



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Uncorrected oral evidence: Border Security, Asylum and Immigration Bill, HC 789

Wednesday 14 May 2025

2.15 pm

Watch the meeting

Members present: Lord Alton of Liverpool (The Chair); Juliet Campbell; Lord Dholakia; Afzal Khan; Baroness Lawrence of Clarendon; Lord Murray of Blidworth; Lord Sewell of Sanderstead; Alex Sobel; Peter Swallow; Sir Desmond Swayne.

Questions 1 - 22

Witnesses

I: Dr Marija Jovanovic, Research Fellow in Business and Human Rights, Bonavero Institute of Human Rights, University of Oxford; Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association (ILPA); Professor Sarah Singer, Professor of Refugee Law, Refugee Law Initiative, School of Advanced Study, University of London; Alison Harvey, Barrister, One Pump Court.

II: Richard Alcock CBE, Director of Strategy and Policy, Border Security Command.

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Examination of witnesses

Dr Marija Jovanovic, Zoe Bantleman, Professor Sarah Singer and Alison Harvey.

Q1 The Chair: Welcome to the 19th meeting of the Joint Committee on Human Rights. As our name implies, we comprise six Members of the House of Commons and six Members of the House of Lords, so we act jointly and are drawn from different political backgrounds and traditions. Our predominant focus is on issues that impact on human rights.

Yesterday, we published our report, conclusions and recommendations on the role of British citizens involved in the genocide against Yazidis and other minorities. The report is available on the committee's website.

We continue two other thematic inquiries, one on transnational repression and another on modern-day slavery and supply chains. In addition to that, we are about to publish a legislative report into the Mental Health Bill, which has completed its House of Lords stages and is heading to the House of Commons next week.

Today is also a legislative scrutiny session, during which we will examine the Government's Border Security, Asylum and Immigration Bill. We aim to consider the main provisions of the Bill that relate to human rights. That includes the creation of new immigration offences, the retention of provisions from the Illegal Migration Act, and the interaction between the Bill and various international instruments, such as the European Convention on Human Rights and the refugee convention.

The Government accept that the Bill engages articles of the European convention, including the right to life, liberty and security of persons, fair trial, private and family life, prohibition of discrimination and the right to enjoyment of property.

The first panel today will present an overview of relevant clauses of the Bill and will consider the compatibility of the new provisions with human rights legislation. The second panel will discuss operational aspects relating to the new and existing offences. We are very pleased to welcome experts in the field.

We will be hearing from Zoe Bantleman, who is a barrister, legal director of the Immigration Law Practitioners' Association and editor of the *Journal of Immigration, Asylum and Nationality Law*. Ms Bantleman has spent her career writing, teaching legal professionals, and conducting court policy and parliamentary advocacy.

We will hear from Dr Marija Jovanovic. Marija is a human rights lawyer with a research interest in modern slavery and human trafficking, migration and refugee law. She is currently a research fellow at the Bonavero Institute of Human Rights at the University of Oxford and a co-investigator at the Modern Slavery and Human Rights Policy and Evidence Centre.

We will hear from Professor Sarah Singer, who is professor of refugee law at the Refugee Law Initiative, School of Advanced Study, University of London. She is an expert on criminality and asylum, and her contributions

to the migration field include publications on European asylum law, humanitarian accountability, immigration detention, and the protection of LGBT asylum seekers.

We will hear from Ms Alison Harvey, who practises in immigration law and related matters. She advises on questions of nationality and immigration status across her own case load. Before joining One Pump Court Chambers, she was the legal director of the Immigration Law Practitioners' Association.

Later, in panel 2, we will hear from Richard Alcock CBE. He is the director of strategy and policy at Border Security Command. Established in July 2024, Border Security Command aims to provide strategic direction to work across agencies, drawing together the work of the National Crime Agency, the intelligence agencies, police, immigration enforcement and border control.

You can see that we have an expert team of witnesses who I know are going to enlighten us about the minutiae, the detail, of this legislation. Before asking my colleagues to put their questions—and I will turn first to Lord Murray of Blidworth—let me ask each of the panellists for their response to this question.

The Government have said that the Bill, “creates a framework of new, enhanced powers and offences to improve UK border security and to strengthen the asylum and immigration system”. Is that a fair representation? Do you think the Bill, taken as a whole, strikes the right balance between individual rights on one hand and the wider public interest?

Alison Harvey: I will start. I do not consider this Bill is a framework. It is another extension to the rickety structure that is immigration law, and until a political party grasps the nettle and produces just a piece of consolidating legislation to consolidate what we have and then sets about changing it, this area will continue to be a patchwork of offences, defences and provisions that no longer fit together.

What we have now, quite simply, is a system that is not human rights-compatible because it is not prescribed by law. As the European Court of Human Rights said in the *Sunday Times* case, the law must be accessible, the citizen must have access to it, a norm is not a law unless it is regarded with sufficient provision. In this Bill we have measures that are not sufficiently precise.

We are told that the provision to impose conditions on limited leave will be used only for somebody on restricted leave, but it could be used for any worker, any spouse. Article 5, the right to liberty, demands that any restriction on liberty be prescribed by law, yet Clause 41 of the Bill proposes with retrospective effect to rule that it was perfectly lawful to detain people when, according to the impact assessment, their detention was not prescribed by law—so not a framework, not accessible.

The Chair: Thank you very much for that curtain raiser. We will be probing more deeply as we proceed. Let me turn to Dr Jovanovic and ask

for your assessment of what the Government say that this Bill is intending to do.

Dr Marija Jovanovic: I have to agree with Alison. In my view, the UK immigration law, including this Bill, as an extension of this framework, reverses the logic of human rights law, both domestic and international. That body of law guarantees protection to certain categories of vulnerable migrants, including refugees and modern slavery victims, and it allows for certain limitations, but these need to be very narrowly construed and they need to be justified.

Instead of embodying that logic, what this Bill and previous legislation does—we provided evidence several times previously on various pieces of legislation introduced—is that it contains sweeping provisions that exclude from protection those arriving via irregular routes or being involved in criminal offences, and then it permits narrow exceptions to these exclusions, but the burden is on an individual to justify the need for protection, so it completely reverses this logic.

What we have as evidence of the effect of that is the withdrawal of victims of modern slavery, for example, from the support system, and record low levels of prosecution; in other words, it does not do very well on law enforcement either. In summary, I think it just tries to put a band-aid on an open wound.

The Chair: I know we are going to ask you further questions later about the effects on victims of modern slavery, but let us go to Ms Bantleman and then to Professor Singer.

Zoe Bantleman: Building on what Ms Harvey has already outlined, I just wanted to outline two important trajectories in the Bill. First, as we all know, it repeals some but not all of the legislative measures that have been put in place in the last three years, which continue to risk violations of the rule of law, of constitutional principles, and human rights. While we, of course, welcome repeal of the safety of Rwanda Act and large parts of the Illegal Migration Act, we are gravely concerned that the Bill leaves in place the Nationality and Borders Act 2022.

As a reminder to this committee, which I know has already conducted very intense scrutiny of that Act, it raised serious concerns regarding compliance with human rights, including through the restrictions it placed on the right to seek asylum here, criminalisation of refugees, poor reinterpretation of our obligations under the refugee convention, disqualification of victims of modern slavery and human trafficking from protection, support and identification, invasive methods of age assessment, and resurrection of fast-track appeal processes. That is the first trajectory.

The second is its focus on securitisation and new offences but the failure to address the most efficient and effective way to break the business model of smugglers, which we all know is simply to offer complementary safe and accessible routes to the UK. People with historic, colonial,

linguistic and cultural ties to the UK will continue to come here for sanctuary. As long as commercial carriers fear that they will receive penalties for carrying these people without the right visa and without the right documentation, they will stop people boarding safe trains, safe ferries and safe planes to the UK. This pushes people seeking protection into dangerous and irregular modes of arrival.

Neither this Bill nor the immigration White Paper that was published on Monday contains a single proposal for a new safe route. Instead, the Bill retains the duty on the Secretary of State to place an annual cap on the number of people who can come to the UK on safe routes. So people seeking asylum here are left in a Catch-22 situation. If you do not come on a safe route you will be penalised under this Bill and under the Nationality and Borders Act that it builds upon, but there are no safe routes available for you to apply to asylum from outside the UK.

If you do come on one of the other safe routes, such as to work, study or visit, even if the Home Office assesses you to be a genuine student or a genuine refugee, you are still considered to be abusing the system.

The Chair: Thank you very much, Ms Bantleman. I will give the floor to Professor Singer, and then we will turn to my colleague Lord Murray.

