



HOUSES OF PARLIAMENT

Joint Committee on Draft Modern Slavery Bill

Oral evidence: [Draft Modern Slavery Bill](#), HC [1019], Tuesday
21 January 2014

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Members present: Frank Field (Chair); Baroness Butler-Sloss, The Lord Bishop of Derby, Baroness Doocey, Baroness Hanham, Baroness Kennedy of Cradley, Lord McColl of Dulwich, Lord Warner, Fiona Bruce, Michael Connarty, Fiona Mactaggart, Sir John Randall, Mrs Caroline Spelman, and Sir Andrew Stunell

Questions [1-36]

Witness[es]: **On behalf of the Anti-Trafficking Monitoring Group**

Aidan McQuade, Director, Anti-Slavery International, **Chloe Setter**, Head of Advocacy, Policy and Campaigns (Child Trafficking), ECPAT UK, **Dorcas Erskine**, National Co-ordinator, POPPY Project, **Kate Roberts**, Community Advocate, Kalayaan, and **David Rhys Jones**, Helen Bamber Foundation gave evidence.

Q1 Chairman: Welcome. Can I open this meeting formally? Can we begin by the witnesses please identifying themselves for the record?

Aidan McQuade: I am Dr Aidan McQuade. I am Director of Anti-Slavery International.

Chloe Setter: My name is Chloe Setter. I am Head of Advocacy, Policy and Campaigns at ECPAT UK, the children's charity.

Kate Roberts: Kate Roberts. I am a Community Advocate at Kalayaan, a charity which works with migrant domestic workers in the UK.

David Rhys Jones: I am David Rhys Jones. I am an adviser on law, policy and practice at the Helen Bamber Foundation.

Chairman: We hope that at some stage Dorcas will arrive. Fiona, will you begin?

Q2 Fiona Bruce: Yes, thank you, Chairman. Good morning, panel, and thank you for coming today. I am Vice Chair of the all-party group on human trafficking, and declare that as an interest.

The draft Bill commences with references to slavery and to human trafficking. From your wide practical experience, what do you consider is meant by those terms? Do you think that the references within the Bill are adequate? Perhaps I could start with Dr McQuade and then move along the panel.

Chairman: Aidan, please begin. We have quite a number of questions. All the panel does not have to answer every question; it's up to you.

Aidan McQuade: One of the things we would have hoped from the Bill was to see a simplified arrangement of law rather than a simple replication of the existing laws, and bringing them together—something that could have had a simpler consolidated offence but also, in addition to that, references and issues relating to child exploitation so that those are clear.

The source for all the questions around what the definitions are for trafficking and slavery has to rely on the international conventions of 1926 and 1930 in particular on slavery and forced labour. Those are good starting points, but obviously those have worked better and more practically in things such as preliminary protocols and such-like. While the law in Britain, where it is scattered across various statute books, is quite good when taken together, there would be an opportunity here for bringing together a single consolidated offence.

Chloe Setter: I know concerns have been raised around the interchangeability of using the terms “modern-day slavery” and “trafficking.” That is something that needs to be explored a little further to make sure that, when we say one, we know what we mean, because they are not exactly the same in the legal framework. As Aidan said, in the Bill one of the issues that the ATMG has with the offences as they are drafted is that they have currently been cut from the other three pieces of legislation that exist and put in one place. We were under the impression that they were going to be consolidated into a simpler offence to make it easier to prosecute. We have discussed this with lawyers, and as it stands it does not make it any easier just by putting them in one place. It means that prosecutors have to plump for one of the three offences: either forced labour or the other ones which are listed. Doing this, I think, has caused a slight confusion that runs through the Bill. For example, quite a lot of the way through, the Bill refers to offence two, which is the human trafficking offence; in part 4

of the Bill, section 35—the statutory duty to refer to the National Crime Agency—only applies to the second offence, which is trafficking. We would question why there is only data collection being targeted for trafficking, but omitting forced labour, slavery and servitude. That is an issue for us. We want them all to be brought together into one, rather than this nit-picking. It does not seem to have made any practical difference by putting them in one place.

Kate Roberts: I would not add to that.

David Rhys Jones: In terms of lost opportunity, the Bill gives the impression that it is being inward-looking. It has referred back to the offences that are already on the statute books rather than taking an opportunity to look wider afield and see where best practice from other jurisdictions can be gleaned to better enhance our own legislation if we are indeed going to make this a world-beating piece of legislation on slavery and trafficking.

Q3 Fiona Bruce: Thank you very much. Before I proceed with my next question, could I ask Ms Erskine, who has just joined us, to introduce herself?

Dorcas Erskine: Hello. I am really sorry I am late. My name is Dorcas Erskine. I am the National Co-ordinator of the POPPY Project. We support women who have been trafficked.

Q4 Fiona Bruce: Thank you very much. You are very welcome.

My next question really goes to the heart of what we are considering. What would you want to see within the Bill to give confidence to victims that they will be adequately supported and protected through the process that the Bill is addressing? Perhaps I can take the panel in reverse order for those who want to comment, and then Ms Erskine can come in at the end if she wishes.

David Rhys Jones: I would like to look to the excellent report by Frank Field and his team, which calls for a Bill that will “ensure the provision of adequate support” in order to expedite recovery and a Bill that “should go further” and actually “detail...protection, entitlements and support” available to victims, thereby enshrining protection and support. That is a crucial piece of work that is lost in this Bill.

