room at the Ritz Hotel is open to all";

but obtaining and acting on legal advice were,

> "luxuries which were beyond their reach".-[*Official Report*, Commons, 15/12/48; cols.1221-23.]

The 1949 Act recognised that the rights conferred by Parliament and the duties imposed by Parliament are undermined to the extent that people cannot enforce their legal entitlements through the judicial process. The law and democracy are quite simply brought into disrepute. As with other pillars of a civil society-such as an efficient National Health Service, an effective defence system and effective border controls- there is no getting away from the fact that these cost money.

I want to mention four main objections to Part 1 of the Bill. First, it does not recognise that access to justice is, as we have already heard today, a vital constitutional principle. Mention has been made of the report of your Lordships' Constitution Committee last week. I am a member of that Committee and I will be putting down an amendment to replace Clause 1(1) of the Bill. The amendment will state that the Lord Chancellor must secure, within the resources made available, that individuals have access to legal services that effectively meet their needs. I hope that the Minister will be able to accept such an amendment, because it echoes precisely the current statutory provision in Clause 4(1) of the Access to Justice Act 1999.

The second objection to Part 1 that I want to mention-we have heard about this already-is that it removes from the scope of legal advice and assistance many complex areas of law where the law is a vital safeguard of basic needs for the most vulnerable sections of our community-areas such as clinical negligence. The fact of the matter is this. It is indisputable that the removal of legal aid in these contexts will inevitably result in many hopeless claims being pursued by litigants in person, because they will not have had objective legal advice, as well as many proper claims not being pursued or, almost as bad, being pursued ineffectively by litigants in person. Do-it-yourself litigation-because that is

what it is-will be as effective as a do-it-yourself medical operation, and I do not think that the elementary truth of that proposition is undermined by my declaration of interest. I am a practising barrister who occasionally has the privilege to act in legal aid cases.

I recognise the problems of delay and expense in the legal system. They continue to impede access to justice despite the exceptional work done in this area by the noble and learned Lord, Lord Woolf of Barnes, who I am delighted to see will be speaking later in the debate. But it is wholly unrealistic to suggest, as the Minister did in his measured opening to this debate, that mediation or a telephone helpline are practical solutions to the exclusion of legal aid in welfare law,

21 Nov 2011 : Column 844

in clinical negligence or, indeed, in family law where the problem is that often the parties are inherently unreasonable and unwilling to reach agreement, at least in their mutual relations.

The third point I want to mention is that Clause 8(2) will confer power on the Lord Chancellor by subordinate legislation to take further categories of services out of the scope of legal aid. This is inherently objectionable in that inevitably there will not be full parliamentary scrutiny. It is all the more objectionable when the Bill confers no power on the Lord Chancellor to add services back into the scope of legal aid, a point already mentioned by the noble Lord, Lord Thomas of Gresford, if, for example, experience shows a lack of wisdom in the exclusion or if, as we all hope, the economy improves. Again, I will be tabling an amendment on this subject, which was addressed by your Lordships' Constitution Committee.

Fourthly, and finally, the money that the Government hope to save through these measures really needs to be assessed by reference to the financial costs that will have to be met by the state. Judges will need to deal with many more hearings in which litigants in person are going to waste valuable and expensive court resources. The health and housing agencies of the state and other welfare agencies will have the burden of dealing with the consequences of vulnerable children and adults being denied the benefits to which the law entitles them. The Justice Committee in another place and the Law Society have rightly criticised the Government for conducting no study into the costs of the provisions contained in this Bill.

I hope that the Minister will forgive me for saying that I know that he personally did not come into politics to aid and abet the infliction of serious harm to the legal aid system which Sir Hartley Shawcross introduced, and I very much welcome his assurance today that he will be listening as this House carries out its vital work of scrutinising the Bill in Committee and on Report.

4.43 pm

Viscount Simon: My Lords, as has already been mentioned by the noble Lord, Lord Hunt of Wirral, in February of this year three senior cost judges made a report about the

proposals of the Ministry of Justice for reform of civil litigation and costs in England and Wales. I suspect that the Law Society is not alone in disagreeing with various parts of the report. It is thought that the problems which affect the conditional fee regime will not be resolved by the abolition of the recoverability of success fees by paying parties, as the Ministry of Justice proposes. On the contrary, shifting the burden of success fees away from tortfeasors and on to claimants will not only cause injustice, but also cast aside the many commendable steps that have been already been taken by interested parties over the past decade to iron out the malign aspects of the conditional fee arrangement regime, which is widely recognised as having been a blight on the English and Welsh legal system.

Under the conditional fee agreements it is often said that claimants have no interest in the costs of their claim. Quite apart from the fact that claimants

21 Nov 2011 : Column 845

will not want the stress of a long and more expensive case if they can possibly help it, they will in fact have a deep interest in matters affecting their well-being, especially if they have suffered an injury. The claimant solicitor will also have a strong interest in keeping costs down because if they lose they will have to absorb them. In some senses the clue is in the well known phrase "no-win no-fee". However, while the recoverability regime can be described as anything but teething problems, the reality is that where improvements need to be made, the majority of difficulties have been resolved and those remaining can be dealt with without dismantling the existing regime. I find it interesting that the Law Society thinks that the changes contained in Part 2 of the Bill will cause years of satellite litigation as people argue about the new rules.

I now turn to medical accidents and the impact on injured patients and their families who are not able to challenge the NHS with the help of legal representation. Practically every clinical negligence claim represents a failure in patient safety, even if the case successfully results in negligence liability and causation is proved and compensation paid. The vast majority of cases are robustly defended by the NHS simply because there is no understanding of serious errors made which have led to avoidable harm to patients. It is often only because the case has been investigated independently that it becomes clear that errors have been made, resulting in some learning taking place to help prevent the same errors being repeated. The reforms under this Bill, particularly taking clinical negligence out of the scope of legal aid, will prevent vast numbers of people ever having their case properly investigated, thereby denying the NHS vital lessons for improving patient safety. This is due to the very high costs encountered by medical experts. If there is no legal aid, solicitors will be able to cherry pick the more clear-cut cases. Because the vast majority of clinical negligence victims are harmed at the hands of a state body-the NHS-there is a strong moral argument that the state should ensure that these people have access to justice.

There are many more areas of concern which I am sure will be raised by other noble Lords but I would like to mention citizens advice bureaux where, under the Legal Help

scheme, thousands of people are assisted with their varied problems. According to the Government, this kind of assistance should not be within the scope of legal aid and these people should be able to represent themselves. The proposed changes will prohibit eligibility for assistance and restrict people's access to justice. It will also have a serious financial impact on CABs and other non-profit agencies. We are told frequently that the Government listen. However, Citizens Advice has told me that 93 per cent of those who responded to the consultation did not support the proposed changes and raised serious concerns about them. These responses have not received the scrutiny they deserve and should be looked at in much more detail. The Government may well listen but they do not seem to take into account the concerns of so many people.

There are many aspects of this Bill which will cause all kinds of difficulties and I suspect that there will be numerous amendments to address them.

21 Nov 2011 : Column 846

4.48 pm

Baroness Howe of Idlicote: My Lords, like other noble Lords, I shall be addressing my remarks only to certain parts of this somewhat hybrid Bill, starting with the provisions for legal aid cuts. Obviously all departments-indeed all of us but we are discussing departments-must share the burden of these cuts. The legal aid system may indeed have become bureaucratic and expensive. In 2009-10 it spent more than £120 million. But as one young lawyer's e-mail pointed out, the average salary for a young legal aid lawyer is £25,000, which is comparable to that of a teacher or policeman. So quite clearly other parts of the system need attention as well as what we pay lawyers.

Upstairs in Committee on the Welfare Reform Bill, one of our major concerns is to see that the most vulnerable sections of our community-children, the disabled, those with special educational needs and their carers-are protected as far as possible from the otherwise laudable attempts by government to get those who could be in work back into employment, an aim which would be even more laudable were the jobs available. But with the many changes that the LASPO Bill brings, the need for expert legal advice for vulnerable groups will be of even greater importance if the resulting, long-term costs for this group are not to escalate, as other noble Lords have mentioned. A particular area of concern for SEC, the Special Educational Consortium, is that young people with SEND between 16 and 25 who are not in school, or not in provision formally designated as a school, will be outside legal aid. Nor apparently does it cover young people with a learning difficulty assessment, which sets out the support they need beyond school; that is, in a college. As SEC points out, help and advice in that particularly difficult transition to adulthood can be important for SEND families.

Equally worrying, the Equality and Human Rights Commission points out that the new criteria for receiving legal aid for private family law may well mean that fewer victims of domestic abuse will be eligible for support. The basis for these concerns is that almost 50 per cent of family court cases where a report is ordered may have involved domestic violence. Government reassurance that legal aid advice will be available beyond doubt in these circumstances is therefore important. The noble and learned Baroness, Lady Scotland, made that point clearly.

We all know that imprisonment of children is both expensive and ineffective, with 80 per cent of those imprisoned reconvicted within a year. It is therefore good to see, not least because one-third of children currently remanded to youth detention are subsequently given community sentences, that Clauses 91 to 94 of the Bill, dealing with youth detention, place two sets of conditions on the court before a child can be remanded. The Government are rightly commended for this by the Prison Reform Trust, and for giving the court in Clause 73 extra powers conditionally to discharge the young offender or indeed to give a second referral order.

I turn to what follows, or should follow, from sentencing and punishment: rehabilitation. As the Prison Reform Trust points out, young men aged 18 to 20 are disproportionately represented in the prison population

21 Nov 2011 : Column 847

and clearly have not been, and are still not being, diverted from falling into a repeat pattern of offending. A much more focused approach to rehabilitating young offenders is needed. The Prison Reform Trust gives as examples two successful intensive-alternative-to-custody schemes run by Greater Manchester Probation Trust and West Yorkshire Probation Trust, both of which have achieved good results.

However, it is surely even more important to focus, much earlier in a child's life, on early intervention. We now have conclusive evidence from Frank Field, Graham Allen and others that this approach is the way forward. The Government are again to be congratulated on taking an important step by committing to early testing of all children at the start of their primary schooling. Funds for further research are still needed to identify those chaotic families with many generations of offending behind them as the real targets for extra help and supervision. If this is achieved it will not only help to ensure useful and satisfying lives for such children, but will be saving a considerable amount of the literally millions of pounds of taxpayers money spent unnecessarily on prisons.

Last, and certainly not least, I turn to women. As the CAB and Equality and Human Rights Commission point out, indirect discrimination is unlawful unless it can be objectively justified. Yet over the past 15 years numbers of women in prisons have doubled. Many of these have themselves been victims of serious crime, domestic violence and sustained sexual abuse. One-third lose their homes and, worse, around 18,000 children are separated from their mothers. In 2009, women accounted for 43 per cent of the 24,114 incidents of self-harm in prison, although women are only 5 per cent of

the total prison population. One essential amendment, backed by PRT, NCW and others-and certainly backed by me-would be to require the Government to produce a strategy to promote the just and appropriate treatment of women in the criminal justice system. When he replies, I would be very grateful if the Minister could give us any hope that the Government will indeed consider producing such a strategy.

4.56 pm

Lord Faulks: My Lords, the intention behind Parts 1 and 2 of the Bill is to restore some balance to our civil litigation system. The system should provide access to justice but should not be so distorted that it provides a source of excessive profits to lawyers and a small industry of parasitic organisations which have been spawned by the current arrangements. Whether there is indeed a compensation culture does not matter very much. In fact, successive government investigations have suggested that there is no such thing. What, however, is indisputable is that the litigation process has been disfigured by the whole machinery of referral fees, crude advertising and cases which too often become about legal fees rather than the underlying dispute. The case for reform is clear. But does the Bill go too far?

The noble Lord, Lord Pannick, is quite right: we should see the whole question in historical context. When legal aid was introduced in 1949, it came shortly after the establishment of the national health system and reflected the national mood. However, we should

21 Nov 2011 : Column 848

beware of golden-ageism. We should also be careful of drawing too close a parallel between patients and litigants. Welcome though the provision of legal aid was, there gradually developed a system in which only those who were very rich or had legal aid could afford to litigate at all.

It was to restore a sense of balance that the Court and Legal Services Act 1990 brought in some modest changes allowing conditional fees to provide access for what has now become known as the squeezed middle. There was a view that these changes did not go far enough, hence the Access to Justice Act 1999, which unleashed the changes now to be redressed by the Bill. The provisions of that Act allowed for the recoverability of success fees up to 100 per cent and large ATE premiums which were effectively unchallengeable This has meant that defendants have suffered an unfair disadvantage in litigation. I remind the House, as did the noble and learned Lord, Lord Davidson, that not all defendants are multinationals or emanations of the state.

The Jackson report, about which the noble Lord, Lord Hunt of Wirral, spoke so clearly, was the remarkably detailed and comprehensive response to these problems. It forms the basis of Part 2 of the Bill. I am broadly if rather cautiously in favour of these changes. I am concerned that some meritorious claims by the victims of industrial disease and even of environmental disasters may not now be viable. I will leave other noble Lords to

develop arguments in these areas. However, a fundamental point ought to be made about Sir Rupert Jackson's report. It assumed the continuation of legal aid.

I want to concentrate the remainder of my remarks on clinical negligence. I should declare an interest as a practising barrister who has been instructed for defendants and claimants in this area of litigation. Many noble Lords will consider that we should retain the status quo, which allows legal aid at least where children are concerned. I have considerable sympathy for this view. The retention of legal aid for clinical negligence is supported not only by the NHSLA, as has been referred to by the noble Lord, but by Sir Rupert Jackson himself. In a lecture to the Cambridge law faculty in September this year, he said,

> "of all the proposed cutbacks in legal aid, the removal of legal aid from clinical negligence is the most unfortunate".

Although I would prefer to keep legal aid for seriously injured children as it is, it should at least be retained for the costs of investigation. Let me give a specific example of where injustice will follow if the current Bill is not amended. In cases of brain-injured children there are often considerable difficulties in establishing whether there has been a breach of duty, and sometimes greater complications still in establishing causation. Even the most experienced solicitors in the field will need expert opinions from obstetricians, midwives, neuro-radiologists, paediatric neurologists and/or neonatologists. Under the existing system, the LSC, which carefully monitors expenditure, allows for considerable legal and medical costs involved in forming a view on whether a case can go forward.

Without legal aid I cannot see how a brain-damaged child and his or her family can begin to pursue these cases. The cost of an ATE premium will be beyond the

21 Nov 2011 : Column 849

means of almost all litigants. Even large firms of solicitors will not be able to carry the expenditure, particularly where the advice may often be not to proceed further. Someone who is possibly the victim of clinical negligence has the right to know whether the immense cost and heartbreak involved in bringing up a disabled child can be mitigated by an award of damages. The provision of legal aid at modest rates is essential to allow them to do so.

For reasons that will be developed in Committee, the so-called exceptional funding provisions, which seem to be directed at Human Rights Act cases, are no answer. In this connection perhaps I may refer the Minister to the case of Powell v United Kingdomin 1990, decided by the European Court of Human Rights, which makes it clear that medical negligence cases will very rarely, if at all, involve violations of the convention. I am afraid that I am also wholly unsatisfied by the Government's proposal in Clause 45 that there will be some modification of the rules to allow the recoverability of ATE premiums in respect of expert reports. Where is there any evidence that such a market can simply be created by the Government in this context?

The only other response is that CFAs should be enough. For the reasons that I have given, I cannot see how anyone in this situation will be able to obtain a CFA, particularly if the profitability is to be so reduced. It is interesting that the existing LSC funding code, which specifically identifies investigative help as being of,

> "vital importance in clinical negligence cases",

also provides that,

> "the potential to obtain a Conditional Fee Agreement will not be a ground for refusal of Investigative Help for a clinical negligence case".

So even if a CFA could be obtained, it is not a very impressive reason for declining legal aid in these cases, particularly when legal aid is granted only where the solicitors are franchised and thus experienced in the field. That is a point of fundamental importance to access to justice. I profoundly hope that the Government will make changes to put the matter right.

I hope that there can be a degree of consensus in the approach to the vitally important process of improving the Bill. That would be much easier to achieve if the party opposite were to acknowledge in the course of debate that it too would have made significant, if not wholly identical, changes to the civil litigation system. Would it really have ignored the Jackson recommendations? Was it really happy with some of the grotesque results of the legislation that it brought in?

This momentous legislation is a necessary corrective to the unsatisfactory system. It reflects the economic times in which we live. There are changes to the Bill which we need, not least in the definition of the Lord Chancellor's duties to which the noble Lord, Lord Pannick, referred-I support his proposed amendment in that regard-and the role of the director of legal aid casework. In scrutinising this legislation it will be vital to ensure that access to justice is not a meaningless mantra. It is a critically important part of what it means to be British.

21 Nov 2011 : Column 850

5 pm

Baroness Gould of Potternewton: My Lords, there is so much in the Bill to be concerned about. The Bill is discriminatory and will entrench inequality for women, people from minority ethnic groups, disabled people and other groups facing discrimination, all of whom will be disproportionately affected, as I am sure we will discover as we go through it. I wish to follow my noble and learned friend Lady Scotland

and deal with domestic violence, and I will go through the consequences of the Bill in some more detail.

First, I congratulate the National Federation of Women's Institutes on the work it has undertaken in talking to vulnerable women, who have made it clear that the Bill will leave them without support or access to protection under civil remedies. As my noble and learned friend says, the Bill demonstrates a complete lack of understanding of the nature and dynamics of domestic violence. It flies in the face of the violence against women and girls strategy produced by the Government only last year. The strategy stated that a,

> "robust cross-government approach underpinned by a single agreed definition",

is required. Perhaps the Minister can explain why the definition in the Bill is not the one used by other government bodies, the one in the national strategy or the one used by the CPS and ACPO, which defines domestic violence as,

> "any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional)".

Domestic violence takes all these forms, but the definition, quite deliberately, does not take that into account and in no way reflects the Government's stated aim of affording access to justice and legal protection to victims of domestic violence. How much is that commitment honoured when looking at the criteria required for evidence of domestic violence? No one challenges that there have to be criteria and evidence, but they must reflect the reality of life for domestic violence survivors.

The Minister in the Commons stated 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. I want to look at what he means by balance. Under the Bill, to get legal aid a domestic violence sufferer must have obtained one of four kinds of civil injunctions or a criminal conviction against the perpetrator, a multi-agency risk assessment conference, which is used only for a few exceptionally serious cases, or a non-molestation order. These do not reflect the reality of how women react and respond to domestic violence; 70 per cent of women choose not to go to the police and very few get non-molestation orders.

How is it "balance" when an overwhelming allegation of domestic violence, supported by witness evidence, will not qualify for legal aid under the law? One would assume that a doctor would be a credible witness, or that staff in accident and emergency departments, where the battered victim is regularly seen, would be credible witnesses, but no.

The Minister in the Commons said:

> "we are not convinced that they"-

the medical professions-

> "would be best placed to assess whether domestic violence has occurred. They might witness injuries, but it might be difficult for them to determine how they had occurred".-[*Official Report*, Commons, 31/10/11; col. 688.]

The important word is "might". What if they are certain that the victim's injuries come from domestic violence? She will still not get legal aid under the criteria. The word of a neighbour who may have heard blows and rescued the victim from the violence she was suffering, or even if the police attended and saw her being beaten, is insufficient to meet the criteria. Here is another unbelievable quote from the Minister:

> "the investigation could be inconclusive, or the police might determine that domestic violence has not taken place".-[*Official Report*, Commons, 31/10/11; col. 687.]

If the woman asks for an injunction, judges often tell a perpetrator that he can save the cost of a hearing by undertaking not to hurt her in future. The court registers that undertaking. It is a contempt of court if the man breaks it, but it will not help her to get legal aid. Should she get admission to a refuge, although the staff will be experienced in assessing complaints it will not get her legal aid. As the Minister said:

> "to include admission to a refuge in the criteria would be to rely on self-reporting".-[*Official Report*, Commons, 31/10/11; col. 688.]

For a woman suffering domestic violence, self-reporting might be absolutely essential. A victim may have eye-witnesses, police and medical evidence, records from refuges and perpetrator programmes, undertakings not to assault, and photographs of injuries, but she will not get legal aid.

A further barrier in the criteria for assessing legal aid is the restrictive 12-month timeframe. This is sheer nonsense. The woman may delay reporting for a number of reasons and the problems that require legal aid may continue to affect her more than 12 months after she has experienced violence. There is example after example of women who, post-separation, have spent many years being harassed and stalked by the perpetrator. The 12-month timeframe fails to reflect this. A time limit of any duration, particularly such a restrictive one, will take many individuals out of eligibility.

Then we come to mediation. Although information from the Ministry of Justice shows that currently more than 50,000 couples are referred to mediation services annually, just 13,500 of those couples participate in mediation. It appears that little research has been done to ascertain why that is the case. Mediation is not always less confrontational as the

Minister seems to believe. It can place the victim at further risk of violence or abuse. It gives the perpetrator the opportunity to continue to have contact with the victim and can cause revictimisation. Evidence shows that mediation works best when entered into voluntarily, but sometimes that is not the case. One victim identified that she was bullied and manipulated in mediation and found it hard to stand up to her "ex". The Bill also assumes that parties will be able to come to agreement in mediation. This, again, is not always the case. There may be partial resolution. In those circumstances, can the Minister say what happens next? What is the victim expected to do?

21 Nov 2011 : Column 852

Two further proposals will make it hard for victims to take action. Reference has already been made to the telephone gateway-the first port of call-and talking to someone who may have no legal qualifications but is expected to make a legal assessment. Disclosure is difficult enough, so at least you would expect to speak to somebody who understands what you are talking about. This proposal is certainly not appropriate for people who have language difficulties or mental health problems or are in distress.

In addition to my concerns about the process I have a number of questions. Will there be a free phone number? Will the conversations be recorded, kept securely and quality-controlled in case of further litigation arising? How will the number be publicised? It has been suggested that the victim might represent herself in court. Domestic abuse involves abuse of power. Many victims, whether subjected to physical power or other forms of abuse, do not have the capacity, skills or expertise to face and question the perpetrator in court. Not only would it be a traumatic experience, it could also put a victim in further danger.

This Bill will mean that too many women will have no alternative but to stay in an abusive relationship, with serious consequences not only for themselves but for their children. I thought that those days were past and that we were moving away from women living in fear and children living in violent households. This Bill will bring that back.

It is said that the Prime Minister is to appoint someone to look at the effects of policy on women. I suggest that she examines this Bill and its consequences on women's lives; maybe then will women who are victims be listened to.

5.12 pm

Lord Goodhart: My Lords, in the last year of his life, Lord Bingham-the greatest judge, I believe, of my adult life-wrote and published a short but remarkable book called *The Rule of Law.* In Chapter 8, he wrote:

"The pressure for reform culminated in the Legal Aid and Advice Act 1949 ... For half a century the legal aid scheme enabled those without means to sue and defend themselves in the courts ... But its cost was its undoing. In the years 1988 to 1996/7 expenditure on civil (and also criminal) legal aid rose at a rate substantially in excess of inflation, and was the fastest rising item of government expenditure overall".

Lord Bingham was, I am afraid, undoubtedly correct, and some reduction of costs here is necessary. On that basis, I start by saying that I agree very strongly with the general principles of my noble friends Lord Hunt of Wirral and Lord Faulks. Of course, we need to keep a no-win no-fee system. The amount involved in this should not be as large as it has been. We cannot justify paying the cost of fees for clients who have no serious chance of winning an action.

Part 1 of the Bill contains changes to the existing law that need to be enacted, but there also are other changes that I do not think should be enacted, particularly those relating to clinical negligence and family violence-although those are not the only ones-where legal rights are plainly necessary and should continue. We should regard a number of provisions introduced in the Bill as, at best, temporary provisions which could be removed when public resources increase. I feel that that is the basis on which we must go ahead. Importantly,

21 Nov 2011 : Column 853

that would mean that some legal aid, which is not provided for in the Bill, will continue to be provided. We must also act in a way that will prevent some of these difficulties and some of these seriously unpleasant things, such as the exceptional level of some profits. We also need to deal with the amount of money spent, as far too much has been spent on legal aid in recent years.

Part 3 of the Bill deals with very different issues which I believe should have been dealt with in a separate Bill. However, it is too late for that now. I am most concerned with Chapter 5. I welcome the abolition in Clause 113 of indeterminate or IPP sentences. IPP was a failure from the beginning. It relied on the ability to train prisoners while in prison, and there has been no such ability. There have been many-often justified-complaints, of which I have received a number, about the difficulty of ensuring that prisoners have access to the probation services which are essential for release. It would have been impossible to release many of these prisoners because of the difficulties of administration. IPP should not be allowed to continue for those who are already subject to it and it should be replaced by a fixed time limit. It is absolutely wrong that those subjected to this wholly undesirable sentence of uncertainty should not have a proper degree of certainty about when their time will end.

I am also concerned with Clause 114, which imposes a life sentence for a second listed offence. That is a mandatory sentence and it must be imposed unless the court is satisfied that there are special circumstances. That is perhaps a little better than the Californian custom of two strikes and you're out, but it is not that much better. The judge will have

seen the prisoner under questioning in court and he will have heard the evidence of the witnesses, so I believe that the judge and no one else should decide whether the prisoner should receive a life sentence. That will happen under Clause 115, which empowers the judge to decide whether to impose an extended sentence. Why should that not also apply to the question of life sentences under Clause 114? After all, it is open to the Attorney-General to appeal to the Court of Appeal if the judge has acted wrongly.

5.19 pm

Lord Woolf: My Lords, it has been a privilege to be able to hear this debate so far. If my arithmetic is correct, I have heard 14 speeches, and I am in the happy position of saying that there is nothing which has been said so far with which I disagree. I include in that the speech for the Government introducing this Bill, by the noble Lord, Lord McNally, in case it is thought that there was an implied exception.

I have two reasons for saying that this Bill has special relevance to me, with regard to the two inquiries which I carried out when I was a serving judge. The first inquiry related to access to justice, a subject about which we have heard quite a considerable amount so far. The second was the inquiry into riots in our prison system caused by overcrowding, a problem which, alas, is still with us today.

21 Nov 2011 : Column 854

The inquiry into access to justice was over a decade ago, and it is not surprising that it should need looking at again after this period. I for one was very pleased when the Master of the Rolls invited Lord Justice Jackson to make his report. I do not think anyone can doubt that this difficult task was undertaken by Lord Justice Jackson, as the noble Lord, Lord Hunt, has indicated, in an exemplary manner. He had a huge amount of material to marshal, and he did so and made recommendations of which, I suggest, on the whole this House could make favourable use.

The inquiry was needed not only because more than a decade had elapsed since my attempts to improve the situation, but also because it was clear that reforms which were made, for which I bear no responsibility, were causing the system to become unbalanced. The conditional fee-for which the noble and learned Lord, Lord Mackay, is rightly to be congratulated-initially helped to obtain access to justice for those who were not able to use the court because they were neither poor enough to qualify for legal aid, nor wealthy enough to dine at the Ritz. That section of the community, which was a large section, at the time of my report was not receiving access as was necessary. However, while those changes initially worked well, the noble and learned Lord, Lord Irvine, thought, rightly or wrongly, that further changes were needed if the conditional fee arrangements were to work as hoped. The problem was that there were doubts as to whether they gave lawyers

enough assistance to take on the really difficult cases because of the need for payment of an uplift fee, which it was hoped could be smaller than ultimately proved to be the case.

In addition, it was found that insurance was necessary. This is because the costs for a claimant if he was unsuccessful could be very substantial, and so we had the after-the-event insurance. This, from one point of view, was beneficial; but it had the effect that a claimant who had paid the after-the-event insurance premium was left substantially out of pocket. Therefore, it was ordered, first, that the uplift to which I referred should be paid by an unsuccessful defendant; and secondly, that the premium to which I referred should also be paid by an unsuccessful defendant. The practical consequence was that a defendant who was unsuccessful could end up paying four sets of costs: first, the costs he incurred himself; secondly, the costs of the claimant who won; thirdly, the uplift, which could be up to 100 per cent; and, fourthly, the insurance premium. I say to the House with absolute confidence that there were many defendants who regarded the total burden as wholly inappropriate, to the extent that they had no option other than not to contest cases that they otherwise would have.

