



HOUSES OF PARLIAMENT

Joint Committee on Draft Modern Slavery Bill

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

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Members present: Mr Frank Field (Chairman), 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, Mrs Caroline Spelman and Sir Andrew Stunell

Questions [547-680]

Witnesses: **Detective Chief Inspector Nicholas Sumner**, Human Trafficking Unit, Metropolitan Police Service, **Detective Inspector Kevin Hyland**, Human Trafficking Unit, Metropolitan Police Service, **Detective Inspector Keith Roberts**, Kent Police, **Alan Hardwick**, Police and Crime Commissioner for Lincolnshire, and **Chief Inspector Mike Winters**, Area Commander, Cambridgeshire Police, examined.

Q547 Chairman: Welcome. If I may, starting with Alan, I will ask you to identify yourselves for the sake of the record. Please do not feel that all of you have to answer every question. We might want to press some of you on particular aspects. Alan, might you begin, please?

Alan Hardwick: Yes, Sir. I am Alan Hardwick, the police and crime commissioner for Lincolnshire.

Chief Inspector Winters: I am Mike Winters, a chief inspector with Cambridgeshire police, and I am the area commander for a district called Fenland.

Detective Chief Inspector Sumner: I am Nick Sumner, detective chief inspector of the Metropolitan police and the operational lead for human trafficking.

Detective Inspector Hyland: I am Kevin Hyland, detective inspector. I manage the operationals of the Met's Human Trafficking Unit.

Detective Inspector Roberts: I am Detective Inspector Keith Roberts from Kent police. I was previously with Serious Organised Crime and am now with Special Branch (Frontiers).

Q548 Baroness Butler-Sloss: We had a lot of evidence, particularly from lawyers, about the cutting and pasting of the existing legislation into the first three clauses of the Bill. The Committee has been looking at the possibility of a very broad definition of slavery and human trafficking as exploitation, so the fact of the person being enslaved, rather than whether they have been trafficked in, their age and so on, is the core offence. How do all of you feel about having a word like "exploitation" which is then identified as including human trafficking, forced labour, domestic servitude and so on, together with the open-ended provision in case we have even further offences, like sham marriages, possibly in the future? As the police or the police commissioner, do you feel that would be a sensible way of going forward?

Alan Hardwick: From my point of view, human trafficking for exploitation would be a very good idea as a catch-all, because exploitation, while that is being considered, would cover whatever was beneath it—the murky depths of the exploitation—so as a catch-all I think that would be an excellent idea.

Q549 Baroness Butler-Sloss: How would the police see this on the ground? Kevin, I know you have a lot of experience on this.

Detective Inspector Hyland: I think that is the right way forward. Clauses 1 and 2 go a long way in achieving that—particularly clause 2, which takes away certain elements that are required under clause 4 and under the Sexual Offences Act. That really is the way forward, but it would have to be wide enough and worded in a way that it would catch all and does not leave gaps in terminology that could be used by defence lawyers. That was some of the feedback I gave around the current clause 2, with the word "intent" being used too many times, and in clause 1 repetition of the "intent" and what the activity is. It was not wide enough to catch all under clause 1 at the moment, and there were too many intents in clause 2. As long as it encompasses what is in clauses 1 and 2 at the current time and deals with those issues, it would be a very useful tool, with open-ended exploitation, because if we put in too many defined exploitations we will miss one that will come in eventually, which will then be given as a defence case, so leaving it open-ended is the solution.

Q550 Baroness Butler-Sloss: To take it a little bit further—perhaps somebody else might like to respond—we are also under considerable pressure from a number of organisations to have a separate offence of child exploitation. Where do the police stand on this? Should it be part of the existing legislation or should there in fact be a totally separate clause on children? As you know, currently clause 3(6) talks about somebody who is young, which is completely impossible to identify.

Chairman: Some of us would not qualify under that provision, Elizabeth.

Baroness Butler-Sloss: How would you identify who was young? I don't think we need to explore that, because I would have thought it is someone who is either over or under 18, but should there be something separate for children?

Detective Chief Inspector Sumner: I am of the opinion that we do not need separate legislation for children. It certainly would need to be reflected in sentencing guidelines and CPS guidelines around charging. Once we have a scenario of exploitation, whether someone is 16 or 18 I think will make little difference. It still needs a dedicated response and thorough investigation, and we need legislation that allows prosecution to take place. A separate Act will probably add confusion as opposed to clarifying anything. I wouldn't know and couldn't tell you now what I would want that to look like. If we need something separate for children, what would it look like? I don't know.

Q551 Baroness Butler-Sloss: I know the Kent police were very involved in stopping a number of children going to France. Is that not right? Weren't the children going through Dover?

Detective Inspector Roberts: Yes. We have had a number of cases involving children being taken out through the Kent ports, and some very successful prosecutions.

Q552 Baroness Butler-Sloss: In your view, would it have helped if you had had a child offence?

Detective Inspector Roberts: Not as a separate offence. The legislation perfectly encompasses it, but I would share Mr Sumner's view about the sentencing guidelines certainly around children and it being an aggravated offence, as it were, but I think wholly different legislation would be unnecessary and complicated.

Q553 Baroness Doocey: Do you believe it should be an aggravated offence if it is a child as opposed to an adult?

Detective Inspector Roberts: Yes. It certainly reflects the seriousness of the offence—the extra element of exploitation of a vulnerable person—and acts as a deterrent.

Q554 Baroness Doocey: Is that the view of everyone on the panel?

Detective Inspector Hyland: The only gap at the moment is where the child is moved and there is no exploitation at the end. We have encountered that—for example, where miracle babies are used as a commodity. There is a sale and a market for children moved from Africa, for example, to the United Kingdom, but there is no final exploitation that we could actually show. It may not have been educated. The movement of children without consent is the only area that I can see should be a specific offence in itself, whether it is consent through law or through families. That will put in place protection for those who are moved. Ultimately, on the surface it may look like they are getting a better life, but as they move on and get a bit older the exploitation might happen then.

Q555 Chairman: Kevin, when you say “moved without consent,” whose consent?

Detective Inspector Hyland: The family’s consent or lawful consent. For example, a miracle baby is brought from Nigeria and arrives in London. We can’t show where that child has come from and how it got here. It is being looked after by a family but they say, “Somebody just appeared and gave us the child.” That kind of thing is not covered in the suggested legislation, and we are dealing with cases exactly like that.

Q556 Chairman: Alan and Mike, do you agree with that? Is there any nuance you want to put on the answer to Dee on the question of children?

Chief Inspector Winters: The kind of exploitation we are experiencing in Cambridgeshire has not so far flagged up any involvement of children, but, from what I have learned so far in using the legislation, if children were involved, we would deal with it as an aggravating factor and not as a separate offence.

Chairman: Very good.

Q557 Baroness Doocey: When you responded to the previous question from Baroness Butler-Sloss, you did not think it was absolutely necessary to have a separate offence for children. Was that on the basis that there would be an offence which was not going to be just slavery, but there

would be an offence of exploitation? You said something about exploitation, and I was not entirely clear what you were saying.

Detective Inspector Roberts: Perhaps I can expand on that point. Certainly within Kent, we have had quite considerable difficulty in working out what is criminal exploitation, particularly labour exploitation, where people are working very, very long hours in difficult circumstances. If you asked an average member of the British public whether that person was being exploited, they are, but because of their circumstances they are allowing themselves to be exploited and to remain within circumstances of exploitation.

Another example would be prostitutes within debt bondage. Even when they come to our notice, they are not purporting to be victims. They are allowing themselves to carry on within that exploitation. It has been very difficult for us to make those people out to be victims within the criminal justice system as it is at the moment. Unless someone comes forward as a victim of crime and supports the police in a prosecution, the weight of their evidence is difficult to adduce in court. We are talking about a circumstance of exploitation without the need for victims. Again, if you talk about exploitation of young children in particular, they would not necessarily be good or strong witnesses. Their evidence would be difficult to get, so the circumstances of exploitation, where the victim is not coming forward with a full explanation of their circumstances, would be useful to have within this legislation. I do not think it has been covered within it. We have had very big problems taking forward labour exploitation cases.

Q558 Baroness Butler-Sloss: Perhaps I can pick you up on that. Very helpfully, in the informal evidence review that Frank Field led before Christmas you produced some very useful written evidence from Kent in which you said, "There appears to be a significant disparity at present between forced labour, as recognised by the CPS, and the systematic exploitation of workers within certain businesses that is seen as employment law." I think you are saying that you do not think the current wording of this Bill deals with what is exploitation and criminal but is not so seen by the CPS. Is that right?

Detective Inspector Roberts: If I could give a very clear example, we came across Lithuanian chicken catchers. Twenty-nine males were put through a victim debriefing centre. Seventeen gave written evidence and statements, which included beatings; theft of their wages; living with anything up to 12 people in a two-bedroom house; bed bug-ridden mattresses; dogs being set on workers; being held within the back of a transit van for up to five to six days at a time without any ablutions—no washing or toilet facilities; being driven from job to job; and being paid only for the time that they were working.

Q559 Baroness Butler-Sloss: How did the CPS deal with that?

Detective Inspector Roberts: They said that that did not amount to forced labour within the legislation as it stood. As a simple soul—as most police officers are—we can deal only with what is in front of us. I would like to know what the bar is that we have to cross.

Q560 Baroness Butler-Sloss: Have we got this problem across, for instance, Cambridgeshire, the Met or Lincolnshire?

Chief Inspector Winters: We have exactly the same experience as Kent. It is not small scale; it is widespread, certainly in the more rural parts of our county in the north-east. Core offences are committed in these scenarios. Clearly, you have threats, assaults, blackmail and fraud, but when the CPS comes to look at the entire package it will deal with those core offences. If we were able to deal with it as exploitation and it was packaged up as exploitation, which would add that aggravating factor to it, it would be beneficial to us.

Q561 Chairman: That is really helpful. Alan, do you wish to add anything to this point?

Alan Hardwick: No, except that the problem of persuading people who have been trafficked to tell the police that they have been trafficked is something that is common to all of us. We had a case recently in Lincolnshire to do with the sex industry where that happened. The foreign national was repatriated but throughout refused or declined to give any evidence or indeed statement at all that would have led to any further criminal action.

Q562 Chairman: Why do you think they were anxious not to help, Alan?

Alan Hardwick: They probably come from countries where the police are not regarded in the same light as friends, as indeed they are in this country. It is very much a cultural problem. That is a problem even where people are not trafficked but come from different countries to this country, so people who are trafficked have that extra layer of terror laid on them. They are told quite often, "If you do contact the police, you know what's going to happen."

Chairman: That phrase would hold different meanings for different people, wouldn't it? We might come back to this whole business about how we treat victims, if we may.

Q563 Fiona Mactaggart: It sounds to me that all of you, except for the Met, which because of its size and because of London has a very complex

experience of this, have different sorts of experience of labour exploitation, particularly in the fruit-picking and food-processing industries, some elements of sexual exploitation and so on. Am I right in thinking that the understanding of all these forms of exploitation in different police forces is very different?

Chief Inspector Winters: The experience of different police forces is going to be different, and that will naturally lead to a different understanding, but as to the core part of the question about whether the police nationally are very structured in dealing with this the answer has to be no. We are in the early stages of understanding this and co-ordinating at force, regional and national level. I am beginning to see that happen, but it is very much early days at the moment.

Q564 Fiona Mactaggart: One of the things I am hearing from you is an issue about consent and how you test it. It seems to me that a child cannot possibly consent to their exploitation. Do we need to write that into the law? Do we need to change the wording of the law to deal with the issue of consent—for example, where people might have consented because they are in debt bondage? Is that one of the problems you have when it comes to prosecuting?

Chief Inspector Winters: That is one of the current dilemmas. We are reducing the evidential burden, which is good in some respects. It is going to encourage prosecutions and prosecution rates; it is going to reduce the burden upon victims and their requirement to give evidence or support prosecutions. However, you are reducing the evidential burden but then increasing the sentence to life. We are almost entering into a realm where there is police evidence of finding a scenario, a situation, and that is going to be enough to charge someone with trafficking potentially.