Professor Sarah Singer: Thank you very much. I very much agree with Ms Bantleman's comments that there are some positive aspects of this legislation, most notably the repeal of the safety of Rwanda Act and some of the most unworkable provisions of the Illegal Migration Act 2023.

As I am sure we will be able to discuss today, in order to be fully compliant with the UK's obligations under the European Convention on Human Rights and the 1951 refugee convention, there is a need to examine further repeal of provisions of the Nationality and Borders Act 2022 and further provisions of the Illegal Migration Act, which have been retained.

In terms of the framework that is proposed for this legislation, I do not consider that it supports the objective of either improving the UK's border security or strengthening asylum and immigration. As you will see, particularly in the second session today, the Bill introduces a number of new criminal offences relating to facilitating irregular arrival to the UK. However, as we all know, these offences will not be targeted at the people who conduct people-smuggling operations, most of whom never set foot on UK soil and will not be reached by the new offences. Rather, who will be targeted? Again, it is the very vulnerable people who are seeking asylum in this country and making these irregular journeys, because they have no other option, as Ms Bantleman has outlined.

Equally, these new offences are highly unlikely to have any deterrent effect, and we can see that through the lack of deterrent effect following the introduction of new immigration offences in the Nationality and Borders Act 2022. I do not see that the legislation will serve its objective in that sense.

Very concerning from a legal perspective is that the Bill continues the expansion of the powers granted to the Home Secretary, including in areas such as detention and the conditions that can be imposed on people who might be deported at some very far date in the future. There is a further shrinking of the scope for judicial oversight of government action.

The overall framing of the piece I think is very concerning. The national security framing encourages asylum seekers and refugees to be seen as a threat, and this undermines social cohesion and it has the danger of fomenting antagonism and disruption, such as we saw last summer. It is particularly concerning that in the White Paper, which was announced this week, the Home Secretary announced the plans for further legislation in asylum, building on this Bill, to be introduced later in the summer before this Bill has even been brought into place. Altogether, that is my overview.

The Chair: Thank you very much, Professor Singer. We will turn now to Lord Murray, who has two questions, and after that we will hear from Mr Afzal Khan, Member of Parliament.

Q2 Lord Murray of Blidworth: Just by way of a declaration of interest, something I am sure the panel are well aware of, but so that those watching are also aware, I am a barrister by profession, but I was also the Minister for Migration and Borders. I took the Illegal Migration Act through the House of Lords when it was a Bill.

I want to focus on, for the first question, some of the new offences that Professor Singer mentioned; in particular, the precursor offences relating to immigration crimes, including the supplying or handling of relevant articles for use in immigration crime and the collecting of information for use in immigration crime. I am sure you are all familiar with those provisions. In your view, is the scope of these new offences sufficiently clear and circumscribed? Do they do enough to distinguish between those doing the smuggling and those who may have genuine asylum claims? Perhaps I could start with Professor Singer.

Professor Sarah Singer: As many members of the committee will be aware, these new crimes build on the new criminal offences that were introduced in the Nationality and Borders Act 2022. In the previous report from this committee on the Nationality and Borders Act, the committee expressed a significant concern in setting up a system whereby refugees are unable to travel to the UK to claim asylum without committing a criminal offence, and that such new offences were inconsistent with the overall purpose of the refugee convention, specifically Article 31.

I might ask you to bear with me and I will outline very briefly what those key concerns were, because they have a significant bearing on the issues with these new offences.

The first issue, as mentioned, is that Article 31 of the refugee convention prohibits states from imposing penalties on refugees who arrive irregularly.

Lord Murray of Blidworth: It prohibits only penalties on refugees who come directly. Those are the words.

Professor Sarah Singer: "Coming directly from a territory where their life or freedom was threatened".

Lord Murray of Blidworth: So that would not apply to people coming from France, which is a safe country.

Professor Sarah Singer: The Nationality and Borders Act brought in a very narrow interpretation of this "coming directly from", which was quite contrary to previous jurisdiction jurisprudence, which was established by UK courts that "coming directly from" would not prohibit someone who, for example, stopped en route to seek asylum.

Lord Murray of Blidworth: You would accept that it is open to Parliament to decide what the interpretation of the convention is?

Professor Sarah Singer: I think that the interpretation of the convention is something that should be considered on an autonomous basis, in light of state practice and jurisprudence across the globe, to ensure that all state parties are adopting a consistent approach towards this. The interpretation of Article 31, which was introduced by the Nationality and Borders Act, was clearly in contravention of the well-established interpretation of the provision, as recognised not only by the UK courts but the UN refugee agency. Concerns with it were recorded by this committee in its report on that previous legislation. That was the first issue with the new offences. They did not provide those arriving irregularly in the UK with this defence against prosecution.

Secondly, the facilitation offences, which were introduced in the Nationality and Borders Act, did not have a "for gain" element, which is something that is most commonly needed.

I outline those, and thank you for bearing with me while I do that, because they also have a bearing on these new offences. As was introduced, we have new offences on supplying articles for use in an immigration crime and handling items for use in an immigration crime as well. These articles are anything other than on a list of excludable things of a humanitarian nature. A number of items are excluded from the list of what could be considered an article.

However, a number of things are not on the excluded list. That includes, for example, small boats and rubber dinghies. The person concerned has to know or suspect that the item will be used by any person in connection with an offence, and there is a defence of having a reasonable excuse for providing an article, and that includes for carrying out a rescue or acting on behalf of an organisation that assists asylum seekers and does not charge for its services.

That means that staff who are working for an organisation that supports asylum seekers would not be caught by the provision. That is very positive. However, a private individual who was trying to assist would

potentially still be caught by the provision if they were doing something that was short of carrying out a rescue. They would probably do so without any awareness of the offence. This could lead to some very harsh prosecutions or convictions. It might also catch people, for example, who are providing legal assistance, or those working for organisations that do not have the sole aim of supporting asylum seekers.

A significant concern is that it has the potential to catch migrants themselves who might be assisting others making journeys without any protections to prosecutions, as should be specified under Article 31 of the refugee convention.

The Section 16 offence of collecting information for use in an immigration crime is extremely broadly drawn. It is about collecting or making a record of information likely to be useful for a person organising or preparing a relevant journey, or even simply viewing such information. This is incredibly broadly drawn for a provision that has a 14-year maximum sentence that can be imposed on it.

There is a safety net here for asylum seekers themselves. There is also a defence for those who are carrying out work as a journalist and academic research or preparing for a rescue. There are some notable exceptions. Again, there are no exceptions for those providing legitimate legal advice and helping prepare legitimate legal claims. It has the potential to catch a vast number of people.

These offences seem to be deliberately quite widely drafted with a very low bar for prosecution. This has a real risk of infringing the principle of legal certainty, which is required by Article 5 of the European Convention on Human Rights. A criminal penalty also has to have respect to Article 7 of the European Convention on Human Rights, which has been interpreted as requiring that offences and penalties must be clearly defined by law. There are no offences, as I mentioned, for a person who might be being smuggled to the UK or might be assisting a fellow migrant along the way. Very key for these facilitation offences is that there is no requirement of material gain for the person who is assisting, facilitating, handling or supplying such articles.

This brings into question compliance with the UK's obligations under instruments such as the smuggling protocol and the Council of Europe's convention on organised crime. Under the smuggling protocol, material gain is a key element of any smuggling-related offence.

Lord Murray of Blidworth: Can I just see whether, Dr Bantleman, you have any further view on those particular provisions?

Zoe Bantleman: I wanted to begin by addressing this point about interpretation of international law. "Any merely short-term stopover en route to such intended sanctuary cannot forfeit the protection of the Article". It was not me who said it; it was Lord Brown in *Adimi*. "Some element of choice was open to refugees as to where they might properly claim asylum"—again, not my words; those of Lord Bingham in *Asfaw*.

In relation to interpretation of Article 31 through the Nationality and Borders Act—and, forgive me, Lord Murray, as I know this will be very familiar to you—the Vienna Convention on the Law of Treaties says, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”. Additionally, it says, in relation to “Internal law and observance of treaties”: “A party may not invoke the provisions of its internal law”—that is, the UK’s domestic law—“as justification for its failure to perform a treaty”. In relation to article—

Lord Murray of Blidworth: Clearly, there is a wealth of academic dispute on these topics, which we will not get into because it is not directly relevant to the legal analysis of these offences. I take the points that you have raised. I wonder whether you could perhaps just focus your comments on these proposed offences. The question was: to what extent do you think they are sufficiently clear and circumscribed to achieve their purpose, and will they be able to distinguish between those who are genuine asylum seekers and those who are not?