Since I ceased to be Chief Justice, I have earned a living-here I declare an interest-by conducting mediations on occasion. I have found that some defendants reach settlements in the course of mediation that they would not otherwise have done because of the deterrent effects of the combination of four sets of costs. While one was very anxious that justice should be done for claimants, it must also be done for defendants in the same position. This is something that requires attention. In due course we will have to consider whether the

21 Nov 2011 : Column 855

proposals made in that regard will get us back to a situation where there is a fair balance between both parties in litigation.

I emphasise what was drawn to our attention by my noble friend Lord Faulks: namely, the fact that Lord Justice Jackson was not directly involved with the question of legal aid. He was not asked to report on it. I suggest that if the system is to be amended in the way proposed by the Bill, it is regrettable that he did not have an opportunity to look at the matter objectively and independently in the way that was needed. I fear that his report could be a victim, as I consider I was because I was only shown part of the picture of where change will take place.

In the Cambridge lecture of 5 September last to which my noble friend Lord Faulks referred, which I read with interest, Lord Justice Jackson gave an indication of his views on the matter. He said:

"Let me make it plain that the cutbacks in legal aid are contrary"-

and I emphasise "contrary"-

"to the recommendations made in my report".

Again, I encourage the House to accept that view. Lord Justice Jackson went on to state that if the position were to remain as is now proposed, an additional exception should be made to the cuts in legal aid. He said:

"On the assumption that it is decided not to maintain civil legal aid at present levels, the question may possibly arise as to whether any particular area of civil legal aid is particularly important and should be salvaged from the present cuts. My answer to that question is that of all the proposed cutbacks in legal aid, the removal of legal aid from clinical negligence is the most unfortunate".

I hope that the House will pay attention to that remark. I see the time that I have already taken and I apologise for speaking for two or three minutes more. I would like to say something else with regard to Part 3.

I am the chairman of the Prison Reform Trust and I am grateful to my noble friend Lady Howe for her comments, which are based on research done by that trust, and which deserve considerable attention. There are matters on which the Government are to be congratulated. They have been mentioned by other Members of the House and there is no need for me to go over the same ground.

However, I submit that when we now know the problem with IPPs, it is extraordinary that the House should be asked to accept a more modified form of IPP. The one thing we want to avoid is people being in custody longer than they should be. Although the Bill repeals IPPs, it is, understandably, not retrospective. We have a deplorable situation in our prisons today, where thousands of prisoners who might be able to be safely returned to the community cannot be, because unfortunately the Parole Board is not in a position to deal with their cases due to the resources available to it. That will continue for some time. Surely it would be possible to change the procedures for those prisoners to obtain release? There is nothing in the Bill about that.

With that indulgence from the House, I conclude my remarks. I hope that there will be many amendments

21 Nov 2011 : Column 856

with which I can be associated that will improve this Bill in the spirit identified by the noble Lord, Lord Faulks.

5.33 pm

Lord Clinton-Davis: It is a great privilege for a mere solicitor to follow the noble and learned Lord, Lord Woolf. Contrary to the view of the noble Lord, Lord McNally, I think that this Bill is profoundly flawed. In my view, many of the clauses are not capable of amendment. Many people, in both civil and criminal fields, will be adversely affected by these proposals.

I had some 25 years' experience of legal aid litigation. In its earlier days, the scheme was seen to be an essential part of the system of social justice introduced by the post-war Labour Government. The House will be grateful to the noble Lord, Lord Pannick, for his views about that.

The advantage enjoyed by the legislation introduced by the Labour Government of that day was that it brought legal protection and legal rights within the reach of ordinary working people and also middle-class people, who would pay a contribution towards the Legal Aid Fund. This was enjoyed for the very first time; previously they had been outside the scope of any remedy whatever. Much of what was introduced by the Labour Government was opposed by the Conservative Party then and, apparently, now. Of course, a small minority of lawyers milked the system, but few made hefty profits. Nowadays, with ever-declining numbers of solicitors operating legal aid, younger members of the profession are disinclined to be part of the whole system. Who can blame them? Is this not bound to have a deleterious effect on the question of obtaining legal aid?

In my day, even the most complicated criminal cases rarely lasted more than three months. Today that situation is very different. Of course, the law has become more complex. Perhaps I can make a tentative suggestion-namely, that the system of applying for more funds should be readjusted. But it should be recognised that in normal circumstances approval should not be given, save where the claimant can establish beyond a peradventure of doubt that it is in the interests of justice that the application should succeed. However, there should be a term limited by the award.

The real trouble with this Bill is that there will be no savings: indeed, the very reverse. Unrepresented persons will appear before courts and tribunals and many, through no fault of their own, will make false and incoherent points. Time will be wasted. Inevitably, judges and chairmen will provide greater slack than ever, and accordingly costs will burgeon. Many organisations-charities, the judiciary, the Bar, the Law Society, many victims' groups, Justice, the Magistrates' Association, CABs, the Sentencing Guidelines Council and now the bishops, by a large majority-have signposted their anxieties about the Government's proposals. They have all been spurned.

My own umbrella organisation, the Law Society, has raised a number of vital points. So far, the claims which they have made have been unanswered. They say that the cuts to civil legal aid are a violation of the European Court of Human Rights and the Charter. Are they right about that?

21 Nov 2011 : Column 857

They say that the Bill's proposed exceptional funding model is likely to prove ineffective. Are they right about that?

They also claim that limitations on the scope of legal aid will carry with them unrealistic costs, risks and burdens.

Then they say that the proposals introduce a lack of institutional independence and impartiality. That is a very serious claim indeed, and deserves a response from the Government.

Finally, they say that there is a serious risk that the courts will declare that compatibility under Section 4 of the Human Rights Act 1998 will be seriously impaired. The £350 million postulated by the Government by way of savings has been challenged by others, including the noble and learned Baroness, Lady Hale, of the Supreme Court. She has argued that this will be exceeded, and there can be little doubt that the poor and the most vulnerable will be the principal victims.

The Government reply in a superior and uncomprehending way. For example, they recommend more telephone advice and excellent advice to ensure that the legal system is hardly ever used. Most people needing such advice are without telephones and, if they do manage to get through, are incapable of communicating their often-complicated problems. Are the Government wholly out of touch with reality as far as this is concerned?

In conclusion, it is noteworthy that one of the principal supporters of this legislation has been the Association of British Insurers. It perceives that it is in its interest to see the decline of legal aid and ordinary people's access to justice. My hope is that these disgraceful endeavours will be frustrated. The House of Lords now has the chance to demonstrate that it prefers to protect the interests of ordinary people rather than the powerful, such as Enron and Lehman Brothers. This legislation is fatally flawed.

5.42 pm

Baroness Whitaker: My Lords, we all believe in upholding the rule of law, but when it comes to making a reality of what the law provides, there are problems. Our law is not easy for everyone to understand. The vast accumulation of case law from Magna Carta on, let alone the wording of the statutes, whose occult succinctness is so cherished by parliamentary draftsmen, makes it almost impossible for the average person to grasp what they can and cannot do, or have done to them, without expert help, and there is no alternative.

The law is not always coterminous with justice, but it is our best shot, and if we want access to justice we have to have a means of getting the point of laws. Professional lawyers are that means, and when the aggrieved person is poor, legal aid is the path. I think it was a judge who said that a person who represents himself has a fool for a client. I do not know about that, but I have sat on tribunals where the people who brought the case did not understand the rules of evidence, did not know the difference between facts and opinions, could not present their

case in the terms of the law at all, and yet had a genuine grievance. It was very time-consuming, as my noble friend Lord Clinton-Davis said.

Some ask whether this is an Anglo-Saxon problem, notably the much-lamented late Lord Bingham, and the noble and learned Baroness, Lady Hale, in her celebrated Henry Hodge memorial speech last June. Our adversarial system is heavily dependent on preparation by lawyers, with the judge coming in at the end to decide. If the judge were more proactive, the argument runs, there would not be such a need for an expensive and lengthy presentation of the case, so access might be easier. However, our courts are faster and cheaper than those in the inquisitorial system, so, as the noble and learned Baroness, Lady Hale, says, the total legal system is not extravagant and legal aid is necessary to ensure access.

Next Section Back to Table of Contents Lords Hansard Home Page

The Jackson report, on which the Government base much of their rationale, did not recommend purging legal aid, as the noble and learned Lord, Lord Woolf, and the noble Lord, Lord Faulks, both said. I will quote just one more sentence from Sir Rupert Jackson:

"I do, however, stress the vital necessity of making no further cutbacks in legal aid availability or eligibility. The legal aid system plays a crucial role in promoting access to justice at proportionate costs in key areas".

Will the Minister confirm the total cost of our judicial system relative to that of other common law countries? The Lord Chancellor said in the House of Commons that our system costs four times that of New Zealand, which is a rather smaller country. Does this make a true comparison for civil legal aid?

We should realise that the costs of severe reductions in legal aid will not fall on the Ministry of Justice budget. Its own cumulative impact assessment states:

> "if dispute outcomes were much less fair ... these resource gains might be more than outweighed by the total economic cost ... This would include wider social and economic costs, both tangible and intangible".

Can the Minister give any idea of what costs might fall on other budgets if people are not helped early on in their battles over housing, debts, employment or family breakdown? What is being sacrificed for this dubious saving? A huge proportion of civil legal aid under threat in this Bill is spent on things that matter very much indeed to poor people: getting the benefits they have a right to, domestic violence, fair compensation for injuries that prevent normal living or earning a living, getting the appropriate education for their children or housing.

Take an appeal against the refusal of a planning application for a Traveller site. It looks as though High Court planning appeals and planning injunction actions would all be out of scope for legal aid, and it seems that if a local authority takes eviction action against an unauthorised encampment in the county court, and even if it does this in an unlawful way, say by ignoring government guidance, the defendants will not be allowed legal aid. Would the Minister confirm this? If that is so, a very high proportion of Travellers who have no legitimate home will lose the chance of acquiring one or will face unlawful eviction.

As long as local authorities shirk their task of providing enough sites, an inability to get legal aid for the interim stages of establishing legitimacy or for

21 Nov 2011 : Column 859

those on the roadside through no fault of their own, as well as for the characteristic problems of negligent landlords and illiterate tenants, will unfairly prejudice this group of claimants. Why is the cumulative impact assessment silent on this impact? Does the

Ministry of Justice include Gypsies and Travellers in its category of black and minority ethnic citizens, and if not, why not?

To supplement the already scarce social good of legal aid, the no-win no-fee system was brought in. That enlightened decision by the noble and learned Lord, Lord Mackay of Clashfern, and the second even more enlightened decision by my noble and learned friend Lord Irvine of Lairg to extend the conditional fee agreement system were responsible for some important settlements of fair entitlement. How could the countless mesothelioma cases, the passive smoking landmark cases or the Trafigura case have been brought under the proposed new regime?

My noble and learned friend Lord Davidson of Glen Clova referred to the United Nations Secretary-General's special representative for business and human rights' commendation of the UK system in cases of high public interest in his letter of 16 May to the Justice Minister, Jonathan Djanogly, and expressed concern over the proposed reforms. Could that letter be placed in the Library? I think noble Lords would find it helpful. This Bill would take away advice that often results in cases not going expensively to court, and it cuts away equal access to the rule of law in major areas of deep human importance.

Finally, I refer to Magna Carta again:

"To no one will we sell, to no one will we deny or delay, right or justice".

There is a facsimile copy in the Voting Lobby that noble Lords can have a look at. I think it is time for the Barons to get on the case again.

5.50 pm

Lord Ramsbotham: My Lords, I shall not touch on legal aid or sentencing, which have been so comprehensively covered by other noble Lords, but instead try to explain a long-held disappointment and how it leads to a current fear.

When I heard that there was to be a legal aid, sentencing and rehabilitation of offenders Bill, I hoped that this marked the end of the mistaken idea that the criminal justice system is solely about punishment. However, when the Bill appeared, my heart sank because there was the word "punishment" instead of "rehabilitation". The change had been ordered, I was told, by No. 10 Downing Street, and it confirmed my fears that a truly coherent criminal justice policy remains an impossibility while there is a continued failure to understand or accept what its acute part-imprisonment-is all about.

The criminal justice system is made up of four distinct parts: courts, police, prison and probation. The success or failure of the system as a whole depends on these four understanding and working with each other. I put imprisonment in pole position because, like hospitals in the NHS, prisons are the acute part, where treatment takes place and to which no one should be sent unless they need the treatment that only

hospitals or prisons can provide. That treatment will not be completed in either hospital or prison, but has to be continued in the community in the form of aftercare.

However, just as the healthcare system would break down if hospitals were choked with people who did not need that level of treatment, so the criminal justice system has broken down over the past 18 years because prisons have been choked with steadily increasing numbers who do not need expensive imprisonment. The Justice Secretary should know this because he was Home Secretary in the early 1990s, the last time that there was any clear thinking about imprisonment, as set out by his predecessor, the noble Lord, Lord Baker of Dorking, in his 1991 White Paper *Custody, Care and Justice*, following the prison riots in 1990, and the masterly report on their causes and possible repair by my noble and learned friend Lord Woolf.

That White Paper, agreed to by all political parties, laid down clear priorities for the Prison Service. These included: to develop community prisons, which will involve the gradual realignment of the prison estate into geographically coherent groups serving most prisoners within that area; to increase delegation of responsibility and accountability to all levels, with clear leadership and a published annual statement of objectives; to provide a code of standards for conditions and activities in prisons which will be used to set improvement targets in the annual contracts made between prison governors and their area managers; and to provide active and relevant programmes for all prisoners, including unconvicted prisoners. Had those priorities been enacted and had the thoroughly unpleasant competition between the main political parties to appear tougher-or not weaker-than the other not undermined rational thinking about the role of imprisonment, I believe that we would not be in today's mess.

What is that role? Some say that it is to deter people from crime, but the figures prove that the fear of imprisonment does not do this; others that it is to satisfy victims, but they are only a small part of society; others that it is to reform and rehabilitate those who are sentenced to imprisonment; and others that it is to punish, but the deprivation of liberty is the only punishment involved. Courts determine the length of that punishment, related to the seriousness of the crime. Therefore, while imprisonment is punishment, prisons are not for punishment, at least not in a civilised country, which we purport to be. Finally, some think that it is a mix of all four.

However, roles are synonymous with aims. The overall aim given to the criminal justice system is to protect the public by preventing reoffending. Therefore the role of the Prison Service should be related to the prevention of reoffending, which means rehabilitation. Taken objectively, I am surprised that successive Governments, while voicing their concerns about the rising numbers of those in prison, appear not to have thought through why the current conduct of imprisonment is clearly failing-witness the appallingly high reoffending rate-and what this says about that conduct. I contend that the avalanche of confusing legislation and torrents of wishful thoughts and undeliverable ideas, not least the expensive introduction of the so-called National Offender Management Service-

which, if it is anything

21 Nov 2011 : Column 861

at all, is a system and not a service-stem from the fact that successive Ministers and their officials have failed to carry out such an analysis and have allowed themselves to be led astray by the seductions of penal populism and the cult of managerialism, which is all about process and not about outcomes.

If you accept that imprisonment is the acute part of the criminal justice system, and should be structured and managed accordingly, you will understand why I am so afraid that the Secretary of State should be embarking on the rehabilitation revolution-the intent for which I strongly support-without the necessary structures or management in place to ensure that it can succeed. It would be an avoidable tragedy if it failed for all the wrong reasons. At present, prisons are not organised into geographically coherent groups, with regions responsible for the rehabilitation of their own prisoners. Today's incoherent prison population management system, as when I first saw it in 1995, prevents continuity of treatment. Also, because no one is responsible or accountable for any type of prisoner, other than high security, there is no consistency of treatment in prisons of the same type, and individual prison governors are not required to carry on from where their predecessor left off. Imagine the outcry if acute hospitals in the NHS were run in the same way. Why are acute prisons?

Therefore, during the passage of the Bill, I will be tabling amendments designed to try to improve the ability of the acute part of the criminal justice system to carry out its role, not least in improving alternatives to custody. I shall challenge some of the omissions and the wishful thoughts, and shall focus on the working prison, substance abuse treatment, women in the criminal justice system, restorative justice and the treatment of young adults.

Finally, I would like to say a word about indeterminate sentences, to which I have been opposed ever since they were introduced. Of course there will always be some criminals who should never be released, most of whom receive natural life sentences. However, the obscenity of the IPP is that the overcrowded system cannot provide the programmes that prisoners need to qualify for release. While I applaud the Secretary of State's decision to end IPP sentences, like my noble and learned friend Lord Woolf, I am concerned that he has not tackled the problem of those serving such sentences now.

There are two immediate steps that I believe the Secretary of State should take, for which he has given himself the necessary weapon in Clause 117 of the Bill. First, he should conduct a census of all IPP prisoners and establish precisely why any of them are over their tariff, what is required of each of them to qualify for release, and what plans, if any, have been made to ensure that they are enabled to do so. This task would be far easier to execute if, as should have been done years ago, someone was made responsible and accountable for the oversight and management of all IPP prisoners, because that information would be available now. I urge him to make such an appointment. I have had

more than 500 letters from prisoners serving an IPP, and their families. I share their view that the IPP is a stain on our reputation for civilised behaviour

21 Nov 2011 : Column 862

and should be removed as quickly as possible. Secondly, he should conduct a similar census of all determinate-sentence prisoners who are over tariff, and establish exactly the same facts.

This is a very important Bill because it contains many features of the rehabilitation revolution. Sadly, it has lost some of the clarity of purpose contained in *Breaking the Cycle*, which this House now has an opportunity to restore. I know that the Justice Secretary and the Minister share my concern that the acute part of the criminal justice system should be made fit for purpose. We must not waste this opportunity of helping them to make it so. I hope that, unlike their predecessors, they will repair the flaws in the system that they have inherited.

6 pm

Lord Newton of Braintree: My Lords, before I say anything else, I should make one prefatory remark of apology to the House and the Minister. It will not surprise those who have observed me in recent times to learn that my stamina is not quite what it was. I hope it will be understood that I shall not feel able to stay for the winding-up speeches later on. I am sorry for not complying fully with the conventions of the House in that respect. If the Minister chooses to ignore me entirely, I shall of course understand completely. In the mean time, I shall try to refrain from asking him too many questions.

In line with almost everybody else in this debate-I want to make this clear to my noble friends on the Front Bench-I am not opposed to this Bill in principle. It is important, and there is a lot of important stuff in it. I do not think that we should attempt to frustrate it. We have had as good a debate as I can recall on any such matter, and it has been a privilege, as a non-lawyer and layman in the field, to have the opportunity to take part in it. I should also tell my noble friends-this may be music to their ears-that wherever I can give the Government the benefit of the doubt they will have it. As for the sentencing and punishment-I must say that I prefer the word rehabilitation-of offenders chunk, if it is in line with the normal liberal instincts of my right honourable friend Kenneth Clarke, I shall be happy to go along with it.

I am also pleased that my noble friend Lord McNally said that he was listening. If I am allowed to note it and it is in line with the rules of the House, I was particularly pleased to note that my right honourable friend Kenneth Clarke actually came along to listen this afternoon, which was a further encouragement.

I want to concentrate on civil legal aid, or rather the proposed cuts in it. I am not now talking about the Jackson aspects, which I broadly support and which seem broadly sensible. Nevertheless, I hope that attention will be paid to the wise words of my noble

friends Lord Hunt of Wirral and Lord Faulks and, indeed, to the words of the noble and learned Lord, Lord Woolf, which seem to me to be very important in this context.

The areas that concern me have already been highlighted, so I am not going to rehearse them. One is social welfare law, including the effects on disabled people, on people with special educational needs and learning disabilities, who are a subset of disabled people, and on the law centres that are associated with

21 Nov 2011 : Column 863

those effects on social welfare law. I am concerned about the effects on family law, and especially on battered people-battered wives, mainly-and children, which have been highlighted in a number of important speeches. I am concerned about the effect on clinical negligence, where I have some experience as a chair of a number of health trusts, and where I certainly share some of the concerns that were expressed by my noble friend Lord Faulks but not only by him. I also still remain a bit concerned about some of the effects in the area of immigration. We had a go at the Government about that a few weeks back in a dinner-hour debate, where I made it clear that I welcomed the concessions but thought that a few questions remained.

As I have already said, I am not going to rehearse the arguments. Noble Lords on all sides of the House will have representations running out of their ears, and I have them running out of mine. The conclusion I draw is that there is now so much smoke on some of the issues that I have touched on that there must be some fire somewhere, and we need if possible to put it out.

I shall mention three or four other points briefly. I have never seen such a strong feeling that a set of cuts will not produce the savings that they are said to produce. What we appear to have here, as I judge it-and I should warn the Minister that this is an area that we all need to explore very vigorously in Committee-is a set of cuts that will save the Ministry of Justice money at the cost of passing costs to a number of other departments, including the welfare departments, throughout Whitehall and beyond, including, perhaps, local authorities as well.

Even within the Ministry of Justice, I suspect that we have proposals that are going to pass costs from one part of the ministry to another. I was the previous chairman of the Administrative Justice and Tribunals Council. It was notorious that, in many jurisdictions, cases where people turned up unrepresented took longer and cost more than cases where they had legal advice or assistance. Has that been costed? I am not sure. I happened to speak at the beginning of last week with a barrister who had been involved in a case involving a litigant in person. He sounded a sensible fellow, although I cannot validate this in any other way. He reckoned that this case-a High Court case, not one involving civil legal aid-had taken, in his estimation, two and a half weeks instead of four days because of the appearance of a litigant in person. If that was replicated on any scale at all, the savings in possible civil legal aid cases would disappear in a flash. We need to

explore that. It was brought out very clearly by my noble friend Lord Pannick-I am going to call him my noble friend for this purpose.

I accept the need to make savings, and I hope that that will not be thrown at me. However, the Government's position, which I support, was to make these savings and fill the debt hole, or whatever we want to call it, with savings that would not be at the expense of the poorest and most vulnerable but might even help them. As I hear things at the moment, this Bill does not do what it said on that tin.

Let me conclude with one very brief example. If I was not here, I would be upstairs in Committee on the Welfare Reform Bill. While discussing that Bill, we

21 Nov 2011 : Column 864

have heard about disabled people's fears that a lot of them are going to lose out as a result of it. I am not saying that they will or will not, but that is their fear. A figure has been bandied around of 650,000 people who could lose out on disability living allowance as it moves on to something else. That group of people will include many who will want to challenge the results of a new system of that kind. Here we are, then, at one and the same time putting this fear into people's minds, potentially cutting their benefits and reducing the scope for them to challenge what has been done to them. It is a sort of pincer movement. It is not the kind of thing I like, and I will need to be persuaded before I vote for it.

6.09 pm

Lord Phillips of Sudbury: My Lords, this Bill is another monster piece of legislation-234 pages long-amending no fewer than 34 other statutes and repealing parts of 20 statutes. I rather concur with the suggestion made by my noble friend Lord Goodhart that it might have been more manageable were we to have taken this in two bites. Certainly, the complexity of this measure will tax all of us to the limit and, I fear, the Minister beyond endurance. Having heard the noble Lord, Lord Pannick, mention the speech made by Sir Hartley Shawcross on 15 December 1948 in moving the Second Reading debate of the Legal Aid and Advice Bill, I cannot resist quoting the first two sentences, the first of which illustrates the gulf of style that separates then from now and the second of which is a rather pithy encapsulation of what the Labour Government were then trying to do. I wish that I could put on his accent, but he said:

"If I might translate a respected expression from the promissory and ephemeral field in which it has been misemployed of late into the sphere of intended enactment, I should be inclined to call this Bill a charter. It is the charter of the little man to the British courts of justice".-[*Official Report*, Commons, 15/12/48; col. 1221.]

With that, we can all concur.

Like the noble Lord, Lord Clinton-Davis, I have been a solicitor for more years than I dare to remember. But I came into the profession in the 1950s fired-I have to be frank-

with a certain idealism that the 1949 Act had brought justice within the reach of every man and woman. I fear that I still persist in that ideal, although one has to confess that over the intervening years the legal aid scheme has run down and down. There is one reason above all for that-it is not a popular scheme with the great British public. It is if you take advantage of it but it is not in general. I am afraid it is assumed that anything that is good for the legal aid scheme is most of all good for lawyers and we are the least popular branch of the entire establishment. In my view that makes it more essential that we defend the legal aid scheme.

I accept and want to make clear, especially to my noble friends on the Front Bench, that it must have been most difficult to put this measure together in a circumstance where all departments of state are having to take their share of unpopular and unwished for cuts, but which are, none the less, I believe, necessary. However, two broad matters, both of which have been referred to by other noble Lords in this excellent debate, have to be faced by the Government and have

21 Nov 2011 : Column 865

to be satisfied if this Bill is to go forward without doing far more damage than good.

The first matter is simple, yet complex, and it has been referred to many times; that is, the boast in this country of equality before the law. Is it not something which enables us to sleep soundly that the judges are not corrupt and that the law is designed with the best of intentions? Again, if we are honest, we have to accept that year-by-year-it does not matter which Government are in power-we legislate more and more benefits for the disadvantaged, the poor, the unable and so on. It is a large slice of every party manifesto. Religiously and properly we legislate and enact those good intentions. But we all know full well that those rights are not enjoyed by a large minority of those for whom they are intended. There is no access to those benefits. Why? Above all, it is because the law relating to access is a jungle. If you think that only tax law is a complicated jungle, just have a look at welfare law.

I believe that if we legislate rights and benefits for our less advantaged citizens, knowing that they will not be taken advantage of because we do not have the wherewithal to enable the people who need those benefits to access them, we are engaged in an organised hypocrisy. We undermine this place and democracy. We add to citizen disenchantment and to a social context which I believe is one we should all worry greatly about-a context which I suggest showed at least one aspect of itself in the riots a few months ago.

I am apologetic to my noble friends on the Front Bench because I appreciate that they are in a position that I am not, but I cannot resist saying, as an old lawyer who has spent his life standing up for legal aid-I formed the Legal Action Group with others in 1971-that I cannot go along with a situation where we pretend that we are doing good to our fellow citizens when we know we are not and we know why we are not. Yet in this Bill we are doing exactly that.

To take but one example, we are excluding welfare advice from legal aid henceforward. Can anyone imagine any aspect of our law which more needs help and advice than welfare law? I cannot. Citizens Advice has 400 main offices and 3,300 satellites. It deals with 2.1 million advices every year and welfare law problems are a major part of that. Yet that will be taken out of scope. Law relating to social security, debt, housing, immigration, community care and employment will be taken out of scope, although not totally. However, welfare will be. Citizens Advice calculates that at present the advice given in those areas by the CABs and the approximately 50 law centres that still exist, but which are declining, costs £25 million plus to the Exchequer. If this Bill is enacted as currently drafted, that sum will be down to £5.5 million. But as others have said, no serious attempt has been made to calculate the downstream impact in just financial terms, let alone in terms of pain, suffering, disenchantment and cynicism.

Recently, the Ministry of Justice stated:

"The lack of a robust evidence base means we are unable to draw conclusions as to whether wider economic and social costs are likely to result from the programme of reform or to estimate their size".

21 Nov 2011 : Column 866

What are we doing? We know the suffering, the disenchantment and the cynicism that will follow. We have made no attempt to calculate the financial costs in social or other terms. We know that these problems come in clusters and that if a man is not given advice on a housing problem because it is now out of scope, that may lead to an eviction order in a court, which in turn will lead to a plethora of social security and welfare engagements, such as children-you name it. Tens of thousands of pounds could be involved for the saving of a piece of advice by a CAB or a solicitor-God bless him if he is still doing this type of work. Let us not forget either that the cost of this work is by the standards of most solicitors puny. It is a £150 fixed fee for every case that they take on. A City solicitor charges £150 for 10 or 15 minutes of his precious time.

I could go on but time is against me. I hope that when we get into the details of this Bill, we will be able fairly and squarely to face up to the on-the-ground realities so that we emerge with a Bill that does justice to the Government's needs and aims but also does justice to justice.

6.19 pm

Baroness Kennedy of The Shaws: My Lords, like the noble Lord, Lord Phillips, I came in to the law full of idealism. I have remained idealistic about the law and what its purposes are and I have remained proud of the legal system in which I work. That has not meant that I have not been a critic of the legal system. Frequently and regularly, I have

been involved in criticising the law's failures and suggested ways in which we could improve the system. From the 1970s onwards, I have campaigned for women's issues and for greater fairness for women in the courts, hoping and working for better sentencing and so on. I have been only too aware of ways in which we have had miscarriages of justice, and I have been involved in many of those cases.