I think that we are going to need very clear CPS guidelines on charging, breaking it down to make sure that all of those different areas are considered: the issue of consent of individuals and the nature of the exploitation. Without that clarity or guidance from the CPS, we could cause ourselves some problems down the line with appeals. We need everyone, including judges, on board at every level. Everyone has to understand it.

Q565 Fiona Mactaggart: Do you think CPS guidance is enough, or does it need to be in the primary legislation?

Chief Inspector Winters: It does not really matter which way round it comes, but we do need some clarity on that.

Detective Inspector Hyland: On the issue of consent, under the draft Bill the clause 2 offence deals with all the consent issues because it

removes them. The objective of the Bill is to increase prosecutions and make the UK a hostile place to be a trafficker. That achieves it in that one piece of legislation, with some changes in it. Although we are talking about having one piece of legislation, are we trying to lump too much together? If we have that around trafficking and the slavery that happens and try to merge it all into one, how is that going to look when you write it down? We need the police and prosecutors to take an intelligent approach towards what consent is and what the person on the omnibus would think of what consent is and produce that as evidence, as we do in other cases. We may have a victim of a very serious assault or shooting who never gives evidence because we present it in other evidence, whether that is CCTV, police observation or whatever it might be. That has not been achieved in trafficking or slavery yet, and this legislation opens up the opportunities for that.

Q566 Fiona Mactaggart: Listening to Nick, it sounded to me as if the consequence of the sentences in this legislation might mean that police forces are reluctant to prosecute in cases where there is some element of ambiguity perhaps about consent. Am I wrong?

Detective Chief Inspector Sumner: No, not at all. I don't think there is any reluctance from the police to prosecute; it will be the fallout after that. We will have a relatively low evidential burden for what is life imprisonment, and that is something we need to ensure—

Q567 Fiona Mactaggart: I am not saying that you are saying it will, but you think that it has the potential to undermine confidence in this legislation.

Detective Chief Inspector Sumner: Yes, the whole process. We just need to be careful around that and have clarity in sentencing guidelines, CPS guidelines and/or within the legislation just to make sure that we are not catching all and throwing everything into the same one very serious pot with a life sentence at the end of it.

Q568 Fiona Mactaggart: That is really interesting. No one has really made that point to us before. Mr Hardwick, one of the things we know is that this crime is rather unlike things like burglary where, when you are consulting your electorate, they will say, "You've got to fix it," because they do not see this very often; it is relatively rare. Is there a way that we could include how you deal with this kind of crime in the performance indicators for people like yourself and police forces?

Alan Hardwick: I am going to jump ahead here, but if you appoint a commissioner, who is a human face, to this, and you are talking about getting through to the general public—as you say, the electorate—they

will have something to latch on to. They will see a face, which will become well known, and they will start to understand better what it is.

Q569 Fiona Mactaggart: Let's not overstate this. You are not that well known as a class of person, if you look at the number of people who even bother to turn out to vote.

Alan Hardwick: I am not talking about me; I am talking about a commissioner for slavery. I was not blowing my own or any other police and crime commissioner's trumpet. I think that would help, if that is what you are talking about, to raise awareness of something that people don't know about or, if they know about it, they don't—

Q570 Fiona Mactaggart: I am asking whether it should be a performance indicator for a police force.

Alan Hardwick: The answer to that is yes.

Q571 Fiona Mactaggart: Do the rest of you think the same?

Detective Inspector Roberts: To go back to points that have been made, trafficking covers a very wide amount of criminality. An example would be a taxi driver who would run girls from brothel to brothel. Is that trafficking for exploitation? Absolutely. Are we going to record that as an individual crime? How would we come across it, monitor it and deal with it? With people moving through borders and hundreds of off-street brothels, there is a significant problem if we are going to tackle this as part of mainstream policing. With a trafficking guru for the country giving clear guidance across the country, I think police forces should standardise their response. I think that making it a performance indicator against other types of crime would cause significant problems at the moment, with police budgets being restricted as they are. The answer is that in reality of course it should, because it is such a serious type of crime, but there would have to be very, very clear guidance on how police forces record it, monitor it and deal with it because it is a huge issue that at the moment is not mainstream policing.

Q572 Baroness Hanham: Can I move you on to something entirely different, which is the orders? I am interested specifically in the risk orders and where you think you would apply for them, as opposed to prosecuting somebody for actions that you think are coming about or have come about. What would be the value to you and the system in general of risk orders? The Magistrates Association, with whom we have also discussed this, suggested that the police, in going for a risk order, might not want to produce evidence which they might want to produce subsequently so that they were giving an indication to the person

concerned that they actually knew rather more than they did. What would be your view of the value of risk orders and the possible outcome if you were to go for them?

Detective Inspector Hyland: As I see it at the moment, the obvious and very powerful one is where we have a trafficker coming from overseas. We can put an order on them, "Don't come," or we put such restrictions on them that they can't come into the UK, or they can't do their activity. Another case is where we know people are buying multiple airline tickets. We can collapse their business by using these orders. There are benefits around them, particularly when we are going for a gang and organised crime group. There might be 10 or 11 people that we are going to prosecute. We could look for orders for all the peripheral players in that. When people are released from prison we can have these orders for five, 10 years and keep reapplying for them.

Q573 Baroness Hanham: Those are not the ones I am bothered about. I can see that. It is a risk order where, presumably, you suspect that somebody might be going to do something, or is doing something, but you do not have enough evidence for it.

Detective Inspector Hyland: The kind of information we get, which is in the evidential chain because it is overseas, would be telephone intercepts from overseas. We are allowed to use it in evidence in the courts in this country, and we do. We get that information and have to wait until somebody is here and commits the offence before we can engage and arrest them and put them through the court system. Wouldn't we rather they never touched our soil, whether or not they are EU nationals? Therefore, we could use those risk orders. That is information that we would use, in evidence form normally, but we can use it for that reason. More importantly, that would be the kind of thing we would want to use to control those coming to the UK who may have previous convictions anywhere in the world. In those scenarios many of the people we deal with for trafficking have got convictions elsewhere in the world and may have got only smaller sentences because of their penalties.

Q574 Chairman: You could listen to someone's phone if they were abroad and use that evidence to stop them coming into the country, but if they were making the same phone call but on British soil you would not be able to use that information to restrict what they were doing.

Detective Inspector Hyland: That is correct.

Q575 Chairman: Do you think that is a sensible state of affairs?

Detective Inspector Hyland: I don't think you need to ask that.

Q576 Chairman: Mike, do you have anything to add to this?

Chief Inspector Winters: We were quite sceptical about the idea of risk orders at first, but we are in the middle of quite a significant operation at the moment and the practical reality is that we don't have the capability to deal with everything we are now uncovering. To use a term that Kevin used, there are people on the periphery of our operation that we can't target as a criminal investigation because our focus and capability is so much on the people at the centre. In those circumstances, a risk order could be useful for us to deal with the people on the periphery, particularly those who are engaged in, say, the housing management of workers. One of our main problems in Cambridgeshire is how houses in multiple occupation are managed—or mismanaged, I should say—with rogue landlords, sub-tenancies and that kind of stuff. We are seeing some of that go on. It is not serious enough for us to deal with as part of our core investigation, but something like a risk order could help us curtail that peripheral activity.

Q577 Chairman: Do you have anything to add, Keith?

Detective Inspector Roberts: There are perhaps a couple more scenarios: people travelling through the borders bringing children into the country for pickpocketing, benefit fraud and so on, and the ability to intercept and prevent them being involved in cannabis factories or exploitation in other areas. We have seen a lot of children moving up to London—Roma families in particular coming straight through the ports—with a view to those children being put out to earn money for their parents. In those circumstances, I can see a risk order preventing those people immediately going on to exploit sometimes their own children. Another scenario could be brothels that are advertising internationally for women, moving people backwards and forwards through the borders. You could have orders for people controlling those brothels to prevent them operating in that arena and close down their businesses. I can see a risk order being useful in that kind of scenario as well.

Q578 Baroness Hanham: It is an uncluttered way of going about things. You go to the magistrates court and present evidence. The defendant or person in question does not have to be there, and presumably there is a system of appeal, if they ever get round to it, to go to the Crown court.

Detective Inspector Roberts: Yes.

Baroness Hanham: That is very helpful.

Q579 Michael Connarty: We all know about the operation involving freedom chickens and happy eggs, or happy chickens and freedom eggs, which the Gangmasters Licensing Authority brought to our attention during the Olympics. It is quite clear when you look at their powers that they are very limited. Their power is to take away the licence of somebody who has been doing this. Somebody else then takes up the challenge and exploits people elsewhere. They did not even have the right to secure evidence. Mike, I was interested in what you said about your operation in Cambridgeshire. I presume you are working with the GLA in some way. Would it be useful if they had wider powers? They said that in the case of the Olympics it was a one-off operation and they did not have the powers or facilities. They just did it because it was the Olympics and uncovered this terrible scandal, but they do not have that power and use that power in that way all the time. Would more powers be useful to them?

Chief Inspector Winters: The simple answer is yes; I can't see why not. With the operations we have running at the moment, if I were to go back in time and look at the kind of gold level multi-agency meetings we were having at the early stages, we did identify that the Gangmasters Licensing Authority probably should have been the lead agency on the kind of exploitation we were tackling, but it was clear from their capability and capacity that they could not do that and the operation just wouldn't have been successful. Therefore, we led that as the police. If they had more powers and capacity, that would have relieved the pressure on us and they could have taken on that operation.

Detective Inspector Roberts: Certainly, we are talking about the labour market and exploitation on a sliding scale. The GLA can work very closely with the labour providers and intercept bad practice at a much lower level than the police, so to widen their powers and bring them in could significantly reduce the amount of exploitation prior to it being a police matter. So I would strongly agree with widening their powers.

Q580 Chairman: Alan, have you anything to add to Michael's question as a commissioner?

Alan Hardwick: As far as the GLA are concerned, my attitude is very simple. They do need more powers. The more expert boots you have on the ground the better.

Q581 Michael Connarty: We interrogated the companies involved in this and wrote to them. They wrote back and said they thought that the GLA in fact should be policing their supply chain. That was immediately refuted by the chair and chief executive of GLA. They said, "That's not our

job; it's the job of the company to do it." So, presumably, if we could get the companies to be more vigilant about who supplies the material, it would help everyone.

Alan Hardwick: I couldn't agree more, Sir; I couldn't agree more.

Q582 Baroness Kennedy of Cradley: Moving back to support for victims, what particular measures would you like to see in this legislation that supports and improves the treatment of victims to help you with your investigations and prosecutions?

Detective Chief Inspector Sumner: Very briefly, the victim has to be at the very heart of everything we do. All of our processes from start to finish, from identification all the way through to the very outcome for the victim, need to be at the very centre of it all. To do that, we need to be mindful of the potential rise. We are already seeing a rise nationally in terms of referrals. We need to make sure that there is a significant increase in funding to ensure that victim care is sustained. The Metropolitan police is finding already that our victims have to be housed further and further away. Sometimes that is a good thing; that is fine and it helps us; occasionally, it is not quite so helpful. That network needs to be properly resourced to manage victims, when we come across them, and support them in standard services.

The other thing I would say is that we need greater flexibility. At the moment we have funding for the initial period and reflection period. We need greater flexibility in moving victims into normal local services so that they can be funded through the local sector. That is going to change nationally; it will look different. We need to understand where our volume is in terms of victims and where they are turning up. We might come across 200 in a farming environment, and that is going to put huge pressure on the local services. As we understand the picture a little better, we have to make sure that we can shift financial resources to support local councils, housing departments and everyone else to manage that. We need a little more focus there. The work of the Salvation Army and all the subcontractors over the last few years has been superb and incredibly helpful.

Q583 Chairman: Is it as wonderful as you say? Earlier Alan talked about having one victim who preferred deportation to staying around in this country. Is our treatment of victims quite as good as you are suggesting?