Zoe Bantleman: That is directly relevant, for the reason that Professor Singer has already outlined: that Article 31 of the refugee convention says that such refugees should be immune from penalties. Clearly, that includes criminal penalties. There is no academic dispute on that point.

Lord Murray of Blidworth: The Government do not take that view because they are advancing these offences, are they not?

Zoe Bantleman: That is why they need to also create corresponding defences in our domestic law. I am sure that you are aware that Section 31 of the Immigration and Asylum Act 1999 does create a statutory defence, but it is extremely narrowly construed. It relates to an insufficient list of offences, including forgery, possession of false identity documents, deception and falsification of documents.

While there is a defence for arriving with false documents, there is no statutory defence for arriving without the appropriate immigration documents. What this Bill does is add new immigration offences. Again, it contains no corresponding amendments to Section 31 of the 1999 Act to make sure that refugees are immune from penalties, as is required by Article 31 of the refugee convention.

Lord Murray of Blidworth: Dr Jovanovic, do you have any further thoughts on that?

Dr Marija Jovanovic: I have three short points. On the point of coming directly and Article 31, there was at the end of last year a general comment by UNHCR on that. This might be a debatable academic point, but it was expressed about not imposing criminal penalties, in that it said, “the irregular entry or presence of refugees must not be treated as a criminal offence”. While they might not be protected, criminal penalties should not apply to them. It is in paragraph 33 of that report; I can share that later.

On the specific question of whether the offences are sufficiently clear and circumscribed to distinguish, that is the whole point of the entire legislation and the framework. Different laws and policies delineate those categories of victims very clearly—victims of modern slavery, refugees, smuggled migrants—but in reality, one person can embody all these statuses. They can be smugglers and traffickers at the same time as being exploited. The problem is immense.

In addition to how to distinguish between those, the question is: which status prevails? Even if we establish clearly what somebody is, does it matter that someone is a genuine refugee at the same time as assisting others? Which status prevails? If somebody is a victim of modern slavery, should that be a primary concern and not the fact that they have arrived illegally? I think that is the question that no piece of legislation addresses.

On what Sarah has just mentioned, I agree about material gain. There is currently a legislation directive going through the European Union legislative process that tries to re-establish the policy on migrant smuggling. There has been back and forth on that point. It features in the current draft that there must be a material gain financial benefit for one to be caught in this provision and subject to penalties. This is something that I have not seen in this.

Q3 Lord Murray of Blidworth: Forgive me, I am conscious that time is pressing. May I ask Ms Harvey a particular question on the offences that are in the Bill? Some of the terms in the offences are quite broadly defined. For instance, “relevant article” is defined as anything of substance. Other than an exhaustive list of items such as food, clothing and shelter, are the definitions provided in the Bill, in your view, reasonable? Are there any further exemptions that should be included?

Alison Harvey: I am not an expert on the criminal law, and I am aware that the drafting of criminal offences is an extremely difficult and technical art. I think we found that in the modern slavery legislation, where there was a read-over between the definition of an offence and the definition of a victim, which ended up causing considerable difficulties.

Clearly, lending someone a pen to fill in a landing card with a reasonable belief that they are not someone entitled to be here is not exempt and would be caught because the definition is broad enough. It is unclear. One can conclude only that the intention is to capture any action.

What I would point to, which your Lordships will be well aware of but not all those reading the committee’s report will be, is that according to *Pepper v Hart*, we can look only at what Ministers say is the intention behind the legislation when the text of the law is ambiguous. Ministerial assurances you and I cannot raise in court unless we are faced with a provision that the court cannot understand without them. What we need to see is every definition, every specificity—if something is not meant to apply to a parent, if it is not meant to apply in a situation except in extremis—in the Bill; otherwise, the courts will read what is there.

The Chair: Thank you, Ms Harvey. That is very helpful. I am anxious that we move on; we can return to some of these points later. I think Dr Swallow was hoping to come in, but he is happy. I know that Mr Khan was going to ask you about Article 31, but you have dealt with that already. With no further ado, I will turn to Sir Desmond Swayne.

Q4 **Sir Desmond Swayne:** It will be an offence to endanger the life of somebody else on a passage to the United Kingdom. This has raised some concern about the fact that it might capture parents of children in that provision. We have seen grotesque pictures of children washed up on beaches and the Government are trying to deter people from undertaking very dangerous journeys. It is perfectly proper that a parent should be responsible for endangering the life of their child by putting them on a boat in this way, is it not?

Alison Harvey: The issue will be one of prosecutorial discretion and why the person did what they did. I think the difficulty there is that that is not a sufficient safeguard. I point the committee to the case of SXH v the Crown Prosecution Service, 2017, in the Supreme Court. That was a lady who sought to bring a claim that her prosecution and her detention for her prosecution were a breach of her human rights under Article 8 and failed. She was a lady who had been raped in Somalia at age six in front of her disabled mother. Her mother had subsequently been murdered. She was stopped at port in the UK. She was prosecuted under the Identity Documents Act, to which the Article 31 statutory defence does not apply.

The issue then becomes whether it is an abuse of process to prosecute. The Crown Prosecution Service pursued the prosecution. It reviewed subsequently. She was in detention for a total of five and a half months until a Crown Prosecution Service person realised that although she had spent a year in Yemen on her way to the UK, Yemen had signed the refugee convention but does not comply with it and she was someone who should never have been prosecuted. The Home Office granted her asylum and a day later the Crown Prosecution Service dropped the prosecution.

The difficulty with someone such as a parent is that there will be parents who have put their children on a boat in the belief that it was all they could do, parents who are mentally ill, parents who are under the control of a smuggler, and parents who, as you say, you would consider do not have a good reason for what they have done, but the issue of prosecutorial discretion cannot be relied on to distinguish those cases. If Parliament wants to ensure protection, it should enshrine it on the face of the legislation.

Sir Desmond Swayne: A court could perfectly properly take any of those defences as a mitigation.

Alison Harvey: In SXH's case, by the time it got anywhere near a court she had been detained for five months.

Sir Desmond Swayne: She had, but I am struggling to see the relevance of her case to that of a parent putting a child on a boat.

Alison Harvey: It is a question of the circumstances in which it would be decided to bring a prosecution. The prosecutor has to make a decision.

Sir Desmond Swayne: The prosecutor can consider the public interest in pursuing the prosecution, which seems to me perfectly satisfactory. We will have to disagree.

The Chair: Ms Bantleman, I think you would like to add to what Ms Harvey has said.

Zoe Bantleman: Yes. Contrary to what you have said, Sir Desmond, the ECHR memorandum to the Bill says that parents who bring their children on the types of journeys that the endangerment offence captures will be excluded from prosecution in almost all circumstances. It is not the intention, from the memorandum, of this Government to prosecute parents and, if that is the case, what we are saying is that for the law to be sufficiently precise and clearly defined, as is required by Articles 5 and 7 of the European Convention on Human Rights, and indeed by the rule of law itself, that should be put on the face of the Bill rather than keeping it in the memorandum.

Sir Desmond Swayne: If it is not the intention to prosecute them, I do not see what the fuss is about, but certainly I would want to see such people prosecuted.

The Chair: That is something for everyone to think about as they go away from today's hearing. I think, Professor Singer, you would like to add a word now before we move on to hear from my colleague Baroness Lawrence.

Professor Sarah Singer: The previous question from Lord Murray asked about the specification of the offences and whether it properly distinguished between smugglers and migrants. I hope that in my previous response I demonstrated that it did not appropriately differentiate between smugglers and migrants because migrants could be caught if there were not any appropriate statutory defences as required by Article 31. As an aside, a way to further specify the offences to ensure that it was smugglers being targeted is that it would need to have a material or financial gain as a required element of the offence. That would ensure that it was smugglers who were being targeted.

Section 18, which the honourable Member refers to, of endangering another, is particularly concerning because this provision looks to be specifically targeting people undertaking dangerous journeys. To be prosecuted for an offence under this clause, you have to have already committed an offence of illegal entry or illegal arrival into the UK, so it is specifically targeting people undertaking dangerous journeys. It is very imprecisely drawn. There is insufficient clarity concerning what act might constitute or cause a situation that would be considered to endanger

another person. It could, for example, relate to directing someone to sit in the centre of a boat. It might catch someone who has been coerced into ordering people into a certain area. There is no mens rea aspect of the criminal offence. In addition to it not having any material gain element to it, there is no requirement that there was an intention to cause danger or harm to a person. This might have arisen unintentionally and there is not even a requirement that a person has acted recklessly.