Kate Roberts: We were definitely concerned not to see more detailed victim support in the Bill, because we think it is important, if we want to secure prosecutions, that it is detailed in primary legislation. We would like to see the provisions in our already existing commitments—the EU directive and the Council of Europe convention—contained within this Bill. There is also an opportunity for non-legislative

measures. Certainly in the case of overseas migrant domestic workers, who we work with at Kalayaan, we have already given evidence on the importance of reinstating the original overseas domestic worker visa, which was introduced in 1998 in recognition of the vulnerability of this group. It is only with such protection in place that migrant domestic workers are going to come forward and give evidence of their domestic servitude.

Chloe Setter: To echo what the previous two speakers said, having victim protection in the Bill is, for us, a must if the Bill is going to be successful in its primary aim, which is disrupting, preventing and tackling modern-day slavery and trafficking. Our experience shows that it is an unfortunate truth that most prosecutions rely on victim testimony and victim participation. In the case of children particularly, we need to give those victims the belief and the trust that they are going to be protected, kept safe and given adequate assistance and support. Our experience shows that otherwise they will not participate with the police if they do not feel believed and if they have not been receiving the right type of accommodation or support.

The first contact the victim has with front-line providers is vital. That is why we believe it needs to be legislated for, because unfortunately so many children are falling through the gaps and being failed by the system set up to protect them. This is not a new thing; it has been going on for years and years. This represents an opportunity to do something practical to help protect children and adults. It is said that a society is judged by the way it treats its most vulnerable victims. This Bill could really do something to step up and make sure that children are protected.

The EU strategy on trafficking talks about the three Ps: prosecution, prevention and protection. This is a well-known approach to tackling trafficking, yet this Bill focuses pretty much on just one P, which is prosecution. It needs and requires a holistic approach in order to be able to have any success. Victim participation and victim protection is central to successful prosecution.

In terms of what we would specifically like to see in the Bill, we would like to have seen a system of legal guardianship, which is recommended by the APPG report that has come out today. It is recommended by Frank Field's report. There is a wealth of evidence, including the Home Office-commissioned report that was out late last year, all calling for and evidencing this need. Again, this is not something new; it has been documented in evidence for years and years, yet still children are being failed. This is why, for us, it is so urgent that something needs to be done.

Equally, we would like to have seen a separate offence in the Bill for child exploitation and child trafficking. This is notably absent for us. We thought this would be quite a simple step that the Government could take, which really targeted it and recognised that it is a separate offence. Children are targeted because they are children. We hoped that it would cover all types of exploitation. As it currently stands, there are separate offences for children in the Sexual Offences Act for sexual exploitation. However, for other types of exploitation, often, when there is a prosecution, they get prosecuted under other things, such as neglect, which does not take into account the exploitative and criminal motive that is involved in trafficking.

We would like to see the offences consolidated and made lifestyle offences, which means they would all be subject to the Proceeds of Crime Act and there could be confiscation orders against traffickers. That money could be put to good use in terms of victim protection and compensation for victims. As we have talked about, victim protection measures encompass access to compensation as well as access to support. That encompasses the non-punishment provision, which I am sure we will talk about more as we go along, and the right to appeal NRM decisions.

Q5 Chairman: We get the point. Could we have bullet points and then we might open up and question you a bit more on the evolving agenda? What is missing, Aidan?

Aidan McQuade: We would endorse what Chloe said in relation to access to compensation and clarification about that, the right of appeal against negative NRM decisions, non-punishment provisions and provision for children, particularly around guardianship. These fundamental things are missing.

Going back to the previous question, one of the reasons that it is important to get a simplified and consolidated offence is in order to provide clear leadership to all the actors of state who may be dealing with this, because protection starts with identification. Unless you can get a clear understanding of what we are talking about, it is going to be difficult to identify and then move into protection. The point that you made in your report—Chloe is right—is that this is fundamental to getting better prosecutions. It is also a question of how Britain wants to be seen in the world and how it is going to treat the most vulnerable people who have been trafficked into these situations.

Dorcas Erskine: Unsurprisingly, I agree with all that my colleagues have said. The way we approach it at the POPPY Project is that two key elements that are missing in this Bill are central problems for us at the moment in terms of how victims get identified. We would like to have

seen the national referral mechanism put on a statutory basis in the Bill. We would also like to have seen some direction in the clauses of the Bill as to who does that identification. At the moment, it is only for non-EU nationals in the hands of the UK Visa and Immigration service. We see a discriminatory effect on victims who are from outside the EU; they are seen as immigrants first rather than victims of a crime. That is one of the key things that is missing: putting the NRM on a statutory basis.

I am sure we will talk more in detail about this, but, since we are currently the only service that goes into prisons and detention centres, we see that it is more likely that victims are punished for crimes that their traffickers commit than the traffickers themselves. We would like to have seen, as Chloe mentioned, a non-prosecution clause in the Bill. To give this Government credit, it has signed up to a very ambitious EU directive and convention on trafficking. If this is a Bill to consolidate all the various legislation that exists on trafficking, for which it is already legally bound, it is surprising that it makes no reference to these clauses in the Bill. At the POPPY Project, we do not think this can be termed as a world-class Bill; it is anything but.

Q6 The Lord Bishop of Derby: You have raised a number of things about victims, children, guardianship and the national referral mechanism. Just to lay another strand of it on the table, I would be interested in your thoughts about the aspiration to pursue traffickers more effectively. I should say for the record that I am Alastair Redfern—interest: director of Christian Aid. Would you like to start? We'll have the last going first: the more effective pursuit of traffickers.

Dorcas Erskine: As Chloe mentioned in her answer to the last question, effective prosecutions depend on victim testimony in this country. That may be an unfortunate quirk of our justice system, but that is the reality. If we are to be pragmatic—NGOs don't tend to be pragmatic but we are trying to be pragmatic in this sense—in order to get more effective investigations, you would need stronger victim protection in this Bill. You cannot divorce them.