Detective Chief Inspector Sumner: Once they are into the Salvation Army network I have heard nothing but good, and we have been supported very well. Obviously, every case is different.

Chief Inspector Winters: Without the national referral mechanism, our case just would not progress. It was the only thing that helped us

deal with the victims. We had 83 potential victims come through our reception centres as part of our operation, and a good chunk of those were referred through the national referral mechanism and managed there. If that was not happening, we would not have those witnesses confident now to help us with the evidence that we are going to need in a few months' time when we get to court.

Q584 Chairman: Keith, is it all as good as they say?

Detective Inspector Roberts: I am not as convinced, particularly with labour exploitation where you have males who, once they have gone through the national referral mechanism, are moved around the country. We had very, very big problems keeping track of our witnesses as they moved around the country. They are itinerant by nature anyway. It was almost impossible to keep track of the 20 or so victims we had within the national referral mechanism. Within a month we had lost contact with two thirds who had drifted to different work and accommodation, or moved out of the NRM.

Kent, perhaps unusually among forces, has a lot of people coming through its border. We find that other forces are giving us a problem in suggesting that, because a person has been trafficked through Kent's borders, it should be incumbent on Kent to investigate them as a victim of trafficking, whether they are in Newcastle, Manchester or London, in investigating and identifying them. That is an impossibility for us.

There are two elements to this: first, the identification and support of the victim who comes into the NRM. It should be incumbent on all forces and agencies involved in the support of a victim to work together better than they do at the moment to support that victim and not just think about the initial welfare of the person, which, quite rightly, has to be the most important thing. They must work together with law enforcement towards a prosecution around that person. At the moment, the drive is very much, as it should be, victim-centred and around their welfare. If we are going to prosecute people, we need to work together to make sure that that victim stands on and we can prosecute the traffickers. Moving victims around the country gives police problems. We are parochial by nature within our investigation remit and budgets, so, if we are properly to prosecute people who are moving these victims around, we need a national structure that allows us to share intelligence and evidence and support victims, wherever they are.

Q585 Baroness Hanham: Very early on in our session you were talking about co-operation and co-ordination between all bodies—police, public authorities or anybody who might have any role at all in this. It seems to me it is pretty fragmented at the moment. In some places they will have very good co-ordination; in others they will not. There was a question as

to whether we ought to have a commissioner—not the police commissioner but our commissioner in the legislation—perhaps doing the oversight and ensuring that that co-ordination took place. Would that help you in your situation?

Detective Inspector Roberts: Absolutely—a standardised product across the country. At the moment, in regard to training, front-end knowledge and support processes for victims and prosecutions, within the Met there is a very sophisticated and well-schooled centre of excellence for trafficking across the country. The UK HTC can give specialist advice. I am probably talking on behalf of Kent and Lincolnshire when I say we have learned from our mistakes. That should not be the way in this type of crime. There should be a standard across the country in how we go about prosecuting and about intelligence and supporting victims.

Q586 Baroness Hanham: And referrals presumably, and a note of that so that at least people know where they are.

Detective Inspector Roberts: Absolutely. A good example would be that when a victim comes forward there have to be specialist methods of gathering their evidence. It takes time and resources to do what we call an ABE: achieving best evidence interview. It can take two or three days properly to debrief a victim. The staff could be looking at a victim who has come from a completely different part of the country, and it is not an investigation that is centred within their force. It should be incumbent on that force to support that victim and deal with them appropriately, as you would with a rape victim, for example. At the moment people get bounced around, and that is wholly wrong.

Q587 Baroness Butler-Sloss: Can I take you to cannabis farms? I think there are in excess of 7,000 cannabis farms in this country, of which not far short of 4,000 are in the Met area. So this is directed particularly at the Met but also generally. The L case was a pretty good example. You had three young people, who I think were under 18, locked in and caught in a cannabis farm and ended up being acquitted in the Criminal Division of the Court of Appeal. They had been picked up by the police, prosecuted and convicted. Why on earth are the police not keeping watch on cannabis farms, which I know you identify in various ways, such as heat, smell and so on, and picking up the traffickers? Your conviction rate on trafficking in cannabis is minimal. Why are you going for the kids and not staking out premises and getting the traffickers?

Detective Inspector Hyland: I know quite a bit of the detail of the case of L. It involved somebody who was arrested in a cannabis farm in Bristol and was moved to a prison in London. The individual involved was asked by the police at the time whether they were trafficked, but

because of their knowledge and the legal advice they were given they said nothing.

Q588 Baroness Butler-Sloss: It is not the kids I am on about but the traffickers.

Chairman: And also the police action.

Detective Inspector Hyland: That is exactly what I was going to say. There is a whole process from the police identifying this as a trafficking issue. You have Vietnamese involved in cannabis farms, which we know is potential trafficking, but then we have a whole process that that individual went through, which is—

Q589 Baroness Butler-Sloss: I am sorry; forgive me, Kevin, but we have a rather short amount of time. I am looking at something quite different. You identify a cannabis farm. That is a criminal activity. Why don't you wait and catch the people who are actually going in and out, because we know that these labs are visited from time to time? They don't live there locked in without anybody going in, so why is there a spate of young people being prosecuted but absolutely nil traffickers, or those running the cannabis farms, being prosecuted?

Detective Inspector Roberts: With regard to a cannabis factory, the people who are locked within those premises could be there for three or four days a week without any people from outside coming backwards and forwards to support that criminal enterprise. It would then be incumbent on a police force to spend perhaps an entire week, doing surveillance 24 hours a day, around a cannabis factory to see whether or not someone is coming or going. That burden on a force would be astronomic; it would cripple the proactive capability of any police force. It would drain resources away from other things and what would perhaps be seen as more serious criminality. It just would not be feasible for forces, particularly like the Met, to go about that.

Q590 Chairman: Overall, we only have about 11 successful prosecutions a year. What is one week of a police force if you get a successful prosecution out of it?

Detective Inspector Hyland: Most of these are found by chance, because local safer neighbourhood teams will smell the cannabis, or a helicopter will be doing the heat-seeking. You are absolutely right. That is the bit that needs to be the subject of education by the police. They will do a raid fairly quickly because somebody is in there. When they see that young person, the change that is needed is that that is identified at that point as a trafficking issue, as opposed to just

prosecuting that person. That is when the police could withdraw and put resources there to observe the people coming.

Q591 Baroness Butler-Sloss: That was what I was talking about. We have a situation at the moment where young people continue to be prosecuted when they are locked into cannabis farms and you are not catching the traffickers. That was the question I was asking.

Detective Inspector Hyland: We are looking at some cases where we know that the traffickers and the people controlling it never ever go to the premises, because they have a chain of people, all of whom have been trafficked, who run the whole network. The only way they will be connected is through the money, which then goes back to Vietnam. Those are the difficulties. It is very organised. That is where control orders may come in, because we could do something around that.

Chairman: Let's stay on the assets.

Q592 Baroness Doocey: I want to ask you about asset recovery. How early on in the process do you start to try to recover assets? For example, is it when you arrest somebody?

Detective Chief Inspector Sumner: In every case we do a financial review and chase the money, without exception.

Q593 Baroness Doocey: From when, though?

Detective Chief Inspector Sumner: From the point of intelligence reception and before we have gone anywhere. From the very earliest stages, we will always chase the money. There are different strands and profiles of trafficking which would attract greater wealth. We know there are tens and hundreds of millions of pounds made within the sex industry. In that sector, huge profits are linked to the exploitation of women primarily—and men to a lesser extent. We always chase the money in every scenario no matter what the profile of trafficking.

Q594 Chairman: At what point do you jump to get the money?

Detective Chief Inspector Sumner: Once we do the assessment and identify that there is an asset to go after, we go through the standard processes. It is relatively normal practice, certainly for us in our unit, to make those initial assessments. As soon as there is any asset for us to go after, whether or not it is in the UK, we will chase it.

Q595 Baroness Doocey: How successful are you? For example, could you tell us what percentage of the money that you believe is out there you have recovered over the last year?

Chairman: Just the figure.

Detective Chief Inspector Sumner: To give you an idea, in one case, which has now been through the courts and so is in the public domain, we shut down a brothel that was linked to a network of five and the trafficking and exploitation of women. There was a proven turnover of £1.2 million a year. We secured just shy of £1 million. In terms of the physical cash asset that we took out of that network, the amount was just shy of £300,000. It is not uncommon to have a big number at the start, and what we actually get into the coffers is significantly less. That gives you an idea.

Q596 Chairman: If the Home Secretary can keep the money in a sense for compensation and these activities, we might have the money to lay in wait for a week on cannabis farms.

Detective Chief Inspector Sumner: Absolutely, yes.

Q597 Baroness Doocey: Is there anything that would help you get a better rate of recovery? Is there anything missing in the legislation at the moment that really would make a significant difference?

Detective Chief Inspector Sumner: To have more people to investigate and go after the money would help immensely. Generally, POCA is fit for purpose. Obviously, it has to be cautious, but it works.

Q598 Lord Warner: I want to go back to the issue of performance indicators, which I know is often uncomfortable for the police. If you look at other crimes which were unfashionable at one point, performance has been driven by starting to measure things. Rape, domestic violence and child abuse are three good examples. They were unfashionable crimes but change was driven by measuring things. Why is modern slavery not in the same category? Why don't we need a set of performance indicators? Let's forget for the moment hard times. If we want to drive change in this area, don't we need some measurements of success or failure?

Detective Chief Inspector Sumner: Yes, I fully agree. I couldn't agree more. In the Met we do have performance indicators around it, and we have had for a few years now. I think it is a matter of keeping those measures simple so that we are not constantly going into detail. Let's give some headline simple measures for the forces to go after as targets. It will certainly give it focus. I would also introduce, but not yet, HMIC inspections.

Q599 Chairman: When you say “simple,” do you mean, for example, successful prosecutions and money?

Detective Chief Inspector Sumner: Yes.

Q600 Chairman: Alan, as commissioner, how does Norman’s question strike you?

Alan Hardwick: I have already agreed that a performance indicator would be absolutely essential. As far as commissioners are concerned, I would talk about money, wouldn’t I? We could all do with a dedicated specialist resource within our forces. That would be the ideal. I think the Met pays for its own at the moment; I don’t think individual forces could. If I can just talk about the east midlands area, as you probably know, we have a collaboration involving Lincolnshire, Nottinghamshire, Leicestershire and Derbyshire. The commissioners in those areas are putting money into that collaboration in the hope that we can produce for the region the sort of outcomes that we could not possibly hope to have as individual forces. So we have got our eye on the ball in that area.

Chairman: That is really helpful for our report.

Q601 Michael Connarty: This takes us back almost to the beginning of the questions. I have done a few attachments to the police service; I have spent time with what was SOCA on each occasion. I understood from what they said, and also what was said by the Advocate General in Scotland when it launched its inquiry and proposal, that, if you could get an aggravated offence for all the minor offences you normally charge people with, it takes them to a tariff level that would allow you to access the finances of the very thing you are talking about. If you follow the money, you usually follow the crime syndicate. Is that the case? Would human trafficking aggravated by exploitation allow you better to pursue the money? We know they are involved in trafficking and forms of exploitation, but you can charge them only with what are very minor crimes at the end of the day. If aggravation was added, would that give you the teeth you require to seek the money from the enterprise?

Detective Inspector Hyland: I think the new draft legislation creates a wider remit of offences. That will include proceeds of crime, lifestyle offences and so on, so the new legislation could achieve exactly what you are saying. That would open up opportunities to take action against people such as the ones who own the premises and encompass them, given the fact they have proceeds of crime through their premises, vehicles or whatever. That would allow us to access all of that as part of the crime syndicate, opposed to the fact that at the moment they may argue as a defence that they did not know or were not aware of it.

So I think it would encompass that. Whether it is part of the new legislation, or other legislation, it would achieve that goal.

Q602 Michael Connarty: It is all about money.

Detective Inspector Hyland: Yes.

Chairman: That is really helpful. Dee, you have a request.