The provision is very imprecisely drawn and could potentially catch a very broad swathe of people under it. This raises concerns about the UK's obligations under the smuggling protocol, which provides in Article 5 that, "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in Article 6 of this Protocol". When they have been the object of smuggling, they should not be subject to prosecution. It is very well taken there might be very limited instances in which there are cases where the individual has put someone deliberately at risk in a very serious way, but the way that this legislation has been drawn up is very expansive and it is obviously intended to catch a much broader set of actions than that.

The Chair: Perhaps after the session today, reflecting on the point that Sir Desmond has made to you, you might consider what greater precision there could be in that case and perhaps write to us about that. I think the committee would find that very helpful. Thank you. We have also been quite exercised about data and biometrics and the danger of information being passed on to people who do not have the right to see it. I know that Baroness Lawrence is concerned about that and would like to ask you a more detailed question.

Q5 **Baroness Lawrence of Clarendon:** Clause 35 of the Bill permits the transfer of potential evacuees' biometric information to third countries and disapplies some of the usual data protection requirements. Is this compatible with Article 8 of the ECHR?

The Chair: Even though the committee is aware of what Article 8 is, perhaps one of you, for the purposes of those who might be watching our proceedings, could remind people what the controversial Article 18 involves. Who will start on that? Ms Bantleman, would that be good for you?

Zoe Bantleman: Yes, I am happy to. Article 8 enshrines the right to respect for private and family life. Of course, it is the case that collecting sensitive biometric information about a person might engage Article 8. I appreciate that it could be of assistance in instances such as Operation Pitting to try to facilitate the transfer of people or to allow them entry clearance to the UK without delay. My primary concern is with the lack of safeguards in Clause 35, particularly in subsection (7), which permits the transfer of information to third countries and to international organisations and mandates that the transfer is to be taken as being necessary for important reasons of public interest, thereby derogating from Article 49 of the GDPR—data protection.

My concern is that a person should be asked and give their informed and valid consent when we are thinking about transferring that information, particularly when it might be transferred to a country of persecution, and a person's non-derogable absolute rights, including their right to life and their right to be free from torture might be on the line. All I have said is that there should be in Clause 35 additional safeguards to protect people in those circumstances.

It is not just me who would say that such safeguards are important. We can see that in the recent regulation of the European Union on Eurodac. We have a similar safeguard where there is a real risk that as a result of such a transfer the data subject might be subjected to torture, inhumane or degrading treatment or punishment or any other violation of their fundamental rights. A very small safeguard would go some way in ensuring that the rights of people subject to persecution are protected.

Baroness Lawrence of Clarendon: What would you see as the safeguarding for an individual person whose biometric information has been asked for?

Zoe Bantleman: When the information is going to be transferred to an international organisation or a third country, they could be informed of that and give their valid consent before it is transferred. There might need to be some assessment as to whether their absolute fundamental rights might be infringed or interfered with because of that transfer.

Baroness Lawrence of Clarendon: Dr Marija, are you able to add to that, please?

Dr Marija Jovanovic: I am not an expert on data protection. I know a little bit about Article 8. It is a broad provision. It is a qualified right. It allows a lot of room for balancing, but the point made before is quite cogent and it is about the implications for protection of other rights. What is the purpose of that data transfer and what could be the effect of it for the life or protection against torture, inhumane or degrading treatment? Oftentimes the European Court of Human Rights looks at Article 8 in an ancillary fashion to those non-derogable absolute rights. On the specific recommendation, I would not go there at the moment.

Baroness Lawrence of Clarendon: Ms Harvey, do you have anything to add to that?

Alison Harvey: If people are there in the circumstances of, for example, the evacuation from Afghanistan that we saw, they will give their consent. Not all the people who were processed and hoped to get out did get out. It has to be at the point of transfer that the consent is sought, I believe. At the initial point of getting on the plane, people would probably say yes to anything because the risk of torture is live and it cannot make it any worse. I think it is the point of transfer. International organisations may envisage some of the UN bodies; for example, the International Organization for Migration, which is also involved in returns and data

sharing is a concern. One has to look at the protocols that those organisations have around data as well.

The Chair: Thank you. We will move on from that now. We will go to Mr Khan and after that we will hear from Alex Sobel, Member of Parliament.

Q6 **Afzal Khan:** The Government have chosen to retain Section 12 of the Illegal Migration Act, which provides that a person can lawfully be detained "for such period as, in the opinion of the Secretary of State, is reasonably necessary". What is the practical effect of this provision and does it pose any risks of incompatibility with Article 5 of the ECHR, the right to liberty?

Alison Harvey: On the risks of incompatibility with Article 5, this committee reported on the provision when it was passed and made it very clear that it does. It certainly, within the court, makes it more difficult to show that a detention is unlawful, no question, because the Secretary of State could stand there and say, "Well, I thought..." rather than an objective test. It makes it much harder, but the committee did some very comprehensive reports when the Bill was passed, and I think there is room to go back to those. The committee's point was that this undermines structures in the common law, in the Hardial Singh case, that have been developed by the courts in recognition of the questions of evidence and proof. You said it all brilliantly last time and you can reprint it and we agree with you.

The Chair: Four of us who were members of the committee at that time are still alive to tell the tale, but thank you very much for your remarks about the committee's earlier work. I hope we do as well this time. Professor Singer, would you like to come in briefly?

Professor Sarah Singer: I very much agree with what Alison Harvey said. This is an example of the expansive power that is being given to the Home Secretary and the reduction of judicial scrutiny. If the judiciary is not able to scrutinise a detention decision for reasonableness under the common law, or proportionality as required by Article 5 of the European Convention on Human Rights, it brings into question compatibility with our obligations there.

Q7 **Alex Sobel:** The Government have also chosen to retain Section 29 of the IMA, which broadens the circumstances in which a victim of modern slavery would be treated as a threat to public order. It would include cases where the person has been sentenced to imprisonment regardless of the seriousness of their offence or the length of imprisonment. I think we all remember the most tragic case of forced labour in modern times of the cockle-pickers in Morecambe, who were obviously undertaking illegal activity. If a similar case arose now and those people were prosecuted, they could potentially lose protections and entitlements under UK law.

You have referred to the previous committee. When the previous committee was looking at the IMA it concluded, "More must be done to ensure that victims of slavery or human trafficking are not prosecuted due to conduct they were compelled to undertake as part of their

exploitation. Prosecuting trafficking victims is wrong because it wrongly punishes them for doing something they may have been compelled to do as victims". Ms Bantleman, as a practitioner, what do you think are the implications for victims of modern slavery who are subject to the public order disqualification?

Zoe Bantleman: I might defer the answer to my colleague who is an expert on modern slavery.

The Chair: Dr Jovanovic. We will take that first and then we will come to you, Ms Bantleman, if that is all right with Mr Sobel.

Dr Marija Jovanovic: Together with the Modern Slavery Policy and Evidence Centre, we submitted evidence on this precise question, and this is one of the only provisions on modern slavery that have remained. It defines the group of people to be excluded extremely broadly. I am talking about Section 63 of the Nationality and Borders Act, and Section 29 of the Illegal Migration Act further entrenches this in law. It contains an extremely broad reference to the group of people to be disqualified, that the decision-maker might not even be qualified to assess.

Section 22 does two things. One is it expands the group of people to be excluded to anyone sentenced to any term of imprisonment, but it also contains the provision and changes Section 63 to mandate their exclusion. We now have a presumption towards exclusion from protection of anyone falling into this broadly defined group of people. One provision says, "excludes for protection a person who otherwise poses a risk to the national security of the United Kingdom". We are expecting the decision-makers deciding on the status of human trafficking to know what these are. It mandates exclusion and leaves only a very narrow scope for protection. Reversing the burden and putting the burden on that person to prove they are worthy of protection, in my view, makes it completely impossible to access. The people you referred to, unfortunately, would never have made it.

In fact, there is the removal of the duty to identify victims of modern slavery, which is a very express obligation in the European Convention on Human Rights and the trafficking convention, which require that every person is identified and protected and do not require that they do anything to support that process. It is a duty of authorities to act on their own initiative.

Alex Sobel: Are you saying that it is incompatible with the UK's obligations?

Dr Marija Jovanovic: Completely, yes, absolutely.

The Chair: Do any of the other colleagues want to add to that?

Zoe Bantleman: Yes, thank you. At its highest, Section 63 of the Nationality and Borders Act and Section 29—which has not yet commenced so it is difficult to comment on it in practice—is a misinterpretation of Article 13 of the European Convention on Action

Against Trafficking. Individuals may be disqualified from the recovery and reflection period under Article 13 but nothing else. They cannot be denied access to protection. They cannot be removed. They cannot be denied access to identification and support, as my colleague has already outlined.