I talked about some of the victims we have identified in prison and detention centres. That is a wealth of investigative material, but none of the statutory agencies, the police or the Crown Prosecution Service has come to us and asked about the 55 victims we have helped to release this year. They have not talked to them about their trafficking experiences. They have not taken them around the areas where they may remember they were victimised. None of that has happened.

These victims are unlikely to come forward and give evidence to the police after they have been criminalised in this way. I know it sounds like

we are repeating ourselves, but there are not many answers to this question. There is just one simple answer, which is that, if you want to speed up investigations and if you want to have better prosecutions, treat victims better.

Q7 The Lord Bishop of Derby: Does anybody want to add anything to that?

Aidan McQuade: The only thing I would add to that is there was a difficulty before the 2010 forced labour amendment to the Coroners and Justice Act was introduced. Trafficking tended to be regarded as something which required a cross-border element of movement. Large numbers of vulnerable migrants and British people were not protected as a result, because there was no cross-border movement in their exploitation.

The introduction of that has been one of the key reasons why there has been an upsurge in investigations of this, which we have seen in the media for the past couple of years. That just demonstrates that, if you can get a clear set of laws explaining what we are talking about, they can be used by different actors of state in order to lead them in terms of what they should be doing. This brings us back, in addition to victim protection, to a consolidated and clarified offence, so that it will provide clear leadership to the agencies of state about how they should be acting in relation to this.

Chairman: Michael, do you want to come in on the prosecution thing?

Q8 Michael Connarty: This is something that has troubled a lot of people discussing this. In your opinion, why have some victims been prosecuted for crimes that they were forced to commit? Specifically, would legislation on the non-prosecution of victims help? What form might that take? There is obviously a dilemma about when people are victims and when they are also actively involved as participants in the criminality.

Chloe Setter: There was an important judgment in the Court of Appeal last year—*R v L* and others. There were four cases. Three of them were Vietnamese children and one was an adult female. They had all been convicted of offences. They all had their convictions quashed by the Court of Appeal, which ruled that they had been compelled to commit the crimes as a direct result of their trafficking. That is key to understanding that, if a trafficked person commits a crime that is not as a result, clearly that is not the same thing. But if it is a direct result of their experiences—in three of those cases it was cannabis cultivation charges and for the adult female it was an immigration offence; she had a false passport that her trafficker had given her—they are things

that clearly cannot be helped by the victim, and they should not be criminalised for them.

Q9 Chairman: But we know that despite *R v L* and others there are still prosecutions.

Chloe Setter: Yes. The RACE project focuses on forced criminality. We are monitoring cases in the media, which obviously only gives us a glimpse of the bigger picture, because they are only the ones that get picked up. We are still seeing cannabis cultivation cases particularly, with adults and young people being arrested and prosecuted. It is shocking how that is still going on. There is a real lack of awareness around the CPS guidelines, which are not being implemented. The ACPO guidance on children recovered from cannabis farms is not being implemented. The judgment that we saw in June last year is not being filtered down. That shows a real lack of awareness across the criminal justice system, including the judiciary.

Q10 Michael Connarty: You seem to be arguing against yourself here, because what you have just told us is that the laws are already there. If somebody can be declared on appeal not to be guilty—

Chloe Setter: That was the first time it had been—

Michael Connarty: But the specific question is what would you put in the Bill?

Chloe Setter: A clause on non-prosecution.

Aidan McQuade: The point is that, because the law is currently fragmented, frankly a lot of people who should know better don't know better, from the judiciary down to the police. I have sat in meetings with senior officers from the Met who said that, if you are a teenager who has been brought to the UK for cannabis cultivation, you basically deserve whatever you are getting. That is against international standards and the law. If you have been compelled as a child into such situations, you have the right to expect that you are going to be treated in a reasonable way.

The opportunity before you and for us at the moment is to be clear about that, and to communicate and thereby lead the institutions and the responsible people in how they should behave. We are seeing again and again, from defence lawyers to prosecutors to judges to cops and to immigration officials, that they just do not understand what they are talking about on this. The consequence is that you get a fragmentary approach towards the victims of trafficking, leading to a lot of them being prosecuted. A lot of kids are currently in UK jails who should not be there. It is systematised miscarriage of justice.

Chairman: We will try and see whether we can put that into the Bill as a suggestion. If any of you have lawyers who might work on this and give us suggestions, it would be very helpful.

Q11 Lord McColl of Dulwich: Should it be made incumbent on the CPS to have to prove that a victim has not been trafficked?

Dorcas Erskine: We have never considered that. That is a very good idea. At the moment, what is happening is that there is a lot of guidance on non-prosecution. This is why we are all against the idea of it just remaining guidance, and why we would like a form of wording in the Bill. The problem we have is that no one is held accountable. In the case that Chloe talked about, the adult woman was a woman we had supported. She had been underground for 11 years in a brothel. When she escaped, she used the passport that she thought was legal and that her trafficker had given her. She was imprisoned for immigration offences, but she was not the one who committed the crime. The CPS fought us all the way. No one bothered to go and investigate the trafficker, so he is able to recruit and procure more victims with impunity. A suggestion like that would make them more accountable. There is no accountability for public authorities in this Bill, and that is a problem for us.

David Rhys Jones: We have an opportunity here to create a piece of law which provides a platform for best practice. We need judges who are specialists and well trained in trafficking; we need prosecutors likewise. We need specialist police units. The Helen Bamber Foundation works increasingly closely with Metropolitan Police specialists. Together, we are working on models for developing best evidence, which takes the point you made, sir, on identifying individuals properly by going back into their histories and looking at where they came from in being trafficked in the first place. That answers your question. You need to have a thorough view of an individual, what their past is, what their socio-economic situation was in their own country, if we are talking about foreign nationals, what they were escaping from and why they thought that perhaps the trafficker was giving them an opportunity, when in fact that opportunity was leading to exploitation. These things are not sufficiently well explored at the moment.