Q603 Baroness Doocey: Could you send us a written note, following the meeting today, from all the forces represented here about how much you have recovered in assets in the last year, and what percentage that represents? If you have recovered £100 and you think the total is £1,000, the percentage would be very helpful.

Chief Inspector Winters: In relation to what offences?

Baroness Doocey: In relation to trafficking.

Chairman: Slavery.

Baroness Doocey: Slavery, yes.

Fiona Mactaggart: One of these sorts of offences that you might have charged, such as prostitution or something like that, but one of the offences in the class of offences that are charged. We know that you are frequently charging something other than exploitation.

Q604 Baroness Doocey: For example, there is the famous one where you cannot prosecute somebody because you don't have enough evidence but you know the money is there. Just give an order of magnitude. It is not something that is going to be written in stone; it is just to give us an idea.

Detective Chief Inspector Sumner: What time frame?

Q605 Baroness Doocey: For the last year.

Detective Chief Inspector Sumner: The calendar year 2013.

Baroness Doocey: Yes, please.

Chairman: If your data for 2013 are up to date, that would be great. Thank you all; that is very helpful.

Examination of Witness

Witness: **Nick Hunt**, Director of Strategy and Policy, Crown Prosecution Service, examined.

Q606 Chairman: Nick, might you identify yourself for the sake of the record, please?

Nick Hunt: My name is Nick Hunt. I am the director of strategy and policy in the Crown Prosecution Service.

Q607 Lord Warner: Could we start off with Part 1 of the Bill, which reproduces the existing slavery and trafficking offences? What is the experience of the CPS in charging for these offences and then prosecuting these cases in the courts? Are they easy to understand and use? If not, how would you like to see Part 1 of the Bill improved?

Nick Hunt: Broadly, the existing offences which have been broadly replicated in Part 1 are fairly straightforward in terms of the statute itself and in prosecuting the cases based on the statute itself. There are areas where we could improve the existing law and the clauses within the Bill, but the major issue is the investigation of the offences rather than the statute itself, and getting the evidence to demonstrate that the offence has been committed in the first place. I am sure the Committee will be well aware of the various reasons why that is the case. The offences themselves do not pose a problem to the prosecution, but there are areas where we could seek to improve them.

Q608 Lord Warner: Some of the people who have sat in the same seat as you are sitting in and given evidence to us, and in written evidence, have criticised the CPS by suggesting that the CPS is reluctant to use the existing offences and, instead, prefers to rely on some other core offences such as rape or fraud. Do you think that criticism is fair? Have you actually found these offences difficult to prosecute and, therefore, you have gone for something else which is better known, if I may put it that way, to the courts?

Nick Hunt: No, I don't think so. If there is a rape as well as the trafficking offence, we would charge both and place both on the indictment and prosecute both offences; so we wouldn't see that as being an issue. There are problems with some parts of the offences which make it difficult at times. For example, the existing section 71 offence, which is now clause 1 in terms of slavery, sets the threshold quite high by referring back to article 4 of the ECHR and the case law generated by that. In terms of the trafficking offence itself, we need to prove that and there are issues around getting evidence maybe from other jurisdictions to prove that particular offence, but I don't think the offences are

complex in themselves. It is fairly straightforward to bring a prosecution. It is getting the evidence to support it where the challenges often lie.

I have been sitting at the back of the room hearing the evidence given by the police officers here today, and there was some discussion around consent and whether that is an issue that needs to be considered within the Bill itself. You could say that, looking at the slavery offence in clause 1, you might wish to replicate something similar to clause 2 where you are saying, basically, you can't consent to being trafficked and so you can't consent to being held in slavery, servitude or subject to forced labour, to put that beyond doubt within the offence itself. There are also other issues there.

The threshold for slavery and forced labour is quite high. It was set quite high by the case law in the courts. There is the issue of whether or not we need a wider definition of slavery to bring in more general exploitation issues, or whether you want to define the circumstances in which a person could find themselves in slavery, forced labour or servitude, such as, for example, being held by force or some form of coercion which is not physical, or some kind of deception, to try and bring more people within the ambit of that particular offence. The offences themselves as defined at the moment do not pose a problem in terms of bringing a prosecution. It is getting the evidence to support the case that is the major challenge.

Q609 Lord Warner: Presumably, your life would be easier if you had a more broadly defined offence such as exploitation.

Nick Hunt: At present we are obviously looking at different parts of the criminal activity. We have the slavery offence in clause 1 and the trafficking offence in clause 2, looking at different bits. Obviously, there are links and overlaps between the two offences, as often trafficking victims are then brought into slavery. But if you bring together a general exploitation offence, we need to look very carefully at what it is trying to do and what it does involve, and whether we are not losing something there by bringing the different offences together. I would have thought one of the major issues here is the issue around slavery in terms of the actual definition of the offence and whether or not we could do something around that to make it clearer.

The definition of traffic victims and trafficking is fairly clear through the Palermo protocol and so forth, and the trafficking legislation we have reflects most of the Palermo protocol definition. There is an issue there around harbouring and receipt, and it would be quite interesting to consider whether or not that should be considered and possibly put into

clause 2 or clause 3 of the Bill. We would have to look very carefully at whether a general exploitation offence would be more helpful than the two separate offences that we have at present, if they are amended, to bring them into the slightly wider definition of slavery, making sure that the trafficking offence covers all the different aspects of the Palermo protocol.

Chairman: Norman, can I just bring Andrew in?

Q610 Sir Andrew Stunell: You heard the evidence that was given just before you, and it was Inspector Roberts, I think, who gave the example of the Kent case. He said if that was not exploitation he didn't know what was. That came to your office and somebody there took a decision that that was not something to proceed with. Would an exploitation offence make it easier for you to take a positive decision about that, or what are the factors which, in brief, led you to reject that particular situation?

Nick Hunt: I am not particularly aware of that individual case, and I am sure there would be very good reasons why that decision was taken at the time not to proceed with that particular prosecution, in consultation with the police. In that kind of eventuality, whether or not a general exploitation offence would be helpful I don't know. What we need to look at very carefully is whether that would be something which would amount to slavery or forced labour or servitude in the generally accepted sense, as opposed to an offence that may well verge on some form of employment law, which might be a better solution towards that particular kind of issue, as opposed to criminalising and putting that offence through—

Q611 Chairman: Do you think, Nick, rather than speculate what might or might not be, given you do not know the case, you might give us a note on how you would answer Andrew's question?

Nick Hunt: Yes, of course; absolutely.

Q612 Baroness Hanham: We have been hearing a lot about the evidence and the difficulty of getting evidence often in these cases. Sometimes they are children; sometimes they are people who are afraid, as we heard, of the police state. Is there anything more in the Bill we can do to help you to be able to prosecute these cases? You have quite a high bar, and I guess the bar for these cases is much the same as others—a 52% possibility of getting a conviction. Is there anything that would help us or help you that we could think about putting in?

Nick Hunt: As I say, I have talked about the offences in clause 1 and clause 2, and maybe ways of improving them to make it easier to

bring forward some prosecutions in some areas. In terms of support for victims, which you are asking about there, we need to be much better in using the existing mechanisms we have in place where they are applying for special measures, to make sure that they are supported better through the court process and making sure we comply with the obligations on us as a service under the Victims Code, which has just been updated. Those are the issues there. We are getting much better in supporting victims, but particularly with traffic victims there is a lot more we could possibly do. One of the things that we did recently was to hold a meeting in December with a number of different agents and experts in this field, which led to the Director of Public Prosecutions publishing an action plan in this area, which is around supporting victims to give evidence even from abroad maybe if they have gone back to their home country, to ensure that we can still bring prosecutions forward.

Q613 Baroness Hanham: So nothing in the Bill but quite a lot around the whole subject.

Nick Hunt: We need to make sure that the existing processes work much better rather than legislating itself.

Q614 Lord Warner: Can I move on to the subject of CPS guidance on the issue of prosecution of victims? The White Paper promised some new guidance, and I gather that in the last few days or so that new guidance has been produced on the issue of prosecution of victims. What makes you think that the new guidance is going to make things better, and what else is going to accompany that to produce any change of culture on this issue within the CPS?

Nick Hunt: The guidance that we have issued in the past couple of days has made it much clearer around the policy involving suspects in a criminal case who may be victims of trafficking and the approach we should take in those particular cases. The policy as such has not changed, but the guidance now, I hope, is much clearer around those particular points so that prosecutors are much more aware about what they should do in those particular cases. We have also had training in place since March last year around human trafficking cases as well. We flag all these cases and follow those through to ensure that we are conducting ourselves properly in these kinds of cases. We are also, obviously, very mindful of the Court of Appeal's judgment last year on the approach to taking these kinds of cases in terms of the court's willingness to stay proceedings, to stay the prosecution on the basis of an abuse of process. If we were to put into the court a person who was quite obviously a victim of trafficking and, for whatever reason, we had already charged them,

then we need to consider whether or not we need to adjourn and withdraw that particular charge against that individual. But we have mechanisms in place to ensure that prosecutors follow the guidance through training and through monitoring what we call our basket of offences. Violence against women and girl offences at our local CPS areas are monitored on a six-monthly basis, so there are different ways there of trying to ensure that our guidance is followed as well as we can do.

Q615 Chairman: Do you think, as a result of your guidance, we will not have examples of young people who are locked up here—they are from Vietnam—in cannabis farms, being charged for growing cannabis?

Nick Hunt: If they volunteer themselves as victims, if the evidence is clear that they are a victim in this particular situation, looking at the guidance, then prosecutors should apply that and should come to a particular conclusion.

Q616 Baroness Butler-Sloss: But volunteering is not realistic, you know. These are boys who are 15, 16 or 17. They are brought from Vietnam to this country; they do not speak a word of English; they are locked into a factory and they cannot get out. They are, whether they know it or not, slaves. How do you have to have them volunteering if you find that they are locked in and they don't have their passports? They clearly do not have any money. Why can't you assume, until you find the contrary, that they are those who should be helping you to find the traffickers rather than being locked up and treated as criminals?

Nick Hunt: If I could just answer—

Baroness Butler-Sloss: It is the word "volunteering." They are absolutely—

Nick Hunt: If I could just add to that, we also have the three-stage process in our guidance. If a person looks like they have been trafficked, we need to refer them through to the competent authority, which is the UK Human Trafficking Centre, for them to decide on the basis of the evidence—

Q617 Baroness Butler-Sloss: Could you take the word "volunteering" out of your guidance?

Nick Hunt: I am not sure it is actually in our guidance—

Baroness Butler-Sloss: I am glad to hear it.

Nick Hunt: —but I will check that point. If they have followed the three-stage process through, if it looks like they are genuinely a trafficking victim and that is the decision of the competent authority, that should be the end of the process and we wouldn't look to prosecute that particular person. If they move on and there is evidence of duress or some other form of compulsion, and if it is a child under 18, then there doesn't necessarily have to be evidence of duress—simply some element of compulsion—and we should not be prosecuting that individual.

Q618 Baroness Butler-Sloss: You haven't done very well after Lord Judge's judgment in the *Re L* case, but are you really thinking, as Lord Warner was saying to you, that you will do better now that those people who clearly should not have been prosecuted won't be in the future?

Nick Hunt: We certainly—

Baroness Butler-Sloss: It is a matter up to you, as the CPS, on this.

Chairman: We have Lord Judge next appearing before us. We are going to ask him how successful he thinks you are going to be with your new guidance.

Q619 Lord Warner: Can I just ask you a simple question? Can you show us that things have changed, since that judgment, within the CPS in the last year? Can you give us any evidence that the CPS has changed because of that judgment?

Nick Hunt: Obviously, as prosecutors, we are aware of the judgment. We amended our guidance. We don't keep figures on the number of cases we don't bring so we couldn't give you concrete information about the number of cases we have not proceeded on, but prosecutors are aware of what should happen in these particular cases and, if they are aware that a person has been trafficked, they should not be bringing charges unless there are serious circumstances why that person should be brought to court. In the normal run of things, if it is—

Q620 Lord Warner: So we don't know.