In practice, what will happen and is already happening with Section 63 is that it will disproportionately impact survivors who were forced to commit crimes as part of their exploitation, who have received convictions. Rather than punishing the perpetrators of trafficking and slavery, the human impact is to place individuals at risk of re-trafficking to trap them in exploitation and deny them vital access to support and assistance and inhibit their co-operation with the authorities.

Q8 The Chair: Thank you very much. Before we go to Lord Dholakia, I would like to push you a bit further, Dr Jovanovic, on the victims of modern slavery but also on Section 59 of the Illegal Migration Act, which would also, of course, be retained and which would make asylum and human rights claims from people from certain states automatically inadmissible because that is where they are from. Is that compatible with our non-refoulement obligations under the 1951 refugee convention and the ECHR, which you referred to? If it were brought into force, how might victims of modern slavery be affected by that provision?

Dr Marija Jovanovic: All these international laws contain protective provisions. They are intended to protect individuals in those categories of migrants, including those who arrive by irregular means and those involved with criminal offences. They are afforded special protection. If they were to be excluded from such protections, it is a duty of states, and that applies to all the different obligations, to conduct individualised assessment and to justify in each individual case. To have a catch-all provision to include broad, loosely defined groups of victims would never pass that matrix.

The legislation gives extreme discretionary power to the Secretary of State, takes away the courts' supervision and does not prescribe key criteria for making that decision. We just assume that this category of people is a threat to public order and if they are not they have to prove they are not and then they can be protected—and they can never do that. In short, I do not think it is compatible.

The Chair: I think it would be helpful if you were able to provide a note after the hearing spelling that out, and on the point about the 1951 convention as well and the non-refoulement provisions in that. Thank you very much. Let us turn to Lord Dholakia and then we will hear from Lord Sewell.

Q9 Lord Dholakia: I declare my interest in that Alison Harvey was the adviser on home affairs to the Liberal Democrats in my early days in this Parliament.

I want to come back to Section 62 of the IMA, particularly that decision-makers shall take as damaging to asylum seekers' credibility a failure to

allow access to their phone. Is this a necessary and proportionate interference with their Article 8 rights?

The Chair: Who would like to kick off on that? Perhaps, Ms Harvey, as you have been mentioned in dispatches, let us hear from you.

Alison Harvey: I cannot get too excited about it and the reason I cannot get too excited about it is that the courts have dealt with Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act in a case called JT (Cameroon). It was in the Court of Appeal in 2008 and the court found a way to construe that section in a way that does not offend against constitutional principles. It said it will do that by taking into account what Section 8 says, all these reasons that could affect your credibility, but saying, "Yes, the matter is entitled to be given some weight but the weight is entirely for the decision-maker". In an appropriate case, the weight could be zero. Successive Governments are well aware of that case, it was in 2008, but they keep adding to this provision. I think it is theatre. I have no time for the specific provisions, but I think the courts are able to keep them out of the way of sensible decision-making in the individual case.

The Chair: Professor Singer, do you get excited about this or are you happy with that reply?

Professor Sarah Singer: I also do not get too excited about this. In previous reports this committee raised concerns that an asylum seeker's credibility should not be damaged by conduct that could be explained by reasons other than dishonesty. I agree with that assessment but I do not have anything further to add.

The Chair: If Lord Dholakia is happy, we will move on to Lord Sewell, who will ask some questions about Clause 41, I think.

Q10 **Lord Sewell of Sanderstead:** Clause 41, on deportation, is intended to clarify that the Home Office may detain someone subject to conducive deportation from the point at which the Home Office serves notification that deportation is being considered. Do you agree with the Home Office's characterisation that this is really just a clarification? Is it compatible with Article 5? As you know, that is to do with the liberty and security of a person.

Alison Harvey: I would say the Home Office does not think it is a clarification and that is wholly clear from the terms of its impact assessment, where it acknowledges that it is changing the law. There is no question that it is changing the law. It is not a clarification in any way. It is not in any way compatible with Article 5. I referred to the *Sunday Times* case in my opening remarks, that Article 5 opens, "No one should be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law". There was no law and people were deprived of their liberty. The Government now want to rewrite that piece of history. Of course, no one can be retrospectively detained, so it is not for that purpose. It is to stop people claiming damages for false imprisonment. That is the only reason I can identify for why they are

doing it, but you cannot play fast and loose with Article 5 for those purposes.

My practice spans immigration, asylum and nationality law but it also spans work in the Court of Protection, which is concerned with people who lack mental capacity who are deprived of their liberty, some in care homes, some young people in specialist accommodation. We spend a lot of our time worrying about whether the restrictions on these people's freedom are prescribed by law or not in that jurisdiction—old people with Alzheimer's in a care home. It is extremely worrying when they are not and I am extremely worried to see an attempt to bodge retrospectivity in Article 5, which specifically demands that the deprivation be prescribed by law.

Zoe Bantleman: I agree with absolutely everything that Ms Harvey has said. I think it also sets a dangerous rule of law precedent if unlawful deprivation is retrospectively made lawful. As Ms Harvey has set out, Article 5 of the European Convention on Human Rights requires it to be prescribed by law and there is significant case law from the European Court of Human Rights on the quality of law that is required and the legal certainty that is required. If it was not law at the time, there can be no certainty that it was prescribed by law that a person could be detained in those circumstances.

Lord Sewell of Sanderstead: Are there no circumstances, do you think, that they could be?

Zoe Bantleman: It simply was not available and I am very happy to go into the nerdy explanation of why someone could not be detained post 20 October 2014, when rights of appeal changed, which meant that someone after a stage 1 deportation decision, who was not someone with leave under the EU settlement scheme, simply did not have an appealable decision, which meant it was not there in paragraph 2(2) of Schedule 3 to the Immigration Act 1971 for that person to be detained.

Alison Harvey: That is what the Government have set out in their own impact assessment. Essentially, they got it wrong. It comes back to this point at the beginning about the rickety edifice that is immigration law, that even Ministers, with an army of civil servants to support them, make one change and do not realise what it has done over left field. This was an example. I am sure it was a mistake, but I am afraid it is a mistake that under the terms of Article 5 the Government have to own.

Professor Sarah Singer: Perhaps I might add, because you were asking about whether it would be possible to detain. As Ms Harvey very rightly set out, under Article 5, detention can be made for only a specific number of reasons. One of those reasons under sub-paragraph (f) is when a person is having action taken against them with a view to deportation. Having an interpretation when a Home Secretary is deciding whether to take action does not fall under a permissible use of that power.

The issue with Section 41 is that it is not a permissible reason to detain, as per Article 5, and that it has retrospective effect. This is again an expansion of Home Secretary power and a reduction of judicial scrutiny, which raises the same issues I mentioned in relation to Section 12 of the Illegal Migration Act 2023.

The Chair: We will turn now to Dr Peter Swallow MP and after that we will be hearing from Ms Juliet Campbell MP.

Q11 **Peter Swallow:** Article 33(2) of the refugee convention permits asylum seekers to be deported where they constitute a danger to the community in the UK. The Government have introduced amendments to the Bill to make it easier to deport anyone who has committed serious sexual offences. In your view, do these amendments comply with Article 33(2)?

Professor Sarah Singer: To be honest, I think this is a newspaper headline-grabbing provision. There would be a very small number of offences that were included under the Sexual Offences Act 2003 that would not already meet the very low sentencing bar that was introduced to the interpretation of Article 33(2) under the Nationality and Borders Act. The Nationality and Borders Act introduced a new interpretation of Article 33(2), which provided that a crime would be considered to be particularly serious if someone was sentenced to 12 months' imprisonment. It would be highly unlikely to have a case under the Sexual Offences Act that did not meet that already very low bar.

In any case, it is contrary to appropriate practice to specify a list of offences without having reference to a length of sentence or having any review of whether or not that individual crime was sufficiently serious. This is something that the Court of Appeal looked at in the case of EN (Serbia), where it struck down Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004. In that case, the Court of Appeal considered that specification of crimes within that provision was unlawful: first, because not all the crimes listed could be considered to be particularly serious but, secondly, and more relevantly for this case, simply having a list of offences and then having an irrebuttable presumption that they were particularly serious was not compatible with the rule of law, and therefore it was considered to be ultra vires. They wanted it to be rebuttable presumption so that someone could challenge whether their crime was considered to be appropriately serious for the purpose of that provision. I can explain further if it would be helpful.

Peter Swallow: What is puzzling me is the suggestion that the sexual offences that would fall under this Act could ever be considered anything other than serious. I think we all agree that we have a duty to have an asylum system that protects the most vulnerable from prosecution. It is right that we live up to our duties as a country in that regard.