Q12 Baroness Butler-Sloss: I entirely understand the importance of victim support for the moral reason, but also the practical reason of getting people to be witnesses giving evidence. The problem that I see, speaking as a former lawyer, is how you create legislation to deal with victim support outside non-prosecution. Picking up what Frank Field said, I do not know whether the lawyers behind you could look at what sort of legislation we could have. It seems to me that that has to be guidance,

but if you think it can be legislation it would be enormously helpful to have it.

David Rhys Jones: Moldova, Italy and Vietnam seem to have achieved statutory frames for this. Perhaps we could look at other jurisdictions and see how it has been done.

Chloe Setter: Indeed, Lord Morrow's Bill for Northern Ireland has a section with statutory victim provision. The proposed Bill for Scotland also includes a statutory survivors' service or victim protection.

Chairman: We do not agree on this, so let us move on.

Q13 Mrs Spelman: I want to come back to the question of why the police do not take the opportunity to go back with the victim and visit where the criminality took place in order to try and catch the real criminals behind this, because that is common practice for pretty much all other types of crime. You described the reason for that as being ignorance, but there cannot be anybody in this country who is ignorant of the scale of the trafficking problem. Can we drill into that a bit?

Kate Roberts: In our experience, it is partly ignorance, but partly it is because there needs to be such a high standard of proof. Where victims feel vulnerable, in the case of the domestic workers we see, because of their lack of immigration status, they do not provide good witnesses. Where there isn't a statutory protection and where it is seen that the victim possibly has something to gain from supporting a prosecution, even if that is not correct, it is seen that they have an incentive, so there is a tendency to disbelieve them. Again in the case of domestic workers, because this is what I have experience of, they used to have permission to change employer. There would be no incentive for them to become involved in a prosecution and detail their exploitation; they were allowed to change employer anyway. Now that this is prohibited, the traffickers' defence could be, "Well, clearly they are making these allegations against me because they want a residence permit while this criminal prosecution is ongoing." For the prosecution to arrive at a criminal standard of evidence, it is sometimes deemed as too challenging and too complex, particularly in the case of domestic workers where the typical profile of an employer is someone who is a so-called respectable individual. It is one word against another, and the migrant is seen as having the odds stacked against them. It is just not deemed as being worth the time.

Q14 Mrs Spelman: That is not ignorance; that is a calculated decision.

Kate Roberts: Yes. I guess it is a calculated decision that it is not worth their time.

Chloe Setter: Primarily we see that victims are seen, first, as immigrants, or potentially criminals at times as well, and victims second. That is a pervasive attitude across not just the criminal justice sector but in social services as well. Often when trafficking happens with children, it is not recognised as child abuse, for example, which it is. It is just not seen as that. Quite often, we have had local authorities saying, "This is a Home Office matter," even when the person is disclosing what has happened to them. They will take them to the Home Office and get their status sorted. They do not react in the same way as if it was a British person, for example.

With the police, it is not just ignorance as in what was described before; it is ignorance of even recognising that the person is a victim. It is that real first crucial point of seeing this as organised crime and seeing beyond. For example, with the cannabis cases, if they come across a young Vietnamese person in situ in a cannabis farm, all they see is, "This is a person who is committing a crime." They do not look at the bigger picture like how did this 16-year old fund themselves to travel across the world on their own and set up this highly technical and organised cannabis farm? It is very black and white. That is down to a huge lack of training and awareness.

The police tell us that these investigations often require international co-operation, which can be difficult. They are very expensive and very long. The police have told us that sometimes they have to battle to get their superiors to agree to let them do these cases. Even when they do, they only investigate a couple of the victims. They know that there are more, but they do not have the resources to go and find them.

There was one case in Nigeria where two victims had been brought here. They know that there were more than two, but two children gave evidence. Both girls described that in Nigeria there was a house where they were taken and taught how to be prostitutes. These were 12, 13 and 14-year-old girls. They were groomed in what to say, how to act around men and how to perform oral sex. It was absolutely shocking. The police knew this existed in Nigeria, but our police did not have jurisdiction to go and investigate that, so it was not part of their investigation. That place still exists and is still doing it. It shows that, if you do not look at the root causes as well and the preventive work, you are essentially just putting a plaster over a gaping wound.

Chairman: Fiona, you might want to pick this up before the end of our session. Chloe made some interesting remarks about the NRM. We might probe those as well. Is that all right?

Fiona Mactaggart: Can I ask the question I was putting my hand up for?

Chairman: All right. Sorry.

Q15 Fiona Mactaggart: How much difference would it make, in your view—because you have talked about people being under suspicion who are victims—if the law said, explicitly on the face of the Act, that if someone is shown to be a victim of trafficking, which induced them to commit an offence, it is not an offence? Sorry. I have not done that well, but you know what I mean.

David Rhys Jones: I think it would make a significant difference, because you are beginning thereby to develop in the victim confidence and belief in the process. There are pockets of best practice. As I say, we work closely with the Metropolitan Police. We have had our clients driven around the streets of London in unmarked cars—unfortunately with the windows blacked, which made them feel they were in a hostile environment—looking for the address where they had been exploited. But they were in such terror that they could not speak, and we then spent weeks unravelling and unpicking this. Those women needed to feel supported and that they were going to be believed and that they would not be prosecuted for anything. That is what the traffickers convince them; we are almost colluding with the trafficker in allowing these prosecutions to go ahead, because this is what the trafficker says to his victim: “You will be prosecuted. The Border Agency will come after you. You will be deported if you do not stay with me. You are better with me. I am your friend. The authorities are not your friend.” We have to get beyond that.