Nick Hunt: We do not have the information to say—no. However, looking at the cases that have been brought forward and the judgments of the court, we are not aware that there is a systemic issue there at present.

Lord Warner: It sounds like a job for the inspectorate.

Q621 Baroness Doocey: I am just a bit concerned about the fact that you don't know and you don't seem to be very clear. Could I ask you a question? What procedures have you put in place to stop children being prosecuted who are clearly victims of trafficking and to stop them being criminalised as they have been up until now?

Nick Hunt: We have been working with the Law Society to ensure that they are aware of the various defences that are available. Obviously, we have training in place for our prosecutors available on our Prosecution College website. We have regular events where we talk to prosecutors about the law in this area. We circulate the various Court of Appeal judgments to make people aware of what the law is in this area. We are also very clear in our guidance that we should not be prosecuting children in this particular situation. If we are aware that they are a child and they have been trafficked, we should not be prosecuting them.

Q622 Baroness Doocey: It won't happen, but if you were to come back before us in, say, six months' time do you believe that you would be saying to us, "In the last six months, since we have produced the new guidance, the situation has changed and we have not now criminalised children who are clearly victims of trafficking"?

Nick Hunt: If we are aware that that child has been trafficked, we should not be—

Baroness Doocey: "If we are aware." It does not make any sense, I am afraid.

Q623 Chairman: Can we put it another way? Could you give us data, over the last three years, of the numbers of prosecutions you have launched for this crime and how many successful prosecutions you have had, and then, as Dee has asked, could you break that down to numbers of children involved in those cases?

Nick Hunt: Okay.

Q624 Michael Connarty: Just to clarify, if someone is sent to a young offender institution rather than a prison, then, clearly, they are children. I have several Vietnamese young people in my own constituency. What seems to me to be odd about this whole process is that, clearly, for many people who come to this country they pay a lot of money; their families raise a lot of money. There was a very big exposé on the curry houses in

London just recently, about the people who had been trafficked many years ago, who paid lots of money and are in huge debt to the traffickers. In that situation, many of the young people would not say anything against those people because they have a tremendous hold over their family.

It seems to me that there is no sense of understanding of the cultural nature of trafficking from these countries. I have just come back from Cambodia, where women are trafficked in large numbers for the sex trade—large numbers. Many of those people would not, if they were pressed, say they were trafficked because of the hold on their families back home, but is there anything in the new guidelines? Is there some cultural understanding of how people come from these countries to the UK to be exploited?

Nick Hunt: The guidelines do touch upon that, and we would expect people to understand that and take that into account when coming to a view on the case. I am not sure into how much detail it goes in the guidelines itself about the cultural issues, but one of the things that we are trying to do is encourage prosecutors to take a wider look at cases rather than simply looking at the evidence in a particular case—to look into the wider cultural and wider issues surrounding the case to understand why that particular person is in the situation that they were, when making that prosecution decision. We have that in our guidance and in our general approach towards these kinds of cases, towards violence against women and girl cases, which we would include this in.

Chairman: We will have a look at your guidelines with Michael's point in mind. We have a quick point from Fiona and then three more questions. We are way behind time.

Q625 Fiona Mactaggart: We have just heard the police officers' evidence before you, but Kevin Hyland suggested that the fact that there is imprisonment for life, suggested in the Bill, for an offence under clause 1 or clause 2 might actually make it harder to secure convictions in some of these cases where, for example, there is domestic servitude. Do you expect it will?

Nick Hunt: I heard that point made. I was not quite sure or clear why that would be the case.

Q626 Fiona Mactaggart: I think he felt that juries would be reluctant to put someone in prison who had perhaps exploited someone which had started off perhaps in a kind of mutual arrangement. One of the things we have been talking about is that this is an odd continuum. Many of the

people who are guilty of this offence have not necessarily conspired to recruit an army of slaves; it has happened in a slightly more subtle route. I think he was suggesting that he thought it would be hard to get a conviction. I want you, as a prosecutor, to tell me if you think it will be hard to get a conviction for an offence of holding someone in servitude or slavery with an automatic life sentence.

Nick Hunt: No, I don't think it would be. It would still be very much on the evidence of the case, and I am not sure we can really anticipate what a jury would think. We need to put the case before the courts and let them decide. I am not sure whether a life sentence in itself would deter a jury from coming to a particular verdict.

Fiona Mactaggart: I am not suggesting a life sentence would.

Q627 Baroness Butler-Sloss: Could I just take you back to the forced labour case in Kent, because Keith Roberts, who was telling us about it and I think you were in the room when he was saying it, said the police view was—it was not one person; it was either 17 or 20 people—that this was a clear case of forced labour? The point he is making is that there is a wide gap between the view of the CPS of what is meant by forced labour and exploitation in the employment trade, and he gave a very graphic description of how these people were treated. You personally, of course, don't know. Do you think you could find out what happened in Kent?

Nick Hunt: Of course I can, yes.

Q628 Baroness Butler-Sloss: It would be very useful for us to know because you were saying that this is usually an agreement between the police and the CPS. Quite clearly, there was a major disagreement here because the police thought there should be a prosecution in relation to these 17 people.

Nick Hunt: We need to look at that and come back to you overnight.

Q629 Baroness Butler-Sloss: What I wanted to take you to is the question of children. We have had a variety of views as to whether there should be child offences quite separate from adults. One possibility is that it would be a separate offence to enslave or traffic a child. The second one would be an aggravated offence so that when you were drafting the indictment, as an example, you would have a general offence of what this particular thing was—slavery—and then you would have a second count, which was that it was a child, which would then have some aggravated

effect to it. The other possibility is a separate offence modelled on existing offences against the child, such as neglect, with the addition of a mental element of intention to exploit. Did you get a copy of the questions?

Nick Hunt: Yes, I did; thank you.

Q630 Baroness Butler-Sloss: Apart from a general answer about whether there should be a child offence or whether it should be an aggravated offence, would you be kind enough to look at those questions and see which of them, if any, would be a sensible thing from the point of view of the CPS?

Nick Hunt: Very briefly, I would say that I would be against a specific child exploitation offence. There may be arguments for a more general offence, and you may wish to think whether or not, if a person is a child or may be another vulnerable person—for example, a person with learning disabilities—there may be some form of aggravating factor, but I am not sure whether we would want to have a specific child offence itself. There are some important issues.

Q631 Baroness Butler-Sloss: Would you support an aggravated factor in the fact if someone is a child or, indeed, as is in clause 3(6), vulnerable adults?

Nick Hunt: That particular clause has problems with it.

Baroness Butler-Sloss: Absolutely.

Nick Hunt: The sentencing guidelines, to some extent, already have aggravating factors within them, but, if Parliament wants to show beyond doubt that it thinks that we should take cases involving children and vulnerable people with learning disabilities within this as well more seriously in terms of the sentencing by the courts, then that should be looked at, yes.

Q632 The Lord Bishop of Derby: You have talked about the guidelines and your practices. I want to raise an issue about using legislation to prevent the prosecuting of victims. It has been suggested to us that one option would be to combine a prohibition of prosecution for anybody who is formally identified as a victim, with a fallback of a statutory defence of being a victim of modern slavery. I wonder what you think of that kind of approach or whether you have any other ideas about using legislation to protect people from prosecution.

Nick Hunt: In terms of non-prosecution of particular categories of person, there are problems with that, which I am sure you won't be surprised to hear me say. First of all, there is a practical issue that we will still need evidence that they are a victim and if we have that evidence now we shouldn't be prosecuting them anyway. I am not quite sure whether that being in the statute would be of extra help to—

Q633 The Lord Bishop of Derby: Is there an issue about the time it might take to establish the evidence, either in the person's own sense of confidence and identity or in the external evidence that is being gathered, and therefore you start off on the wrong track if you are going to say, "Until the evidence arrives, we'll prosecute"?

Nick Hunt: If we turn it round the other way, there would also be particular issues for the police and prosecutors if there is a general defence that we had to prove a person was not trafficked before we could prosecute. That would create huge hurdles in terms of bringing people whose presence in the UK was unclear, on the basis that we couldn't assume that they hadn't been trafficked here. Whichever way you turn it round, whether the onus is on the victim or on us, there would be practical issues around that.

Also, there is the "in principle" argument as well in terms of the discretion applied by prosecutors to making the prosecution decision. It pre-dates the CPS that prosecutors apply discretion when deciding whether to prosecute or not, and this is effectively taking it away from this particular category of cases and replacing it by statute, so replacing a fairly flexible approach which can adjust to the individual circumstances of the case with one which is set out more broadly in statute, which would be difficult in a number of difficult cases to—

The Lord Bishop of Derby: If you have more space for discretion, then you would be wary of the statutory approach.

Q634 Chairman: To put it another way, Nick, do you think we could put into the Bill a clause which would stand up which forbade the prosecution of victims?

Nick Hunt: In this area, because of some of the complexity of the situations we are faced with, from our point of view we would very much prefer to leave it to the public interest and the discretion of the prosecutor in bringing forward these particular kinds of cases. We have commented on the guidance today, but a number of the issues, in one formulation or another, will need evidence of some form of whether or not

that person is a genuine victim of trafficking or slavery, and I am not sure whether having a statute would quite overcome that particular issue.

Q635 Chairman: If the MRN was put on a different basis and they ruled this is a victim of slavery, might that not be a key to not prosecuting?

Nick Hunt: I am not sure that would quite overcome some of the issues that we will be faced with. It is a difficult area in terms of making that prosecution decision. We have had some discussion today now with the police around the different prosecution decisions and the views that we have taken. It has reflected that the individual circumstances and factors make it hard to have something broadly set out in statute, and you need to be able to adjust and to be able to consider the individual circumstances and the public interest that come into play in particular cases. I am not quite sure that that kind of approach would be helpful in terms of helping the victims in this situation not being prosecuted in court.

Q636 Chairman: Lord Judge's ruling was that we were locking up people that we should not be locking up because they were victims. What hope do you offer us, going back to the questions that Norman asked, with your guidance, that we are going to see a lot less of that?

Nick Hunt: All I can say is that we have the guidance in place. I am not sure that placing it into a Bill would help overcome the issue around identifying victims in these particular cases. We need to show that the guidance we have in place works effectively and that we are not bringing these cases forward to court. If the victim is identified as a trafficked victim, that should not happen.

Q637 Chairman: We are desperate to see the Bill more shaped towards victims and their defences. Would it not be possible then, in a sense, taking Lord Judge's view, if we couldn't go and put it in statute, for the defence to ask for the dismissal of the case because this person has been deemed by the MRN as a victim of slavery—that the case should not be heard?

Nick Hunt: You could look at that as part of the consideration of the Bill and we would need to look at what it means, but, even then, if you are talking about it being a general defence in law, there will still be some offences, unfortunately, which are so serious that we might wish to bring a prosecution and then for the court to take that into account as a mitigating factor when sentencing. So, again, it is very difficult to have this kind of general defence set up in the statute itself.

Q638 Chairman: Have we had any examples so far where, for example, we have locked up young people from Vietnam because they have been growing cannabis, who are also charged with a serious offence? Presumably, you are suggesting that there are some offences that are so grave that being a victim of slavery is not a defence. Presumably, murder is one extreme. How many cases have you had at the CPS where there have been serious charges, but not to do with the actual trafficking or the slavery offence, which you feel somebody should stand trial for?

Nick Hunt: I don't have that information to hand and I suspect it is very few, but we still need that ability to be able to respond. I have been given a note. I am not going to read it now, but if I can write to you on that point it might be helpful.

Chairman: Would you? I am really grateful to you, Nick, for your time. It was really good. Thank you.

Examination of Witness

Witness: **The Rt Hon the Lord Judge**, examined.

Q639 Chairman: Lord Judge, thank you not only for coming but also for waiting, as we are behind our timetable. Might I ask you to identify yourself for the record?

Lord Judge: Yes; I am Igor Judge. That is what I am—not anything any more.

Chairman: This is who we see before us. Thank you.