My underlying point here is surely what the Government are trying to do here is to build confidence in that system, to ensure that the public can trust that system, and therefore we can maintain or, indeed, enhance our

duties to protect asylum seekers from prosecution. Surely any suggestion that sexual offences would not be considered serious and therefore institute the Government's ability to act according to Article 33(2) would be—I am struggling to see how—

Professor Sarah Singer: I agree with you completely. My point is that these serious offences would already have been covered under the previous legislation. They would already be considered to be particularly serious if they attracted a sentence of 12 months.

My argument is that, in principle, the Government should avoid listing a lot of offences and then inserting an irrebuttable presumption that they are particularly serious. My point is that this is just a headline-grabbing piece because these crimes, if they were particularly serious, would have been caught already under the existing legislation.

The Chair: Would any of the other witnesses like to add anything? It is a very important question.

Alison Harvey: I do not practise in crime. I asked my colleagues who do practise in crime whether it was the case that they would all be caught. They said not necessarily all, but I tend to agree with Professor Singer that it is probably headline grabbing because what there are two limbs to the test. Is the crime particularly serious? If it is, does the person constitute a danger to the community? The sort of case where my colleagues gave an example of where they might not get 12 months in prison is, for example, someone aged 13 or 14 who is prosecuted for having sex with someone else who is 13 or 14.

Now, that person would not necessarily be deprived of their liberty. People who do not have the mental capacity, who are found with indecent images as a first offence, that was another example. This is simply day-to-day criminal practitioners giving examples of cases in their case load. There are community disposals; there are cautions. The length of time you spend on a notification depends on the sentence that you get. I think very often the types of cases where the person was not sentenced to 12 months in prison would be cases where you would then be arguing the person was not a danger to the community.

I tend to agree with Professor Singer: it will not actually change what happens in terms of who is excluded and who is not. That is my impression.

Q12 **Juliet Campbell:** The Government have introduced amendments to the Bill to introduce a targeted 24-week statutory timeline for the handling and disposal of certain appeals. Is this imposition of the statutory timeline reasonable and does it adequately protect the right to fair hearing?

Alison Harvey: The tribunal procedure rules are subject to the overriding objective, which is to dispose of cases fairly and justly. One ingredient of the overriding objective, and I will have to check the exact wording because I am struggling among my different pieces of paper, is

to do with speed. What that element of the overriding objective says is, "Avoiding delay so far as is compatible with the proper consideration of the issues". The tribunal already has to do that. These time limits cannot force the tribunal to decide a case in a way that is incompatible with its overriding objective, which is to decide the case fairly and justly.

No tribunal wants a case hanging around for the time that they are hanging around. I think there are a variety of reasons why they do. There is the resourcing of the court system itself. How many courts are live when you go into the immigration tribunals? How many judges are sitting? What is the throughput? There is the question of legal aid. It is virtually impossible to get legal aid for an asylum appeal at the First-tier Tribunal, because increasingly practitioners are not doing that work. Firms of solicitors have opted out of it because it is not financially viable.

If you have someone whom a judge considers is in desperate need of representation—they may be mentally ill, they may not be able to express themselves—the judge is likely to adjourn to try to get representation. It does not always work but that is a reason for delay. The Legal Aid Agency will not give you funding normally for expert evidence at first instance. It says, "Wait and see if you are refused and, if you are refused, come back to us and you may need medical evidence or country evidence". There is then a delay to wait for that expert. Getting legal aid in exceptional cases in immigration can cause a delay.

Until those things are sorted out, the tribunal, complying with its overriding objective, will not necessarily meet these time limits. I would also point out that where there is a fast lane, there is always a slow lane. In this case, the slow lane will be immigration cases that are not deportation cases. They will be cases where the Government will watch someone's Article 8 family life case get stronger as they sit in the queue for 10 years—which does not seem, according to the other statements, to be what the Government want to do at all.

I do not think this is helpful, interfering with a tribunal that is trying to manage cases through the system as fast as it can. Resource it properly and it will be able to do so.

The Chair: Thank you. Are the rest of the panel happy to leave it there and we will move on, if we may, to our last question, from Lord Murray? I also invite the panel, when they have responded to Lord Murray's question, if they have further points that they would like to add to anything that they feel should have been said earlier on, to feel free to do so and to write to us afterwards. We are always open to correspondence.

Lord Murray of Blidworth: May I ask one very quick follow-up on the timetable provisions? The way the timetable provisions work is that they require that the tribunal must accept where the tribunal considers that it is not reasonably practicable to do so—determine the appeal, and so on, within 24 days. Perhaps I will just address this to Ms Harvey. First, do you think that the tribunal system is ready for the implementation of these measures; that is, the current backlog would permit its use?

Secondly, do you think that the backlog itself would mean that it was not reasonably practicable and that ultimately it would have no effect?

Alison Harvey: Absolutely. I think the tribunal is certainly trying to meet comparable time limits now. If it could do it, it would have done it, and it will be resourcing. The backlog is obviously something that demands a higher level of resource to get through, but it will be resourcing that determines how fast the tribunal system can go.

That will not solve the problems, such as waiting for expert reports. The tribunal in the end is statutorily bound by the overriding objective. It has to dispose of cases fairly and justly, so it can go only as fast as is compatible with that.

Q13 **Lord Murray of Blidworth:** The final question I will ask very quickly. The Government have introduced a further new clause expanding the conditions for immigration bail to include tagging; that is, electronic monitoring. In the view of the panel, are those powers necessary and are they proportionate? Are there adequate safeguards to protect against any potential breaches of the right to liberty? A tag can amount to a breach of Article 5, as we know.

Professor Sarah Singer: Apparently, the Home Secretary has power to put a number of conditions on those who have limited leave to enter or remain in the UK. That includes restrictions on work and study, with no recourse to public funds, and so on. What this amendment seeks to do is to expand the number of conditions that can be imposed to include things such as electronic monitoring requirements, being in a place at a certain time, prohibiting being in a particular area and, quite concerningly, any other condition that the Secretary of State sees fit.

The other thing that this amendment seeks to do is to enable the Home Secretary to apply these conditions not only to those who have a limited leave to remain in the UK. It seems to be targeting a broader swathe of people. The Home Secretary has said that the powers will be used only in cases involving conduct such as war crimes, crimes against humanity, extremism or serious crime, and where the person represents a threat to national security or public safety. This is a pretty high bar. I think that this is intended to reassure us that these quite expansive powers will not be applied wholesale to large numbers of people.

There is nothing in the Bill that explicitly limits the powers to those categories of persons, so these conditions could be placed on anyone who is not liable to detention. The condition that I mentioned—any other condition the Secretary of State sees fit—is also incredibly broad. Potentially, this amendment is granting the Home Secretary very broad powers to impose a wide range of conditions on a broad set of people.

These are conditions that potentially engage Article 5 of the European convention—for example, electronic monitoring, curfews and exclusion zones—and might breach someone's Article 8 rights if they are imposed

on people for extensive periods of time and they constitute a significant restriction on their private and family life.

It is difficult to conclusively determine the compatibility of these provisions with the UK's obligations under the European convention, absent any individual examples of cases in which it has been applied, but potentially it grants the Home Secretary enormous power in this respect. There is an absence of judicial scrutiny of these decisions to impose these conditions on individuals, which means that there is a limited range of safeguards. Indeed, the leave that a lot of people are placed on is a six-month leave, which is deliberately designed to mean that the individual does not have a right of appeal. They can only go down a judicial review route. The safeguards are very limited, so it raises a number of concerns in that respect.

The Chair: What about you, Ms Bantleman, are the safeguards adequate?

Zoe Bantleman: There are no safeguards in Clause 43 of the Bill. It is particularly concerning that we have a very similar set of measures in the Terrorism Prevention and Investigation Measures Act. They can be placed only on a specified segment of individuals who have been involved in terrorism-related activity where it is necessary to protect the public and prevent or restrict the individual's involvement in terrorism-related activity. There is no similar condition in Clause 43, despite the fact that Dame Angela Eagle and the Home Secretary have said that Clause 43 is for a much slimmer group of individuals. There is simply no specified cohort of individuals with restricted leave who might be a threat to national security, for example, that this clause tries to target.

In relation to those with limited leave to remain, it is simply everyone who does not have indefinite leave to remain or permanent residence in the UK, who could have one of these TPIM-style conditions placed on their leave. However, there is far more discretion than there is under the TPIM Act and there are none of the safeguards. The TPIM Act has a time limit, judicial scrutiny, automatic review of the ongoing necessity, and a right of appeal against refusal to revoke or vary any of these measures. None of this is contained in Clause 43 of the Bill. Instead, it is added on to conditions to leave, to enter and remain, things such as the ability to work, the ability to rent, no recourse to public funds, which are things that are related to the general administration of the immigration system, which is why they do not contain any limits on their duration or any other safeguards, because they are to do with general administration of the immigration system.