However, when you travel abroad, nothing fills your heart with greater joy as a lawyer than to realise just how wonderful our legal system is. I happen to believe that it is the best legal system in the world and that it is a source of pride to us. Yet I ask myself regularly: why is it, when we have something so precious and wonderful that is the best in the world, that we should we seek in any way to undermine it and actually take steps to destroy it?

One of the ways in which we are measured as a democracy is that we are proponents of the notion that the rule of law and democracy travel hand in hand. Britain is looked to as a great place of law, with great judges who are not corrupt, as the noble Lord, Lord Phillips, said, and great lawyers, whatever public opinion might be. When I go to the United States and speak to judges even in the Supreme Court, they say that they have sat and watched proceedings in our courts, like the Old Bailey. They say, "We have some great lawyers who are as good as some of your greatest advocates; but we do not have great lawyers in the middle ranks to measure against the lawyers that you have in the general run of courts". It does not come without a price. We train our junior lawyers well. We give them opportunities to hone their skills. They start small doing legal aid cases, as I did, and build it up. I

21 Nov 2011 : Column 867

have to say that most of my life has been spent doing legal aid cases, and I take a pride in that. I do not feel that it is the sad end of the work that we do. I think that it is about the most precious and important work that we do.

I want to remind noble Lords why all of this matters. Only a week ago I was discussing the rule of law with people in government in Iraq. They asked, "How do we make access to justice real?". When I am describing how our system has operated, it is a solid reminder that the rule of law is about more than passing laws and what we do in this House. It is about making it real by giving people genuine access. The Master of the Rolls, the noble and learned Lord, Lord Neuberger, recently made a speech in which he, like the late Lord Bingham and the noble and learned Baroness, Lady Hale, talked about how we get incredible value for money compared to other places. We also have a strong sense of what the rule of law is about. The noble and learned Lord made it very clear in speaking about its three facets: making clear and effective laws, which we try to do by honing, refining and improving legislation; enforcing those laws effectively and clearly through a good legal system, which I consider the best in the world; and ensuring that the law and the legal system are accessible to all.

As the noble Lord, Lord McNally, told the press in a recent interview, like every other government department, the Ministry of Justice had to take its hit. Of course, that is done at the behest of the Treasury, which is not really looking at the principles of the rule of law. However, two-thirds of the savings being made are being paid for out of the legal aid pot. The Ministry of Justice could have been bolder about taking more money out of the prison system. Regrettably, over the past 20 years, we have seen the ratcheting up of the numbers of people going in to prison, all satisfying a sort of Dutch auction on sentencing when we really ought to be much more creative about the ways in which we deal with crime. We could have been bolder about the ways in which this requirement to reduce the bill in the Ministry of Justice was fulfilled. Instead of reducing across the board what legal aid would mean in civil law, we have seen whole areas of law being removed from its ambit. It cannot be right or good for law.

The cuts are going to dismantle two key elements of the existing system. Others have mentioned how the legal aid system came into being at the end of the Second World War. It was saying that law is not just for the rich or for those who have money, but for all of us. That is what having a mature democracy is about. What came into being at that time was essentially legal aid that started off in family law and provision for women who did not have equality of arms and for their children when it came to the increase in divorces and in family disputes. The second thing that happened in the stages of this building up of legal aid was the Legal Advice and Assistance Act of 1972, which was taken through this House by Lord Hailsham, who was not exactly a bleeding heart on matters to do with law but a very fine constitutional lawyer who understood why it was important. He introduced assistance, which was the green form scheme, to which I will turn in a minute. We are going to see that dismantled. Having

21 Nov 2011 : Column 868

ready access to a lawyer will be replaced by a telephone hotline, a sort of call centre. We all know the problems that we have with call centres in every other area of our lives; imagine it when you are in distress and in need of decent legal advice.

The 1972 Act introduced a scheme for legal advice on any matter of English law, known variously as the green form scheme or the £25 scheme. It meant that a solicitor was available to give you advice. Law centres and advice bureaux came into being around that time, too, to give advice-on welfare benefits, community care, mental health, education law and so on-on that first call, when people have anxieties about how something is affecting their lives. I know good, decent, committed, idealistic lawyers, who have not become rich but who can persistently stay in this area providing that kind of advice to people. For us to be destroying it seems to me to be crazy.

The suggestion that there is a compensation culture, I am afraid, has been swallowed by our Lord Chancellor-to my surprise, because I am a great admirer of his. With the tabloid notion that a compensation culture exists, in a society that has idealised materialism and put the greatest value on money, it is not surprising that when bad things happen to people, they will want to be compensated. If you deregulate the professions and make it

possible for them to ambulance-chase, it is not surprising that you will have poor outcomes. Judges at the Old Bailey now tell me that, because of the legal aid cuts by the previous Government, they are seeing a decline in the quality of representation in the courts before them. Why is that? Increasingly, people will go in ill prepared. Cases of weight are being conducted by inexperienced people. That happens if you are paying people very little money for doing a professional job.

I really think that a mistake is being made in these proposals. I urge the Front Bench, which I know is concerned about these matters, to think again. This is a precious part of our legal system and the consequences of the cuts may be far greater than anyone imagines.

6.29 pm

Lord Martin of Springburn: My Lords, I have an interest to declare. Before entering this House I took up a complaint with the *Times* newspaper on a no-win no-fee basis and I was successful. Whether you are a long-standing politician or a showbiz personality, when you point out to a newspaper that it got the story wrong and ask it, in a civil manner, to rectify the matter, you are soon regarded as its enemy. The newspaper will look upon a complainant as someone who is attacking its professional integrity as a newspaper and it can take weeks to negotiate in the hope that you will go away. If you are lucky, you will get a few lines of correction somewhere in the back pages. The private individual who is not in public life can expect to be treated just as badly when he or she is publicly traduced, scorned or sneered at. It will be a daunting task for an individual as the newspaper deliberately delays or drags its feet in the hope that the complainant will go away. At least with the no-win no-fee arrangement the private citizen does not need to worry about his or her modest savings or house, or both, being at risk.

21 Nov 2011 : Column 869

The Government and the media tell us that 100 per cent success fees are too high. If that is the case, why not go to a 50 per cent success fee, with stages at 10 per cent and 25 per cent for pre-court settlements, and 50 per cent only after a full court hearing? That 50 per cent should be paid by the losing party; it should not come out of the winning claimant's settlement. This would give private citizens access to libel lawyers without considerable financial worry.

There are many examples of decent people who have benefited from no-win no-fee arrangements: a Catholic priest who was wrongly accused of habitually stealing from his church collection, an Army officer who was falsely accused of being involved in the abuse of prisoners in his care, and a teacher who was wrongly accused of inappropriate contact with female pupils. The Dowler family has written to our Prime Minister to say

that it could not have taken through its successful case had it not been for the no-win no-fee arrangements.

There is also the case of Mr Christopher Jefferies, the landlord of the late Joanna Yeates, who was brutally murdered. This man who lived quietly was arrested on suspicion of murder and was going about the business of convincing the police that they were wrong to suspect him. However, eight newspapers, most of them national, indulged in a hate campaign against this good man. They described him as a "Peeping Tom", a "weird", "posh", "lewd" and "creepy" individual, a "blue-rinse loner", a "creep" who "freaked out schoolgirls". What kind of people do we have in the media who can behave in such a manner against innocent people? This was after Mr Jefferies' lawyer warned the media to desist from publishing damaging stories. It should be pointed out that in law a journalist is even allowed to get things wrong provided that he can prove he acted responsibly. Eight newspapers failed in their duty to act responsibly with regard to Mr Jefferies.

I am speaking tonight not for the benefit of highly-paid lawyers but for men and women on low or modest incomes who might be caught up with the media that we have the misfortune to have. I thank noble Lords for listening to me.

6.34 pm

Lord Prescott: My Lords, I cannot declare an interest or experience as a barrister, a lawyer, a solicitor or, indeed, a judge, but I can declare some experience from my seafaring days when the ship owners used to call me a barrack room lawyer. I did not have legal aid, but a bit of industrial muscle helped. Perhaps I can just declare one interest. I am presently, after the comments made by the noble Lord, Lord Martin, involved in a no-win no-fee situation with the Metropolitan Police. Indeed, I concur with what the noble Lord has said. If you try to get justice for an offence committed by the press, they just ignore you or say, "We'll sue you", and you have to think about whether you will take on a no-win no-fee case. I identify with those circumstances.

I want to concentrate my remarks on what people have criticised about the Bill, which is that it is about cutting costs and money. Indeed, everybody admits that. But the people who are carrying the burden are

21 Nov 2011 : Column 870

the most vulnerable in our society, and that too is agreed across all the Benches. However, I disagree with it. I shall address my comments to the biggest interest group in this country-namely, our press. They are the ones that have real influence. They are the ones that have committed most of the injustices against individuals. They are the ones that can claim to do whatever they like in the name of the public interest, usually at the cost of the private individual's interests and rights. I shall therefore concentrate on Part 2, which deals with litigation.

It has been said that many more cases are taken on under conditional agreements. Naturally so, and many have been won that way. Why is that? It is because people could

not afford to take on the press before, who in contempt would not make any kind of apology. By the way, if you did get an apology, it was usually printed on page 25, even if you had probably been given the front page, as they often did with me. But eventually, when you win the case for an apology-by the way, they do not use the word "apology"; they say "correction"-basically it is put on the back pages. They are in contempt of justice for the individual. We therefore now have an opportunity to take into account how this Bill affects this area.

What offends me most about the Bill is that it strengthens the most powerful group against the vulnerable individual. The press have the money, the lawyers and the influence, and they use all that effectively against the individual. What this Bill seeks to do is strengthen that strong group by helping to reduce its costs on the one hand and by increasing its influence in these situations on the other. Look at what the Bill is actually proposing on damages-and we are talking about an industry that does not look as if it is going to change. Listen to the inquiry being conducted by Lord Leveson, or to what was said there today by Milly Dowler's family. The press are still carrying on with business as usual. This is a group that does not want any change or a statutory framework. It is making it clear that it wants to keep the voluntary system. That has to be questioned.

The importance of that, particularly for this Bill, is: how do you bring an action against a powerful interest group like this? It is accountable to the useless Press Complaints Commission. It is absolutely useless. We have had Members of this House chairing the commission-I think the noble Baroness, Lady Buscombe, was one. In fact she was the chair of this pretty useless group when it was fined or had to pay damages for libel against one of the lawyers in the hacking case. In that case, did the press pay her legal fees and did they pay the damages? I keep asking but I get no answers. But I can tell you for a cert that it would have been carried by the industry. The PPC is a total failure. It does not carry out its job. Why is that? It is because it is self-regulated. It is controlled by the Editors' Code of Practice Committee and by its code. If anybody saw the apology made by the *Daily Telegraph* in regard to Vince Cable, the Business Secretary, about what it did to him, they will see that the newspaper admitted that it was in the wrong and in breach of the Editors' Code of Practice, but thought that it could still go ahead with the story. Publish and be damned because it could not care a damn, quite frankly, as long as it

sells newspapers. That is the only interest of the press in these matters, and they ride over the rights of the individual simply to secure those sales.

This Bill will actually help to reduce the costs of the press, which they are moaning about, and not only in individual cases. Last July, we had a debate in this House on the private Defamation Bill introduced by the noble Lord, Lord Lester. The press were worried about libel tourism and who would carry the costs of that when our judges were making judgments on damages in some of the other cases that they thought to be excessive. Are they excessive when they breach the law and breach people's rights and even object to judges giving a decision? Look at the case of Mr Dacre, who attacked the

judge for making a judgment on human rights issues in regard to the Mosley case. That was totally unacceptable. It is the judges' right to make the decision about the balance between public interests and private rights. That is what we ask them to do. Mr Dacre was saying it is not the job of the judges to do that. Journalists want human rights legislation changed, so it is not only in regard to individual claims that we have to watch this powerful interest group. They want changes right through the system. They want changes to reduce costs and damages so they can continue to pay them, limited as they are, in order to publish and carry on. That is what concerns me most.

In my own regard, the police constantly opposed my application for a judicial review. Thank goodness the judges eventually made a judgment that I should have one. But the police were contesting it. Who pays the police's costs if there are damages involved? Who pays for them to employ the best barristers? That is paid, presumably, by the Metropolitan Police, which means by the public. I could not have taken out a case against the press if I had not had the chance to use the conditional system and to pay insurance. We now hear that the Government in this Bill are going to transfer insurance and other costs on to those who win their case. That is totally unacceptable, frankly. We talk about individuals paying damages if they have lost a case, but here we are talking about a powerful, wealthy body called the press which is asking us to make these changes.

There have been recommendations by Alan Rusbridger, editor of the *Guardian*. He suggested having a proper press complaints procedure with intervention and mediation by the Press Complaints Commission. He is absolutely right. He said it should be an independent body. He is absolutely right. But he does not want it to be a statutory one. How are you going to enforce everybody to be part of the PCC unless there is a statutory framework? How are you going to enforce sanctions, if you believe in doing that? I would suggest to him that in no-win, no-fee cases, the PCC should consider acting in mediation, and if courts or individuals refuse to accept that, then let the Press Complaints Commission take the complaint. Let it offer a conditional agreement so that the individual can then take the case, and let that be a cost to the industry, because it might be an effective deterrent if it has to pay to put something on the front page that is wrong. The Government in this Bill are reducing those penalties and strengthening the press and that is not acceptable.

21 Nov 2011 : Column 872

This House will be debating a number of pieces of legislation. One is the legal aid Bill which is now before us. The second will be a defamation Bill that will presumably come before this House. There will be a new Human Rights Bill, a Bill of Rights or whatever, which normally comes to this House. And there will be a new public complaints or mediation facility and perhaps even a cross-media ownership issue. All these involve the media. This is an opportunity for this House to get a very clear idea of how the press fits

within the framework. I believe in a free press-I think it is necessary-but one that defines what the public interest is, not one that is out of control. The *Guardian*'s proposal is that the editors should determine the public interest. Editors determining the public interest? They are only concerned about their own private interest and the selling of newspapers. To suggest, against the background of what our press has been doing, that they should define the public interest is unacceptable. They have defined it and they have no time for it. It is all about press freedom. I hope when we come to debate this legislation, we will consider all these parts. This is about the role of the press in a free society but not one where it is business as usual, as they are now proposing.

6.44 pm

Baroness King of Bow: My Lords, this House knows that when a Bill is put before it, the Government of the day usually get some of the legislation right and some wrong. But the wrongs contained in this Bill, whether by accident or design, are monumentally devastating. They cannot be made good by the benign aspects of the Bill or written off as collateral damage to be borne by British citizens in times of austerity. The Bill undermines the very compact between citizen and state. Were it to become law, British citizens who cannot afford a lawyer will effectively lose fundamental rights they have today.

I will confine most of my remarks to the legal aid section of the Bill. Those affected could be almost anyone but they include some of the most vulnerable groups in Britain: disabled children whose lives are ruined by medical negligence, battered women who are victims of domestic violence, terminally ill patients-for example, those suffering from asbestosis-related disease-the disabled, the abused and the sick. Under this Bill these are the scapegoats for austerity Britain. What is the Government's argument? They say they must clamp down on frivolous and trivial cases and the claim culture. We all agree with that. But how can they claim that a person dying of asbestos-related disease is a trivial or frivolous case or is part of the claim culture? I am sure the Minister does not claim that; in which case, surely he must bring those claims back within the scope of legal aid.

The same is true of domestic violence. Those crimes can never be described as trivial or frivolous. I was struck by what was said by a domestic violence survivor, Jeanie, who came here to the House of Lords to address Peers a fortnight ago. She said:

"It's not an ideological issue; it's one of basic fairness and justice".

Jeanie was thrown down the stairs by her husband late in her pregnancy. She gave birth at the bottom of her

21 Nov 2011 : Column 873

stairs to a still-born child. Eventually, on a subsequent occasion when her husband cracked her skull, she received legal aid and was able to escape with her children and prosecute her psychotic husband for GBH. Jeanie says that without legal aid she would not have been able to leave her husband and he would have killed her. He might have

killed the kids as well. Under this Bill as it now stands, Jeanie would not be eligible for legal aid. It is clear that these provisions must be amended because the criteria for domestic violence are now so narrow that in many circumstances even if a perpetrator admits that he has raped a woman, his own admission no longer counts in getting his victim legal aid. This is madness. It is no good asking a woman who is beaten and raped by her partner to use what the Minister described earlier as "less adversarial means" to resolve disputes. Not only is it inappropriate to ask a woman to do this, it is adding insult to terrible injury. Again, I know the Minister would never intend that so I am sure that he will want to rectify the Bill as it stands. If he is not able to give women in Jeanie's position access to justice, I am sure he will never sleep again at night. To prevent terminal insomnia on his part and to put all our minds at rest, I ask him to abandon the narrow definition of domestic violence which is not used in other parts of Government, to lift the 12-month time limit and to ensure that no victim of domestic violence is forced to either ruin their life or lose their life because the justice system is now closed to them.

I now turn my remarks to the Bill's impact on children. The Government have said that where children are involved, legal aid will still be provided. In the Minister's opening remarks he said that 95 per cent of children who are currently covered by legal aid will retain that protection. First, having spoken to all interested parties, I am not yet convinced of that fact. Secondly, the Minister cannot be including within that statistic all the children affected by their parents' or carers' loss of legal aid under these proposals. The Minister will know that almost 150,000 children will lose civil law and family law protection provided by legal aid. Children are the main party in 6,000 cases a year that will no longer qualify for legal aid. They are financially affected by more than 140,000 cases a year involving their parents. Another obvious example, about which we heard earlier, is welfare benefit advice. Currently in tribunal appeals where the applicant has legal advice-this is an incredible statistic; if your Lordships are drifting off, I advise you to come back for this one and remember it-55 per cent of all DWP decisions to cut benefits are declared wrong and are overturned. On decisions taken to appeal, the Government are proved wrong more often than they are proved right. This means without a shadow of a doubt that low-income households will unfairly and through no fault of their own suffer when they no longer have recourse to legal aid. That includes 36,000 children every year from the poorest families who will no longer be able to appeal poor benefits decisions of this nature. A previous speaker talked about equality of arms. This is a precise illustration of how we are losing that equality of arms and how power is slipping from the individual towards the

21 Nov 2011 : Column 874

state. I do not think that this is an ideological issue, but, if it is, surely noble Lords on the government Benches would want to stop this drift of power from the individual to the state.

On the subject of children, the NSPCC unsurprisingly says that it is "gravely concerned" by the Bill and that:

"The proposals fail to protect the interests of children's welfare and the interests of justice".

That is a damning critique. The Children's Society is equally concerned and says:

"Taking whole areas of legal matter out of scope will inevitably affect the poorest, most vulnerable and marginalised families".

So let us add those vulnerable families to the other specific groups targeted by the Bill: the disabled, the abused and the sick. There must surely be a better way of reforming legal aid than making life unbearable for those on the margins.

I was so concerned about the proposals in the area of medical negligence that I wrote to all Peers on the subject before the summer. I was overwhelmed by the responses that I received from all sides of the House. Your Lordships clearly do not think that it is wise or just to remove legal aid in medical negligence cases. I am sure that the Government will want to listen intently to the will of the House by accepting an amendment on this subject at an early stage.

My last sentence on this matter returns us to the victim of domestic violence, Jeanie, whose husband's violence killed her child. Jeanie named her daughter, who was stillborn at the bottom of her stairs, Hope. She found the courage to protect her children and save her own life using legal aid. Jeanie is relying on us, on the Minister and especially on Peers on the government Benches to ensure that other lives are not ruined by a legal system where justice is denied.

6.53 pm

Lord Elystan-Morgan: My Lords, I wish to use the time available to me to speak to Parts 1 and 2 of the Bill, that robustly harrowed area in respect of which we have heard the most distinguished and powerful contributions already.

Unless a Government of the future pass a one-clause Bill to abolish legal aid completely, the contents of this Bill and the proposals surrounding them must constitute the most savage and most deadly attack upon the institution of legal aid in the 62 years of its existence. The Government have pleaded three justifications for those proposals. The first is that we live in a society that is overindulgent with eccentric litigants, that legal aid is wasted and, even worse, that in some way or another it encourages and stimulates utterly irresponsible litigation. The second is that, in the context of legal aid, there is every alternative possible that can ameliorate and mitigate any loss that would otherwise exist. Furthermore, they say that, in any event, it is a system that will be greatly improved by the proposals in the legislation.

A few questions should be asked about those propositions. First, is there a litigation culture that menaces the community in which we live? I doubt it very much. I draw all my experience from some 50 years in the law as a solicitor, a barrister and a judge. I have

seen many cases of legal aid. There may well be some

21 Nov 2011 : Column 875

one would doubt it was utterly reasonable to have granted legal aid-what else would you expect in an imperfect world? But for each one of those, I can think of a dozen cases for which one would think it would have been proper for a litigant to have been granted legal aid.

The first point that I would wish to make in challenge to that proposition of overindulgence and creating a culture of litigation is to be found in the report by the noble Lord, Lord Young, some few months ago, entitled if I remember rightly, *A Community and a Safe Society.*

Lord Faulks: My Lords, it was *Common Sense, Common Safety.*

Lord Elystan-Morgan: I am most grateful and obliged to the noble Lord. In that report, the noble Lord, Lord Young, made it perfectly clear that the conclusion that he came to, from all the evidence that he had heard, was that there was no such thing as a litigation culture in society but there was in the minds of tabloid editors. Of course, there are eccentric litigants. Let us just think of how poor the reports of the law of tort and the law of contract in the 19th century would have been were it not for eccentric litigants. However, they were rich and they were certainly not on legal aid. That is what we have to consider. There is no evidence whatever that we live in a situation where legal aid has stimulated a culture of litigation.

Secondly, we ask whether the effects of what we see now are going to be destructive or benign. So much has been said here today that it needs me only to ask that particular question for it to be answered. It is perfectly clear that the whole foundation, the whole ethos, of legal aid is being challenged and attacked. In those situations, the scope of the cuts and the very nature of the deprivations are such that it is inevitable that there will be very considerable destruction. There will be no legal aid generally, but only in that cluster of sparse areas referred to in Schedule 1. Six hundred thousand people who are now eligible for legal aid will be taken out of that system. There will be no legal aid for private family cases apart from domestic violence-and it seems that the gateway to that has already been deliberately created as a massive obstacle course for likely applicants.

Thirdly, I look to the question of whether amelioration is possible. I doubt it. No doubt mediation has its part to play. Even if we had an army of persons trained, skilled and experienced in mediation-and I hope that some day we might very well come to that; a great deal might be done-some cases, especially family cases, as I well know, could take days but would otherwise be utterly impossible. Again, so much has been said about no-win no-fee to make it obvious that, although that may fill some of the gap, a huge and yawning chasm will still remain.

Lastly, I ask a question about the cost to the Exchequer. In its third report on legal aid, the House of Commons Select Committee on Justice expressed amazement that there was no comprehensive study of the knock-on effects. These knock-on effects will show themselves in one of two ways: either people will retreat from defending or asserting their rights altogether, or there will be a knock-on effect in massive expenditure in other departments.

21 Nov 2011 : Column 876

It has been calculated by the CAB that for every £1 that is spent on legal aid, £2.34 will be spent on housing, £7.18 on employment, and £8.80 on benefits. Where is the gain? What is the gain commensurate with the anguish, the loss and the injustice? At Second Reading of the Bill in the other House, the Secretary of Justice said:

"I accept that access to justice for the protection of fundamental rights is vital for a democratic society-something on which I will not compromise".-[*Official Report*, Commons, 29/6/11; col. 986.]

It is not by their words but by their deeds that they will be judged, as far as this matter is concerned.

7.02 pm

Lord Morris of Aberavon: My Lords, in the limited time available, I shall try to avoid Committee points, but I am confident that this House has a formidable task as a revising Chamber. The Lord Chancellor was, reputedly, one of the first to agree to the Treasury's demand to contribute to the cut in the deficit. With hindsight, that might turn out to be a mistake. All his proposals flow from his efforts to meet the required amount: sentencing, remission, prison numbers and now the legal aid budget. Our job is to assess their fairness. How fair are they? In which fields will the most vulnerable suffer disproportionately? The words of the late Lord Bingham ring in our ears-they have already been quoted by my noble and learned friend Lady Scotland. He said that,

> "denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the rule of law".

The Law Society, in today's *Times*,recites some of the most vulnerable who will suffer. This House will have to examine in detail proposals for family law, some victims of domestic abuse, and victims of clinical negligence. The view has already been expressed of the grave concern that clinical negligence will be outwith legal aid. In the absence of legal aid, no-win no-fee has been the only means of litigation for many. From what I understand, a great deal of the ground is to be cut from under the feet of many by the Bill's proposals.

Let me pinpoint one issue-the environment. As a constituency MP for more than 40 years, I was constantly reminded of environmental problems created by industry and developers. Litigation is the last resort in these fields, only when other means have failed. It is a battle of David and Goliath. There are occasions when the means should be provided for David to have his day in court. The Bar Council, in response to the Government's proposals for legal aid reform, has made proposals for £350 million savings in the administration of justice. It is the profession's belief that its views have fallen on deaf ears.

Let me make one point of detail-a detail which, if continued to be ignored, distorts the legal aid budget substantially. I have defended over the years many defendants who have hitherto enjoyed significant wealth. The cases would involve drug dealing, particularly importation, VAT frauds, mortgage frauds and the like. The defendants would frequently, having enjoyed the trappings of wealth, be on legal aid-or, in the course of a trial would be granted legal aid. You may well ask why. It would be because their assets would have been frozen by court orders on the application of

21 Nov 2011 : Column 877

the CPS. At that point, they would be persons without resources, eligible for legal aid, and in many cases treated as men of straw.

Let me give the basis of all this. In 2005, more than 50 per cent of Crown Court legal aid expenditure is consumed by 1 per cent of cases. These are the kinds of cases I was involved in. The average cost per case would be £2.6 million. To give an idea of the sums under restraint, the value in 2009-10 was £560 million, rising to £744 million in 2010-11. If we used some of that money for legal aid that is not necessary, the legal aid budget would be more realistic, fairer and more easily understood. The Treasury says that it can recover some of the money through confiscation orders. But how successful is it? Does not that basis distort the whole picture of legal aid? In any event, I believe that it is an unfair and distorted way of portraying and allocating public expenditure.

I will touch briefly on sentencing. When I sat as a recorder from 1973 to 1997, we were bombarded each year by criminal justice Acts. Sentencing was a labyrinth that you navigated as best you could. The pressure on the judiciary to get a sentence right was unremitting. Let me give two examples of how some things fell into or out of favour. At one stage, suspended sentences were very much in favour-with or without conditions. Then they fell out of favour. And now we are, back again, to look at how they are to be implemented. Secondly, the four-year imprisonment tariff became important; release depended on whether the sentence was just under or just over four years. That had immense consequences for the sentencing judges.

Some of the proposals in the Bill may well have a great deal of merit. We will examine them exceedingly carefully and hold on to that which is good. But I hope and pray for some respite in the introduction of the equivalent of the criminal justice Bills which change whatever is the fashion from year to year. The judiciary should be allowed to get

on with it. Sentencing would be easier; the professions would understand it better; and the defendant-an equally important person-would understand it better. Constant changing in sentencing does not make life any easier for anyone at the criminal Bar.

7.09 pm

Baroness Prosser: My Lords, I am pleased to be able to contribute to this debate, but less than pleased with the proposals contained within the Bill itself. I will restrict my remarks to the social welfare law aspects of the Bill, plus a couple of comments regarding access and rights.

Prior to becoming a trade union organiser, I worked in a south London law centre for six and a half years. It was work that I thoroughly enjoyed and was an experience which has given me a good understanding of the range of issues dealt with and the types of people looking for help.

I also clearly understand how the law centre and advice centre network is interdependent, providing general and specialist advice and services and a system of cross-referrals, almost always with good connections to services, benefit offices and so forth. There seems to

21 Nov 2011 : Column 878

be confusion in the minds of supporters of the Bill as to what does and does not constitute legal advice. On Report in another place, it was said that social welfare problems are not legal matters and do not require legal expertise to resolve them.

However, common sense would teach us that these matters are as legally complex, with case law and precedents to be taken into account, as any other legal area. Where they differ, of course, is that the first port of call for a hearing or an appeal is usually a tribunal where an unqualified lay person can speak and represent the claimant or client. The law centre and advice centre movement is also acutely aware that to claim legal aid for non-legal advice is simply against the law.