Q640 Sir Andrew Stunell: I will start off where the last discussion petered out; that may be the right wording for it. Should there be a statutory defence for victims of trafficking and/or immunity from prosecution? What do you see as the pros and cons of that?

Lord Judge: I don't think there should be such a defence because this Bill is not addressing the problem of the boy in the cannabis factory, who is plainly a victim. What it is addressing is serious professional crime, at all sorts of different levels, involving all sorts of different people. If you say that it provides a defence if somebody has been trafficked or enslaved, is in servitude or is in forced labour, all of which are different, what is it a defence to? Is it a defence to performing the function that you did in slavery, in servitude or in forced labour? That is a pretty dangerous concept for us, isn't it? We say that superior orders

are no defence to any kind of misconduct, and I believe that to be a very fine principle.

You then go to the obvious case of the boy sitting at 42 Acacia Avenue who is being exploited most dreadfully and say, "What about for him?" For him, yes, but you are then introducing a sort of special defence for the youngster who was in the exploited situation and saying, "You're immune from prosecution for anything that you may have done during the period of your exploitation and arising from it." That is arguable, but, frankly, I simply don't think that a broad defence of the kind that you are putting to me and that was being put to the last witness will work—and it is not needed.

It is not needed, I think, for these reasons. The system is much better organised than it was to identify the cases where there is a genuine problem of exploitation. It is far from foolproof—no system we have ever had can be—but let us assume for the moment that the prosecution decides to prosecute someone in the situation we are considering. The first application will be an application that the proceedings should be halted as an abuse of process. If we are talking about the extreme cases, the judge will look at the decision we did in L and say, "This is an abuse of process."

If that fails and the judge gets it wrong, nevertheless at the end of the trial he or she may come to the conclusion that there should never have been a prosecution here—that there is no ground for interfering with a prosecutorial decision, but, good heavens, look at this case. The most salutary form of sentence a court can pass is an absolute discharge. If the court passes an absolute discharge, the prosecution service will regard that as a terrible insult to the decision it made to prosecute in the first place and they won't do it again.

Ultimately, of course, there is the Court of Appeal Criminal Division, which is available to quash a conviction where an abuse of process argument should have succeeded or to quash a sentence and reduce it to absolute discharge—which, in effect, is an acquittal. There are much better mechanisms in place and a very broad defence, with considerable difficulties of application, as was suggested to the last witness. I am sorry—that was a very long discursive answer, but it is a question that required quite a long answer.

Q641 Sir Andrew Stunell: It is a very helpful answer. The case has been advanced on the grounds that, to get victims to give good evidence, you have to take them out from the pressure of facing prosecution.

Lord Judge: If you are inviting a witness to act as a witness for the prosecution, you will make that clear to him. If I may say so,

Chairman, we are dealing with major crime, aren't we? We are not dealing with the minor thing down the road that is a summary offence. I don't see any of these as summary offences—I see what we are talking about as major crime. If you are dealing with that, I don't think most of these victims would dream of speaking. I regard as unacceptable pressure the idea that you threaten them and say, "If you tell us who Mr Big is, we won't prosecute you, but if you stay silent, we will." They are terrified. The youngsters who get here are terrified for themselves but also for the consequences back in wherever it is they have come from. The reason they are here is because the family is, in effect, indentured—in slave labour—to some Mr Big in wherever they have come from. They are here not as volunteers but to help their families. They would not say, "Ah well, Mr Big is X." They regard the consequences for their family way back in wherever they have come from as much more important than seeking to help the prosecution. That is how I see it.

Sir Andrew Stunell: Thank you very much.

Chairman: Fiona?

Fiona Mactaggart: I am sorry—I was completely unprepared.

Chairman: Do you want me to come back to you later?

Fiona Mactaggart: Yes, please. I am sorry—I was listening and thinking.

Q642 Baroness Butler-Sloss: How should the judiciary act when they are faced with a case where the CPS has decided to prosecute someone who was in the re L situation? That came to you on appeal in the criminal division. Should it have been stopped by the judge at the trial?

Lord Judge: I can't remember whether there was an application for an abuse of process in that case. Whether there was or not, if that sort of situation was presented to a trial judge, I think he or she would raise the point with the defence and ask, "Are you not taking an abuse of process point here? Have you looked at Re L?" That is how the process should work. I think, though, that we are much more alive to these issues than we were, and I think as a nation we are much more alive to these issues than we were. I am not troubled that a case that should somehow have been stopped will get through—unless the judge makes a mistake, which is obviously possible.

Q643 Chairman: Thank goodness we are all getting up to speed on this. When one looks at the political process, one is always amazed by how long it takes for people to grasp what is happening. One of the functions

we hoped the new Bill would perform was that, in a sense, it would be *the* document and you would not have to go beyond it to know how to prosecute, how to defend and so on. I think you have finished off any ideas the Committee might have had about putting in a statutory defence, but is there not a halfway house where it would be proper for the defence to ask for the dismissal of the case on the grounds that the person is a victim, who has status because of the NRM? For the laggards, who are most of us in this system, it would be very helpful to have that in a single document, so that when you are defending for the first or second time—we hope many more of these cases will come forward, so there will be many more lawyers involved in this for the first time—you know from the Act itself how to do a proper defence.

Lord Judge: I am the last person to suggest that any bit of anybody's system is infallible, but I really do believe that anybody dealing with these cases now must be alert. I am hoping that there won't be these cases. I rather disagree with you. I don't want there to be a great body of lawyers who become expert in this; I want this just to wither on the vine, so that these people are simply not put through the process at all. We are getting there, but broad declarations in an Act of Parliament about what should and should not apply always run into trouble. One of the worst forms of legislation is deeming anything. It really is, because the facts never ever ever fill the bill of whatever had been deemed. So I would caution against that.

Q644 Fiona Mactaggart: Do you think that clause 1(2), which says that it is "to be construed in accordance with Article 4 of the Human Rights Convention," is a problem? Ought there at the same time to be a reference to the Palermo description, or would it be better without any of that? Don't all our laws have to be in conformity with that?

Lord Judge: Would you mind if I answered the question systematically?

Fiona Mactaggart: No, not at all.

Lord Judge: First, could I ask you to consider why clause 1(1)(a) makes it an offence to hold somebody "in slavery or servitude" and so on where the alleged criminal "knows or ought to know," and why at the same time in clause 2(3) we have a different form of the same offence, which is that the alleged criminal "believes" someone is likely to be exploited? Please can we have the same language? When you come to look at the legislative structure, could you please consider whether knowing or believing is sufficient for this purpose? If you believe someone is being trafficked or held in compulsory labour, that is a very serious matter. Can I get that one off my chest? Some lawyers will be saying, "There must be a different meaning because the words are different." As a judge trying to construe this, you might be forced to

the absurd conclusion that there is supposed to be a different meaning. That is not to anybody's advantage.

My next point, which now addresses your question, is that I am very troubled about any form of domestic legislation that simply sprinkles itself with reference to some other convention. Surely we know what we mean by slavery or servitude. It is there in all the sections and in the decided cases, so why aren't we saying, "These will be defined in this way"? My worry about referring to article 4 of the convention, Palermo or anybody else is that these things move, too. The European Court of Human Rights will be construing it on a case from somewhere, so suddenly we will all have to say, "Is what our Act of Parliament meant article 4 as it stood at the time when it was passed, or do we mean article 4 as it has been developed down the years?" I think domestic legislation should say, "We mean this. It is defined as that." That is my answer to your question. If you want the rest of my views on the legislation, I will offer them to you.

Fiona Mactaggart: We might quite like your written note, mightn't we?

Chairman: You are helping to write our report as you sit there. It is immensely helpful.

Q645 Fiona Mactaggart: Could I follow up with the question that I asked the CPS before you? One of our police witnesses suggested that having a life sentence as the sentence for these offences in clauses 1 and 2 might make juries reluctant to convict people in some cases. Do you think that is not the case?

Lord Judge: You will be very interested to know that in the great trial of John Lilburne, who was tried for banishment, on pain of death if he returned, the jury said for the first time, "Not guilty of anything requiring the death sentence," which I thought was rather brave. Juries will be as disgusted as anybody else by slavery, servitude and the exploitation of children, in particular.

There is some suggestion—I don't know how valid it is, and I don't have a view on it—that if, for example, you charge someone with date rape the jury may think, "Gosh, seven years for that—we won't convict." That is the sort of thing that generates conversation. I don't think the jury will say here, "We know this is a life sentence case and therefore we won't convict." If the evidence is good enough, they will convict. Most of the evidence in these serious cases is very serious. This is very unpleasant behaviour, which juries tend not to like. I am not at all troubled by that.

But I do have a separate trouble, if I may say so, Chairman. While I was here you were asking questions about the issue of whether there

should be a separate offence relating to children. May I express my views on that?

Chairman: Please do.

Lord Judge: I think it would matter and there would be something to be said for it if the consequences of a conviction were not life imprisonment anyway. If you had a system that said, "Slavery, exploitation and so on of an adult: 14 years," but you felt that in relation to children it was just that much more serious—I happen to think that it is, but that will be a matter for the Committee and, ultimately, the two Houses—you would say life for the child. If you are saying that the maximum penalty for all forms of slavery, servitude and forced labour—which is not as serious as slavery—is life imprisonment, you are not gaining anything by having a separate child exploitation offence. Depending on how the discussion and debate about how maximum sentences are organised goes, I don't see any advantage.

Chairman: That is really helpful. Dee, do you want to come back on that?

Q646 Baroness Doocey: I was not entirely sure about how the Bill would cover specifically exploitation—and exploitation of children. I am thinking particularly of children in domestic servitude.

Lord Judge: If I may say so, that is another aspect of the Bill that troubles me. We are making provisions for slavery, servitude and compulsory labour in clause 1 of the Bill. In clause 2, trafficking is the offence. It becomes an offence because you do it with a view to exploitation—knowing, believing or whatever words are chosen to be used. You could have an offence of trafficking, full stop, and a separate offence of exploiting. As it stands at the moment, you have a single offence with two parts—here is the trafficking, and it is with a view to exploitation. My own view, for what it is worth, is that trafficking in people is a dreadful thing to do, trafficking with a view to exploiting them is a more serious thing to do, but exploiting them is also serious. My concern reading clause 2 and the various subclauses is, "Is this really what we want?"—a single offence that has two ingredients, rather than two separate offences and, possibly, a third offence, which would put the two together. That is my answer to your question, if it is an answer to the question that you were asking me.

Baroness Doocey: I think it is a brilliant answer to the question. It is the best I have heard to that question for very many years.

Chairman: Michael, do you have a question?

Q647 Michael Connarty: Yes. We got evidence from our barristers, originally at a private session, who talked about the word “control”—taking away from a human being control of their own life. They then talked about exploitation and the Palermo definitions. It seems to me that the issue is that process of taking over control of someone’s life for exploitation. You can have all the subsets of it. There is trafficking them for that purpose, but you do not have to be trafficked to be exploited; it can happen in your own home or your own home town, without being moved anywhere. It seems to me that it is a question of putting the words down correctly, rather than having a reference to a convention. The whole point of this is controlling someone’s life against their will. Would it not be better to define it in that way so that the words you put down are the things you mean? Trafficking is one method of taking control of someone’s life. That is slavery—slavery is taking away control and exploiting the individual.

Lord Judge: Not quite—slavery is treating them as your own property. Servitude is getting them out and taking control of their lives, and forced labour is making them do things that they don’t want to do, with the threat of violence that is sufficient to make them not be able to say no.

I am not sure that what I have said is particularly different from that. I think only that you may then have to address a question in relation to exploitation and trafficking. Trafficking implies without consent, and exploitation self-evidently is. You could define exploitation further, but it is a good English word. You do that anyway by saying, “For the purposes of clause 2 a person is exploited only if one or more of the following subclauses apply.” If you want to expand the wording, it is at that stage, in clause 3(2), that you should add—if you intend to add—the sort of language you are referring to.

Q648 Mrs Spelman: It is very important for us to understand from lawyers that we are not creating environments where we are creating the potential for grounds to appeal. You are indicating that, because of the way the Bill is drafted, there are areas where that is the case. Do you want to talk to us about that?