Q16 Chairman: I want to move the conversation on. You have put before us four areas where you think the Bill is defective and inadequate. One is about the definition. The second is about prosecutions. Linked to that is making it more victim-centred. Chloe, you also talked about reforming the NRM. What are the other areas you think we should be looking at so that we get a feel for where you think the Bill is inadequate as it currently stands? Are there other headings, please?

Chloe Setter: Certainly, the offence we mentioned—having a specific offence for children.

Chairman: Great. Yes.

Chloe Setter: The Anti-Slavery Commissioner role is another area we wanted to touch upon. We certainly welcome the idea of the creation of such a role as recommended by all the international legislation and reports. We are a bit concerned that it is too narrow in its remit.

Q17 Chairman: Before we dart off, are there other areas? We have six, but are there any more?

Chloe Setter: Do you mean where something is missing or defective, or both?

Chairman: Yes.

Aidan McQuade: There is limited consideration, by which I mean none of the international aspects of this, in relation to supply chains and international development aspects. Those would also be good areas to look at.

Q18 Chairman: Great. We have the commissioner, supply chains and the national referral mechanism.

Chloe Setter: And guardianship as well.

Q19 Chairman: We will put that in with children. Yes?

Chloe Setter: There are a few small issues in the offences section. I only talked about some of them, but there is a focus on movement in the trafficking definition that we do not think is helpful. It is like it is drafted for an immigration purpose. It is all about movement into, around or out of the UK. That does not take into account the other elements of the trafficking definition which is internationally accepted, such as recruitment, harbouring and—there's another one that I've forgotten.

David Rhys Jones: Receipt.

Chloe Setter: That's it: receipt, recruitment and harbouring of a person. The definition in the Act as it stands does not incorporate those other parts of the trafficking chain. It is important to remember that trafficking is a process with different players who take different roles. It is not just about the person who does the exploiting at the end or the person that facilitates the movement, for example. We would definitely like to see that expanded.

There are a few other smaller issues around the drafting of the words, which we think could be improved. Section 3 is about the types of exploitation. Currently it says "shall include." We think it should be "at a minimum." Unfortunately, we are seeing new, developing and emerging forms of exploitation, as traffickers find any way they can to exploit somebody. For example, as it stands, I do not think it would currently include victims who have been trafficked for blood transfusion, or potentially sham marriage. We do not think the drafting is as broad as it could be. It should be broad and expansive to incorporate the emerging trends.

Q20 Chairman: Chloe, at the end I am going to sum up and ask the things we want of you, when we have heard all your evidence. There are three areas you have not touched on fully. That is the NRM, the commissioner and supply chains. You made a very interesting suggestion. You thought that the NRM should be put on a legal basis.

Chloe Setter: That wasn't me, it was Dorcas, but we have talked about having victim protection on a statutory basis. Whether it is explicit in the Bill itself—to refer to the NRM—is difficult to say at the moment, because there is an ongoing review of the NRM. In our opinion, there is so much that needs to be done to overhaul how it currently operates that we would not want to see it in statute as it currently stands and currently operates, but we would like to see statutory underpinning of victim protection.

Aidan McQuade: Fundamental to that, as I have mentioned before, is breaking that conflict of interest which currently exists between those who are judging the immigration status of somebody and those who are judging their victim status. In addition, there needs to be an automatic right of appeal for that. At the moment, it seems to be completely at odds with the basic principles of the rule of law.

Going back to what David was saying a while ago, one of the reasons we see right across the world that trafficking and slavery occurs is that there are gaps in the rule of law. That is one of the things we see here as well. We do not have sufficient law, properly executed, in order to provide sufficient protection across the board.

Dorcas Erskine: I would like to elaborate a little bit about the NRM being on a statutory basis. There is an ongoing review of the NRM, so we will see what comes out of that, but I think there is an opportunity here for the Committee to set out some sort of principles in the Bill as to what the NRM should look like. It is rather more around the statutory basis of the principles on which the NRM should operate. It should be non-discriminatory. It should have a right of appeal. At the moment, we have to lodge expensive judicial appeals to reverse bad decisions that the Home Office then concedes were bad. It is a waste of everyone's time, and it does not support victims. There is an opportunity here in terms of the NRM to develop some principles, and I think the Committee are well placed to do that.

David Rhys Jones: On judicial reviews, I refer the Committee to the Anti-Trafficking Monitoring Group's reports, which demonstrate that there have been a significant number of judicial reviews of the working of the NRM. Almost all of those judicial reviews, if not all of them, have

focused on the work of the UK Visa and Immigration department rather than UKHTC, which in itself is telling.

Kate Roberts: And it does go further than the judicial reviews. We certainly, and other organisations, frequently have to request an informal reconsideration of decisions. After this request, we very often get a positive reasonable grounds or conclusive grounds decision, so we are very concerned for victims who do not have the support of organisations such as ourselves. Inevitably, as victims of trafficking are seen as having “something to gain” for immigration purposes and as having more entitlements and rights as victims of trafficking, if the Home Office remained responsible for those decisions, there would be an increased incentive to disbelieve victims.

David Rhys Jones: I would add that those reconsiderations appear to be arbitrary. It is a case of justice not being seen to be done. A right of appeal would give the victim an opportunity to have a day in court, which is all-important.