Because of the interdependency of the services provided, restricting the availability of legal aid support in the ways proposed is likely to see the collapse of the whole advice network. It is very hard to see how in a civilised society justification can be made to withdraw access to legal remedies from the most vulnerable and needy among us. It seems that there is a view that such people will somehow be able to look up the law, draft out a legal case and speak to the court-all this, of course, after going through the mandatory telephone gateway where they will be required to refer to complex documents at the same time as interpreting the legalese and trying to articulate their case-all in the name of reducing the overall legal aid bill, where civil legal aid is not even the culprit.

Many other aspects of the Bill cause me to feel dismayed. There is to be no housing advice unless the person is likely to lose their home. What about redress against landlords who make their tenants' lives a misery, turning off the electricity for example or refusing

to do essential repairs? There is to be no help in cases of domestic violence until the point where the woman is likely to be afraid for her life and often the lives of her children. There is to be no help for employment cases. Combine that with the introduction of fees to access the employment tribunal and a wronged employee has no effective right of redress at all. The Minister refers to the fact that tribunals were intended as more informal venues where the ordinary person can go along and state their case. He implied that it would be good to get back to that happy state and I am sure that most of us would agree, except that we cannot go back. We are where we are. Informal venues have been turned into highly legalistic arenas where the inexperienced will be swallowed up by complex arguments and convoluted language. Eleven years of sitting on the employment appeal tribunal tells me that unrepresented cases will take up much more court time. Where is the saving?

I turn briefly now to matters of rights and access. I declare an interest as deputy chair of the EHRC. There are two areas of particular concern. The first is the likely impact of the mandatory telephone gateway on those with disabilities. The equality impact assessment carried out by the Government does not properly assess whether the impact can be justified as a means of achieving a particular aim. Indirect discrimination in services and public functions is of course unlawful unless it can be objectively justified.

The second is the overall question of legal rights being no rights at all if they cannot be accessed. As is known, we have international obligations and the right

21 Nov 2011 : Column 879

to a fair trial is guaranteed by Article 6.1 of the European Convention on Human Rights. It has also been found by our own courts to be a constitutional right. The proposals contained in the Bill do not reflect the values of a civilised society. In my opinion, they are pretty shameful.

7.15 pm

Baroness O'Loan: My Lords, there can be no doubt that the current arrangements represent, as the Minister said, an "unignorable problem of affordability". However, even in that situation the current arrangements do not enable access to justice by huge sectors of society who must make the decision not to bring legal proceedings, based not on the merits of their case, but simply on the basis that they do not have the resources to fund litigation. So the current situation is far from perfect. The Bill as drafted will in some respects exacerbate a very difficult situation. It will not be compliant with Lord Justice Jackson's insistence that there should be,

> "no further cutbacks in legal aid availability or eligibility".

Elements of the Bill are welcome. I refer to the proposed introduction of a new offence of squatting in a residential building-a problem which became quite widespread as it was realised that it is possible to occupy a building without any possibility of criminal sanction. The costs of such occupation in terms of property damage and the consequential

civil legal proceedings to eject a party can be very significant and can cause massive distress. This provision is clearly a common-sense and necessary improvement to the law. The only question is why it has taken so long to get there.

I wish to address the issue of the extent to which the current proposals will restrict access to justice for the most vulnerable and marginalised members of our society in circumstances in which they find themselves the victims of crime-of clinical negligence, professional negligence or fraud. I think of those who are very poor; those who have to cope with the consequences of disability in all its forms; of the 20 per cent or so of our population who effectively cannot read and write; of prisoners, who are disproportionately represented among those with mental health and literacy difficulties; and of immigrants for whom access to justice was completely unknown in their home country and who have come to this country believing in the rule of law and the principles thereunder to enable access to justice. The current civil legal aid provisions are very restricted but they do allow people with very limited assets to bring the proceedings that are necessary to assert their rights. The evolving conditional fee arrangements provide some access to justice for those who are not entitled to legal aid but who can seek redress in the courts through alternative arrangements.

I am no fan of the ambulance chaser. Indeed, I would prohibit the type of advertisement to which I-like many other noble Lords, I am sure-have been subjected, suggesting that I have suffered an accident and the sender of the text will provide me with legal representation to enable me to secure compensation. However, the Access to Justice Action Group has stated that Part 2 of the Bill will affect the capacity of some 600,000 ordinary people to get access to justice.

21 Nov 2011 : Column 880

It states that there will be 25 per cent fewer claimants and that the remaining 75 per cent will lose up to 25 per cent of their compensation. This will almost inevitably, in medical cases, result in additional costs to the National Health Service. Have those costs been factored in to the overall savings said to be consequential on the proposed changes?

The reality for a parent who has given birth to a child who has suffered significant injuries as a consequence of medical negligence is very grim. Such parents face, even in the present situation, an almost insuperable problem. They must learn to come to terms with the consequences of the alleged negligence in terms of their baby's ability to function. They must enter a world which they hitherto never knew of clinical process and, in some cases, almost constant emergency situations. They must learn to do that which doctors and nurses normally do, to preserve the life and function that their children have. Often, they will be constantly exhausted and frightened. They may have to care for their other children while coming to terms over years with the ongoing, developing consequences of that medical negligence. In the midst of all this, and of all the consequential visits to doctors, occupational therapists and physiotherapists, as well as to those who provide wheelchairs and other aids and adaptations for those with disability,

they must contemplate the need to commence legal proceedings to seek compensation, which will enable them to secure proper care for their children in the future.

Similar situations will arise for those whose adult friends and relatives have suffered catastrophic damage as a consequence of medical negligence. They too will have to come to terms with a whole new way of life if they decide to become the carer for the injured party. By so doing, they will save the state a lot of money, because the state will not have to provide residential care. What too of the situation of those with an industrially-acquired disease and the widows and children of those who die at work as a consequence of an employer's negligence?

In the midst of all the grief, the confusion, the fear and the exhaustion, they will need to know how long they have to initiate legal proceedings. They will need to know when it is best to do so, because the consequences of medical negligence may take a little time to emerge. They will have to contemplate the costs of expert medical and other technical evidence to support and explain the situation to them. They will need the capacity to keep their claims going through years of litigation-and all this without legal support. Is this possible?

All the while, in many negligence cases the costs of the defendant are borne by the public purse. We fund the defendant, but we will refuse to fund the complainant. The effect of the current proposals will be that yet another two-tier system will emerge. There will be those with sufficient resources to bring actions with legal representation, for whom compensation may ultimately be decreed and consequentially a higher standard of care. Then there will be those whose parents or carers just cannot contemplate how to bring such proceedings and who will ultimately suffer the consequences in terms of reduced living standards.

21 Nov 2011 : Column 881

As the noble Viscount, Lord Simon, said, where the injury has been suffered as a consequence of the failure of state-provided care, it is even more necessary to provide an accessible remedy in law. There will have to be revision to this section of the Bill. The provision for exceptional cases will not meet the needs of these claimants. I also echo the words of the noble Lords, Lord Pannick and Lord Newton, about the court costs resulting from the appearance of an unrepresented litigant. I echo too those who identified the serious problems which will emerge from the withdrawal of legal aid for welfare cases.

There is one other matter in the Bill to which I will refer briefly. It is the matter of how the law deals with those offenders who are dangerous and violent and who will be sentenced, but in respect of whom there is an enhanced need for public protection which must be dealt with in a proportionate manner. This matter was dealt with in Northern

Ireland by means of the Criminal Justice (Northern Ireland) Order 2008, which created indeterminate custodial sentences. Under the legislation, a judge contemplating an ICS has first to consider whether an extended custodial sentence,

> "would be adequate for the purpose of protecting the public from harm".

The purpose of that law is to ensure that the ICS is imposed only where there is no other proportionate way to protect the public. Mr Justice Hart stated in the case of R v McGleenon this year:

"Common to each of these four sentencing options (determinate sentence, ECS, ICS, life sentence) is the need to consider whether the accused presents a danger to others by virtue of being a significant risk to members of the public of serious harm in the event that he were to commit offences of the same or a similar nature in the future".

In that case, Hart imposed an indeterminate custodial sentence with a minimum term of five years' imprisonment, meaning that the defendant would not automatically be released after the minimum term has elapsed, but rather that he would be released when the parole commissioners are satisfied that it will be appropriate to release him.

It appears to be the view in Northern Ireland that the combination of judicial discretion as to the question of dangerousness-similar to that applied in England and Wales-and the requirement to consider an ECS before imposing an ICS has meant that the number of public protection sentences has grown slowly, far lower than anticipated. Consideration of the operation of that system may assist in providing a public perception and reality of protection while ensuring that there is not a disproportionate use of the ICS.

7.24 pm

Baroness Newlove: My Lords, I have listened with great interest to the debate, which so far seems mostly about legal aid. I cannot comment knowledgeably about that, but I want to speak about what I know. I stand with a great weight of expectation on my shoulders as I speak out for victims of violent crime. I cannot hope to represent all the different views held by this group, but I will try. Many good and honest people, through no fault of their own, have entered the criminal justice system as victims. I add my own and my daughters' personal and eye-witness

21 Nov 2011 : Column 882

experiences as victims of the violent teenage gang that left my husband Garry dying in a pool of his own blood.

I support these innocent, grievously wounded people, and I speak also for Garry and the many others, deeply loved and missed, who are silenced for ever. This Bill has the capacity to right many wrongs and bring real justice. The coalition Government's strong sentencing package will make a huge sea-change reform of our justice system. It will ensure that criminals are punished for their crimes and made to face up to the causes of

that criminality, and it will restore public confidence in our criminal justice system. I ask you to listen with your heart as well as your ears and minds. There but for the Grace of God go you.

I am grateful and humbled by the Minister saying on record that the victim will be at the centre of these reforms. I thank my noble friend. Our criminal justice system needs overhauling. Our jails and young offender units are full and overflowing. The system is creaking at the seams and not working when we see the depressing and costly figures of reoffending. Many people locked away are not violent, but others who can cause hurt have their freedom. It is shocking that about half of all prisoners reoffend within a year of release; 74 per cent of young people sentenced to youth custody and 68 per cent of young people on community sentences re-offend within a year. Something is broken and needs urgent fixing.

The scales of justice are tipped too far to the rights and needs of the offender. They must be balanced towards the victim; or, if their lives have been cruelly taken from them, then towards the families left behind. They should have a say in the sentencing, parole and probation of offenders. Although the argument rages between rights of victim and offender, there is another interested party to this; the public. Victims were the public once. Anyone can join our terrible club in a heartbeat. Membership is lifelong and unwanted. Lives will always be affected by the violence they never asked for.

We need to restore public confidence in the judicial processes, to look at the proposals put forward in this Bill and why we must make these changes. Offenders are not victims. Please do not patronise and disrespect us by confusing the two. Mitigating factors of background, bad parenting and social circumstances can influence an individual to commit terrible crimes, but this can never be a cloak to excuse criminal behaviour. Ultimately it is down to individual choice and we must do all we can to inform, educate and, if that fails, enforce common laws of acceptable behaviour. That is how a just and strong society functions. The will and actions of every individual must support and nurture the community. It protects the weak and defenceless, the young, aged and those with disabilities and learning needs. For without the common goals of strong values, self-respect and self esteem, we turn feral. We become a society that looks to self-gratification, to thinking me, me, and mine, mine. That takes out and does not put back in; grabs and steals but does not earn; tramples everyone that stands in the way of getting what we want; and passes these wrong behaviours to the next generation. In this downward spiral we risk never releasing the compassionate good that is within every one of us.

I do not speak from a vengeful and bitter platform. What has happened to my family and so many like us will be with us for ever. We cannot turn back the clock. What victims want is that it does not happen to anyone else. The suffering we experience cuts to our very hearts. My daughters will never have their father walk them down the aisle on their wedding day. My grandchildren will have to be content with photos and stories about the grandfather they will never see. Birthdays, anniversaries, Christmas, the back of a head in a crowd which is so familiar, the words or tune of "our song"-I cannot describe the physical pain which strikes unexpectedly and ferociously; words do not exist.

I welcome the Bill's promise to simplify, release and recall arrangements and clarify the statutory duty to explain a sentence. Again, it must be clear and easily understood and accessible by the public. It must not be lip service. Communication is vital for everyone to understand our criminal justice system and the Bill promises to strip out unnecessary clutter. The government support of approximately £50 million to the victims' voluntary sector this year was a real commitment to rebalancing the criminal justice system. Extra funding for the homicide services and a redirection of offender surcharge and earnings are all steps in the right direction.

The Bill looks to encourage the use of compensation orders. This should be mandatory and paid directly to the victim involved or, where refused, the money should still be deducted and retained for other victims. Focusing on punishment for the perpetrator will help them to recognise and accept the wrong they have committed against others. This could well have a positive effect on reoffending. It will certainly appease the general public who are unhappy to learn that offenders can get away with working just six hours a week. A consultation document on victims' services will be published soon by the Ministry of Justice and I look forward to the public's chance to influence policy-makers. The victims' code should focus on sharing information and offer complete transparency. I recommend that we should explore new technology to help us in the fight against criminal behaviour and offender management. The public will accept community orders as long as they feel that they are safe and are guaranteed that offenders are not left to roam free but are properly monitored and put to real work.

Tomorrow I will look at a new GPS-linked UK tagging device called Buddi Tracker. This has an impressive record of stopping repeat breaking of parole conditions. It could help in the fight against organised gangs as tracker devices can alert when two or more banned individuals try to get together. While I believe in localism and returning power to local communities and agencies, I am also very afraid that we risk losing consistency in supporting victims by handing over these services completely. There needs to be an umbrella organisation so that, no matter where you live, the same platinum service is delivered to support victims and encourage witnesses to testify.

The annual three-year grant funding of £38 million to Victim Support, with its roots embedded in communities and supported by local volunteers, is to my mind a good thing. I shall be speaking next month at the first meeting of a victims' alliance of charities

and the support networks for victims of homicide brought together by Victim Support. I hope that everyone in this sector puts aside their minor disagreements and joins to make this a powerful force for good, sharing best practice, avoiding duplication and acting as a central source of comment so that reform of the criminal justice system can be better joined-up.

The Bill promises to tackle reoffending by young people so that the young offenders of today do not become the hardened career criminals of tomorrow. I recently visited the West Midlands to see a police initiative which is driving down anti-social behaviour by bringing young offenders and victims together to thrash out their differences in a safe, controlled environment. It is very early days but the initiative holds great promise and similar avenues of restorative justice should be explored. Success builds community trust in the police and empowers victims while exposing offenders to the suffering that they cause. This can stop minor bad behaviour escalating to dangerously high levels, as I know only too well.

Outrageous stories of foreign nationals abusing our hospitality while using human rights to stay and cause terrible harm to our citizens are shocking. The Bill promises to do what we all clamour for-remove them from our shores at the earliest possible moment and keep them out. Possessing a bladed article in a public place is already an offence. The new custodial sentences are welcome, but the message must be clear that no one should carry a knife in a public place without good reason; for example, for use in their job. It is the wrong message to send that unless someone threatens or endangers another it is okay to carry a knife. We must speak out loudly and impose harsh deterrents to reinforce the message to prevent anyone of any age carrying a knife. By setting an age limit, those under it will be coerced or bribed into carrying for their elders.

May I ask noble Lords to join me in conveying a huge thank you and get well soon message to the four brave police officers who were stabbed in the line of duty yesterday in north London? Our officers get up each morning, kiss their loved ones goodbye and walk into the unknown-a violent and unpredictable world. There is no guarantee that they will return unharmed, as this latest knife attack reminds us all. That is why we have to get knives off our streets, to limit the risk to them and us.

Finally, I want to comment on the review of the IPP sentencing to make this easier for the public to understand. I welcome clarity in sentencing laws. Victims need to know exactly how long offenders will be imprisoned. I hope this means that we see the end of a review of tariff at half-term stage for those convicted of murder and that instead they are subject to the new extended determinate sentence and will have to serve at least two-thirds of it behind bars before release. Victims must know that offenders are made to serve time and that there will be no automatic release before end of sentence for the most serious cases.

Sentencing, punishment, rehabilitation of offenders and the cost to the public purse of legal aid will be overhauled by this new Bill. It might not be totally perfect but it goes a long way to rid us of the current wrongs in the system and reassures the public that this

21 Nov 2011 : Column 885

Government will guard their safety and at the same time introduce common sense into new laws. Instead of being back-seat passengers, victims are at last being invited into the front seat, and even occasionally given the wheel, to enable them to take their rightful place on the journey. It is time that we were not treated as a meddlesome problem in the criminal justice system to be ignored, but included in discussions as part of the long-term solution. We have paid a high price for our ticket.

7.38 pm

Lord Monks: My Lords, I declare an interest as a non-executive director of Thompsons Solicitors, which is probably the most experienced legal firm acting for workers in the personal injury and employment fields, and certainly the largest legal firm working with trade unions. That is enough of the advertising.

I am grateful to the noble Lord, Lord McNally, for affording me the opportunity to discuss my concerns about the Bill with him. A central concern relates to Part 2 which, if enacted, will undoubtedly make it harder, more hazardous and more expensive for many damaged workers to have access to justice. As a result, it will act as a major deterrent to applicants to apply for justice. A good thing too, some might say, including some employers and insurance companies. However, the losers will be the many victims suffering from injury or illness who are afraid to risk the expense of seeking redress.

In recent years, access to justice has been much encouraged by conditional fee agreements-the so-called no-win, no-fee arrangements. These have certainly not led to an explosion of cases in the employer liability personal injury field. Employer liability claims are on a downward trend and fell between 2007 and 2011. There has been no noticeable surge in the compensation culture in this area. As the noble Lord, Lord Hunt, highlighted earlier, recently there has been a surge in road traffic cases, which are up 43 per cent to the very high figure of 791,000, 10 times the number of employer liability cases. I understand the Government's concern in the road traffic area, but that is no justification for making no-win, no-fee arrangements in relation to employer liability and making access much harder for vulnerable claimants.

Conditional fee agreements were introduced to ensure that people who did not qualify for legal aid had an opportunity to instruct solicitors on a no-win, no-fee basis. Changes to funding, brought in by the Access to Justice Act, meant that from 2000 solicitors were able to make judgments about whether to proceed with cases with a degree of confidence that they would get paid; and, importantly by using the success fees that they recovered in cases that they won, they could fund riskier, less straightforward cases with worse odds of success. As the Bill is now, there will, at best, be a limited fund from success fees because they will be capped and it is a fund into which clients would have to pay from the compensation, if any, that they receive. We calculate that as many as 25 per cent of injured people whose cases would currently be run, and won, will not be able to find a lawyer willing to take on their cases.

The Bill is not making minor adjustments to the present system; it is scrapping the present system. Sections of society, other than the wealthy, will be frightened off pursuing cases. As the Law Society has argued, the other winner will be the insurance industry. I ask the Minister: is that industry preparing to cut premiums as a result of these substantial changes in their favour? They have given no such promises in the road traffic area, so those small and medium-sized employers who were in Ministers' minds when they introduced the Bill had better not count on getting a better deal from their insurers.

Even at this stage, I hope that the Government will rethink their position. As the noble Lord, Lord Newton, said earlier, public finances may well not benefit. There could be a loss to the social security department in recoupable benefits, extra burdens on the NHS for the costs of care, and more people being reliant on benefits. Victims who win cases will have to pay a hefty slice of their compensation to lawyers, while many others will be deterred from taking cases at all. There is many a human tragedy, as we have heard today, behind all this technical talk of fees and so on. In today's debate we have heard very moving stories about the victims of asbestos, from the Spinal Injuries Association, and other support and self-help groups. I ask the Government to look again at Lord Justice Jackson's two alternative packages, which would control recoverable success fees, and at the problems in the road traffic area.

I have one final point on legal aid. I would like to support points made by, among others, the noble Lords, Lord Newton and Lord Phillips, and the Chairman of the All-Party Group on Citizens Advice in the other place, that at a time when major changes are taking place in the welfare system, it is unwise to withdraw support for people who are challenging bad decisions. We heard the statistics on that earlier. I hope that the Government will urgently meet concerns in this area. There is a way forward that is more equal and effective than the current provisions in this Bill and I hope that we can persuade the Government to take it.

7.44 pm

Baroness Linklater of Butterstone: My Lords, this has been a fascinating and important debate and I am honoured to be part of it. This is an enormous Bill, not only in its size but also its scope and aspirations. Of particular interest to me are the relative roles of prison and community sentencing in the future and how this will be managed. I agree with everything that my noble friend Lord Dholakia has said on specific aspects of sentencing policy and so will not repeat those arguments. I shall concentrate on Part 3.

The Lord Chancellor came into office to find our criminal justice system in a mess. There are soaring costs. The NOMS resource budget alone for 2011-12 is £3,679 billion-I thought they might have got the "b"s and "m"s muddled up, but apparently not; prison

numbers are soaring and are currently around 85,000; and re-offending rates are soaring. Of those serving short sentences of a year or less, nearly two thirds will reoffend. Where children are concerned the figure for reoffending rises to more than 71 per cent. This is the

21 Nov 2011 : Column 887

headline indicator of the failure to deal effectively with offenders in ways which help them to stop committing crimes. The whole country's needs, particularly those of victims, are not being met. The challenge is to cut costs and to try to make the system work better.

The Lord Chancellor's initial response in the Green Paper, *Breaking the Cycle*, recognised that short custodial sentences do not work, and he proposed instead the development of effective, tougher, targeted community penalties, which are much more successful at reducing reoffending, thus making society a safer place. He proposed making prisons work better by reducing the impossible overcrowding created by those serving short terms and allowing them to do what they do best, which is to deal with the violent, dangerous, prolific offenders, who are serving long sentences, from whom we need to be protected. He talked about a rehabilitation revolution and presented a coherent programme of legislative reform, which was very welcome and made many of us cheer.

Since then, there has been a move back from the clear, constructive focus on prevention, rehabilitation and the reduction of reoffending to giving punishment a more central focus. Hence the change to the last part of the name of this Bill from "the Prevention of Reoffending" to "the Punishment of Offenders" after it was first published and the Bill had to be reissued. I regret this because it injected an unhelpful, retributive and negative tone. From my earliest days of working in prisons, I have been told that not only was imprisonment the sanction of very last resort and for as short a time as possible, but that those who were sent to prison went as a punishment, not for punishment.

Despite this, I believe that the Bill could usher in a shift of focus, or emphasis, so that much of what is being proposed is constructive and could succeed in the core aim of reducing the number of short-term prison sentences, and thus reoffending, save money and protect the public. However, that will depend crucially on the work that will have to be done with sentencers in both magistrates' courts and Crown Courts to generate understanding and, more importantly, confidence in the proposed community sentences and the quality and availability of these new tough sentences in the community. The decision on whether to use these alternatives remains with the sentencers. However, there is nothing in the Bill about the nature, range or expectations of the community sentences, which are to be alternatives to short sentences and on which the reduction of reoffending is predicated.

At a meeting with the Minister, Crispin Blunt, he was emphatic that there is no government money for this provision, but rather an expectation that payment by results will provide the answer. My noble friend Lord McNally did indeed refer to that in his opening remarks, but I have yet to find any detail in the Bill. Perhaps this is because this

is an approach which is still only being trialled at the moment and that the success or otherwise is as yet unknown and unproved. The result will take at least two years to demonstrate, so the country will have to wait several years. This means we are indeed putting on hold the kind of revolution we hope to see. There is one much-heralded project at Peterborough prison, run by the prison, the

21 Nov 2011 : Column 888

private sector and voluntary sector partners. However, it has yet to demonstrate any definite outcomes, and is also based in the prison and focuses on finding prisoners jobs. I understand that at least 14 other prisons have plans of some kind in place. Mostly, however, the work-if it is to work-must be done in the community, on release, where the capacity to keep a job and sustain it will be the critical result.

I have the honour to be the patron of an excellent medium-sized, voluntary sector organisation called SOVA, which is also attempting to make such a PBR scheme work. It is very well placed to do so in terms of its knowledge and experience of working with offenders in the community. The problem is that for the first two years at least there is no return on its investment which, as an organisation, is extremely expensive, because the payment only comes after two years, based on the result of reduced reoffending; this is of course a major gamble. There are in fact only a few agencies in the voluntary sector able to afford such up-front commitment. The voluntary sector has been the bedrock of community-based work with offenders and consists mainly of SOVA-sized organisations which will struggle and have to take on huge risks to deliver results. The field is left mainly to the few large voluntary organisations or the private sector who can afford to become players if and when they choose. These are the ones who have come into the criminal justice world through providing STCs-our child prisons-YOIs, some adult prisons, and escort services such as Serco or G4S. Meanwhile, the probation service, which provides the basic, statutory work with offenders in the community, is itself facing cuts and is very limited in its ability to participate-although I understand that there is a project on which it is working with NOMs.

How is it that on this very important and key element of policy, on which the reduction of the prison population is predicated, and which we all want to succeed, there so little explanation of how it will work, be managed, structured, co-ordinated, staffed, or delivered? I have searched the Bill without success. Perhaps the Minister can help me.

I welcome the Bill's aspirations in Part 3 as a positive first step in the approach to reforming our sentencing system and making it more fit for purpose, particularly in relation to community penalties including PBR, and the reduction of short-term prison sentences. Much will hinge on the nature and effectiveness of how these penalties are devised, how they command confidence-regarding sentences in particular-and show themselves to be truly effective. I sincerely hope that these aspirations will be realised.

7.53 pm

Lord Borrie: My Lords, several participants in the course of this debate have referred to and quoted from the book by our late colleague Lord Bingham. If noble Lords will forgive one more quotation, he described the Legal Aid and Advice Act as one of the great but less celebrated achievements of the post-war Attlee Government. The noble Lords, Lord Pannick, Lord Goodhart, and others, made the point, following on from what Lord Bingham said, that legal aid is a service that the modern state owes to its citizens as a

21 Nov 2011 : Column 889

matter of principle. Lord Bingham went on to say that the closer a country comes to achieving the goal of expeditious and affordable dispute resolution, the better the rule of law is served. As several noble Lords, including the noble and learned Baroness, Lady Scotland, from these Benches, have already said, access to justice for all is essential to the rule of law.

These are powerful and persuasive sentiments. Because of the cost of legal aid-many noble Lords have rightly concentrated on this this afternoon-increasing, of course, in the 60-plus years that have passed since 1949, successive Governments and senior judges alike have promoted alternative remedies. The noble and learned Lord, Lord Woolf, in particular has promoted alternative dispute resolution procedures such as arbitration, mediation, more informal tribunal hearings, and alternative methods of financing litigation in the courts through conditional fee arrangements. Some of these are not appropriate in all circumstances, and I do not think that anyone is suggesting that they are. However, as people have worked through those proposals and as some of them have been implemented, we have come to see their value but also their limitations.

This Government, like the previous Government-and I certainly have no objection to this at all-are trying to reduce the costs of civil litigation. Many participants in the debate this afternoon have indicated serious doubts about the detail of the Bill because it very specifically limits legal aid for the most vulnerable and impecunious in society, such as those in need of advice on social welfare. Many people in this House, this week, next week and so on, will be involved in the most tremendous upheaval in welfare rights, and many individuals who may or may not be on welfare at the moment will have somehow to see whether they are eligible under the new legislation that will be in force very soon.

Many provisions in this Bill are counterproductive, as has been indicated, sometimes with detailed figures such as those given by the former Attorney-General, the noble and learned Lord, Lord Morris of Aberavon, and as Citizens Advice has pointed out as well. Judges have said many times that if applicants are unrepresented in the courts-and in the tribunals, which deal with so many welfare matters-they will be overwhelmed trying to cope with litigants in person. Trials that might have taken such and such a time will take much more time if litigants are not represented. The noble Lord, Lord Newton of Braintree, made a special point about this.

A seemingly minor change is a promised requirement that applicants must use the telephone as the only method of communication. Several people have put it as a mandatory requirement. Yet it must be clear to many people that for those with mental health problems or linguistic problems, the telephone is a more difficult method of communication compared with others.

The only other matter that I wanted to mention briefly relates to criminal proceedings. I do not think that it has been mentioned today; it is the provision that bail should be granted to a defendant where,

> "there is no real prospect",

that the defendant will be sentenced to imprisonment at the conclusion of the proceedings. But of course, as many people realise, bail is normally determined at the

21 Nov 2011 : Column 890

beginning of proceedings, and at that stage it is guesswork rather than any rational, intelligent observation that determines whether the proceedings are likely to end with a term of imprisonment. I understand that the Sentencing Council has criticised the Government's proposals, saying:

> "it will not be clear until the conclusion of the trial ... whether the offence ... merits a custodial sentence".

So what is the point of this in determining whether bail should be given?