Instead, what we have now are, in essence, TPIM conditions that will be put on any migrant here who does not have indefinite leave to remain, potentially. Again, just as with the other new offences that we were talking about in relation to Clauses 13 and 18 of the Bill, if the intention is to target a specified cohort of individuals, simply put that on the face of the Bill rather than making ministerial statements about it.

I do have other things to say in relation to legal aid more generally, just on the prior points that Ms Harvey made in relation to the tribunals and whether or not the 24 weeks is likely to be something that is reasonably practicable for the tribunal to do. We conducted a survey—Baker McKenzie conducted it on behalf of ILPA—of the 490 offices that provide legal aid services in the UK to see whether or not they would have capacity to take on new immigration and asylum claims and appeals. Only 38 of these 490 offices had the capacity to take on new appeals. So from our end it simply is not there.

While the Lord Chancellor is thinking about whether to increase immigration and asylum legal aid fees, which have not increased in nearly 30 years but were cut in 2011 by 10%, it is also important to note that any changes to legal aid will not result in increased capacity overnight. These are providers that simply do not have the capacity now and it will take significant amounts for them to be able to reinvest and recruit in order to build that capacity. So 57% of people in the UK do not have assistance with their asylum applications and appeals, based on statistics produced by Jo Wilding, and that means that 57% of people will continue to likely not have representation, even if there were legal aid increases, for some time until they take effect.

The 24-week time limit is unlikely to be practicable until we see that increased capacity among legal aid professionals.

Dr Marija Jovanovic: On the safeguards, I do not really have much to add. I just wanted to bring the conversation back to the point of where this leaves genuine victims of modern slavery or asylum seekers, because that was the point raised before. Do they have confidence to engage with the system? The answer is, if we look at statistics, a clear and unequivocal no.

Victims are losing trust in the system. There is some evidence that since 2016 the proportion of those who refuse to engage with support services has soared by 630%. Without victims engaging there is no chance of prosecution. Those are at a record low, only 58 in a whole year compared with 17,000 potential victims in the same period.

If the intention is really to go after criminal gangs, those who traffic and smuggle people, if we look at the trafficking framework, the same approach does not seem to work. There is no evidence that this criminalisation-based approach would work either when it comes to smuggling of migrants. I just wanted to say that the victims are clearly let down here.

The Chair: Thank you very much. I think we have one more comment, please, from Ms Harvey. Perhaps also returning to Lord Murray's question, the proportionality of using things such as electronic tagging and so on, can you also refer to that when you deal with the safeguards issue?

Alison Harvey: Certainly. The safeguards place conditions on limited leave to remain that are very similar to those that exist for bail. The Government say that they want them for restricted leave, which is the leave that they give to people they do not want to give any form of leave to but who they cannot remove; for example, people who would face torture on return. The Government said, "You are excluded from refugee convention protection because of your conduct, you are excluded from humanitarian protection, but we are stuck with you; we cannot get rid of you".

The courts have said that it is perfectly legitimate in those cases to place roadblocks in the way of people building up rights under Article 8. It is not possible or legitimate to prevent them building up rights under Article 8, but it is possible and legitimate to make it difficult. That is a case called *Mayaya* from 2011 in the High Court. Conditions such as electronic tagging have been accepted on behalf of the Government to constitute an interference with rights under Article 8. The question is whether it is justified and that is a very recent case: *ADL* of 2024 in the High Court.

The problem with this clause is it does not target specific people. It could be used on any form of limited leave, which is what workers have, spouses have, students have, visitors have—everybody who is short of settlement and indefinite leave to remain. I come back to my opening remarks about *Pepper v Hart*. It is no good the Government saying this is for restricted leave. That is not what the legislation says. It could be used more broadly.

Again, I come back to my opening remarks. I think the committee in the questions today, and more generally in its reports, does a fantastic job of getting to the heart of what is actually going on, but Parliament as a whole, and Report stage in the Commons yesterday provides an example of it, has totally lost sight of what is going on in immigration. It simply does not understand. You can read the amendments, you can read the draft Bill. It amends clause something that amends clause something else and then there is a defence that you have never even heard of in a different Bill. Never mind Article 31, there are four separate defences that can be used.

We have simply lost control of the whole idea that our immigration system is prescribed by law or that our Parliament can really be said to know what it is passing. We have to look at that, I think, as a fundamental human rights and rule of law problem. It is beyond this committee and the Constitution Committee, but I would relish a joint report between the two committees that said, "You cannot make law like this".

The Chair: I think that many of us would share your view that pre-legislative scrutiny is something that we do not do enough of at Westminster. If there was more collaboration, as there is in this committee, between both Houses of Parliament, that also might result in far better and effective legislation as well.

However, that is beyond our remit for today. We are extremely grateful to you for sharing your expertise and your practical knowledge of what happens on the ground when legislation is passed. Sometimes, even with good will, even when it is well intended, it can have the opposite effect and it is the law of unintended consequences. That is our job, to produce some scrutiny of this legislation and to provide it to the Government, and you have set us quite a task today in the responses that you have given us. Thank you again for your attendance. With those words, I conclude this session. Order, order.

Examination of witness

Richard Alcock CBE.

Q14 The Chair: I resume the hearing that we are holding today, looking at the Borders and Immigration Bill. I am particularly pleased to introduce our witness, Mr Richard Alcock CBE, who is the director of strategy and policy at Border Security Command. At the very beginning of our hearing today we gave more of your biographical details. You are very welcome and we look forward to hearing your evidence to the committee.

If I may, let me ask a curtain-raising question at the outset. What will the Bill actually mean for Border Security Command in practice? Are there any particular provisions that you think will make your work either easier or more difficult?

Richard Alcock: Thank you, Chair. Thank you, committee, for the opportunity of talking to you today. The Bill will genuinely be transformative for our organisation in the Border Security Command. We stood up on 5 July last year and since that time we have established a Border Security Commander, we have established the central Border Security Command organisation, we have mobilised the UK border security system. What is that? That is basically government departments and agencies to work to the common good against agreed outcomes and agreed priorities, and we are working very comprehensively in the UK and internationally, but we are doing so under existing powers.

What the Bill does is it puts Martin Hewitt CBE on a statutory footing so that different members of the border security system have to pay due regard to the priorities that are collectively agreed and eventually set by our commander. It enables us to share data more freely between HMRC and the DVLA. Some of the challenge we have is the timelines are very tight for tackling OIC—organised immigration crime—and serious criminals. We need better and faster data to enable us to target criminality to get upstream, so data sharing is important.

The committee will be aware of the various additional powers that exist about supply of relevant articles and information and collecting information on immigration crimes and the endangerment offence. We have new powers, not only to assist in our quest to tackle the organised immigration criminals—and I must stress that the Bill is about enabling

the UK operational community, with international partners, to tackle criminality and serious criminals. It enables us to do that but also, finally, it enables us to strengthen the broader immigration and asylum system to protect the public from harm.

In short, we have started well, in my view, but there is a whole bunch of stuff that we cannot do without the powers that are set out. I hope that I have given a reasonable summary there.

- Q15 The Chair:** It is a very good introduction. Before we go to Dr Swallow, who will ask you a further question, I would like to ask about any practical things that you will now have to do to put the Bill into effect when it becomes an Act of Parliament. Do you have enough resources to make it work?

Richard Alcock: Yes, the Government have committed £150 million of additional resources. We are growing our people. We are mobilising our colleagues across the UK system to best prepare for implementation, where, clearly, we will be working with our border security system partners in all government departments, agencies and other partners to develop the appropriate regulations and guidance on some of the more technical powers that we are bringing forward.

We will have to build some technical capabilities—for example, extraction of data from phones—where necessary and appropriate. We will have to ensure appropriate safeguards within that and that everyone is appropriately trained, suitably skilled, qualified, experienced and trained throughout the operational system. We have already started thinking about that because it is important when we get these powers that we implement them as quickly as possible so that we can deliver the operational benefits that we know the powers will deliver.

- Q16 Peter Swallow:** I want to focus on the new offences included in the Bill, including the so-called precursor offences and an offence of endangerment at sea. Will these new offences introduced in the border security Bill make it easier for you to do your job and tackle the gangs? Are there any practical issues that you see arising from these new powers?