Q21 Baroness Hanham: Do you think there is enough strength in the Bill on other public authorities’ involvement? You mentioned local authorities, for example. Particularly for children, we have the previous unaccompanied children regulations. Do you think there is anything more that needs to be done to ensure that social services, for example, are involved at an early stage with children? Legal guardians are going to be another issue, particularly where guardians in children’s courts are quite difficult at the moment. Is there any more strengthening that needs to be done behind that? Dorcas, you are nodding so shall we start with you?

Dorcas Erskine: Chloe is the child expert so she can talk about that in particular. I think what the Bill lacks is accountability. If there is a statutory duty on public authorities in this Bill to protect victims, maybe you do not need a whole long shopping list. If there is a statutory duty to protect victims of trafficking with reference to other forms of legislation which the UK Government is already accountable for—or we would say, in a different way, liable to, when we take them to court—that would cover it. It would cover things that are in the directive and it would cover emerging guidance that the Government, to its credit, is producing in this area, but there needs to be a statutory duty in the Bill for victim protection. We will then be on a stronger basis, because the support workers who work in my team can quote the Bill. At the moment we quote the directive and say, “You are responsible for this and this.” Our fear is that if there is this Bill, which has none of these duties in it, public authorities who are already stretched for time will only look at this Bill and say, “This is what the Bill says.” They will not pay any attention to all the other guidance or legislation that they are

bound to. If you are going to consolidate everything, you should have a statutory duty for public authorities in this Bill.

Q22 Lord Warner: May I drill down a bit more into this issue of children? Are you actually arguing not just for a separate offence, but that the gravity of that offence should be deemed to be more severe and serious than if it was an adult? Secondly, are you in effect arguing that any child who is seen as a victim of trafficking or slavery, etc. should be deemed to be a child at risk for the purposes of social services?

Chloe Setter: The latter part of what you said should be the case as it stands anyway. Any child who is suspected of being trafficked should be seen as a child in need and treated as such by the local authority. What we see in practice is trafficking and forms of slavery not being recognised and identified. Victims do not come with a label on saying, "I am a victim." Children especially do not disclose what has happened to them, through fear. We need to strengthen the existing practices, and we also need to improve training and awareness, which is where I see the commissioner role coming in.

You mentioned the guardianship system. That is why we believe this would be a complementary system to what already exists, such as having social workers, support workers and advocates. The guardian would give that confidence, because they would have the legal authority to be able to make decisions, to be present in meetings and to be involved in all aspects of the child's life. That can be so complex, often having multiple solicitors, and criminal proceedings, welfare proceedings, immigration issues, access to education, access to compensation and access to counselling. That person would have an oversight and also the legal authority to step in when things were not being done.

Unfortunately, social services can only do what they can do. Sometimes they do it well and, at other times, it is not so good. They have a limited ability; it is not the duty or job of a social worker to do all those things. It is foolish and impossible to think that they have the capacity, the time and the resources to be able to do that for each child they suspect of being trafficked.

Q23 Lord Warner: Seriousness of the offence?

Chloe Setter: I forgot about that. I would probably say yes. Currently as it stands, if the victim is a child, it is an aggravating factor, which I do not think is sufficient. Children are targeted because they are children. That is why they are targeted and that is why we believe there needs to be a separate offence. I believe that, yes, it should be more serious and it should potentially carry a life sentence.

One thing we have not touched upon and that would be useful to include here is that in the EU directive there is a clause about presumption of age—that a person who claims to be a child or who could be a child should be presumed to be a child. That is really important, because so many victims who are children and young people do not have documentation because they have been trafficked, or their traffickers have given them false documents or they have had them taken away from them. It is very difficult to prove someone's age. As it stands, the local authority makes that judgment. They do it by doing an age assessment. But there is a clear conflict of interest. If the local authority is doing the age assessment and they find that person to be a child, they have to support and accommodate them. If they find them to be an adult, they send them to London, and they have to be put through the asylum system. It is clearly not a fair system.

Q24 The Lord Bishop of Derby: Can I push you a little on that? In terms of the safeguarding framework that you are talking about, it would seem to me that of course children have to have that guardianship and representation, and have to receive priority, but in my experience, quite a lot of the people who are trafficked into the world of work are vulnerable adults in the way we understand safeguarding, in terms of mental health issues and homelessness in their own country. Would you advocate that, besides a focus on children, we need to learn from our own safeguarding practices in terms of victims as vulnerable adults?

David Rhys Jones: We need to have a wider view on vulnerability than the Bill currently allows for. There is a concept, which time does not allow us to go into here, which is abuse of a position of vulnerability. Within that, one would say that children are inherently vulnerable, but there are the groups you have raised, such as the mentally ill. There are a great many others who are vulnerable and are not being caught. This goes back to the point I made earlier about the need to go into the background and the origins of an individual, to learn how they came to be trafficked, and what particular aspect of that individual's background was being exploited in order to further that trafficking. There is an opportunity here to develop that, which is lacking.

Q25 Andrew Stunell: I have been trying to join up the various proposals that have come out of this session, one of which is that there should be immunity to any victim that the CPS cannot demonstrate wasn't a victim, if I can put it that way. How do you see the system providing some balance between the risk of collusion that that opens up and the need to protect and defend the victim? If we build this into legislation, it is clearly a crucial question to get right.

Aidan McQuade: We have discussed that before. One of the key ways of doing it is by the Bill providing clear leadership on what we are talking about and having a clear understanding of what contemporary slavery is, what is trafficking and what therefore are the responsibilities of various offices and officers of state in terms of dealing with that.

The second thing is ensuring that you have removal of the conflict of interest in relation to that. The third thing is about having good professional practice in relation to this. Your question is very reasonable. One of the things we have seen, which is maybe weighting the evidence we are giving, is that currently the benefit of the doubt is never given to the people who are victims of trafficking who are found afterwards. That is something which needs to be redressed. Until that happens, there is going to be the ongoing risk of people prioritising other agendas over the agenda responsibility of addressing victims of crime.