Finally, again on the subject of bail, the Opposition in the other place made a powerful case for the prosecution to have the right of appeal against a court decision to grant bail to an accused person. Jonathan Vass was given bail in a rape case in 2009, despite the fact that he had a very violent past. While on bail he murdered a woman who had earlier filed a number of complaints of rape against him. I understand that the Director of Public Prosecutions endorsed the desirability of a change in the law through a statement made by Parliamentary Under-Secretary Mr Crispin Blunt, and that favourable comments were made by the Government a few weeks ago in favour of the prosecution having the right of appeal against the granting of bail. I will be interested both in what the noble Lord, Lord Macdonald, will say shortly and in what the Minister will say in due course.

8 pm

The Earl of Listowel: My Lords, I am prompted to speak briefly about the debate tomorrow on the Public Bodies Bill-and the amendments that are coming back from the other place-by what was said by the noble Baronesses, Lady Newlove and Lady Linklater of Butterstone, about the reoffending rate for young offenders, which is put at 71 per cent. Clearly we want to see that figure reduced. I draw noble Lords' attention briefly to the programme of change that the Youth Justice Board has set in motion in this area. Key to the effective rehabilitation of young offenders is the ensuring of good resettlement

back into their home areas. The Youth Justice Board has worked with consortia of local authorities to develop programmes of work, accommodation, training and education for young people. It is early days, but one striking fact is that in the recent riots only one child in the programme was involved in criminal activity. I cannot tell noble Lords how many children are involved, but so far four large local authorities in the north-west of England have been pulled into the programme, which is now moving down to Wales. I hope that noble Lords will make time to listen to the debate tomorrow on amendments to the Public Bodies Bill-I apologise, the debate is in fact on Wednesday-because it will be germane to this debate.

I was grateful to the Minister for introducing the Bill in the way he did, and in particular for paying attention to concerns about the welfare of women and children. I am speaking because of concerns that have been raised by many bodies about the impact of the legislation on their welfare. I was grateful to the Minister for making clear that the Bill will not directly affect looked-after children in local authority care. I was also very pleased to hear some things that he said

21 Nov 2011 : Column 891

about the Bill's impact on sentencing, and about 17 year-olds. In the past they were treated-quite unacceptably-as adults, but now that situation will be remedied and they will be recognised as children while they are on remand.

I will comment on the rehabilitation revolution. It is perhaps important to bear in mind the success of the previous and current Governments in reducing the numbers of children coming into custody. There has been a 30 per cent reduction in the past three years in the number of children coming into custody. That is a very striking result. There has also been a 51 per cent reduction in the number of under-14s coming into custody in the past four years. Given that we have an exceptionally low age of criminal responsibility, and that such concern has been expressed in this area, it is very good news and one must pay tribute to the previous and current Governments for achieving those results.

Given the success that we have seen in the Youth Justice Board arena with these children in terms of reducing the numbers coming into custody, will the Minister consider again the recommendation made by the noble Baroness, Lady Corston, in her report on women in the criminal justice system? She recommended that there should be a women's justice board that would give appropriate focus to the smaller number of women, with their complex needs, in the criminal justice system. I understand that the decline in that area has not been sustained, and indeed that the numbers may be climbing again.

I return to the Bill and say that I share the concerns expressed in particular by the noble and learned Baroness, Lady Scotland. I will address briefly the important point raised by the Minister in previous debates regarding the disproportionate size of our legal aid system when compared with that of our international peers. Many noble Lords tonight spoke of the rule of law, which is perhaps dearer to us than to many nations. The Minister prompted me to reflect on differing national priorities. In Finland, 40 applicants for a

teaching post are rejected for every successful candidate, and it takes five years to qualify as a teacher. In Denmark, a social pedagogy degree-the qualification for working with vulnerable children-is almost as popular as one in law or medicine. In France, the literature suggests that social workers have a high status and are held in high respect by the courts. In this country we are beginning to address the low status of social workers, teachers and others who work with our most vulnerable children. However, we have always prized the law. It has always been a high-status profession.

I sat in with a lawyer doing pro bono work at the Waterloo Legal Advice Service. He was advising a young, pregnant woman about her rights of tenure in her home. I was compelled to admire the clarity of reasoning he applied to the young woman's situation. In our culture it is vital to ensure that the weak have access to the law, because so many of their other advocates are absent or weak. Therefore, I share the deep concerns expressed by the noble and learned Baroness, Lady Scotland of Asthal, and other noble Lords. While I recognise the complexities of the issues that face the Government, I am very worried about how the raising of the threshold of access to justice will hit the most vulnerable.

21 Nov 2011 : Column 892

I share concerns that were raised that many more litigants in person may clog up the courts. I worry that this will add to delays for children both in private and public family law, as the same courts are used for both. For example, has the Minister considered how the Bill may impact on the time it takes for children to go through the adoption process? Is he concerned that it may add to delay? I share the concerns raised about the likely knock-on costs of poor decisions or no decisions being taken, in particular by the family courts.

As I said, I am grateful for the care with which the Minister in his opening remarks addressed anxieties about the impact on children and women. Is he prepared to undertake an impact assessment of the Bill's consequences for children and its compliance with the United Nations Convention on the Rights of the Child? I look forward to his response.

8.07 pm

Lord Howarth of Newport: My Lords, it is a bedrock principle of a liberal society that there should be equality before the law. Every citizen, regardless of means, should be able, where they have a reasonable case, to have access to legal advice, assistance and, should it be necessary, representation in court. This is a matter of both constitutional and humanitarian principle-a principle that the Government are abandoning in the Bill.

Legal aid costs £2.1 billion. Is that too much to pay to make such a fundamental principle a reality in practice? Is it really unaffordable? It is no more than 1 per cent of social

security expenditure, yet legal aid, too, is an indispensable part of the welfare state. Of course, where there is waste in legal aid, or unintended injustice in its working-as the noble and learned Lord, Lord Woolf, explained-it should be stripped out. However, when that has been done, I do not mind-and I suspect that most of my fellow citizens do not mind-how much tax we pay to fund legal aid.

Justice for All warns that more than 700,000 cases a year will lack legally aided support following the reduction of legal aid funding for advice centres and the removal from the scope of legal aid of housing, welfare benefits, debt, employment, immigration, education, clinical negligence and family breakdown. The organisations that form Justice for All-including the Law Society, Justice, the Disability Alliance, AvMA, Mind, the National Autistic Society, Gingerbread, Citizens Advice and Shelter-are experts, and I trust their evidence and their motives.

The Government take the view that legal aid is not justified in welfare benefits cases. Paragraph 4.219 of the Green Paper states that,

> "because the issues are not generally of sufficiently high importance to warrant funding",

and the tribunal system is so "user-accessible",

> "appellants are able to represent themselves".

Not of sufficiently high importance for whom? I think that they are of very high importance for people in poverty. And how are people beset by the multiple, interlinking problems that the poor have to battle with and facing all the complexities of debt, the benefits system and the law to represent themselves? It is

21 Nov 2011 : Column 893

estimated that 58 per cent of those whose benefits cases will fall out of scope will be sick and disabled people.

Those served by law centres and other advice centres funded through legal aid include people who are ill and unable to manage day to day, have physical or sensory impairments, are learning disabled, cannot speak English, cannot read, have addictions, are old people with support needs or young people with support needs, or are refugees. Legal aid is to be taken away from people who are in acute difficulty.

The Government are legislating to remove legal aid from employment cases at a time when youth unemployment has passed 1 million and employment prospects are bleaker than they have been for a generation. Shelter anticipates that more than 50,000 housing cases will be unaided when legal aid is removed.

The removal of legal aid for clinical negligence is very worrying. The noble Lord, Lord Faulks, spoke powerfully about that. I ask Ministers to imagine the grief and the stress for a family in such a situation. Parents seeking legal redress and compensation in the interests of their damaged child have to battle not only with the distress and the practical difficulties at home that such an event creates but with daunting legal complexities, substantial costs for expert reports and the implacable resistance of the NHS to admitting fault. Your Lordships will want to examine rigorously the Government's contention that reformed conditional fee agreements and the insurance industry will make up the gap.

Special educational needs are also removed from scope. Parents again face constant struggle and stress as they try to establish the rights of a child, ground down by the determination of so many LEAs to provide the minimum. If the parents' marriage should break down, adding new dimensions and intensities of distress to their lives, again the Government intend that they should no longer have access to legal aid to help them through the crisis.

The policy in the Bill on legal aid is not only indecent; it will not only create fear and suffering to save net, perhaps, £20 million or £25 million on legal aid for welfare cases and just £11 million for clinical negligence cases; it is also stupid. It will end up costing more to other government departments and to local government. Early advice and intervention prevent problems escalating to become more serious, complex and costly. The Howard League warns that:

"The logical conclusion of reducing legal aid is that ... youth crime will increase and greater economic costs will be incurred further down the line".

Through legally aided advice centres, litigation is actually averted, tribunal procedures are smoothed, ill health is prevented and children are saved from harm.

There is an ignorance and unrealism in the ministry's approach. Real life is messy and fails to fit bureaucratic categories. Citizens Advice has testified that,

> "advising only on debts where a home is at 'immediate risk' is not practical, as most clients have multiple debts which must be addressed for them to achieve a sustainable financial position".

21 Nov 2011 : Column 894

The National Federation of Women's Institutes has noted that:

"To exclude areas of law such as housing and debt from the legal aid scheme denies victims of violence the support they need".

Then there is the new obligatory telephone gateway to legal aid. My noble friend Lord Borrie asked questions about this. How are people with poor language skills, speech impairments or mental health problems leading to stress and poor concentration to explain themselves over the telephone? Clients need face to face contact with advisers. Advisers need to read body language, and build clients' confidence and ability to explain and understand. Poor presentations and poor advice will lead to poor decisions and further costs.

The exclusion of poor people from advice and legal aid comes when the Government are cutting local authority funding by 30 per cent; forcing cuts to Sure Start, social care and other local authority services that are crucial in assisting disadvantaged people to cope; cutting and capping benefits; making social housing tenure more uncertain; driving up unemployment through reckless cuts to public spending; and making it easier for employers to sack people.

The Ministry of Justice has failed to seek economies in the right places. The Law Society says:

"There is significant scope to make efficiency savings within the legal aid and the civil and criminal justice systems that will enable at least £400 million to be saved".

It is not civil legal aid whose costs have been rising. The ministry is hitting the wrong targets. It is cutting the fees paid to legal aid practitioners by 10 per cent, yet legal aid lawyers typically earn only around £25,000 a year. The ministry's policy will also result in a 77 per cent loss of legal aid income to charities, which is essential to fund staff. Volunteers need professional training and cases need the continuity that only professional staff will supply.

Sixty per cent of appeals against the refusal to award disability living allowance, when the claimant is accompanied by an adviser, are successful. Appeals against the refusal of employment and support allowance have quadrupled in the last two years. Why are the Government penalising claimants instead of the DWP for the appalling quality of its decision-making? It has to be anticipated that the introduction of universal credit from 2013, affecting huge numbers of people, will be accompanied by a high error rate. Legal aid will be essential for the success of welfare reform.

At a time when we are seeing mass protests, which the Government should take very seriously, they are introducing a policy in this Bill that will drive more people to hold the view that politics, law and public administration in this country are unjust.

I had hoped that we agreed across the parties that in hard times, and indeed at all times, we should protect the weakest and the most vulnerable. Of course I do not believe that Ministers personally want to hurt anyone, but this policy of withdrawing legal aid, of hitting people when they are down, will be cruel in effect, and it is wrong.

21 Nov 2011 : Column 895

8.17 pm

Lord Macdonald of River Glaven: My Lords, as my noble friend Lady Linklater said a few minutes ago, this has been a fascinating debate, and it is a great privilege to speak in it. I listened with particular interest to the speeches of my noble friend Lord Phillips of Sudbury and of the noble Baroness, Lady Kennedy of The Shaws. I found myself agreeing with every single word that they uttered.

It is clear that the legal aid bill is high, but it is equally clear that Part 1 of the Bill, if it passes into law, will narrow access to justice. That is a quite inevitable consequence and in that sense it is surely a retreat. It is all the more essential then that the areas where access will be narrowed are carefully chosen and the most vulnerable, we would hope, protected. It seems that many noble Lords on all sides of the House feel that these important aims may not yet have been entirely achieved by the Bill so that if Part 1 passes into law unrevised, the pain will, on the contrary, fall disproportionately on the weakest and the most vulnerable. That cannot be the Government's intention.

I want to address the question of domestic violence, which has already been spoken to by a number of noble Lords. When I was chief prosecutor some years ago, I saw the extent of the scourge of domestic violence, its impact on those who suffered it, who were mainly women, and its impact on the children, who usually witnessed it, many of whom would enter their own chaotic cycles later in life. We did a great deal of work with the police and other agencies to try to improve the response of criminal justice to crimes of violence committed against women and children in the home. The first lesson we learnt doing this work was that it is impossible to predict the responses of people who are suffering that sort of crime. They do not respond in a way that you can always predict. Sometimes their responses appear to be entirely out of kilter with what is happening to them. One thinks of women returning again and again to abusive partners. This first lesson which we learnt appears to have been forgotten by the drafters of this Bill, who completely fail to understand that the responses of people who are being beaten and abused by their partners will not fit into the sort of narrow tramlines that serve as a gateway to legal aid under Part 1. An inevitable consequence of the Bill's approach to domestic violence is that more people-again, mainly women and children-will be trapped in more abusive relationships with no succour at all from our law. I venture to suggest to noble Lords that that is a situation that would bring shame upon our entire legal system.

It surely at the very least must make sense for the definition of domestic violence in the Bill to be the same as the tried and tested ACPO definition that has been used by the police and the Crown Prosecution Service and well understood by the courts for many years. It is a matter of very great regret that the definition of domestic violence in the Bill is narrower and, I have to assume, deliberately narrower than the definition used by

ACPO and the CPS. I ask the Government to think very carefully about whether it is appropriate to have a narrow definition of domestic

21 Nov 2011 : Column 896

violence in the Bill so that fewer women who are victims of it will have access to the law and to the protection of the law, as will their children.

I want to address one other issue in the Bill because it seems to be another illustration of the application of the law of unintended consequences as it applies to the Bill. Clause 12(1) concerns criminal legal aid in the context of advice and assistance for individuals in police custody. The right of a prisoner to consult a solicitor in a police station is a fundamental protection. It has been described by the Court of Appeal as,

> "one of the most important and fundamental rights of a citizen".

The United Kingdom Supreme Court has endorsed this view saying that,

> "on arrival at a police station, the detainee must be advised about his right to free legal advice".

However, the provision of legal advice in police stations is not simply a protection for detainees; it is also a protection for the police. This was very well understood by Parliament when it passed the Police and Criminal Evidence Act into law under a Conservative Government in 1984. This legislation followed notorious police abuses in the 1970s and early 1980s, when mistreatment in police stations was common and confessions were regularly fabricated. One notable and inevitable effect of this misconduct was the growing unwillingness of juries to convict defendants on the strength of police evidence alone and widespread cynicism among them about confession evidence generally. This cynicism certainly meant that some guilty people escaped justice, adding insult to the injury of their victims.

It was in response to this that the Police and Criminal Evidence Act enshrined the right to legal advice in police stations into our law. The effect of this long-overdue reform was immediate and entirely beneficial. Of course it helped fundamentally to regulate conduct in police stations-and that was a good thing-but it also protected the police because it gave honest officers, the overwhelming majority, protection from malicious allegations of abuse. The universal availability of free legal advice in custody suites throughout England and Wales has improved beyond measure the quality of criminal justice and, along with tape-recorded interviews, improved the standard of prosecution evidence to the general benefit of the public.

Of course, a critical aspect of this legal advice was that it was readily available and free. This meant that its provision was swift, it was certain, and it did not tend to disrupt the flow of an investigation with additional layers of scrutiny and paperwork. However, Clause 12(1) raises the spectre of this all changing in the future, and changing for the

worse, because it indicates the possible future introduction of means-testing before police station advice may be available. Leaving aside the extent to which the cost of administering means-testing often seems to outweigh any financial benefit occasioned by its introduction, it is very difficult to conceive of any environment less suited to its always rather clumsy operation.

We are talking about busy police stations, in the early stages of an investigation, possibly when the need to interview a suspect is urgent. However, if he wants legal advice, he cannot be interviewed until he has received that advice-after all, if he remains silent,

21 Nov 2011 : Column 897

that could be held against him at a trial. Are we really to say that no interview is going to take place before a means test is considered, no charge may be preferred until the financial forms are filled out and passed-mortgage payments, rents, wage slips, debts, assets and all the rest of it? It is-I choose my words carefully-a foolish notion. Who is going to calculate the cost of this in wasted time and disruption to the forensic process? How will any hoped-for benefit possibly compensate us for yet more bureaucracy in police stations at a time when we are supposed to be doing all we can to reduce it?

The truth is that suspects in police stations need legal advice and it is equally in the interests of the police that they should have it. It is certainly in the wider public interest too because appropriate and legally compliant behaviour in our police stations is the starting point for a fair and decent justice system worthy of public confidence. We would tamper with this gateway at our peril.

8.25 pm

Baroness Stern: My Lords, I am very glad indeed to follow the noble Lord, Lord Macdonald, and wholeheartedly endorse his comments about free legal advice in police stations. However, I shall concentrate my remarks on the sentencing part of this Bill, Part 3, which contains many proposals that are broadly welcome.

The Lord Chancellor has said on more than one occasion:

"A sensible review of sentencing policy is much overdue".

This followed his statement soon after his appointment that he was "amazed" that the prison population had doubled since he was Home Secretary in the early 1990s and now stood at more than 85,000, which he described as "an astonishing number", which he would have,

> "dismissed as an impossible and ridiculous prediction"

if it had been put to him as a forecast in 1992. He said:

"We need an enlightened and effective penal system that the public can both trust and afford to pay for ... Too often prison has proved a costly and ineffectual approach".

These are very sensible words that have proved a little difficult to put into policy.

It is perhaps worth noting, in support of the Lord Chancellor's view, that it is a feature of England and Wales that our use of prison is high compared to similar countries, and our use of prison rises year by year, unlike similar countries. England and Wales have 154 prisoners per 100,000 of population; Germany, a similar, large, western country, has about 87. So we are about 70 per cent higher. Germany's prison population has not been on a steady upward trend for the past 20 years; it has fluctuated around 90 per 100,000, and has gone down by 6 per cent since 2007. In England and Wales, the prison population has gone up steadily for the past 20 years and has increased by 6 per cent since 2007.

The Lord Chancellor is right to think that there are models of an "enlightened and effective" penal policy, and prison numbers can be reduced, especially since there is no evidence to connect imprisonment rates and crime rates; for example, in New York, the number

21 Nov 2011 : Column 898

in the city's jail system has been going down steadily. In 2010 it fell below 100,000 for the first time since 1987, and at the same time there has been a big and much publicised reduction in New York City's crime rate. Whether the legislation we are debating here this evening will take us in that direction remains to be seen, but it might be worth noting that features of the European countries with lower and stable prison populations are, to generalise, first, broad discretion for judges; secondly, strenuous efforts to keep young people out of the system and to divert lesser offenders; thirdly, strong, well resourced probation and social services; and finally, a recognised role in the system for victims of crime.

There is therefore much to welcome in Part 3 of this Bill. For example, there are provisions for greater use of compensation orders, which take victims into account. There is flexibility for the court in dealing with breaches-that is, more discretion for judges; greater discretion and flexibility in supervising community orders-and probation staff are likely to be more effective if they are given the opportunity to use their discretion and tailor what they do to the individual before them; more flexibility in imposing referral orders, trusting the court to do what is best for the juvenile before it; and reducing remands in custody, and, in particular, juvenile remands.

Obviously many of us who have spoken so often in this House about the injustice inherent in the IPP system will welcome the abolition of the IPP sentence, and also the proposal to reform the release test for prisoners serving IPP sentences. The Convenor of the Cross Benches, the noble Lord, Lord Laming, has received and passed to me a huge packet of letters from the families of current IPP prisoners-I believe that they have also

written to the noble Lord, Lord Ramsbotham-pointing out the injustice of their continued detention. Many of them are without access to the facilities that would enable them to progress towards release. Can the Minister also tell the House in his response what the Government plan to do to deal with those currently serving IPP sentences?

Not everything that has been put before us in Part 3 of the Bill is so welcome. Curfews of up to 16 hours, with the length of curfew periods up from six to 12 months, seem to me neither sensible nor enlightened, especially for children and young people. The provision for mandatory four-month detention and training orders-that is, prison sentences for 16 and 17 year-olds-for threatening with a knife could bring another 200 to 400 teenagers into prison every year. It is not clear to me that that is sensible either.

I must end with a word about the legal aid aspects of the Bill, although I can see that the Minister feels he might well have heard enough about them. It is my experience when dealing with improving observance of the rule of law in countries where it is grossly deficient that the one measure most likely to create a more lawful, fair and democratic society is to give poor people access to justice and access to means of redress of abuses by the powerful or by the state. In a democratic society, people-whatever their social position-should be able to get wrongs righted and injustices rectified. So I am in wholehearted agreement with the very powerful points that have been made all

21 Nov 2011 : Column 899

around the House, calling for the Government to think again about what it means when a rich person can go to court and fight for his or her rights and a poor person cannot do so.

8.34 pm

Lord Judd: My Lords, in opening this debate, the noble Lord, Lord McNally, in his engaging, candid way, asked us to be reasonable and accept that it was not possible for everyone who sought legal aid to have it. The trouble is, if I may say so to the noble Lord, that those with wealth can always have access. That is the basic contradiction and injustice in the system. We must not lose sight of that in our deliberations. Quite apart from the burden on judges, courts and legal systems as a result of inadequate legal aid, which will be caused by the absence of proper professional legal representations, we have to remember the indirect costs, which have been spelt out for other spheres of government and for the economy as a whole; that is, the costs of stress, mental illness, homelessness and the impact on economic performance by people who are so stressed or, indeed, broken.

My noble friend Lord Howarth was right. We have to remain focused on the people about whom this legislation is concerned. We have to focus on the widow, the single mother, the disabled, the chronically sick, the bereaved, the recently unemployed and the redundant. These people often are devastated, broken and bewildered. It is not just a matter of leaving it to them; they need particular help and assistance in their struggle simply to keep going.

The distinguished Howard League has raised key issues in approaching most of us, I think, about these deliberations. It has raised magistrates' sentencing powers and has asked whether, if we are really serious about reducing the number of people unnecessarily in prison and ensuring adequate rehabilitation, the issue of committing people to prison should be in the realm of the Crown Court and not the magistrates. It has also raised the issue of curfews and extending them, as proposed, to 16 hours. What impact will that have on rehabilitation? For people who are expected to stay at home even longer, what will the situation really be? Will this assist them in becoming more well adjusted, productive citizens or will it make matters worse? The Howard League has suggested that perhaps there is provocation, in effect, in extending the hours, which makes the system almost certain to fail.

On bail, in 2009, 40 per cent of people remanded in custody did not go on to a custodial sentence. Almost two-thirds of those on remand in prison are accused of non-violent offences. The average waiting time is 12.3 weeks. What are the social and economic consequences of this? What about family disruption? Are we thinking through the implications of some of these measures?

The Howard League rightly concentrates, as have other noble Lords, on the position of women. In dealing with women, we are also dealing with children and families. Do we remember that the average distance of prisons away from home is 55 miles? Very often, that distance is faced by families with virtually no spare means available. Only 5 per cent-a shocking statistic-of the children of women in prison remain

21 Nov 2011 : Column 900

in the family home. More than 17,000 children in any year are separated from their mothers as the result of imprisonment. While on average women spend four to six weeks in prison on remand, 60 per cent do not go on to receive a custodial sentence, which is clearly contradictory and counterproductive. But what kind of logic is being advanced in favour of a situation of this kind? As my noble friend Lady Corston put it in her good report, surely we should have a situation in which women who are unlikely to be give a custodial sentence are never remanded to prison.

As a former director of Oxfam, I very much share the concern of my old organisation and other organisations working in the same sphere about the way in which wealthy companies have invested heavily in cheap agricultural land in poor countries. In many cases, the land sold is being used by poor families to grow food. Families are often forcibly evicted with little or no warning or compensation. Research by my old organisation has revealed that residents regularly lose out to local elites and domestic or foreign investors and to local corruption, because they lack the power to claim their rights effectively and to defend and advance their interests. There is concern that the changes in this Bill to the cost regime for civil litigation would make it almost impossible for foreign victims of human rights abuses committed by UK multinational companies to access justice in the United Kingdom.

There is real anxiety lest the abolition of success fees being payable by defendants will mean that claimant firms will not be able to run the risk of taking on cases against multinational companies. The financial risk of losing the case will be great. Even if they are successful, they may not be able to recoup all their expenses. This, of course, will be particularly pertinent when the claimants are from developing countries.

The Bill also proposes that the claimant, rather than the defendant, should pay for the "after the event" insurance premium, again reducing compensation recovered. In recognition of the significant expense and expertise required, clinical negligence cases are to be exempt. Surely human rights cases, which require similar levels of expense and expertise, should therefore be exempt. This will need our careful consideration. I think the example that I have just given brings home that, at an international level as well as within the UK, justice is indeed often the key to full mobilisation of people's potential rather than simply handouts or grants.

Access to justice is, of course, the hallmark of a decent society. Lack of convincing access is a spur to social fragmentation, alienation, instability, or worse. To talk about all being in it together is provocative when it is patently obvious that, in effect, we are not all equal in the processes of the legal system and when too many people simply cannot get access to justice at all. In our deliberations, we must be vigilant lest overall this Bill aggravates that sad reality.

8.42 pm

Baroness Mallalieu: My Lords, I must first declare two interests. I am a practising member of the criminal Bar with an almost exclusively legal aid practice. In addition, I have a daughter who has followed me into the same area of practice, despite my best efforts to stop her boarding a sinking ship. I have had 40 years'

21 Nov 2011 : Column 901

experience of looking at the legal aid system from inside and outside, and in my seven minutes I will concentrate on Part 1 of this Bill.

Most members of the public give credit to the 1945 Labour Government for laying down the foundations of the National Health Service. However, few people outside this Chamber remember that that same Government introduced legal aid and that, later on, reforming Labour Lord Chancellors, notably Lord Gardiner and Lord Elwyn-Jones, built on those beginnings to try to ensure that no one in our country should be denied access to justice through lack of funds. They saw that principle, as I do, as a fundamental aim of a just and civilised society and part of our very constitution.

Since then, like the health budget, the legal aid budget has grown and grown as areas of law have developed and expanded. In the present climate, every area of public spending, including legal aid, faces cuts in addition to those that have already been imposed on criminal legal aid with very damaging consequences under the previous Administration.

The legal profession has not been guilty of special pleading. It entered into the consultation with the Government fully on this Bill and identified alternative cost savings of more than £350 million in the administration of justice, which the Government have so far chosen to ignore. Those proposals would have saved money yet retained the structure of the legal aid system without abandoning some of the most vulnerable to do-it-yourself justice. But instead, in Part 1 of the Bill, the Government have preferred to throw out the baby as well. Indeed, Part 1 might just as well be titled the "slash and burn" Bill, because it is destructive and in no way constructive. What it says is, "We'll get rid of legal aid and maybe we'll give a little help to some further mediation here or a bit of encouragement to some pro bono work there".

If access to our health service was to be reduced to as many people and to the extent to which this Bill proposes to reduce access to legal assistance for those in need, there would be a public outcry and very probably a major demonstration taking place outside in Parliament Square today. We can all readily envisage a time when we or those close to us may need a doctor or a hospital, but few of us envisage needing a lawyer or having to go to court until it actually happens to us. Much of the outcry against this Bill, and there is one which will grow as its reality becomes better known to the wider public, comes from people who have seen for themselves those in need of help and the protection of the law, or with good and valid claims sometimes against government departments or large companies with big purses, who lack the means and the ability to pursue them without proper help.

Like others who have spoken, I hold no brief for ambulance chasing, for referral fees which should rightly go, or for excessive legal costs. For the reasons given by the noble Lord, Lord Thomas of Gresford, I spoke out against conditional fee agreements when they were introduced in this House, but I have to say now, "Thank goodness for them". I am very concerned about some of the steps that are proposed in a later part of the Bill which are likely to close that avenue off to many people.