Lord Judge: No, I think I have said everything that I need to say. It is critical—not for the Court of Appeal but simply for the poor trial judge—that we should have the same words used, if that is what we mean to say.

Q649 Mrs Spelman: Okay, but are there issues in relation to the rights of the defendant?

Lord Judge: I don’t see any. Provided that an offence is sufficiently clearly defined, you either commit the offence or you don’t. If you are

alleged to have committed an offence, then you take legal advice, you are advised and you are entitled to a trial if you deny that you have committed it. I don't see anything in the clarification of what we are saying—by that I mean we the community, through the Houses—is a criminal offence that impinges on the fair right of a defendant.

Q650 Baroness Hanham: I want to ask you something that it was not suggested I should ask you. In the Bill—I am just racking my brain, as I do not have it at the moment—there is a suggestion that some of these offences might be suitable for summary only. What you have said, which would be my expectation, is that these are all pretty serious offences and they would probably go to the Crown court. Is there any room in any of this where you might see a role for the magistrates in dealing with the matter?

Lord Judge: If what we are talking about is slavery, servitude, forced labour or exploitation, as ever, I can't think of any, but you never know what may turn up. The sort of thing that could turn up is illustrated by two cases I did—one appeal against sentence and one Attorney's reference, both called Johnson—where the exploitation was of a different kind from that of the boy in the house in Acacia Avenue. It is possible that, if you have a family, for example, who are alleged to have exploited, you may very well say, "Mum and dad should go to the Crown court, but there is a youngster in the family who is part of the exploitation team and could go the magistrates, as he is young."

Q651 Baroness Hanham: He would go to youth court.

Lord Judge: Yes—let's send him off to the youth court and cut him away from the main criminality. I would never say never about it. I merely reflected that, if we are talking about this kind of crime, it is the Crown court for me.

Baroness Hanham: I was interested to know where you thought that the magistrates might have a role.

Q652 Chairman: Lord Judge, thank you very much. At some stage soon, we will be drafting our report, particularly on these early stages. Might we ask you to come back for an informal session with us when we have something written on paper?

Lord Judge: Of course. If I can help, I will certainly come. This is a very serious matter.

Chairman: Thank you very much indeed.

Examination of Witness

Witness: **Caroline Haughey**, Criminal Barrister, Furnival Chambers, examined.

Q653 Chairman: Caroline, we all know who you are, but we need to ask you to identify yourself for the record.

Caroline Haughey: Good afternoon. My name is Caroline Haughey. I am a criminal barrister, practising in prosecution and defence, based mainly in London and the midlands.

Q654 Lord McColl of Dulwich: Thank you very much for coming. Part 1 of the draft Bill reproduces the existing slavery and trafficking offences. Do you think that the current offences are easy to prosecute and for juries to understand?

Caroline Haughey: With the best will in the world, the current legislation has the right intention behind it, but in practical terms it is very difficult for a jury, in my experience, to grasp the complexities and nuances of the reality of dealing with the fact that in this day and age people do keep other people in slavery and other such confines of bonded labour, domestic servitude, forced and compulsory labour and so forth. Is the legislation fit for purpose at present? It is doing a job—not a fantastic one—but it is one with which we at the Bar are obliged to work with.

Q655 Lord McColl of Dulwich: But you would like to change it.

Caroline Haughey: Very much so—please.

Q656 Lord McColl of Dulwich: What would you change it to?

Caroline Haughey: In May last year, I had the privilege of speaking with Lady Butler-Sloss on the terms of modern slavery as we deal with it today. I was asked by someone in the audience what I would do, if I were the Lord Chancellor or anyone else in power, to make it easier to achieve the right end purpose, which is prosecuting properly and fairly those guilty of slavery, domestic servitude, forced and compulsory labour and so forth.

How do we go about doing that? We want simplicity and a single place where we can go to the legislation. Currently, I go through five or six different Acts. I have to look at retrospectivity and the length of time an offence has taken place over. If someone was brought into the United Kingdom prior to the Coroners Act coming into force, I am limited in what I can prosecute under. Very often these cases are historic. As we know from recent media exposure, sometimes it can take decades for people to come to the attention of the police. Quite

simply, they don't have the capacity, because of the situation in which they are kept, to make their complaint.

We want a single location, simplicity and tougher sentences. Currently, the maximum sentence is 14 years. As a practitioner, I find it utterly lamentable that we equate a human being with cannabis, because that is what it is. If I were importing cocaine, I would be looking at a life sentence. If I am importing cannabis, I am looking at a maximum of 14 years, which is exactly the corollary with human trafficking and slavery. I am sorry, but as a practitioner and as a human being I find that utterly unacceptable.

I would also like it to be made clear for those of us who are prosecuting these cases—and, in fact, defending them—what exploitation is. I have been following this closely, so I appreciate that I am throwing a bit of a curve ball in here, but how do you define exploitation? Do you rely on the common sense of what we see every single day? That is what juries are very good at—they are 12 people good and true, who use the benefit of their experience to see what is exploitation.

Currently, the case law defining slavery is dealt with in *R v. SK*—the case called *Saeeda Khan and others*. With the greatest of respect and humility to the Court of Appeal, in my humblest opinion it got it wrong. We are very privileged; we live in a country where, by and large, we have trust in our police. We don't have the same levels of corruption that other jurisdictions unfortunately have. We are not obligated to carry national identity documents; we are the exception to the rule. It is my very humble view that if you take an individual who is by definition vulnerable—that is why they are targeted for trafficking—take them into the United Kingdom, take their identity documents, deprive them of any moneys and leave them in an ideology where they believe that the police are as corrupt as in their own home nation, you have totally isolated those individuals socially. They are exploited by that because you have removed any freedom of choice. Surely that is the starting point for exploitation, isn't it? That is what I would observe.

Chairman: I think we might put the questions to you in another way, Caroline.

Q657 Baroness Butler-Sloss: We have had from Peter Carter the suggestion that, basically, we should bin the first part of the Bill and start again. I am putting it slightly more broadly than he did, but I know you have been working very closely with him, in between having more children.

Caroline Haughey: I have tried.

Q658 Baroness Butler-Sloss: The draft Bill retains the link between exploitation and trafficking. Do you see "exploitation" as the term that

should be the overall umbrella, followed by an explanation of what it is—trafficking, servitude, forced labour and so on? You have probably seen some suggested questions, didn't you?

Caroline Haughey: Yes, I did.

Q659 Baroness Butler-Sloss: I wonder whether it is not broader than those questions and whether you should start with the word "exploitation." Did you hear what Lord Judge said?

Caroline Haughey: I did not have that privilege, unfortunately, but I can anticipate some of his views, having had the privilege of appearing in front of him. From my experience of having the opportunity to work with Frank and others—yourself included—and with practitioners, the NGOs and the police, the reality is that the main driving force behind this Bill is to prevent exploitation. That is what we all want to stop happening, so surely that should be the dominant force behind it. Trafficking has a connotation, if I can put it in that way, of almost Hollywood glamour—forgive me for using the phrase—but the reality is that, definitionally, trafficking is just the movement of something. Exploitation is what we should be looking. If it simplifies things and makes it easier to put into force and for juries—i.e. the random punter on the Clapham omnibus—to get their head around—

Q660 Baroness Butler-Sloss: One of the possibilities is a general offence of exploitation that would encompass trafficking and slavery. You could have an offence of exploitation, with retention of separate offences of trafficking and slavery, or an offence of exploitation that is aggravated by trafficking.

Caroline Haughey: Yes. Aggravating features are an extremely practical way forward, because it removes from the jury having to deal with that. In my experience, you want the jury to be focused on whether the individual is being exploited, full stop. This is about how they got here and how badly they were exploited. Aren't those the matters that should be left to the sentencing tribunal to take into consideration when passing sentence? For example, if an au pair comes into the United Kingdom and everything is fine and dandy for the first five months, but then matters change and she or he is treated in an exploitative matter, the fact of the exploitation is what the jury needs to consider, because that is the criminality. The means by which they came here is the aggravating point.

Q661 Baroness Butler-Sloss: In the indictment, where you set out that so-and-so is exploited, would you set out in what form it was—by domestic servitude, forced labour or whatever?

Caroline Haughey: Under the authority of SK, that is now an obligation. For example, if I am indicting a person who was taken into the UK for the purposes of slavery, I am obliged—as I would be in an historic sex abuse case, for example—to identify the particulars of what I am alleging. I would need to say, if it was in SK, slavery or domestic servitude—or in the Connors case in Bedfordshire, for example, forced and compulsory labour. There is an obligation on counsel to pin their colours to the mast, in order to ensure fairness for the defendant, as much as anything else.

Q662 Baroness Butler-Sloss: That is what I understood. But you would start with exploitation.

Caroline Haughey: Yes. It is what type of exploitation it is.

Q663 Baroness Butler-Sloss: Then you would subdivide into the various categories.

Caroline Haughey: Yes.

Baroness Butler-Sloss: That is great.

Chairman: There is a question about what we put on the charge sheet, but there is also what we put on the face of the record in the Bill.

Q664 The Lord Bishop of Derby: If we are going to have an offence of exploitation, do you think we should recommend the inclusion of a non-exhaustive list of indicators? If so, which way would you point us?

Caroline Haughey: I have to say this is something I have given considerable thought to. In my opinion, it would be helpful to have four examples, but it must be a non-exhaustive list. The brilliance of legislation is that they are living instruments—they must evolve and adapt to the changes in society. Currently, for example, to me, exploitation is abusing someone's identity for the purpose of claiming benefits. In fact, I cannot do that under exploitation because it does not fit comfortably within the purpose of what the legislation was initially put in place for.

If when drafting this Bill you put in the theft of identification documents, the stealing of organs or whatever but made clear that it was not an exhaustive list, that would be one solution. The alternative is not to put in any list and to leave it for the jury to consider whether something is exploitation. You then expose yourself to the fact that, every time a conviction takes place and the issue of whether or not something is exploitation is taken up by the defence, it will go to an

appellate court for further consideration. You then create a whole new layer of interpretation.

The Bribery Act is quite helpful, because it sets out examples of what bribery is. In section 1 it says, "This is bribery," and in the next section it says, "This is also bribery." I am not saying you can do that with exploitation, but a non-exhaustive list where it is made clear that "other such behaviour, as considered to be exploitative" is included gives you as a practitioner much more space for manoeuvre when you are prosecuting these cases.

Q665 The Lord Bishop of Derby: Especially if we are trying to bring something together and to have a clearer focus on what it is about.

Caroline Haughey: Absolutely; indeed. If there is one piece of legislation that I can keep going back to, it is so much easier to indict and to put it in front of a jury—rather than having, as in my last case, an 18-count indictment with nine different Acts.

Chairman: Can I bring in Dee, followed by Norman and Caroline? We will keep the theme going.

Q666 Baroness Doocey: Can I ask your views on whether you think there should be a separate offence of child exploitation?

Caroline Haughey: My present opinion is no. It should be an aggravating feature. Exploitation is exploitation. It is more dreadful when it is done to a child because they have no ability to consent from the very outset, but complicating matters by adding more legislation will do just that—complicate it. Why not make it simple? A child is a child.

Q667 Lord Warner: A number of witnesses have suggested that in construing these offences, particularly forced labour, we have to recognise that there is a long arc of behaviour. Do you have any views on how we should be able to draw the line between civil claims and criminal offences?

Caroline Haughey: That is the ultimate question, I suppose. One of the concerns that I have as a practitioner is the withholding of money. To me, if someone is brought into this country or taken on—because they don't have to be brought in—for the purposes of exploitation and you don't pay them, obviously that is exploitation, but what if you pay them only £100 a week, which is less than 50% of the minimum wage?

The difficulty you have is that I don't think you can legislate for that. I think that is something that the jury will need to consider. That is the

point of the legislation, if I can put it that way. If someone is paid two thirds of the minimum wage, that is dreadful, but they can remedy that through the civil courts if it is the only complaint. If they are paid nothing, the follow-on from that is that they have no means of changing it. Do you see the grading that I mean? In my view, the ability to choose or the removal of choice forms the significant part of the exploitation. So I don't think you can have a graded arc.