Q26 Baroness Kennedy of Cradley: I want to explore your views on the statutory duty to refer to the NRM. There is obviously opposition to that and I wondered why that was. Putting that aside, there is the need to have an accurate picture of the data. If it was not the NRM, who would have that accurate picture?

Kate Roberts: We have discussed this as a group. We are certainly in favour of any attempts to increase the evidence and data collection on victims of trafficking in the UK. Our caution is that we are not clear as to what the statutory duty entails. We understood that it was not to report to the NRM—it was not to refer anyone we came across to the NRM. It reads differently in different places. Certainly, if this is an attempt at anonymous data collection, it is something we would like to support. I hope I am speaking correctly.

One of our considerations is clearly that of capacity. Again in the case of Kalayaan, we are a very small organisation. We do not have capacity to do an in-depth narrative for anyone we come across who could potentially have been trafficked. We are also trusted by migrant domestic workers. We would absolutely need to be able to guarantee confidentiality. If it was submitting data we already collect in an anonymised manner, this should be fine. It is something that the UKHTC already request of us. Anything more than that could be problematic, both in terms of victims' trust and simple capacity. We physically could not do it.

Aidan McQuade: There are two issues there which need to be separated. One of the reasons there is significant opposition to the statutory referral to the NRM at the moment is that we are speaking from our current experience. If we were to refer people into the NRM now and were forced to do that by law, it would not be in the interests

of the victims of trafficking we are working with. Therefore, we would obviously have big problems with that. If one gets a reformed NRM, which functions well and has victim protection and identification at its centre, that is going to be another question.

The second question relates to the one-off data-gathering. We feel that that should be the responsibility of an Anti-Slavery Commissioner, because it is a bigger methodological problem than just ticking a few boxes here and there. We think what we should be talking about when we are gathering data is balance of probabilities, as opposed to the criminal law standard. Thinking about the various pools and possibilities from which one might draw data in order to get solid estimates is going to be a job of work in and of itself. It is something that could usefully be put in a specialised office with a specific responsibility for that, rather than trying to tag it on to the responsibilities and functions of some other elements of a good anti-slavery regime, which are going to have significant problems and challenges in and of themselves just doing the primary function.

Chairman: We have two other big areas we want to cover and we have seven minutes.

Q27 Baroness Butler-Sloss: Could I put to you the suggestion that has been made that the NRM should be two-stage? One should be anonymous referral of everybody who is identified by a first responder—whatever it may be—as trafficked or a slave; secondly, a voluntary referral to the NRM by those who would want to go through the system.

Kate Roberts: We would be very wary of that at Kalayaan. Since the tied domestic worker visa was introduced, the numbers coming to us have dropped. Domestic workers have always historically trusted us. Clearly, people are now nervous of coming to us. If people knew we were going to refer them into the NRM, even anonymously, I think they would be driven further underground.

Q28 Chairman: Do you think they would know what it is?

Kate Roberts: What they see it as is that we are telling the authorities about them. Even if it is anonymously, I think it would scare people. Secondly, just to repeat myself, we would have a massive resources issue. We could not do it. To do a proper trafficking assessment takes a substantial amount of time. We physically could not refer everyone we identify internally as trafficked into the NRM.

Q29 Baroness Doocey: Specifically on children, you have all made suggestions as to how the Bill could be enhanced to protect children better. If, for whatever reason, it was not possible to have those enhancements put in the final Bill, do you think the Bill as currently

drafted will make any significant difference to child trafficking from what we have at the moment?

Chloe Setter: No. Children are notably absent from the Bill. I think they are barely mentioned. There is one section in the offences part, which again is not drafted correctly. It uses the word “youth” and does not define what that means. Other than that, they are completely absent. It is shocking for us, because they represent a quarter of all victims and are possibly some of the most vulnerable victims. Where are the provisions for them? Yes, there is stuff that can be done in policy, but look at the history of the last 10 years and look at how many children have been failed, let down, criminalised, not protected, re-trafficked, and missing from care and never found. Where are those children? Why aren’t we doing what we can? This is a real opportunity to make the UK really strong in terms of its approach to child trafficking, making us a country that is tough on trafficking and slavery and, as I said, protects the most vulnerable people.

Q30 Mr Randall: In the draft Bill, under policy, it mentions trying to enhance a voluntary code on supply chains. Do you think that is sufficient?

Aidan McQuade: No. There are a number of models kicking around. The most popular one at the moment is the California Supply Chains Act. That would be a good start in terms of getting companies to think and to speak more publicly about what they are doing and what is happening in the supply chains.

I am on the board of the Ethical Trading Initiative. We have done some supply chain investigations over the past couple of years on anti-slavery. Frankly, I do not find it convincing when companies say that they do not know what is happening in their supply chains, right up to Rana Plaza, where more people were killed than in the entire Falklands War.

The California model would be a good step forward, but I know some lawyers have some concerns about this. If you start talking about what I think a lot of companies already know on their supply chains, one could be rendering oneself liable to prosecution under the Coroners and Justice Act, which talks about illegal people, and there is an idea that could implicitly involve corporations as well. What would be a better model in the current circumstances is building on something which has been pioneered in the Bribery Act—looking at what due diligence means and how companies can follow up with due diligence and act on that. Modelling up something that would essentially be a combination of California plus the Bribery Act would be a much more robust way to go. In that instance, you would be saying to companies, as has been said with some of the guidelines in relation to the Bribery Act, “This is what we expect of you and this is how you should go about doing it,” rather than

just saying, "Tell us every year what you are doing." That wouldn't hurt, but I think there would be certain liabilities under the current legal framework, within both the UK and Europe, which it would be remiss not to address.