21 Nov 2011 : Column 902

To remove legal aid altogether, saying that there will be nothing but self-help in so many areas of the law for those who cannot afford to pay, ultimately does not punish the greedy lawyers, who if they exist in this field will simply move on to other work, but puts the most needy outside the protection of the law. Strong cases have been advanced in a number of areas during the course of this very interesting debate. People have argued for the victims of domestic violence, for those involved in welfare claims and also in cases of clinical negligence. All of these are likely to fall outside the scope, as far as I can see, of any remedy. I would just say this. Clinical negligence is not alone. There are many other cases where medical reports and expensive preparations have to be made before a case

can be begun, and I doubt very much that many solicitors will take up those costs unless the case is 100 per cent sure, which they seldom are.

As the noble Baroness, Lady Kennedy, said, we have in this country the best legal system in the world. Our judges are drawn from the top of the practising profession and they are of the highest quality. Our courts are not corrupt, they are relatively speedy and they have a worldwide reputation for fairness. But our justice system will be tarnished if it lies beyond the means of whole sections of our poorest citizens. On the figures I have heard mentioned, over half a million people a year who would now be eligible for help will be excluded. If people are left with no alternative but to grin and bear it or try to represent themselves, usually against a trained lawyer experienced in the field, where does that take equality of arms? I sat as a recorder for some years in both criminal and civil cases. A litigant in person was the one thing I most dreaded. The whole case took far longer as everything had to be explained-the procedure and the law, which usually I had no time to check. I had to help them with the evidence, with cross-examination and, indeed, with every aspect of the case. The rest of the list, which was always long, often went out of the window.

The Government's own research shows that poorer outcomes, longer delays, fewer settlements and overall a greater likelihood of injustice occurs where someone is not represented. To take away legal aid in cases where at present there is no practical alternative and to leave so many of our poorer people without help in a time of need is to strike a blow at fairness itself. We may all have to stomach many unpalatable cuts in these difficult times but we would be mad to dismantle the very structure of one of the pillars of our constitution which goes to the essence of fairness in our society and respect for the rule of law.

When we come to the Committee stage of this Bill for my part I shall support the amendment which the noble Lord, Lord Pannick, indicated that he would put down and which the noble and learned Lord, Lord Woolf, indicated that he would support, which will place clearly on the head of the Lord Chancellor a duty to secure that legal aid is made available in order to ensure effective access to justice. If we cannot stop unpleasant and painful cuts being made, we can at least stop the pillars of our constitution being knocked down in this way.

21 Nov 2011 : Column 903

8.50 pm

Lord Shipley: My Lords, my noble friend Lord Thomas of Gresford indicated that I would say something about access to justice. My concerns relate to the planned reduced availability of legal aid and the impact on the voluntary sector, in particular on law centres, which helps those who lack the resources to buy their own representation. I wish

to address the issue from two perspectives-first, law centres, and secondly, the court system.

Law centres are non-profit legal providers. In 2010, Newcastle Law Centre opened 550 casework files on a mix of welfare benefits, housing, immigration, asylum and employment-including discrimination-cases. The law centre works closely with and complements the work of Shelter and Citizens Advice and it meets a gap in provision. All 550 cases were for clients on low incomes who might not otherwise have received legal representation. In addition to those 550 cases progressed, Newcastle Law Centre gave some 2,000 instances of one-off advice to individuals-people who might manage themselves or could secure advice and help from elsewhere. In that year this law centre's income was just £346,000 with nine full-time equivalent workers. Experienced solicitors were paid on average £29,000 a year and experienced caseworkers were paid £25,000 a year. That figure of £346,000 is made up of £206,000 from the Legal Services Commission, £60,000 from the Equality and Human Rights Commission, £65,000 from Newcastle City Council-I declare my interest as a member of that council-and other incidental income. Within this year's budget there has been a 10 per cent cut in contract fees already.

In England and Wales there are 52 law centres and all of them have a legal aid contract with the Legal Services Commission. The Law Centres Federation estimates that up to 18 of the 52 law centres-that is just over a third-receiving Legal Services Commission funding would close as a consequence of this Bill. These 18 are primarily or entirely funded by legal aid work. The curtailment of the scope of civil legal aid hits law centres hard as it focuses on those areas in which law centres specialise-welfare benefits, employment, housing, debt and so on. In Newcastle funding will be reduced from £206,000 to £48,000 as a consequence of the abolition of the Legal Services Commission. This cut cannot be taken in isolation since the Equality and Human Rights Commission grant of £60,000 is disappearing as well. In total at least 63 per cent-effectively two-thirds-of Newcastle Law Centre's income is set to disappear, which leaves us with the question of what will happen to those 550 cases and where those people will get the detailed help that they need.

Secondly, I want to address the issue of access to the court system. In December 2010 the Ministry of Justice announced the closure of 142 courts-93 magistrates' courts and 49 county courts-out of a total of 530 courts in England and Wales. Although the business of these courts is being transferred to other courts, the court closure plans have caused the loss of experienced caseworkers and counter staff, while simultaneously making it more difficult to access a local court.

21 Nov 2011 : Column 904

The proposed removal of public funding from private family cases-essentially, divorce, contact and residence disputes-will decimate the legal profession in these areas. Legal aid firms already typically work for only £50 an hour for this type of work. They provide excellent value for money in these critically important cases. Without their continued help, access to justice for our most vulnerable will be severely harmed and social cohesion damaged. Without that help, legal rights may not be enforced. With this modest but crucial income stream removed, many legal aid firms will withdraw from this work and many will go out of business altogether. If they do, there will be no going back. Having left this type of work, it is unlikely that firms will return to it should there be a later change of mind by government.

Initial access to proper matrimonial legal advice is often a gateway to other areas of social welfare law, including housing and debt. It may minimise conflict between separating parents and head off social services involvement and potentially expensive, harmful and disruptive care proceedings at much greater cost to the state.

Those members of the public who avoid the temptation simply to take the law into their own hands will be forced to attempt mediation. Should mediation fail, the parties will be forced, unrepresented, into a complex and technically difficult arena. While the judiciary are experienced in dealing with litigants in person, there is likely to be a flood of unrepresented litigants, which will severely impact on the courts' business and lead to delay, lack of proper presentation of cases and potential injustice. The reduction in experienced court staff will exacerbate the situation, as there will be no one to help guide the public through the procedures and forms they need to complete to prepare their own cases. Cases which might have proceeded smoothly through the system will require direction hearings, with greater judicial input, for the judge to explain to the parties in layman's terms what is required to prepare and present their cases, and final hearings will be lengthened.

Budgetary cuts have already led to a reduction in the number of sitting days for part-time judges, leading to overlisting of cases, longer adjournments and greater inefficiency in the court system. Justice delayed is justice denied, and there is a very real and serious risk that those delays will only worsen when the flood of litigants in person starts to come through the system.

The removal of legal aid as proposed could have many unintended consequences. I hope that we shall be able during the passage of the Bill to make changes which guarantee effective access to justice for all. That means access to good-quality, face-to-face, free advice from a qualified person, and representation when it is needed for those without their own resources to enable them to pursue their right to equality under the law.

8.58 pm

Lord Alton of Liverpool: My Lords, it must surely remain one of the highest ideals of any society, perhaps its very first duty, to provide equal and unfettered access to justice regardless of economic status. Justice is not a commodity to be rationed. Any legal system which depends on the amount of money that you have

21 Nov 2011 : Column 905

before you can seek redress forgoes the right to describe itself as just. Sadly, unless this Bill is significantly amended along the lines suggested by my noble friend Lord Pannick and by many others in your Lordships' House today, these proposals will be judged as a huge assault on access to justice.

Specifically, I want to speak about the changes to legal aid and to success fees, and the deleterious impact which these changes will have on victims of personal injury and on claimants who have modest means. I particularly regret that the Government did not accept amendments in another place to retain legal aid in cases of clinical negligence and have chosen to ignore significant and broad-based opposition, which includes the Judges' Council and the Lord Chief Justice.

I take as my starting point the Bar Council's assertion that it is profoundly concerned about the impact that the Bill's proposals could have on access to justice, particularly for some of the most vulnerable members of society. It says that access to justice will be replaced by do-it-yourself justice; that access to justice will be seen as an unaffordable luxury; that there will be a concomitant and inevitable short and long-term decline in the availability of quality advocacy services. That point is underlined by the Law Society, which says that the Bill ensures that serious injustice will be done and that clients with physical or mental health difficulties or low levels of education may be unable to resolve their problems in the absence of support through legal aid.

Take the specific example highlighted by Tony Whitston of the Asbestos Victim Support Group, who vividly points out that mesothelioma sufferers will have to bear their share of risks by paying up to 25 per cent of their damages for pain and suffering in legal costs. That should be simply be unconscionable. Many learned jurists from Lord Bingham to Hartley Shawcross have been quoted in our debates today. Let me rely instead on the Greek philosopher, Thucydides, who proclaimed:

"Justice will not come . . . until those who are not injured are as indignant as those who are injured."

For those who have contracted mesothelioma, or who are in the position of the lady who spoke with such dignity at a meeting here last week about the life which lies ahead of her in bringing up a brain-damaged baby, we in this House need to be indignant on their behalf; indignant at the prospect that recourse to law will in future be denied them; indignant that their damages may be swallowed up in meeting legal costs. Forcing mesothelioma sufferers-many of us who have been constituency Members of Parliament will have met victims, whose life expectancy is nine to 12 months from diagnosis-to surrender as much as 25 per cent of damages, which average about £65,000, because of austerity measures or charges of ambulance-chasing or compensation culture or the bad practice of some claims management companies, is cruel and unjust.

I would particularly like to draw the attention of the House to a case involving the president of the Liverpool Law Society, Mr Norman Jones; a case which ended in the Supreme Court and is known to the noble Lord, Lord Bach. Hugely significant in the development of the common law concerning mesothelioma, the judgment has given hope to many thousands of asbestos victims

21 Nov 2011 : Column 906

who probably would not be entitled to compensation had the Supreme Court appeal by the defendants not been dismissed.

The judgment in Sienkiewicz v Greif (UK) Ltd was given in the Supreme Court in March this year. Mr. Jones handled the action under a conditional fee agreement. There were CFAs for the County Court proceedings, the Court of Appeal and the Supreme Court. Norman Jones tells me that without the 100 per cent success fee payable under the CFAs, the risks of the handling this case would have been totally beyond his firm. Putting it bluntly, he says, had it lost, his firm may have been facing bankruptcy. It is not only the claimant who will suffer-so will many of their representatives. Small practices and single-handed solicitors working in disadvantaged cities and regions are likely to be the most badly affected by these proposals.

Donal Bannon, the director of the Liverpool Law Society says that Liverpool is one of the most deprived cities in Europe and that the impact of the proposed reforms will have a disproportionate effect there. I asked the Liverpool Law Society for more examples and it sent me several. They include a medical negligence case, a vicious-circle case involving an unemployed drug addict, where no one is willing to bear cost liability for an expert witness, and children's cases that they say would simply be out of the reach of anyone but the very rich without public funding. It says that the idea that mediation can resolve all these matters is delusional. One of its member solicitors says that if we want a society where only the rich can litigate, then we are certainly heading in the right direction.

This is why the Bill represents a huge assault on access to justice. Lord Justice Jackson stressed the importance of making no further cuts to the availability of legal aid, specifically in the case of medical negligence. He stressed,

> "the vital necessity of making no further cutbacks in legal aid availability or eligibility ... the maintenance of legal aid at no less than present levels makes sound . . . sense and is in the public interest ... On the assumption that it is decided not to maintain civil legal aid at present levels, the question may possibly arise as to whether any particular area of civil legal aid is particularly important and should be salvaged from the present cuts. My answer to that question is that of all the proposed cutbacks in legal aid, the removal of legal aid from clinical negligence is the most unfortunate".

If we are right to be indignant about the removal of legal aid in cases of personal injury, spare a thought, too, for the impact of the Bill on children. The Bar Council says that

68,000 children and young people will be affected by the withdrawal of legal aid and that 54,000 fewer people will be legally represented annually in the family courts. The Children's Society, which works with more than 50,000 children a year, bears this out. It says that it is concerned that the changes will affect the poorest and most vulnerable families, including,

> "children who will suffer as a knock on effect of limited access to justice for their parents or carers",

for reasons such as,

> "parental disability, language barriers, poverty and mental health issues".

Next Section Back to Table of Contents Lords Hansard Home Page

I have a non-pecuniary interest as patron of the National Association of Child Contact Centres which, over the past year, hasworked with more than 9,000

21 Nov 2011 : Column 907

families 15,000 children and delivered 30,000 hours of contact. Many of those who work in the centres do a wonderful job in helping families to settle their differences and move on, without the courts or lawyers being involved-something of which I know the Government would approve. However, NACCC has flagged up its concern that this Bill will result in a big increase in the number of self-referrals that it will have to deal with: It says that many will be inappropriate and beyond its mandate, resources or its capacity. It says:

"This in turn creates extra work in terms of gathering information, assessing that information and then arranging, monitoring and reviewing contacts. To make matters worse, all of this is happening at a time when many of our Centres are already dealing with record numbers of referrals and managing ever increasing waiting lists to access their services".

The prospect is already having a disastrous impact. NACCC cites one co-ordinator who left a centre in Norfolk recently and who said, "I am a volunteer-the amount of work and the level of responsibility that goes with it is now simply too much".The centre had been running for 15 years but has closed because no one else was prepared to take on that role of co-ordinator.

Whether it is a victim of domestic violence or abuse about which we have rightly heard a great deal today, the position of a remote indigenous people living in a rainforest seeking redress against a British company, the mother of a brain-damaged baby or a man dying of

mesothelioma, the same principle of being able to seek the righting of a wrong must apply.

As the Bill currently stands, it will significantly further restrict the scope of legal aid, it could leave the United Kingdom in breach of our human rights obligations, it may well create a chaotic situation in our courts, put conditional fee arrangements out of the reach of most people and save a lot less than the Government have speculated. Above all, Parts 1 and 2 of the Bill fail the ultimate test: does the Bill ensure access to justice regardless of wealth or means? Clearly, the answer is no. There can be no talk of equal access to justice if it is becomes dependent on the amount of money a person has. It is about that that this House should be indignant.

9.08 pm

Baroness Massey of Darwen: My Lords, in this far-reaching and detailed debate, I shall speak about my concerns for children, young people and families in relation to the Bill. I am surrounded by eminent lawyers and I am not a lawyer, but when I hear about the concerns of legal organisations and the voluntary sector, that reinforces my own concerns.

I remember David Cameron recently expressing a commitment to turn around the lives of the country's most troubled families. When I see what is happening in education, health, social care, welfare reform and now this Bill, those words seem empty. I know that the Minister is interested in children and young people, but can he encourage the Government to examine the impact of their Bills, individually and collectively, on the lives of children and families? Otherwise, we will pay for this in more ways than one. I wish the Government would look at children and families in a holistic way. They may reach better conclusions.

21 Nov 2011 : Column 908

I turn to the Bill. The Bar Council has stated:

"Justice does not come at any price. The Government has opted for cut price justice, against the views of the overwhelming majority of respondents to its consultation on legal aid".

The Bar Council points out, as have many others, that removing private family law from the scope of legal aid may cost the taxpayer more, not less. As the noble Lord, Lord Alton, has just said, there will be fewer people represented annually in the family courts, and more children and young people will be affected by the withdrawal of legal aid. In the case of victims and alleged perpetrators of abuse, children and young people could be cross-examined by the accused, with resultant threats to their welfare. The Family Justice

Review has pointed out that protection for vulnerable witnesses exists in criminal, but not in family, courts. Many organisations are concerned about the potential outcomes of this.

The Interdisciplinary Alliance for Children points out that the loss of legal aid will increase the trauma of divorce and separation and disputes about children. Family courts and family lawyers can help with solutions to difficult problems in a child-centred way. Issues not resolved through such negotiations and mediation may leave parents struggling, and many of them will not take on that struggle. This could mean that parents will lose contact with their children, or a loss of protection for the child. The alliance has stated that this Bill is not child or family friendly and does not recognise the impact on children caught in the middle of parental disputes. The Bill fails to recognise the impact on people who have to represent themselves. It ignores the impact on victims of domestic abuse, as has been so eloquently expressed in the debate. I will not say much about this, except that domestic abuse can often impinge on children and set up cycles of abuse, particularly in relation to the behaviour of boys.

In my capacity as chair of the National Treatment Agency for Substance Misuse, I have often had contact with the Kinship Care Alliance. Family and friend carers often care for a child because of a crisis in the parental home; for example, death, drug or alcohol misuse, divorce, prison or domestic violence. It is estimated that there are around 300,000 children living with friends or family carers. Previous Bills have discussed the plight of such carers, particularly grandparents who may be impoverished by this extra responsibility of looking after children. Following consultation on the Green Paper, the Government announced that private law applications would be retained within the scope of public funding where a child is at risk of abuse, but not in other circumstances. That could be, for example, where lack of legal aid prevents a family or friend applying for an order to provide a permanent residence for a child.

The Bill as it stands could prevent family members taking immediate action to protect children. To get public funding to apply for a residence or special guardianship order, they will have to provide evidence of abuse. This could delay the child being given residence in a relative's home. There are other issues here, such as the 12-month time limit when a child has been in the care system or under a child protection plan for more than 12 months. Early intervention by family

21 Nov 2011 : Column 909

and friend carers in the cases of such vulnerable children is vital. I beg the Government not to introduce such restrictions to legal aid and ask the Minister whether he will meet me and representatives of family and friend carers to discuss this serious and urgent issue.

There is much concern about child poverty. About 2.6 million children in the UK live in poverty, 1.14 million of these in a household affected by disability. Cuts to legal aid for advice on entitlement and appeals for welfare benefits will work against the Government's ability to deliver on their targets. The organisation Just Rights points out

that it would cost only £10 million to protect current legal aid entitlements for children under 18, and £40 million for 18 to 24 year-olds. Some 41,000 children aged under 18, and 124,000 18 to 24 year-olds, accessed legal aid in their own right last year. These cases related to employment, debt, immigration, welfare benefits, clinical negligence and criminal injuries. Community legal advice telephone services helped more than 21,000 children in 2010-11. It has been estimated that each year more than 1 million 16 to 24 year-olds failed to get advice for their civil justice problems, with knock-on costs of around £1 billion. The Government say that they will open an exceptional funding scheme for legal aid. What exactly does this mean? Can the Minister offer some clarity?

There is a Private Member's Bill on trafficking led by the noble Lord, Lord McColl, to be discussed this Friday. Child victims of trafficking may have immigration claims that are not asylum claims and will therefore no longer qualify for legal aid. Trafficking cases are very complex and require expert legal advice and representation. These cases of children who have been abused, exploited or neglected should surely be within the scope of legal aid.

There are concerns from the Standing Committee for Youth Justice, the Prison Reform Trust, Liberty and the Howard League about the youth justice elements of the Bill. These have been discussed earlier so I will not go into them but I am concerned about the issue of 17 year-olds. I think that the Minister made reference to this earlier. Perhaps it has been resolved but I would like to hear more about the safeguards regarding youth cautions and 17 year-olds.

I close by going back to the important issue of legal aid. Resolution, formerly the Solicitors Family Law Association, expresses its extreme concern that under this Bill the poorest and most vulnerable in society will have reduced access to justice. This concern is shared by many noble Lords and was eloquently expressed by the noble Baronesses, Lady Stern and Lady Mallalieu, and the noble Lord, Lord Alton. Another concern that many noble Lords have is that removing this access could increase government expenditure. Noble Lords will see this as an imperative to re-examine parts of the Bill. We cannot leave families, children and young people in distress. That is cruel and uneconomical. I look forward to the Minister's response.

9.15 pm

Baroness Turner of Camden: My Lords, this is a very complicated Bill but it is obviously being introduced as part of the Government's plan to cut costs. The

21 Nov 2011 : Column 910

problem is that it involves the possible loss of rights of poor and vulnerable people-human rights to which they are entitled as members of a civilised society. It has been suggested to me that the proposals contained in the Bill represent the most seismic shift in civil litigation in living memory.

The Legal Services Commission, which is concerned with the provision of legal aid, is to be abolished. The Lord Chancellor will now have a duty to provide civil and criminal aid, and in order to do so he will have a director of legal aid casework, who will, of course, have staff. Why it should be necessary to do away with one body and its staff and replace it with another is by no means clear. What is clear, however, is that there will be a range of services for which legal aid will not be provided. Most of these deal with the type of problems that can cause stress, trauma and often damage to ordinary people during their normal working lives. The Government seem to believe media accusations that we have become a "compensation culture" even though the noble Lord, Lord Young, who originally provided advice to the Prime Minister in these areas, said that this was a myth.

Much of the Bill has been justified by the claim that means other than legal action can resolve many difficulties. This is disputed by many organisations that have made representations to Peers on the Bill. Some of the areas likely to be adversely affected by the provisions of the Bill are family courts and legal aid casework. This is a problem because often the future of children may be at stake. Children are often the victims of family break-up. Actual domestic violence may be eligible for assistance, but the degree to which assistance will be available is not clear. Again, there are many problems because much domestic violence takes place in a family environment. I understand that local authorities have some responsibility in such cases, but, again, it depends on regulations and what these will be is far from apparent. Many of the problems involved have been fully explained by my noble friend Lady Gould of Potternewton.

Cases involving housing will not be covered, except where homelessness is threatened. Welfare cases, particularly disputes about benefit entitlement, are also unlikely to be covered. Citizens advice bureaux have already expressed concern about the provisions of the Bill. They have often been complimented by Ministers for the work that they do, much of which is concerned with debt counselling and welfare counselling. The benefits system is complicated and individuals often do not know what their entitlement is, and so they do not claim it. Then complications arise, with the necessity for claims to be pursued. However, the CABs are facing cuts in provision, to the extent of £350 million in the first year. They say that these cuts will interfere with their ability to do the job which they are appointed to do.

An issue which causes much concern is the failure to cover clinical negligence. Almost all the organisations that have made representations to us have raised this. The Bar Council has protested. Removing legal aid for clinical negligence would remove access to justice for the most vulnerable people. Legal aid for clinical

21 Nov 2011 : Column 911

negligence cases costs £17 million out of a legal-aid budget of £2.2 billion, so it is a relatively small amount of money.

Another area of concern is that of personal injury. Many personal injury cases are funded by conditional fee agreements, which are commonly known as no-win, no-fee. These

normally allow for a success fee to be claimed by the claimant lawyer in a successful case and that is usually paid for by the losing defendant or the defendant's insurance company. A clause in the Bill will prevent the success fee from being recovered from the losing defendant and the fee will instead be taken out of the damages awarded to the injured person. An injured person will not therefore receive the full compensation to which he or she is entitled. It really seems as though the Government are anxious to make it as difficult as possible for an injured person to secure compensation for his or her injuries. Moreover, the Government's plan is to make injured people pay for some of their legal costs when someone else has injured them in the first place. As many such people are elderly or infirm that seems very unfair.

As far as I can see, employment cases are not to be regarded as eligible for legal aid. The Government apparently take the view that means other than legal ones are available; no doubt they are referring to the arbitration system. However, recently a government statement about employment law indicated that charges would be made to the dismissed employee before his or her case could be heard by the tribunal. Reference has been made to a fee of £1,000. The tribunal will not consist of lay representatives from both sides of industry but there will now be a judge sitting alone; in other words, a more legal system, but of course no legal assistance.

I hope that the TUC is paying attention to all this. Ordinary workers need the trade union movement more than ever. Unions have a record of successfully representing members and they also now provide a fairly comprehensive legal-aid service to members. But this is an unfair Bill and, unless we succeed in amending it, many people will suffer undeserved stress and trauma in incidents for which they have not themselves been responsible. We must do what we can to prevent that.

9.22 pm

Lord Clement-Jones: My Lords, I declare an interest as a member of the Law Society and as a partner in an international law firm. Even so, I venture with caution into this arena, so I shall be brief, especially as so many excellent speeches have been made tonight. By background, I am a commercial lawyer, but I became involved in politics largely as a result of my experience volunteering in the early 1970s at the first law centre, the North Kensington Neighbourhood Law Centre set up by Peter Kandler, in the immediate post-Rachman era. I joined the Legal Action Group, founded in 1971 by my noble friend Lord Phillips, and thereafter I have taken a strong interest in the development of the law centre movement and the extension of legal aid into key areas of family law and social welfare. Until now, I thought that we had been making steady progress in ensuring that, where rights had been given, there would

21 Nov 2011 : Column 912

be adequate access to justice to enforce them, regardless of means. The contents of this Bill heavily lead me to doubt that belief.

I recognise that savings need to be made in the budget of the MoJ; the current legal bill is £2.2 billion. However, the extent of withdrawal from scope of legal aid is quite breathtaking and I believe it will put the clock back more than 40 years. We are told that more than 650,000 people will be affected in total. As we have heard, it seems that Lord Justice Jackson is not happy that these cuts are part of the package. They will cripple CABs and law centres and many will have to close. We are told that 18 out of 56 law centres are at risk and that they are already suffering from a 10 per cent cut in legal aid fees. My noble friend Lord Shipley has illustrated that extremely clearly. Granted there is planned to be some transitional support but, over time, the law centres will lose some 77 per cent of their legal aid funding. Do the Government think that we will all go back to volunteering in order for people to get the legal help that they need?

Furthermore, in the first instance, even where legal aid is available, the only initial recourse will be via a telephone gateway. This will badly disadvantage the more vulnerable, who will find the telephone much more difficult to cope with than a face-to-face meeting, as many noble Lords have said. This will save the princely sum of £2 million, we are told. All these cuts will fall hard on the poorest and most disadvantaged members of society, who are already being heavily impacted by government welfare reforms.

Contrast the contents of this Bill with the one line in the coalition agreement which says:

"We will carry out a fundamental review of legal aid to make it work more efficiently".

What kind of mandate is that for the sweeping nature of this Bill and its changes to legal aid? As if that were not enough, as has already been said, the Lord Chancellor will have the right to omit further categories from the scope of legal aid by order, but not to add to them. What is the justification for these changes: the so-called compensation culture? As we have heard, the report by the noble Lord, Lord Young, said that this was a myth perpetrated by the national press. If the grounds are purely cost-cutting, why has the MoJ not taken more seriously the Law Society's suggestions for savings of between £249 million and £384 million, and sat down to explore them? As we have heard, the impact assessments of the MoJ are not underpinned by any proper research into the unintended cost to the taxpayer and other government departments-indeed, the MoJ admits it. How can it cast doubt on the Law Society's projections for efficiencies, procedural reforms, and cost-cutting in other areas, or the CABs' claim of what the impact will be on them?

In many ways the most unfair and emotionally disturbing aspect of the Bill, however, is the proposal to do away with legal aid for clinical negligence except in exceptional cases. This is particularly because very ill and very injured children are often involved. I want to describe a typical case which has been cited to me by a well known firm of personal injury and clinical law specialists:

"Our client Felix was born at the Royal Surrey County Hospital in Guildford in 2002. He was born premature but healthy. Sadly his prolonged neonatal jaundice was not adequately and promptly treated, so he suffered severe brain injury and has cerebral palsy. He requires 24-hour care, including waking specialist nurse care at night. After his claim was issued at the High Court, the hospital admitted liability and has made damages payments 'on account' of the final damages settlement that we hope will be reached before the trial, fixed for next year. Felix can now be provided with the care, equipment and therapies he so desperately needs. His damages settlement will be strictly based on his needs, as well as the massive impact his condition has upon his family.

Felix's claim is funded by legal aid. This meant that if Felix had lost his case, he and his family would not be liable for the costs of the Trust, and that they were able to instruct lawyers with the ability to deal with his complex claim. Under the new LASPO regime proposed by this Government, Felix's family, who could not themselves have paid to bring a case, could only have brought a claim if they could both find a law firm willing and able to fund the investigation and running of Felix's complex claim, and perhaps also pay for insurance to cover the risk of paying the Trust's costs if the claim failed. Felix would also have lost a substantial slice of his carefully calculated damages to pay that part of his costs the Trust would no longer be obliged to pay. These same issues apply to many of our clients' claims".

It goes on to say:

"Compensation payouts are not lottery wins. They are calculated in great detail in an attempt to normalise the lives of both the injured and their families following traumatic events. They can provide for care costs, adaptations to accommodation, equipment such as wheelchairs and hosts, and vehicles".

Firms in this field say that without legal aid, especially to pay for the early investigations and medical reports, and exacerbated by the 25 per cent cap on success fees, they will in general find it very difficult to act on a regular basis with a CFA for victims of medical negligence unless their chances of success are assessed as at least 70 per cent.