You may want to consider saying that failure to pay the minimum wage is not sufficient to demonstrate exploitation. Yes, it is dreadful, but that is what the civil courts and employment tribunals are for; they provide remedies for that. It has to be more than just not paying the minimum wage. If it is paying nothing, that is sufficient, because by paying nothing you have removed the choice to do anything, whereas, if you pay 50% or more, at least there are the financial means for someone to try to extricate themselves from the situation.

Q668 Lord Warner: Can we pursue this a little? If the consequences of you trying to pursue a civil claim are that you effectively lose your job and could be thrown out of the country—and the employer knows that—is that a level of coercion, in effect, that turns it into a criminal offence?

Caroline Haughey: Arguably, yes, but in my experience it is not one that a jury would be comfortable convicting on. Obviously, when a case is brought to court, it has to be proved beyond a reasonable doubt; the jury must be satisfied so that it is sure. If the fallout of complaint is that I will lose my job, the employment courts are built for that—whistleblowing, constructive dismissal and so on deal with that. There might be a civil answer to deal with that—and perhaps an angle with UKBA, if there is litigation in place that demonstrates that there has been a failure to pay reasonable wages incurred.

All of that can be dealt with through the civil courts. In fact, in a number of my cases we have had corollary civil litigation happening at the same time. In fact and rightly, the civil litigation has come to fruition much more quickly than the criminal one has. I have had a victim of domestic servitude who was able to settle a case through pro bono means. She was represented by a very senior magic circle firm, through its pro bono unit, and the defendants in my subsequent case had settled. I was able to use that as bad character evidence against them.

Chairman: Michael has a point on this.

Q669 Michael Connarty: Thank you, Caroline, for your very lucid arguments. My question is about extraterritoriality. Let's say a company

has someone supplying it with goods where the women are locked in and a fire burns them all to death; we know what happened with the collapse of the building at Rana Plaza. The whole idea of ending slavery cannot be dealt with by legislating for you to prosecute people in Britain. How do we get something extraterritorial into this, or do we just abandon the idea that this Bill should have any extraterritoriality and supply chain implications at all? You seem to argue that in the UK, if someone is being exploited in terms of not getting the amount of money they should get, if they are agricultural workers, but they are getting something—even though they may be getting hounded around the country, working 17 hours a day and being hounded by Rottweilers, as we found during the Olympics—that is not a criminal case but just a civil case.

Caroline Haughey: If it had been brought to my attention and I had been asked to do a pre-charging advice, I would probably have pursued it as a criminal matter. That is the difference. The difficulty that is faced at the moment is, first, we cannot police the world—much as I personally would love to take them all on—

Michael Connarty: Wilberforce thought he could.

Caroline Haughey: I would love to police the world. The reality is that we are obliged to look after those who are within our jurisdiction. If someone comes to the United Kingdom, we expect them to live by our laws. The corollary and fallout of that is that they are also entitled to be protected by our laws. That is why we prosecute those cases here.

How do we prosecute a company in a foreign jurisdiction where people are being treated abominably and enslaved in order to provide products for this market? I don't think we can prosecute that; I don't think we have the capacity to do that. What we do have is the capacity for anyone working in this country to be protected by our laws. In Cambridge—I now live there, so I have the benefit of seeing rural slavery and gangmasters, as opposed to the urban areas in which I normally prosecute—we know that it is a massive problem. I live on the edge of the agricultural areas and can see what is happening. I am also conscious that the chief inspector for the area gave evidence before you today. I know from having spoken to officers on the street that there is grave concern on their part that they are not able to deal with clear victims of trafficking, such as the case you talk about in the Olympics.

This is moving away from legislation. I don't think we can legislate for it, but we can fund for it by encouraging the Association of Chief Police Officers to put together unique groups of officers whose specialisation is trafficking. You have had the benefit of the Metropolitan police's trafficking unit, which is exemplary and has achieved great things. Why aren't we passing that experience to other police forces? Why don't counties such as Lincolnshire, Cambridgeshire and Norfolk, which all

have problems with gangmasters and abuse of staff, have a hub of police officers sharing forces and ideologies with the gangmasters?

Q670 Chairman: We would like to ask you questions as well, Caroline.

Caroline Haughey: Sorry.

Q671 Mrs Spelman: After the sessions this morning we discussed the clear point that, although I am in favour of localisation, I can see that this requires specialisation.

Caroline Haughey: Yes.

Q672 Mrs Spelman: I must not pre-empt what the Committee thinks, but I think that will be one of the things we come to. I have a question for you. How can the offences be drafted to reflect psychological forms of coercion or apparent consent?

Caroline Haughey: Psychological coercion can simply be put there. If you look at false imprisonment, which is a common law offence, case law now recognises that you don't have to physically imprison someone. A better example is grievous bodily harm. Psychological trauma can be so damaging as to be equatable with physical harm. That has been recognised by case law recently. The Bill can encompass that by saying "not limited to physical."

Mrs Spelman: Okay.

Caroline Haughey: It is simple. I accept that it is not the direct way of saying "and psychological harm," but saying that it does not need to be physical allows for psychological restraint also.

Q673 Chairman: Let me put it another way. How do we make this Bill more victim-centred?

Caroline Haughey: Well, we obviously need to protect victims, but we have to balance that proportionately with ensuring that the correct people are convicted. To make it more victim-centric, one of the things we need to do is protect our victims while they are giving evidence. It is with great sadness that I say that victims are very often exploited up hill and down dale again in giving evidence. Can we not put in place something like section 41 applications, in which rape victims' previous sexual behaviour is not admissible without leave of the court because it is relevant and goes to a fact that is an issue in the case? The previous background of the complainant—the victim—is not relevant.

The problem you inevitably have with victims in human trafficking cases, slavery cases or exploitation cases is that they are exploited

because they are vulnerable in the first place. By fault of their vulnerability, inevitably there will be something in the background that has led them to be targeted: alcoholism, drug abuse, mental health problems, poverty—any one or all of the above. All of that becomes background that can be used by the defence to obfuscate the real issues in the case. My suggestion would be that we have something like section 41 or that we enhance section 41 so that the previous background of the victim does not become relevant save and unless by leave of the court.

Q674 Fiona Mactaggart: But in some cases that I am sure you have argued, the defence might say, “Actually, this person was part of the operation. They consented to it. They knew what they were coming to” and so on. How would you deal with that if you said that the previous behaviour was not relevant?

Caroline Haughey: Then it does become relevant. Practically speaking, I don’t think that you can legislate that. The investigative team—i.e. the police, the Crown Prosecution Service and whoever is the advocate prosecuting it—has the obligation to ensure that the strongest case goes forward before the jury. From experience, that means that you don’t rely exclusively on the evidence of the complainant. It is not like a rape case, where it is a “he said, she said”; what you do is obtain corroborative evidence. That has been my very strong advice to any officer I have ever spoken to who is dealing with these cases. If a victim says, “I was taken to the hospital, but they didn’t let me speak to the attendant registrar” or whoever, go to the hospital and get that evidence. Corroborating evidence means that you take away the ability of the defence to undermine the evidence of the complainant, because it is showing truth. Inherently, these cases are very difficult to prosecute. There is only so much protection you can afford without compromising the underlying principles of the justice system.

Q675 The Lord Bishop of Derby: Have we learned anything from the whole approach to safeguarding that we are developing?

Caroline Haughey: We can safeguard our victims by using something like the national referral mechanism—the NRM. In my view, that needs to be enhanced significantly and it needs not to be an obligation of the Crown to decide whether or not a victim has been trafficked. It is not that it is the Crown’s decision now, but if the NRM is an entirely separate mechanism whereby perceived victims of trafficking are sent for their assessment by specialists and someone is deemed a victim of trafficking, that is an excellent starting point for the Crown. It also means that the defence can’t turn around and say, “Of course you are going to find them a victim of trafficking because you want to rely on

them for your case.” We can say, “No, this has been independently assessed. The victim is as the victim is found.”

The Lord Bishop of Derby: That is helpful.

Q676 Fiona Mactaggart: Do you think it should be justiciable whether someone is a victim of trafficking?

Caroline Haughey: Lord Judge has probably just given evidence on the authority of L. Arguably, you could run it like mental health is now run. The Mental Health Act regulations and legislation have all changed. Now, if a judge has a concern about the mental health of someone, he or she can cause their own inquiry to be made. If a judge has a concern, that concern should be allowed to be acted upon, because sometimes you don’t know what is going to happen until the victim opens their mouth when giving evidence. That cuts both ways. You can have a victim who has made a fantastic ABE interview—achieving best evidence video interview—but when you ask them questions in chief as part of that process a whole new scenario comes out that is detrimental to your case.

It is a balancing exercise. If a judge feels that because someone is giving evidence there is a need for intervention, in my view there must still be an inherent judicial power to do that, because sometimes, again, referral mechanisms can fail. Often, people who are sent into the system from the beginning are so wounded and damaged—and so effectively psychologically bound up—that they can’t answer those questions. It takes time to be westernised or protected in order for them to feel capable of admitting what has gone on in the past, so there is a place for judicial intervention.

Q677 Baroness Kennedy of Cradley: You have an enhanced section 41, an enhanced NRM and the judge concerned. Are there any additional mechanisms that you would create to protect victims in the court process?

Caroline Haughey: I would make them automatically vulnerable witnesses—I don’t think that they are, but I have never had an objection—under the Youth Justice and Criminal Evidence Act, so that they are entitled to those protections. It can cut both ways, but I would consider permitting them to have leave to remain in the United Kingdom until the conclusion of their legal proceedings, which I have had happen before. Often, these victims are terrified of returning to their home country, because that is where they were recruited and the people who recruited them hold great powers there. I am very conscious that there is an element of society that may take the view that this is just an easy, back-door way of getting citizenship in the UK.

It is not like that. Genuinely, in my experience of these cases—I have perhaps done more than many—I have yet to have a victim who was using this as a means to exploit citizenship in the UK.

Q678 Chairman: But these are the ones who went through the process and were appearing in court.

Caroline Haughey: Yes, and I have had victims who have returned. Recently, I had a case where I had one victim in the UK and a victim who had returned to Hungary and was giving evidence from there via a live link. She wanted to go back, but she was not prepared to disclose where she was. She said, “Why on earth am I going to say that to those people, who will have me killed?”

Chairman: Yes—“Come and find me.”

Q679 Baroness Butler-Sloss: On a point of clarity, Caroline, we have been talking about aggravating factors. Did you see the aggravating factors as coming within the legislation, as an aggravated offence, or were you really rather looking at them under sentencing guidelines—or is it a bit of both?

Caroline Haughey: A bit of both actually. One of the things I am very concerned about is that the current Sentencing Council guidelines are somewhat dated, if I can put it that way. Currently, the maximum sentence is 14 years. From everything I have heard and spoken about, I am optimistic that that is going to change, which is extremely reassuring. Currently, if you traffic someone in over a lengthy period of time, which is a sophisticated offence, the top-end figure that is bandied around in the guidelines is 10 years. That has got to be a fairly big-end commercial operation, for which I do not think any such sentence has been passed. Ironically, if you bring someone into the UK who wishes to come here in order to exploit the asylum situation and they have come to you for assistance, you will get a longer sentence than if you have brought someone into the United Kingdom and exploited them.

Baroness Butler-Sloss: It needs to be looked at.

Caroline Haughey: It really does need to be looked at. I think we can legislate aggravating elements of it but still maintain the simplicity.

Q680 Chairman: On that happy note, Caroline, thank you very much once again for your input to our thinking.

Caroline Haughey: Thank you; it was my pleasure. Thank you for listening to my rant. Is there anything more with which I can assist you as the Committee considering this?

Chairman: I think we may have some questions later for you.

Baroness Butler-Sloss: You won't get away completely.

Caroline Haughey: Not a chance.