Richard Alcock: Well, it certainly will help. In the development of the Bill, we consulted extensively across the border security system. We consulted a lot of our operational partners. Some of them spoke in February during the various pre-committees and confirmed that the powers that we are bringing forward would enable them to deliver a greatly improved operational effect on serious organised criminals.

I am so pleased you have raised the endangerment because the endangerment is preventing harm against the vulnerable and those whose lives are genuinely put at risk. The work that we have been doing, yes, it is about tackling OIC, yes, it is about dealing with serious organised criminals, but some of the things that these criminals do are genuinely appalling—putting women and children in the centre of boats with fuel and seawater mix, coming out with horrific burns, or offering

children over the side of boats by way of threatening the various cohorts that are on the boats. As part of the endangerment, it is important that we bring to justice those people who are also doing harm as well. It will enable us to do that.

- Q17 **Lord Dholakia:** One of the issues that is often very much focused on in the debates in the Lords is issues relating to children. What safeguards there are for ensuring that children whose age may be in dispute or may have been wrongly assessed are treated appropriately?

Richard Alcock: As I say, at the heart of the Bill there are a number of safeguards to ensure that the direct operational action is focused on the serious criminals and delivering effect on those. We are about protecting the vulnerable and there are a number of safeguards within the Bill that enable us to focus specifically on that. You will be aware that through the Nationality and Borders Act 2022 we have put in place arrangements for a national age assessment board to provide greater focus and the Bill does not amend NABA in any way.

We look very closely at the evidence base on the criminality, particularly those who are engaged in endangerment, and there will be judgment calls applied through the Crown Prosecution Service and the police to ensure that only the most appropriate action is taken in the public interest. We will be doing that very rigorously.

- Q18 **Afzal Khan:** The Bill retains Section 29 of the Illegal Migration Act, which broadens the list of circumstances in which a victim of modern slavery would be treated as a threat to public order. That makes it all the more important to be careful about prosecuting victims of modern slavery or human trafficking. What are you doing to make sure that victims are treated appropriately?

Richard Alcock: I think that what you are alluding to there is the safeguards that were put in place. Throughout the Bill, we have put in extensive safeguards relating to the individual offences, the collection of the devices and the handling of information, so that throughout the Bill we have safeguards to make sure that we are ensuring full compliance with human rights legislation.

- Q19 **Baroness Lawrence of Clarendon:** You have talked about the endangerment of victims at sea. With all the number of new offences being introduced, what are the so-called precursor offences and how do these offences relate to existing immigration offences? Is there an overlap with existing criminal offences which might have an operational implication?

Richard Alcock: To my best knowledge, and I do not come from an immigration lawyer background, the endangerment offence is certainly new and it gives us the powers to do things that we have not been able to do before. We certainly have not had an endangerment offence before. We have not been able to collect relevant articles and prosecute people for holding information or assistance in trafficking, but I think it is the collection of all the offences coupled with the endangerment offence that

gives us greatest leverage. If you are trying to prove the point of endangerment, if you are trying to prove criminality, what you need is good access to intelligence and data to best produce the evidential case to prove for otherwise wrongdoing.

Q20 Lord Murray of Blidworth: Mr Alcock, we know that the Border Security Commander, Mr Hewitt, has emphasised that deterrence is crucial for tackling organised immigration crime and reducing small boat crossings. Do you agree with him in that?

Richard Alcock: Yes, I work for Martin, so clearly deterrence is a full-spectrum effect. It is part of the strategy that we are taking forward through the Border Security Command. It is not just about pursuing; we are looking at what we can do to strengthen the broader visas and asylum system to have that deterrence effect. We are looking at returns agreements. We are looking at a whole array of different options within the suite of tools in our toolbox. However, the primary focus of the Bill is around putting in place the required powers to enable the capabilities to be built to bring people to justice, because there is no better deterrent than making sure that criminals cannot profit from their crimes, that we can bring people to justice promptly and that there is that disincentive of engaging in the criminal activity in the first place.

Lord Murray of Blidworth: In your view, do the measures in the Bill provide a greater deterrent effect?

Richard Alcock: By virtue of the fact that we will be better equipped to tackle criminality and rapidly deliver operational effect, domestically and internationally, with international partners all over the world through international operations, to deter people from proceeding with their criminality.

Lord Murray of Blidworth: I think that is a yes.

Richard Alcock: Yes.

Lord Murray of Blidworth: In particular, of the new offences proposed in the Bill, which of them do you think will provide the greatest measure of deterrence?

Richard Alcock: It is in collection, I would say, Lord Murray. There is a collection of the operational capabilities that we need to collect data, to better understand the system, to understand that in terms of the supplying of relevant articles in relation to the information. It is hard to judge which one will have the greatest effect because what we produced is a Bill that gives a suite of powers, which will typically be applied at the same time to deliver an operational effect, working with partners across the United Kingdom.

Lord Murray of Blidworth: We know that there has been the White Paper announcing further immigration measures, some of which I think will be added to the Bill in the House of Lords and some will be in a fresh piece of legislation. Are all those going to be deterrence measures, too?

Richard Alcock: I cannot comment on how we will proceed with the immigration White Paper. I am here only to comment on the current Bill today.

The Chair: That is fair enough. In case any of my colleagues have supplementary questions, all they need to do is catch my eye, which Mr Khan already has done, but I will bring in Mr Sobel first to ask about the French, among other things.

Q21 **Alex Sobel:** We hear from both the Prime Minister and Home Secretary that their overriding aim is to remove the scourge of people traffickers from the system and see the end of small boat crossings of the channel. I think that we all agree with that very ambitious aim. We know that many of those undertaking people trafficking might be in the country of origin, might be in neighbouring countries operating in refugee camps, might be operating across Europe, including in France, but they rarely operate in the UK because we are the point of destination. How will you tackle those extrajudicial issues? How will you co-ordinate with the French authorities for that last leg of the journey? Do you expect that the Bill will have any impact on any of these issues? Will it give us more powers to do something about those operating abroad?

Richard Alcock: It is so important that as a key facet of our delivery strategy we are working with all international partners. At the end of March, the UK hosted the Organised Immigration Crime Summit. Over 40 nations came to that event. It was structured over two days. The first day was around driving the policy and strategy alignment to mobilise international action to develop further partnerships. The second was about focusing on operational action, so work with Interpol, Europol and other partners to share data.

I set that out is because it is important that we go to source. We have been working hard with some of the source destination countries; for example, partnerships with Iraq. If we look at some of the intermediate transit countries, we have new arrangements working on illicit finance task forces with Italy. Of course, we are working closely with the French on information sharing and data sharing to tackle what is a common problem. What we are driving is an international programme through a series of task forces that are being led. The summit helped with mobilising those task forces, but it is all about enabling joint operations, again, to create the deterrence by bringing people to justice through joint operations. There have been a number of successful joint operations led by the excellent National Crime Agency and others recently that have stemmed the flow of small boats.

Alex Sobel: Do UK forces of any colour, whether yours or others, National Crime Agency and so on, operate on the ground in some of these places where there are weaker systems? I am not saying France or Italy, but you mentioned Iraq. In any of those jurisdictions are we operating on the ground to support them?

Richard Alcock: What we are doing is we are working very much at the political level, focusing mainly on information sharing and data sharing in full partnership to do joint programmes of work. I cannot comment on specific operational details.

Q22 **Afzal Khan:** I am not sure how fair this question is but let me put it to you. The whole immigration history, when we look at it, we can see two things. One is that for a long time we have not been able to nail it. The second is that it seems that it has been a piecemeal development of the whole immigration system, so even the judges sometimes struggle with what the law is. Do you think that this is a substantial move forward that will bring about better clarity and will be more effective, or is this another patchwork?

Richard Alcock: I cannot comment on the broader scope of the UK's immigration system. What I can say, given my professional background and experience, is that the Bill will give us the capabilities that we need to drive forward an investigatory system that will target organised immigration crime, give operational partners the capability that we need, that is styled on the very efficient CT—counterterrorism—system that we have, and will enable us to bring people to justice more swiftly, domestically and internationally. That is the focus of the Bill: tackling criminality and protecting the vulnerable.

The Chair: Thank you very much, Mr Alcock. You have heard the earlier session that we held and you have now given a different perspective on the legislation. That is part of our job, to hear different points of view and all sides of the argument, and you have done that on behalf of your organisation extremely well. Thank you for joining us today. If there are other points that you feel we should have covered or you would like to say more to us about, please do not hesitate to write to us. We are very pleased to receive written evidence as well. When we come to publish our views about the legislation after the scrutiny is complete, we will do our very best to reflect the points that you have made to us today.

Richard Alcock: I am very happy to do so.

The Chair: Thank you. With those words, I end this second part of our session. Order, order.