All for what? An estimated saving of £10 million. The NHS Litigation Authority said that removing legal aid for clinical negligence would undoubtedly cause NHS legal costs to escalate massively and increase public expenditure. The Minister may say that of course some exceptional cases will be funded if failure to provide funding would breach the applicant's rights under the 1998 Act-but he knows that this has been very narrowly interpreted by the European Court of Human Rights.

The one bright spot in Part 1 is the fact that specific provisions for legal aid for children with special educational needs and disabilities has been strengthened: but even here, it

needs to be made clear that this will continue beyond 16 to the age of 25 and will cover more than a school setting.

In conclusion, we all celebrate the passage of the landmark Legal Aid and Advice Act 1949, which had such a major, positive impact on the enforcement by ordinary citizens of their legal rights. This Bill risks being remembered for another, more negative reason. I urge the Minister to listen to the voices in the House today, and those in Committee, so that we will be able radically to alter its worst features before it leaves this House.

9.30 pm

Lord Rix: My Lords, I will put my weight behind those who oppose removing welfare benefits from the scope of legal aid provision. The point was put most

21 Nov 2011 : Column 914

forcefully by the noble Lords, Lord Phillips of Sudbury and Lord Howarth of Newport, and by other noble Lords. The expectation that people with a learning disability will be able to represent themselves at tribunals is thoroughly unrealistic, particularly as advocacy support will also be made more difficult to access. However, I know that many noble Lords have particular and forthright expertise in this area and I am reassured that any points I might make on the issue will be, or have been, more than adequately covered.

I will focus on other sections of the Bill, and in particular on issues around sentencing. It was notable from the exchanges in the Commons that this is a Bill of two halves. The first one concerns legal aid and the second concerns everything else. In this respect, only the first half of the Bill has been subject to any form of scrutiny. That is not to say that there has not been discussion and indeed progress on the issues of the sentencing and punishment of offenders. I wholeheartedly commend the Government on announcing their intention to equalise the sentences given to perpetrators of disability-motivated murders from 15 to 30 years. This is a vital step if, at long last, we are to view disability hate crime as a serious issue. I know that it has significant support on all sides of the House and throughout many organisations, 21 of which have signed an open letter to the Secretary of State for Justice endorsing the proposal.

Mencap's Stand by Me campaign-I declare an interest as president of the Royal Mencap Society-urges that disability hate crime should be tackled at the earliest opportunity. While I recognise the positive roles that the Government are playing with regard to the issue, it is important that Ministers take the opportunity to recognise the many challenges that remain. Disability hate crime happens on a number of different levels. Murder is one such level, but it applies equally to a spectrum of abuse from name-calling to physical violence. This is why I hope to use the passage of the Bill to put forward the case for disability hate crime to continue to achieve parity across all aspects of sentencing.

For example, issues still exist around the enforcement of Section 146 of the Criminal Justice Act 2003, which makes provision for a sentence uplift for any crimes in which

disability is deemed to be a motivating factor. Although the provision exists, the requirement for joined-up work by the police, the Crown Prosecution Service and the courts to implement the sentence uplift means that it is very rarely used. Additionally, the Attorney-General's power to review sentences that he or she considers "unduly lenient" is an issue that requires great consideration. This discretionary power applies only to particular types of offences, including crimes against the person that are racially or religiously aggravated, but not including many hate crimes against individuals on the basis of their disability. Given that disability is a protected characteristic in Section 146 and, I hope, soon to be in Schedule 21 to the Criminal Justice Act, this seems to be a perplexing anomaly that creates an inconsistent picture about the seriousness with which disability hate crimes, at all levels, are treated.

Unfortunately, limits of time dictate that I cannot raise further points about which I have concerns in any great detail, particularly the treatment of people

21 Nov 2011 : Column 915

with a learning disability in prison. According to the Prison Reform Trust report *No One Knows*, published in 2007, between 20 and 30 per cent of,

> "offenders have learning difficulties or learning disabilities that interfere with their ability to cope within the criminal justice system".

However, the identification of people with a learning disability in the criminal justice system remains a complex area and there are currently no effective tools in place to measure the situation accurately. This means that many learning-disabled offenders are not accessing the appropriate support or services that they need and, equally, that provision is often not made by police and other public bodies to account for the potential reasonable adjustments that this group might require while in the system.

Provisions around employment in prisons, changes to conditional cautions and the need for accessible information to be available to individuals at all stages of the system are particular priorities. Indeed, I believe that it is essential to provide access to justice for people with a learning disability, no matter on which side of the criminal justice system they find themselves. I hope that the Minister will meet me and other noble Lords before Committee to try and move matters along towards a satisfactory outcome. I shall wait patiently until the end of this rather lengthy session in the hope of an affirmative answer, even though, as I am approaching my 88th birthday, it is long past my bedtime.

9.37 pm

Lord Collins of Highbury: My Lords, this Bill covers a wide range of issues. The only common thread is that they all come under the auspices of the Ministry of Justice. However, I detect a more disturbing theme after listening to the debate today, which is that those who are most vulnerable in our society end up paying the price for these changes. Because of the time constraints on us today I have little alternative but to focus on one specific area of the Bill, Part 2, on litigation and the funding of costs.

We often hear, and we have heard today, of the so-called "compensation culture", fuelled by media stories about individuals receiving large compensation payments, constant adverts in the media offering the promise of a handsome settlement if they claim and businesses fearing litigation and being subject to expensive insurance premiums. However, as many of my noble friends have pointed out today, the noble Lord, Lord Young, noted that the problem is one of perception rather than reality.

In early 2010 Lord Justice Jackson recommended radical changes to the system to address this problem. Unfortunately, the view of many victim support groups is that he relied heavily on information from the liability insurance industry but took very little evidence into account from the claimants' point of view.

The Government's subsequent Green Paper, aimed at implementing the Jackson recommendations, reflected this one-sided approach by stating in its introduction:

> "we are endeavouring to ensure ... that unnecessary or frivolous claims are deterred; and that as a result costs overall become more proportionate".

21 Nov 2011 : Column 916

Many people suffering from diseases and injuries were naturally outraged at the suggestion that they make frivolous claims or that they should suffer because some people might do so. They feel that they are being denied access to justice because of the actions of others.

In publishing their policy plans following the consultation, the Government continued to ignore practically every submission on behalf of claimants. My fear is that the Government are using a sledgehammer to crack a nut, especially in the light of other developments since the Jackson report was published. I suspect this is why the impact assessment contains so little data in support of their arguments. Past figures are of little use when a fixed capped costs regime, including success fees, operates under the RTA fixed-cost portal. Road traffic claims are 80 per cent of all personal injury claims, so only a tiny proportion of personal injury cases will not be subject to fixed costs. The cases that will be affected are those that are of higher value and greater complexity. This one-size-fits-all approach imposes a form of collective punishment on those who are innocent victims and who are lumped in with trivial claims and dishonest claimants. Personal injury claimants are being used to discipline solicitors to force them to keep down their costs. To impose, as we have heard today, more stress and anxiety on people who suffer serious industrial diseases is simply heartless.

Who saves from these proposals? Clearly the insurance companies do, but whether such savings are passed on in reduced premiums is a moot point, as my noble friend Lord Monks pointed out. Who pays? While the cost of litigation will be reduced, what will the

cost to justice and fairness be? One of the many quotations I received that moved me was from someone who through no fault of their own is now suffering from exposure to asbestos. They said:

"How can this be morally correct? To make in my case, the most heartbreaking time of my life and the family, much harder to bear. My case has not reached court yet ... Being diagnosed was a big shock. To then be expected to pay legal costs from any compensation that might be awarded adds yet more worry that is not needed".

On the question of justice, I think two quotations are incredibly relevant:

"Compensation just means that money worries don't compound a very difficult and upsetting situation. It also acts as a deterrent to those who flout the laws on asbestos".

"Guilty defendants should pay all the costs making companies now think about health and safety of its employees and the financial implications not only now but in the future".

This last point is critical when you see that, despite our health and safety laws, many industries have an appalling record for accidents.

Finally, who are the losers? Despite the savings to the insurance industry, the changes will actually cost the taxpayer rather than save any money. In a paper shortly to be published by London Economics, Moritz Godel and Dr Gavan Conlon show that while the direct savings attributable to the Jackson proposals are substantial, estimates based on public data suggest that they will be outweighed by direct and indirect costs resulting in a sizeable net loss to the Exchequer of £70.2 million per year. The main sources of loss are tax and the recovery of payments from public bodies

21 Nov 2011 : Column 917

resulting from PI claims. So, on the behalf of the real people behind Britain's dreadful industrial disease and accident statistics, I plead for the Government to think again and put fairness and justice first.

9.44 pm

Lord Gold: My Lords, the Bill proposes many sensible changes to the civil justice system, although this debate has highlighted some serious issues of disagreement, particularly in relation to legal aid. I was certainly heartened and encouraged by the Minister's comments at the beginning of the debate that he is here to listen and I hope that he will be sensitive to some excellent speeches that we have heard this evening. Today, perhaps because I am looking for safety, I am going to concentrate my remarks on Part 2 of the Bill, which deals with litigation funding and costs, a subject of which I have some knowledge. I feel guilty to say that I have very little knowledge of legal aid.

At the outset I formed a somewhat simplistic view of the Bill-not the easiest thing to do, as it happens. Accepting that some reform of the legal aid system was required to reduce the high financial burden on taxpayers, it seemed to me that in order to continue providing access to justice to all, which is certainly desirable, one answer was to encourage greater use of private funding through conditional fee arrangements and "after the event" insurance to plug the hole left by the reduction in legal aid. Accordingly, it did not sit well with me that in Part 2 of the Bill, which largely seeks to implement Lord Justice Jackson's recommendations, private funding was being limited through the abolition of the recoverability of success fees, which has been the cornerstone of conditional fee arrangements and of ATE insurance premiums. Surely, I thought, what we should be doing is making it easier to fund litigation privately so that any reduction in legally aided cases would to some extent be alleviated.

Many commentators on the Bill, including the Bar Council and the Law Society, have expressed grave concern that the effect of these proposals will be to limit access to justice as many claimants who cannot obtain legal aid will be reluctant to risk losing and having to pay their own legal costs as well as those of the other party. Indeed, the Law Society goes sufficiently far as to suggest that the ATE market is likely to collapse. Having reflected on these submissions, I am much more sanguine and believe that the negative predictions of the system collapsing are somewhat exaggerated. In practice, a claimant who has the benefit of a conditional fee arrangement and after the event insurance may well not be required to pay anything towards the cost of the litigation. We have heard a lot about that today. Whatever his own costs, he may well not have to bear anything at all.

There has to be some merit in the action in the first place, otherwise neither the lawyers nor the insurers would be prepared to fund the claim. However, in assessing whether to agree to offer a CFA and ATE, I am sure that some account is taken of the effect that such an arrangement is likely to have on the opposing party when it is known that the claimant has a free run to trial and no risk of having to pay any costs whatever

21 Nov 2011 : Column 918

the outcome. Even the toughest of defendants will realise that there may be commercial sense in settling with such a well funded opponent.

The Government's proposals seek to remove the ability to recover either the success fee or the premium for ATE insurance. Instead, it is proposed that on a capped basis both the success fee and the insurance premium must be financed from the damages award that is made. We have had some criticism of that today from many noble Lords. To help compensate the claimant for this financial burden, the Government propose that damages awards should be increased by 10 per cent. However, that will not be sufficient to bridge the gap. Some critics say that this is unfairly eating into the compensation being awarded to a claimant. The noble Baroness, Lady Turner of Camden, made that point very clearly and very well. The result, of course, is that victims will no longer receive 100 per cent of their compensation. A second complaint, as I mentioned earlier, is that the ATE insurance

market is thought likely to collapse. Thirdly, the legal services market is thought unlikely to be willing to absorb the greater losses that cases of lower value, higher risk or greater complexity would present. Solicitors will be disinclined to take on anything but the most winnable cases.

I now want to compare the position of these claimants with that of litigants who receive no financial aid and have to finance their claims themselves. First, one can be sure that self-financing litigants do not usually risk having to pay their opponents' costs by bringing claims that do not have a good chance of success. Those who pay are more cautious than those who have no risk, or, to be somewhat colloquial, have no skin in the game. Secondly, as the noble Lord, Lord Hunt of Wirral, who is sitting next to me, pointed out-what seems like many hours ago-the victor in civil litigation never recovers all of his costs. That is so, even when so-called indemnity costs are awarded. As a norm, the winning party may recover something in the order of 60 per cent of his total bill. He has to finance the balance and he has to do that from the damages awarded. In other words, the successful self-financing claimant is not able to keep for himself the whole of his damages award. A proportion of it will go to his solicitors to bridge the gap between the solicitor's bill and the money recovered from the losing party. Why should litigants who enter into CFAs and take out ATE insurance be in a better position? Why should they not give up some part of their award to pay the costs?

Finally, are the proposals in the Bill likely to bring down the ATE insurance industry? I do not think so. First, I believe that the ATE insurance market is more resilient than many fear. I do not know the figures. None of those writing to me-I have had many letters and e-mails-has indicated how much money is being made by the ATE insurance market, but I suspect that it is rather a large figure. If I am right, there will be room for the insurers to swallow some of the cost by reducing their premiums and thus reducing the cost that claimants have to contribute from their damages award. It is a question of finding the right balance. I would hope that, with a little pressure, we could move in the right direction.

21 Nov 2011 : Column 919

For all of these reasons, I believe that what the Government are seeking to achieve in the Bill, so far as funding is concerned, should be supported. The present system does not achieve the right balance. I fear that the availability of CFAs and ATE insurance has encouraged some, who otherwise would have been wary of litigating, to bring claims on the basis that they have nothing to lose and everything to gain. I suspect that a number of claims would not otherwise have seen the light of day. That is not to say, of course, that these claims lack some merit. Indeed, if one is to give access to justice to all who want it then theoretically we should actively pursue a course that allows such claims to be brought even if, ultimately, they fail. However, asking taxpayers to fund claims that non-

funded claimants would not themselves bring because they are too speculative and therefore risky is not the answer.

Our legal aid bill in this country is too high. As the former Justice Secretary, Jack Straw, acknowledged at the beginning of 2009,

> "legal aid per head in England and Wales is higher ... than in any other country in the world, including common-law countries".-[*Official Report*, Commons, 26/1/09; col. 28.]

As the noble Lord, Lord Clement-Jones, said just a few minutes ago, the legal aid bill is now £2 billion a year.

As for outside funding, I suspect that this will be harder to obtain in smaller cases where solicitors and ATE insurers may calculate that it is unlikely that they will recover a sufficiently high figure to cover the costs and provide even a partial success fee. In truth, it may well be that these smaller cases are not financially viable unless supported by legal aid.

The Government's answer, which I wholly support, is to encourage greater use of mediation. If the parties can be persuaded to mediate their claims at an early stage, perhaps before litigation has commenced and substantial legal costs have been incurred, there could be considerable benefit to the parties. It is far better for them if moneys are used to settle the dispute rather than to be spent on lawyers' fees. Indeed, in some cases, the parties themselves may mediate claims without lawyers being instructed. With the right encouragement to mediate and help from an experienced mediator who ensures that each party is helped through the process and treated fairly, I envisage that many disputes will be settled at a far earlier stage than is the case once proceedings have been issued and entrenched positions are taken.

I should declare an interest in that I sometimes sit as a mediator, but not in cases of the size that we are discussing today. My experience is limited to dealing with large civil cases where mediation usually occurs late in the day after considerable work and costs have been incurred. If the Government's present proposal of encouraging mediation is to succeed it is imperative that it happens at an early stage before the costs have been racked up.

There is much detail in this Bill to review in Committee but I hope, as I said at the start of this speech, that the Government will be sympathetic to some of the very moving speeches that we have heard today.

21 Nov 2011 : Column 920

9.56 pm

Lord Faulkner of Worcester: My Lords, at this late hour I do not intend to detain the House for long and shall concentrate on just one issue. In Committee, I intend to table two amendments to Part 3, Chapter 8, to amend the Scrap Metal Dealers' Act. The first would have the effect of making cash transactions in the buying and selling of scrap metal illegal. The second would introduce criminal charges for theft of scrap metal which take into account aspects of the crime other than the value of the scrap metal stolen.

Subject to final guidance from the Public Bill Office, which has been extraordinarily helpful to me thus far, these two amendments would add scrap metal theft to the offences listed in Chapter 8, joining knife crime, dangerous driving, squatting, and force used in self-defence. Given the huge public outcry at the prevalence of scrap metal theft, I hope that, given the way that this Bill is structured with the four offences already listed in Clauses 128 to 131, the Government will support what I am proposing. If there were ever an issue where the universal refrain is "something must be done", this is it.

I invite the House to bear in mind that ACPO puts the national cost of metal theft at £770 million. The problem is particularly acute on the railways-as the noble Earl, Lord Attlee, knows well and I am delighted to see him in his place-where signalling cable theft caused 16,000 hours of passenger delays in the past three years. I am told that this has now reached epidemic proportions with eight actual or attempted thefts every day. Metal theft from electricity networks rose by 700 per cent between June 2009 and June 2011. Other examples are lead from church roofs, manhole covers, telephone wire, and, most despicable of all, brass plaques from war memorials. Almost no aspect of our national life is escaping.

I am not saying that my amendments will provide the complete solution, but they would undoubtedly help. The move to cashless transactions is seen by all the interested parties as an essential step in the process of getting this business under some sort of control. Introducing his Metal Theft (Prevention) Bill in the other place last Tuesday, Mr Graham Jones MP said that he had been told by the industry that,

> "scrap metal is a £5 billion industry, with an incredible £1 billion estimated to be exchanged in cash payments".-[*Official Report*, Commons, 15.11.11; col. 709.]

As an indication of what we are up against, I would draw your Lordships' attention to a giant screen advertisement at West Ham United's football ground, which was seen on 27 September and which, I believe, is there on a regular basis. It says, in huge letters, "We want your scrap for cash", followed by three exclamation marks. All that was missing were the three words "No questions asked". So my first amendment will deal with cash transactions.

The second will provide for a sentencing regime that relates to the consequences of a crime, not the value of the metal stolen. So if the cost to the community in terms of, for example, passenger delays on the railway is £250,000, caused by the theft of signalling cable worth only a few hundred pounds, that much higher loss would be taken account of

in any penalty

21 Nov 2011 : Column 921

imposed. I suspect that particularly unpleasant metal theft, like the brass plaques from war memorials, could also attract exemplary penalties.

I have already given notice of my intention to introduce these amendments to my noble friend Lord Bach, to the government Chief Whip and to the noble Lord, Lord Henley. I have no wish to score points on this issue. I just want the Government to get on with it and for the House to approve the necessary amendments to this Bill.

10.01 pm

Baroness Doocey: My Lords, I wish to focus on the impact that the proposed changes to legal aid provision will have on people claiming disability benefits. The welfare benefits system is complex and, despite the best efforts of all involved in a claimant's initial application, mistakes are frequently made. More than half of all welfare benefits funded through legal aid relate to disabled people, and the legal aid system enables them to challenge decisions made about their lives and their income.

To pursue an appeal, a claimant must have at the very least a working knowledge of the rules for benefit eligibility, which are set out in a range of different regulations. The complexity of the extensive legal precedents determining the criteria for being,

> "virtually unable to walk",

is just one example where professional legal advice is invaluable to anyone appealing against a welfare benefit decision.

The recent report published by the disability charity Scope, *Legal Aid in Welfare: The Tool We Can't Afford to Lose,* explains the challenges for claimants negotiating the complex appeal process unaided. The report notes that, between October 2008 and February 2010, of the 60 per cent of appeals in which disabled people were eventually successful in receiving employment and support allowance, the claimants initially had been deemed to have no factors affecting their ability to work. This underlines the importance of disabled people being able to have the tools necessary to appeal benefit decisions and get the right level of support.

Quite apart from the difficulties that the Government's proposals would create for disabled people, I fear that the Government are making a rod for their own back. Central to the welfare reform programme is the desire to get more decisions right the first time round, reducing the necessity for a large number of appeals. Currently, 40 per cent of cases taken to appeal in relation to employment and support allowance decisions are upheld, so the Government's aim is laudable. However, the benefits system will remain complicated for large numbers of disabled people as well as for Department for Work and Pensions decision-makers; and incorrect decisions are likely to continue to be made

relating to the benefits and support received by disabled people. Indeed, in the words of the Employment Minister overseeing the Welfare Reform Bill:

"There will always be decisions that we get wrong the first time round, however hard we try to perfect the system".

It is worth noting the ambitious scale of the Government's welfare reforms. The replacement of disability living allowance with the new personal

21 Nov 2011 : Column 922

independence payment will affect 3.2 million disabled people. The migration of disabled people from incapacity benefit to employment support allowance or jobseeker's allowance will affect 1.8 million people, and the transition to universal credit during 2013-17 will affect a reported 12 million people.

When employment support allowance was introduced in 2008, there was a fourfold increase in appeals in the first year and nearly 200,000 appeals in the second year. So with a reform on this scale it is almost inevitable that there will be an increase in the number of inaccurate benefit decisions and that disabled people will need legal advice to challenge these. I share the Government's desire to reduce the number of appeals against welfare decisions. However, this reduction must not happen because the loss of legal aid prevents disabled people challenging decisions.

I also have serious concerns about the impact that withdrawing welfare benefits from the scope of legal aid will have on the tribunal system. It is almost inevitable that the number of litigants who appear in front of a tribunal without receiving proper legal advice will increase, as will the backlog of cases facing the system itself. Legal aid undoubtedly helps individuals to navigate the tribunal system. Relating medical evidence to conditions of entitlement can be technical and beyond the understanding of most people without legal advice. I would also suggest that legal aid provides excellent value for money when compared with the cost of a tribunal panel, which is nearly twice as much as the fixed fee per case for legal aid.

The Government want to get more disabled people into the workplace so that they can lead increasingly independent lives. It is therefore essential for disabled people to receive tailored, appropriate support in order to help those who can get into employment. If disabled people are placed on incorrect benefits as a result of an incorrect decision that they cannot effectively challenge, they will not be able to access this support. I will give an example. An individual who is wrongly placed on jobseeker's allowance, who should be receiving employment support allowance, will not have access to the specialised work programme or work choice that would support them into employment. Without this support, it is likely that such an individual would be unable to find work and would remain on jobseeker's allowance for a longer period of time, perhaps even incurring sanctions. Indeed, the Government's own research shows that many disabled people find

the support provided by disability living allowance vital in ensuring that they can stay in employment and close to the labour market.

Without legal aid to allow disabled people to challenge incorrect decisions effectively, it is inevitable that more disabled people will find themselves further from the workplace, receiving incorrect benefit awards or lacking support to find employment, and therefore the Government's intention to get more disabled people into employment will be undermined. It is my intention to return to this issue when we reach the Committee stage.

10.05 pm

Baroness Lister of Burtersett: My Lords, I apologise that I have not been able to be present for much of the

21 Nov 2011 : Column 923

debate, but it would have meant absconding from the salt mines of the Welfare Reform Bill in Grand Committee, where I had an amendment down. In fact, I see the two Bills as being intimately connected, not least because what the Government herald as the most fundamental reform of social security for 60 years, to which the noble Baroness, Lady Doocey, has just referred, will coincide with the removal of social welfare law from the legal-aid scheme-a double whammy, for sure. I shall focus on this in my remarks, although I am aware that there are many other aspects of the Bill which are causing concern, such as its implications for children and young people, including immigrants, women, asbestos victims, tenants and squatters, who will be unnecessarily criminalised. According to the Law Society, the provisions in Part 1 represent the most profound change to the structure and nature of the legal-aid system in England and Wales since it was set up in 1949. Whole categories of law will be removed from the scope of legal aid in an approach that the Law Society considers to be fundamentally misguided.

Also in 1949 TH Marshall delivered his groundbreaking and influential lectures on citizenship and social class in which he discussed the Legal Aid and Advice Act as an example of a social right of citizenship which attempted to remove the barriers between civil rights and their remedies and to strengthen the civil right of the citizen. The current Bill restores the barriers between civil rights and their remedies and weakens the civil right of the citizen. It represents an assault on a key building block in the overall edifice of citizenship. Indeed, some years ago the National Consumer Council referred to access to information and advice as the "fourth right of citizenship". In its briefing, Justice also reminds us that when the 1949 Act was before your Lordships' House, it was presented as providing legal advice for those of slender means and resources so that no one would be financially unable to prosecute a just and reasonable claim or defend a legal right. In other words, Justice contends, it is misleading for the Government to suggest that the scope of legal aid has expanded beyond its original intentions.

What has certainly changed is the nature of social welfare law. In the other place, a number of references were made to the Child Poverty Action Group's national welfare benefits handbook. I declare an interest of a kind in that I wrote the first edition of that

handbook in the 1970s. It was about 20 pages long. Today it is 1,620 pages long. It is a symbol of the complexity of this area of law testified to by DWP Ministers themselves. While universal credit might represent a simplification in the structure of one area of social security, it is also introducing new complexities. As Scope points out, the lesson from previous social security reform is that it increases the need for legal advice significantly during the transition period, a point made by the noble Baroness. The assumption that social welfare law does not justify help under the legal-aid scheme because it is insufficiently complex or important is, not surprisingly, challenged by a wide range of representations made on the Bill and by a recent Civil Justice Council report. A common theme voiced in an e-mail I received from the CAB local to my university in Loughborough is that timely legal advice can prevent a problem escalating and thereby save money in the long run.

21 Nov 2011 : Column 924

Where a problem cannot be resolved, legal advice is particularly important in helping people prepare appeals to the courts or the Upper Tribunal. We are not talking about large numbers here so perhaps the Minister could tell the House just how much money is being saved by removing legal aid from such cases.

Citizenship is in part about the relationship between individual citizens and the state. A recent report from the chair of the Administrative Justice and Tribunals Council argued that the Government are making it more difficult for citizens to challenge decisions made by the state. The removal of legal aid from social welfare will make the situation worse. The report of a commission of inquiry into legal aid states that legal aid plays a vital role in holding the state to account for its mistakes and failings. The suggestion in the Government's response to the consultation that Jobcentre Plus and the benefits advice line are substitutes for independent legal advice is thus risible, never mind that it is their mistakes which often give rise to the need for advice in the first place. I find it strange that a Conservative-Liberal Government want to weaken the position of the individual citizen against the state in this way.

The suggestion that citizens might turn to Jobcentre Plus is made in the context of the Government's acknowledgement that,

"Respondents have told us that other sources of advice, particularly the voluntary sector, may not be able to meet the demand for welfare benefit services because of factors such as local authority cuts".

The welcome one-off £20 million support package to CABs notwithstanding-and I will be interested to hear whether it is the same £20 million that was announced earlier-I fear that the combination of local authority and legal-aid cuts will mean the destruction of the legal advice infrastructure so crucial to protecting that fourth right of citizenship I spoke about earlier. The equality impact assessment demonstrates that the citizens who will be disproportionately hurt will be those who are ill or disabled, female and/or of a black or

minority ethnic group. As other noble Lords have eloquently demonstrated, we have a responsibility to defend the rights of these citizens in the name of justice.

10.15 pm

Lord Lloyd of Berwick: My Lords, at this late hour, I, too, will confine myself to a single, rather narrow point on legal aid. It concerns a particular aspect of claims for clinical negligence; namely, the cost of obtaining expert reports.

In almost all cases, expert reports are a prerequisite if a claim is to succeed. The cost of such reports is usually covered by after-the-event insurance in the manner described by the noble and learned Lord, Lord Woolf, and, before him, by the noble Lord, Lord Faulks. Since 2000, the premium paid by the plaintiff to obtain such insurance has been recoverable from the defendants, usually the National Health Service, whether the plaintiff wins or loses.

It was the Government's original intention that premiums payable for ATE insurance should cease to be recoverable, along with success fees and referral

21 Nov 2011 : Column 925

fees. However, the Government listened to certain concerns, particularly about the effect that that would have on funding expert reports. The point was put very clearly by the Minister in the other place on 2 November. He said:

"Such reports, which can be expensive, are often necessary in establishing whether there is a case for commencing proceedings, which raises particular issues if recoverability of ATE insurance is abolished. In responding to these concerns, clause 43 provides, by way of exception, for the recoverability of premiums in respect of ATE insurance taken out to cover the cost of expert reports in clinical negligence cases".-[*Official Report*, Commons, 2/11/11; col. 1027.]

As a consequence, the Government introduced Clause 43 as we now find it.