The fundamental thing is that forced labour in supply chains is a systemic problem. This is well understood and well known by businesses. It is well understood and well known by many of the countries which sustain these systems. History shows us that it is only by a systematic response to systemic problems that you get any change. History shows us again and again the various efforts and voluntary initiatives to end slavery—for example, in the United States under Hamilton and under Lincoln—which did not work. There is a need for law in relation to this which gives clear leadership and guidance on how it should be done and explicitly spells out what the liabilities of companies and individuals should be in that.

Q31 Mr Randall: You have raised an interesting point about due diligence. A lot of companies would be very happy to sign up to it, as long as they feel they are not going to be prosecuted if they have made every effort to ensure that there is nothing in the supply chain. I think that would be the block—that they would be very concerned that the company or whatever would be prosecuted. On the other side, of course, do you have any evidence—you mentioned Ethical Trading—that companies would welcome this as something to show that their companies are the people to deal with, because they have taken this action?

Aidan McQuade: One of the things I find whenever I am engaged with companies is that generally they are stuffed full of decent people, but there is one of those peculiarities in relation to organisations: an organisation gives you an awful lot of excuse for doing unpleasant things. One finds again and again that people say, "Well, I have problems with this but the company is doing it." When you pick a little closer, the people who are making the decisions are in actual fact those individuals who say that they are having problems with it but they feel some pressure from this imaginary corporation or company to do it. There needs to be clear direction to people whose instincts and impulses are right and decent. They need to be given clear direction, clear responsibility and clear authority to challenge the mores and practices that are going on within companies.

One of the ways by which a lot of companies deny responsibility at the moment is through so-called ethical auditing. It is my belief, based mostly on anecdotal evidence—but a lot of anecdotal evidence—that most companies who employ ethical auditors employ them so that they find nothing. If you look at the various disasters in Bangladesh over the past

couple of years, all those factories had been ethically audited and yet, at the end of the day, you still find young women on low wages locked into them and ready to be burnt. We see this in southern India as well. We have clear evidence of forced labour and slavery in the manufacture of clothing and garments for western markets, such that each of us is probably wearing at least one garment that has been made with some element of forced labour.

There needs to be a move towards something which is stronger than ethical auditing as an approach to due diligence. I believe that there are such models in play at the moment. I worked with the American confectionery company Mondelez over the past couple of years in order to produce a new child slavery policy for them, which they have now publicly adopted. They have not put it into practice yet, but it is a different approach towards dealing with human rights problems in the supply chain from the ethical auditing one. It says, "We will explicitly go out and look for the problems. We will put in place specific standard operating procedures in order to respond to them when we find them. We will train our staff in order to identify them. We will work with NGOs and Governments in order to be able to put in place proper practices when we come across them."

There is the beginning by some international businesses of recognising that there has to be a different approach towards this. It is going to be a challenge getting that more in place, but it needs to start, otherwise we are being complicit in the system.

Q32 Mr Randall: Otherwise it is just a tick-box exercise.

Aidan McQuade: Yes, it is a tick-box exercise.

Q33 Michael Connarty: I have a simple question. If, from the Government, they are not going to offer or accept an amendment to put in the wonderful description you have just given, Aidan, what do we need in the Bill that is sufficient to start the process? It is quite clear that this Bill is not going to add a whole chapter on the supply chain, given the Government's response so far on this issue, but there seems to be a will to do something. What needs to be done at the basic level in this Bill?

Aidan McQuade: Introduction of compulsory reporting would be a good start.

Q34 Chairman: Can you give us a draft clause, please?

Aidan McQuade: Yes.

Chairman: Great.

Mrs Spelman: Mondelez, of course, bought Cadbury who had to tackle this issue in West Africa. After this, could you also think of other companies? If we could begin to build up examples of businesses that really take this seriously, that see the business benefit and the ethical imperative to do this, that kind of evidence would be helpful. I know we have run out of time.

Chairman: When our witnesses go, we are going to sit down and briefly see what more we specifically want from you. We will have this one question, if we may. Fiona, might we end on the commissioner?

Q35 Fiona Mactaggart: I heard strongly what you said about clause 35 and the duty to refer to the NCA suspected victims. Do you think that people would feel the same if you had a duty to inform an independent commissioner about it? What would have to be done to the role of the commissioner to make sure that that problem did not occur?

Kate Roberts: From the perspective of Kalayaan, a small organisation which is trusted by a very vulnerable sector of migrants, it is problematic for us to have a duty to inform anyone because we are trusted. With anything like that, rumours will spread and people will become cautious. As I say, evidence shows that domestic workers are already very scared of even coming to us. Our confidentiality policy is absolutely paramount in terms of vulnerable victims trusting us. I suspect that would be the same for many groups.

David Rhys Jones: Helen Bamber Foundation is coming from a clinical base and a clinical model. We have developed our policies on confidentiality around consent and informed consent. We need to be able to reassure an individual that what they provide us with is entirely anonymous and cannot be traced back to them, and that it is going to an independent body rather than into a Government body which has a role in prosecutions and pursuit. Given the vagaries that trafficked victims have about whether or not they themselves are involved in criminal activities, if you can separate that, you create trust and confidence, and that is the route by which you can pass the information.

Q36 Chairman: Thank you very much for that session. Can I ask people to leave so that we can decide what more we want from you?

Chloe Setter: We didn't touch too much on the commissioner role as it is drafted. I think that is the only thing we wanted to add.

Chairman: Sure. I was trying to move things along at the beginning. Thank you very much.