My concern is not about the Government's objective, quite the contrary-I agree that the cost of obtaining reports should not in any event fall on the plaintiff. However, I would respectfully suggest that there is a much better way of achieving that desirable objective, rather than the rather complex provisions that one finds in Clause 43. I hasten before anything else to add that this is not my idea, but an idea of Lord Justice Jackson. I echo the tribute paid by the noble Lord, Lord Hunt, to what Lord Justice Jackson achieved, by my calculation, nearly five years ago. It was an astonishing achievement in less than a year. In that respect, he has really done the state some service. His suggestion is that if clinical negligence generally is not to be covered by legal aid, it should at least, by way of exception, cover the case of expert reports, since expert reports are, as the Minister in the other place has already accepted, an exceptional case.

Why then is legal aid a better way of achieving that desirable result than what is contained in Clause 43? The reasons are set in Lord Justice Jackson's lecture, to which reference has already been made by the noble and learned Lord, Lord Woolf, and others. I pick out only two of his reasons. The first is cost, a point touched on by the noble Lord, Lord Gold, quite recently. At the moment, after-the-event insurance premiums are at an all-time high. The Law Society says that the cost of ATE insurance is "currently prohibitive". They are a major element in the cost of clinical negligence cases, which currently falls on the taxpayer and will continue to fall on the taxpayer if Clause 43 stands.

Secondly, Clause 43 is inefficient. The cost of obtaining expert reports will fall on the state-on the taxpayer-however wealthy the plaintiff. The great advantage of legal aid in this context is that it is selective and only available to those who qualify. That, surely, is as it should be.

The cost of making legal aid available for obtaining reports would be, as I understand it, a mere £6 million per year, but the savings to the public purse, by amending Clause 43, as I shall suggest in due course, are far greater than that.

Whatever view the House may eventually take about legal aid for clinical negligence generally, I hope that both sides of the House will accept that it should certainly be available in the case of expert reports, in accordance with Lord Justice Jackson's views.

21 Nov 2011 : Column 926

10.20 pm

Lord Beecham: My Lords, not for the first time, although I think it is fair to say no doubt inadvertently, children and young people will be among the prime casualties of government policy. The Family Rights Group reports that 300,000 children are living with family or friends as carers because of illness, violence, separation, drug abuse or whatever by their natural parents, and a third of these carers give up work to look after the children. They can apply for a residence or guardianship order, but the Bill will allow legal aid funding only where the child is at risk of abuse and in particularly constrained conditions.

For example, under Clause 10, evidence of abuse would have to be provided, including ongoing criminal proceedings for child abuse, where a local authority child protection plan is in being, or where a court has found that child abuse has occurred within a period of 12 months prior to the application. Therefore, a carer cannot obtain funding to anticipate a situation in which a child might be abused, nor will an application be able to receive legal aid support 12 months after the last incident of abuse. I hope that the Minister and the Government will look very closely at the requirements to facilitate the

granting of legal aid in circumstances in which, for example, there is a reasonable cause for the carer to fear that abuse would occur even if it has not already occurred.

Alternatively, the 12-month time limit for proving abuse should be waived, and in particular there should be no bar to obtaining funding for resisting an application to discharge an order simply on the grounds that any abuse took place more than 12 months before that application was made. Equally, funding should not be restricted where the court has made a Section 37 order requiring the local authority to investigate whether abuse has occurred.

In any event, the restriction of legal aid funding to instances of child abuse, as such, is much too narrow a definition. Of course, where the welfare of children is concerned, access to justice should surely not depend on private resources where legal aid is not available.

The position of children is affected in other ways, too. The noble Lord, Lord Alton, referred to the fact that 6,000 children will be denied legal aid and assistance. Indeed, 69,000 youngsters between the ages of 18 and 24 will lose access to legal aid and advice. The range of cases is quite remarkable. There are nearly 2,000 employment cases, 9,000 debt cases, 11,000 immigration cases, 210 education cases, 9,000 welfare benefits cases, 1,090 clinical negligence cases, and up to 34,580 private law cases involving children. Those are very significant figures, and large numbers of young people will therefore be denied legal aid.

The Government seem to rely on the voluntary sector to pick up the slack that will be created by the withdrawal of legal aid funding. Citizens Advice estimates that the 500,000 people whom they currently serve will lose out because of cuts that they are sustaining. They have an 80 per cent success rate in the cases that they bring, supporting claims with legal advice. They estimate that 75 per cent of their cases in debt would lapse, and they take on an astonishing 9,400 cases a day nationally.

21 Nov 2011 : Column 927

The noble Lord, Lord Shipley, referred to the difficulties faced by law centres and quoted extensively the position in Newcastle. In fact, virtually the same observations were made at cols. 844 and 845 in *Hansard* on 26 October, when I made a speech that very much involved Newcastle. However, I undertake to the noble Lord that I will not bring any action for breach of copyright whether or not no-win no-fee arrangements are available to me. In any event, the point is well made and it is broader than simply Newcastle.

Local authority cuts to law centres nationally average 42 per cent; in London the average is 61 per cent. Four law centres have received a complete 100 per cent reduction in their

funding from the local authority-in Birmingham, Oldham, Warrington and Wythenshawe in Manchester. More may well be on the way. The total cut in grants from local authorities to law centres is some £7 million. That has to be set against the £20 million, to which others of your Lordships have referred, which the Government are proposing to award in a grant. I understand that reference has been made to that £20 million about 14 different times. Whether it is the same £20 million no doubt the Minister will advise us, but perhaps when he replies he will indicate whether it is a one-off payment or whether it is envisaged that it will be continued. If it is a one-off payment, frankly, it will not go very far to staunch the flow of resources from law centres at a time when demand will constantly be rising.

I do not for a moment suppose that the Minister would associate himself with the rather strange attitude evinced by one of his ministerial colleagues in the Ministry of Justice who was reported in the *Guardian* last October as saying that legal aid work will be useful filler for unemployed lawyers, or for women returning to work. That is hardly a sensible definition of legal aid and what it has to offer.

Many of us have been concerned that the Health and Social Care Bill, with which we continue to deal at some length, will undermine the National Health Service. It is clear to many of us in your Lordships' House that this Bill clearly demonstrates that the Government are taking a wrecking ball to the structure of access to justice. That is in the context in which, on their own figures, 80 to 85 per cent of cuts to legal aid will affect the 20 per cent poorest people in this country. I can do no better than conclude with the words of Lord Justice Jackson in his report from which the Government have cherry-picked their selection of reforms. He said very explicitly:

"I do not make any recommendation in this chapter for the expansion or restoration of legal aid. I do, however, stress the vital necessity of making no further cutbacks in legal aid availability or eligibility. The legal aid system plays a crucial role in promoting access to justice at proportionate costs in key areas".

Those should be the watchwords of any reform. Thus far, the Bill does not match them.

10.29 pm

Lord Wigley: My Lords, I apologise, as did the noble Baroness, Lady Lister, for missing half this debate because of being engaged in the Welfare Reform Bill like a number of colleagues. Time is limited so I will confine my remarks to what I see as the most pressing elements of the Bill. My interest lies mainly in

21 Nov 2011 : Column 928

Part 1, but I would like to welcome a provision contained in Part 3, which abolishes the discredited system of indeterminate sentences. IPPs have been controversial. They effectively introduced life sentences by the back door for a huge range of offences. The Government are right to abolish them, although I am concerned that the new system

would introduce a mandatory life sentence for those convicted of a second listed offence, so removing judicial discretion.

Unfortunately, the Government seem to be replacing one contentious system with another, which promises to throw up a number of problems. I ask, as did the noble Baroness, Lady Stern, a little earlier, why abolishing IPPs cannot also apply retrospectively. Those serving IPP sentences are languishing in our prisons since little focus is placed on putting them into rehabilitation programmes. Not enough thought seems to have been put into determining a prisoner's tariff. On average, these prisoners serve 244 days beyond their tariff and it costs roughly £30,000 to keep somebody incarcerated for that period of time. If you multiply that by the 2,229 prisoners who are in that situation, you get a figure of no less than £68 million. The IPP regime has been a rather costly mistake.

Turning to Part 1, the cuts to legal aid propagated by this Bill are, I believe, unethical and will have a damaging effect on the make-up of our legal system. What is more, as the report published by the House of Lords Constitution Committee last week made clear, the cuts go against the constitutional right to legal advice. The cuts will create a market for the supply of legal aid driven by cost rather than the needs of the clients. Profits made by legal aid firms are relatively low and any move to fixed fees for all cases will mean suppliers will be encouraged to take on only the least complicated cases.

The most vulnerable clients, including those with mental health problems and people with a range of disabilities, may find it impossible to gain access to free legal advice due to the complications often arising in these cases, as described so effectively by the noble Baroness, Lady Doocey. As we have heard from many noble Lords, legal aid will also be denied to patients injured as a result of medical negligence as well as workers who have suffered illness due, particularly, to asbestos exposure. I was involved with that campaign 20 years ago, as I had a Ferodo factory in my former constituency.

At present civil litigation claimants are able to bring cases under the no-win no-fee system, which the Bill seeks to overhaul. Claimants can take out "after the event" insurance, ATE, to pay the defendant's costs if the claim fails, while solicitors counter the risk of claims with success fees which are payable on winning a case. Under the new system, as I understand it, successful claimants will have to pay some costs and "after the event" premiums out of their compensation. Without ATE insurance, the risks of bringing a claim will simply be too great, so the right to redress will be lost for those caught up in the most distressing cases involving clinical negligence.

These proposals are totally unacceptable and made worse still when we note that the Government failed to carry out a full assessment of how their proposals would affect disabled people. Not even those suffering

21 Nov 2011 : Column 929

domestic abuse will be guaranteed free legal advice under this Bill. During earlier stages

of the Bill in the House of Commons, the Government refused to recognise that the definition of domestic violence contained in the Bill is too narrow. This will leave vulnerable women without the support that they most certainly need. What is more, if the perpetrators of domestic violence are not entitled to legal aid and so act as litigants in person, they will be able to cross-examine witnesses, which will surely cause unnecessary anxiety.

The proposals included in Clause 12, which threaten to limit legal advice in police custody through secondary legislation, are also deeply worrying. This is yet another proposal on which the Government failed to consult and is a move which has been widely criticised. Errors and abuses at the police station can lead to miscarriages of justice, which are exceptionally difficult to resolve. The Bill as it stands allows the Lord Chancellor to replace advice in person in custody with telephone advice. This would be a dangerous step indeed. I strongly oppose the proposals to introduce a mandatory telephone gateway, which would mean that those seeking legal advice for discrimination cases would have to speak by telephone to an adviser, who may not be legally trained, to find out whether they are eligible for legal aid.

Many claimants, including those with disabilities and those with caring needs and learning difficulties, may be prevented from accessing the legal aid scheme due to communication problems. That is a real barrier to equal access to justice. The proposals ignore many subtleties that surround abuse and will abandon some of the most destitute and vulnerable people in our society without access to support. I urge the Government to reconsider these aspects of the Bill.

10.35 pm

Lord Bach: My Lords, no one could have listened to the speeches made in your Lordships' House today without recognising that the Bill we are debating is of very great importance. All three parts of the Bill could be major Bills in their own right, and all three touch on fundamental issues of justice and the rule of law in our society, whether it be the new proposed offences, the replacement for IPP provisions in Part 3, or the radical changes to the conditional fee system in civil cases and the resulting shift in the balance of power between claimants and defendants in Part 2. Other issues include the fact that there is no replication in Part 1 of the duty of the Lord Chancellor in the Access to Justice Act, and Clause 12 and police stations, which the noble Lord, Lord Wigley, just spoke about.

The Government intend to cut legal aid by in effect decimating a system of social welfare law that over the past 40 years or so has cheaply and successfully helped many of the poorest people in our society to have access to justice and to resolve their legal problems. The Bill's definition of domestic violence has been described by many noble Lords as absurdly narrow and one that will lead to many victims being deprived of vital assistance. Whether it relates to any of these concerns or all of them, the Bill goes directly to the issue of what kind of society we want to live in. The stakes could not be higher.

21 Nov 2011 : Column 930

I of course congratulate all noble Lords who have spoken in today's debate. This has been in many ways an astonishing debate, with a depth of knowledge and experience in this field that perhaps very few legislatures anywhere could match. However, it is surely no surprise that the vast majority of those who have spoken from all around the House are highly critical of the Bill and many of its proposals. Her Majesty's Government must take note of this widespread sense that they have not got it right. They should be prepared to listen and, more importantly, to act on what has been argued so trenchantly and so often in the House today. We will listen with even more attention than usual to the Minister when he sums up to see whether real compromise is in the air. I hope that it is. If it is, the House will welcome it, but if it is not the House may well have to do its duty on some future occasion.

I forecast, perhaps unwisely, that there will be less disagreement around Part 3 than is usual when we discuss sentencing in this House. Of course, there will have to be considerable debate and close scrutiny as so much of Part 3 has been added so ridiculously late. Even now it is not clear that it has been sufficiently thought through. Clause 114, for example, with its mandatory indeterminate life sentence for a second listed offence, does not seem to be very different from the IPP system it is there to replace. A prisoner will still not know when he is to be released. It will still depend on the Parole Board, which will have the same information as it does for IPP prisoners now. An indeterminate sentence is an indeterminate sentence, whatever it is called, or does the clause find itself in the Bill solely to appease hard-line elements of the coalition, even though the numbers caught will be absolutely minimal? We will also want to look at bail provisions in the context of the tragic Jane Clough case and at the new Clause 130 offence of squatting in a residential building. That certainly deserves some discussion. The House will have taken special note of the speech of the noble Baroness, Lady Newlove, speaking as she did on behalf of victims.

On Part 2, my noble and learned friend Lord Davidson has told the House in clear terms what our position is. Whatever view we may take of Lord Justice Jackson's report, it is clearly a prodigious personal achievement. It reminds me of a kind of magisterial work of art, large and grand, produced by eminent Victorians. However, it is no use Her Majesty's Government hiding behind Jackson because the whole world knows that they picked and mixed his conclusions as though they were choosing sweets. If there is one thing that Jackson was clear about-he was clear about a lot-it was that his proposals were a package to be taken as a whole or not at all. To many of us, as we have heard today, one of the key findings of Jackson was that there should be no reduction in civil legal aid. Noble Lords have quoted him, but my quotation is this:

"Legal aid is still available for some key areas of litigation, in particular clinical negligence, housing cases and judicial review. It is vital that legal aid remains in these areas".

He goes on to talk about eligibility. That is pretty straightforward but it is actually rejected by the Government. I ask the Minister why the Government have rejected what Lord Justice Jackson said so clearly about clinical negligence and legal aid.

21 Nov 2011 : Column 931

This is a critical point because the Government intend, as part of their £280 million cut in civil legal aid, to save £11 million or £10 million-I have a figure of £17 million but that may be out of date-by taking clinical negligence out of scope. The idea that conditional fee agreements alone are satisfactory for this type of law has been ridiculed by everyone in the House and outside. Many commentators believe that a number of victims, including children, will never be able to get access to justice. Is that the sort of society in which we want to live?

That brings me to what many-and, I must be honest, I-consider the meanest and most wretched proposal of all: the decimation of social welfare law. The rest of my speech will be devoted to that part of Part 1. Whether you call it social welfare law or poverty law or the law of everyday life does not matter very much, but what matters hugely is that the Government are proposing that it should no longer be possible for a citizen who cannot afford it to get legal advice to deal with a legal problem, however complex, involving welfare benefit law. The same goes for employment law, which is completely out of scope. Much housing law will come out of scope, as will practically all debt law and some education law too. As the Bill stands today, that means that there will be no legal advice or representation, even at the Court of Appeal or the Supreme Court. Just to state that proposition shows how absurd it is.

The supposed savings are as follows: including immigration, £81 million; excluding immigration, £61 million. That means that in the social welfare area alone more than 350,000 people a year-it is much wider if you take the other parts of Part 1-will not be given the sort of legal advice that they receive today. Even where the law is still in scope, fixed fees, which are far from generous, have already been cut by 10 per cent. Anything left in scope, of course, will have to go through a mandatory phone gateway, including community care cases. One can hardly think of a sillier area of law to put through a mandatory phone gateway than community care.

Despite many progressive reforms by different Governments to simplify the legal system to make it easier for participants to access and understand, the reality remains that law and enforcement of the law is an often complex and stressful experience for many in our

society. The legal aid system was created to address evident inequality in the legal system. We give legal aid contracts to law centres and CABs because they help those most in need. What is the point of legal rights if there is no ability to enforce them?

The value of the advice that is currently available is unchallenged. The respected academic Professor Dame Hazel Genn, in her seminal work *Paths to Justice*, pointed out that legal problems are not single ones, but come in clusters: it is not debt on its own, for example, but welfare benefits, debt and housing. If legal advice is given early and well, it can and does change lives. If that advice is not given, problems grow, become more difficult to resolve, and can end up in loss of job, loss of home, loss of family, social exclusion, of course, and sometimes descent into crime. All this costs everybody: the individual involved, the Government, and society too.

21 Nov 2011 : Column 932

How can the Government justify this change to a system which-and I want to stress this point-up to now has been supported by all three main political parties in this country? The Conservative Party has a proud tradition of supporting law centres. The Liberal Democrat Party clearly does too, and I hope we do as well. This system has always been supported by the political parties. It has not worked faultlessly-of course not-but it has worked pretty well for many years.

This proposal is the exact opposite of any concept of the big society that one might want to consider. Who are the people who will lose out? We have heard about them throughout the afternoon. If there is no legal aid for welfare benefit advice, some of the biggest losers will be people with disabilities. These people often need legal advice to obtain the benefits they have a right to. The figure of 78,000 disabled people who will be denied specialist legal help for complicated welfare benefit problems is staggering. But the Government say, at the moment, "No, these people do not need legal advice. They can do it themselves. It is all general stuff. It is all comparatively easy". Actually, the DWP guidance now runs to, as I understand it, 9,000 pages: a good deal more than the CPAG guidance that my noble friend first wrote. As the president of the Social Entitlement Chamber, Judge Robert Martin has said that where people have not had legal advice, about 10 per cent of hearing time at welfare benefit tribunals is spent just explaining what is going on. No wonder that the noble and learned Baroness, Lady Hale, said in her Henry Hodge Memorial Lecture, and I quote:

"The idea that the law in some of these areas is simple and easy to understand is laughable".

This is an example of judicial understatement if ever there was one. And yet her Majesty's Government seem set on this course, all for an alleged saving in welfare

benefits of £25 million per year. This is a Government who are prepared to pay out £250 million in order that people can have weekly rather than fortnightly bin collections and £125,000 per year to-is it 40 plus?-police commissioners around the country. This is not a sensible priority at all.

Children and young people will be losers too. As we have heard, they have civil justice problems that require advice. There is academic research to show that there is a relationship between civil legal problems not being solved and crime. This seems incredible in the year of the riots. To cut legal help for the young age group is absolutely crazy-perhaps as crazy as abolishing the successful Youth Justice Board. Both legal aid and the Youth Justice Board work as early-intervention measures to ensure that our young people have a future.

Of course we know that lawyers who work in this field are not fat cats. Many sacrifice a career in high-paid private practice because they consider that the work is so important. Their fees have been cut by 10 per cent. Further legal aid cuts will rip apart law centres, CABs and solicitors' firms, which will have to close. I ask the noble Lord: where will people go then?

The honourable Member for Bradford East, the Liberal Democrat David Ward, made a brilliant speech on Report in another place on 2 November. I was

21 Nov 2011 : Column 933

privileged to see and hear it; I watched from our seats in the other place. He attacked these proposals with passion and good sense-and, with nine Liberal Democrat colleagues, including his Deputy Leader, voted against the Government. He made two important points. In the first, he stated:

"It is a very dangerous thing if we are going to use deficit reduction as a justification for almost everything we might do".-[*Official Report*, Commons, 2/11/11; col. 976.]

His second point came in his final words. He said:

"Someone once told me that the world is divided into two groups of people. There are those who, when they see somebody walking down the street with a walking stick, believe in kicking the stick away because it will make that person stronger, and there are those who believe that if they kick away the stick, the person will just fall over. We are in grave danger of making some of those who are, by definition, the most vulnerable in our society fall over, and we will still have to be there to pick them up, at even greater cost to the public purse. It does not make sense; we should not do it".-[*Official Report*, Commons, 2/11/11; col. 977.]

Then he sat down.

That is one way of putting it. Another way was expressed in the quote by the late Lord Bingham, which I will not repeat now. Both quotes, in different ways, make the point that equal access to justice is at the heart of our democracy, and that Governments should be very wary of tampering with that principle.

The Government's proposals are deeply wrong in three distinct ways. First, they are-I choose the word carefully-immoral. They deliberately look only at the impact assessments that the Government themselves produced; and they deliberately pick on the poor and the vulnerable. Secondly, they represent a serious denial of access to justice, as the Constitution Committee powerfully argued. Thirdly, far from saving money, they will cost much, much more.

The Minister often uses the phrase, "To govern is to choose". He is quite right. When in government we put forward proposals that would have saved much more than the cut in social welfare law that this Government propose. Our intention to cut back on the number of criminal solicitors with LSC contracts would have been very controversial-much too controversial for this Government, who chose instead to take on not powerful interests that might give them a hard time but the poor, the vulnerable and those who cannot represent themselves in court, let alone begin to fight the power of government.

I end by saying that noble Lords-I hope in a non-partisan spirit and across the House as a whole-should say that in this case the Government have made the wrong choice. If necessary the House must take up the fight and stand up for those who cannot stand up for themselves. The House has a tradition of looking after the interests of those in our society who have little power. In this of all cases, we must not let them down.

10.54 pm

Lord McNally: My Lords, I hope that the House will understand that in a debate of 54 contributions, I am not going to be able to answer them all in detail this evening. Indeed, many of the questions will be better raised at Committee, with specific details of the Bill.

21 Nov 2011 : Column 934

The noble Lord, Lord Rix, and the noble Baroness, Lady Massey, asked whether I would meet them on the specific issues they raised. Of course I would be delighted to do so. If they will contact me I shall fix something up. The noble Baroness, Lady Whitaker, asked whether the letter from Professor Ruggie could be put in the Library of the House. I will certainly arrange that. It is already on the internet. It might be interesting to the House to know that Professor Ruggie is no longer the UN special representative for business and human rights; he has joined a Boston law firm. Whether that is promotion, I do not know, but that is the fact.

The noble Lord, Lord Faulkner, came with his proposal about amendments to deal with metal theft and the dangers it poses. I cannot give him a definitive answer at the moment, other than that there is an inter-ministerial group looking at this issue as a matter of priority, and we will look at any proposals appropriate to the Bill. I have lost sight of him again-oh my God! Thank God we did not give the Speaker more powers; he would have named me by now.

It has been a very interesting and well-informed debate. Let me take to start-because he was quoted-my colleague from the other place, Mr Ward, who said that we must not let deficit reduction dominate everything that we do. Of course, unless we address the issue of deficit reduction, many of the things that we subsequently do-

Lord Bach: The noble Lord is quoting Mr Ward wrongly. Mr Ward said:

"It is a very dangerous thing if we are going to use deficit reduction as a justification for almost anything that we might do".-[*Official Report*, Commons, 2/11/11; col. 976.]

Lord McNally: I stand by that quote, then. If we are going to take that attitude, and if we are going to avoid taking tough decisions, we will face far greater economic problems. This idea that somehow we can put things off until tomorrow is perhaps why we are where we are today, and why we have to take the decisions that we will take today.

I heard closely what the noble Lord, Lord Howarth, was saying. Of course, it was a wonderful speech. A number of the speeches made today were wonderful speeches, if we believe that there is no limit to the amount of money that we can spend on legal aid; that there was somehow a golden age when this was all available. However, we know well-

Lord Howarth of Newport: The difficulty in the position that the Minister is taking is that while he may indeed reduce the Ministry of Justice's expenditure, he is exporting his cost to other government departments and to local government. Far from reducing the deficit in public finances, the policies of his department are likely to increase it.

Lord McNally: That is the speech the noble Lord made earlier. He knows, as I well know, that across government, except for two special cases-health and overseas aid-departments have had to make severe cuts. In each of those departments, there are people who could make speeches, like those that have been made today, about how those cuts hurt specific sections

21 Nov 2011 : Column 935

of society. But there is no getting away from it: the Ministry of Justice is a department with a budget of just over £9 billion. Its commitment was to cuts of £2 billion in a department that spends on only four things-prisons, probation, legal aid and staff and court administration. Each of those has taken a hit. If noble Lords are successful in stopping the changes we have made in legal aid, those other parts will take a hit as well. I can tell noble Lords that it may be heartbreaking to hear some of the stories today, but for

me, it has been heartbreaking to see very good staff who have served the Ministry of Justice well having to leave through no fault of their own. We have a probation service, which does exceptionally good work, that is under pressure. There are no soft options and no easy ways in this. We have tried to put forward a series of suggestions.

Listening to some of the distinguished lawyers, they do not fully appreciate that their profession is in flux. The way law is delivered and by whom it is delivered is going to change. I do not think the full impact of alternative business structures and changes in the way chambers and solicitors are organised is fully appreciated yet. They will mean changes, and they may be changes that make a big difference to the way that legal advice is delivered. I heard the disparaging of telephone advice, but the world is changing and lots of people receive advice on the net and by telephone. Indeed, I went to the Law Society's prize giving for solicitor firms of the year and I was intrigued by how many of the prize winners now have web pages where people can go. You can get lots of advice for free before you press the button to hire them. It is a changing world in some of these things.

I understand that when campaigning groups are campaigning they always produce figures that will be brandished around in debates like this. For example, I point out that none of the horrendous cuts that we are being told about actually yet impacts on CABs. I hold up my hand on the £20 million. I thought of saying that when I was doing economics there was something about the velocity of money, and I think this is an example of it. I do not know whether it has been around 14 times, but it is, I confess, the same £20 million that was advised earlier, but it is a very useful addition. We are across the department looking at this very special problem of advice centres and the CAB to see whether we can bring forward proposals longer term.

I go back again to this idea that somehow we are moving from a principle in terms of legal aid. It invites the question: what is so magic about £2.2 billion or £2.1 billion against £1.7 billion? It is less, and it means cuts, but it is not a move away from some absolute commitment to pay for everything, whatever, which seemed to be the thrust of some of the speeches earlier. Once you have a budget, you make choices within that budget, and that is what we are doing. These reforms will still be spending £1.7 billion a year

21 Nov 2011 : Column 936

on child protection proceedings, most judicial reviews, international child abduction, special educational needs, community care, discrimination, debt and housing cases where a home is at immediate risk, mental health cases and 95 per cent of funding for child parties.

I accept that a number of issues have been raised today that need the kind of scrutiny and expertise that this House brings. The Government have not sprung these issues on an unsuspecting country. The proposals on legal aid were in the Green Paper that was published over a year ago. Certainly, some of the more recent additions will need the

close scrutiny of this House, but it is not true that we brushed aside the Law Society's wonderful ideas for saving the money in different ways. We considered its proposals very carefully, and we are looking very closely into the one for more efficient prosecution and reimbursement of legal aid funds. A great deal of its proposals were shuffling responsibilities and costs around Whitehall or producing new taxes, which is not the same as making savings.

I also take on board the very strong concerns that were voiced about domestic violence. I believe that we have tried not just with these measures but with other government measures to try to give support and help in this area. We should go through this in Committee and I will be able to respond to amendments that are put down at that stage. The same is true of clinical negligence. These issues have been raised with considerable passion and they merit closer scrutiny in Committee.

Those who are experienced as Ministers will know that I cannot make any commitments at this stage, other than to suggest, as I did earlier, that we use Committee for a useful and productive examination of the Bill. I take on board what a couple of my noble friends said about advice at police stations. I suggest that they put down an amendment on that. The noble Baroness, Lady Grey-Thompson, suggested that we had not listened to earlier consultation. That is not true. I will not weary the House by going through them but there are at least a dozen examples of specific changes we have made during the consultation process. I take the advice of the noble Lord, Lord Gold, that the best way I can end this debate is the way I ended my opening speech; that is, to recognise that the range of expertise in this House will be extremely useful to us when examining this in Committee.

This may excite noble Lords or send them into depression, but we have something like three months of parliamentary time looking at this Bill in its various stages. I cannot go further on these issues than saying that we will listen, but we will listen to some very serious points that were made in a very serious way. I hope on that basis we can move to Committee and that the House will give this Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 11.09 pm.

Next Section Back to Table of Contents Lords Hansard Home Page