



HOUSES OF PARLIAMENT

Joint Committee on Draft Modern Slavery Bill

Oral evidence: [Draft Modern Slavery Bill](#), HC [1019], Tuesday 4 March 2014

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Ordered by the House of Commons to be published on 4 March 2014.

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

Questions [959-1026]

Witnesses: **Jenny Marra MSP**, Scottish Parliament, **Joyce Watson AM**, Welsh Assembly, and **Lord Morrow of Clogher Valley MLA**, Northern Ireland Assembly, examined.

Q959 Chairman: Jenny, Maurice and Joyce, might I ask you to identify yourselves for the sake of the record, and then Alicia will begin our questioning?

Jenny Marra: My name is Jenny Marra. I am a Labour Member of the Scottish Parliament for North East Scotland.

Joyce Watson: I am Joyce Watson, Assembly Member for Mid and West Wales.

Lord Morrow: Maurice Morrow, Member of the Northern Ireland Assembly for Fermanagh and South Tyrone.

Q960 Baroness Kennedy of Cradley: Welcome, everyone. You have given us a brief outline of your main proposals, in the Bills, in the case of Jenny and Lord Morrow, and in the working group report, in the case of Joyce. We are trying to get at the main differences between all of your proposals and our draft UK-wide Bill. In giving us an outline, it would be helpful if you could reflect that, and also whether you support a UK-wide approach.

Chairman: Tell us what we could nick from your Bill.

Jenny Marra: I will leave that up to you, Chair. The Human Trafficking Bill for Scotland, as proposed, is a Private Member's Bill which I am taking through the Scottish Parliament at the moment. It has six main proposals.

The first is to create a Scottish anti-trafficking strategy. That would have to be agreed by the Scottish Parliament every three years, and could include various measures such as raising awareness, however the Government sees it to tackle the problem over those three years. The second thing is a legal part, to introduce a criminal definition of human trafficking into Scots law for the first time. At the moment we have the strange situation in Scotland that human trafficking is a crime but to get to that crime you have to conflate two Acts of Parliament: an Immigration Act of Westminster and a Sexual Offences Act of the Scottish Parliament. There is no clear definition in Scots law of the crime of human trafficking. My Bill proposes to embed the Palermo protocol definition of the crime in human trafficking. I think that will greatly help, because it will allow police to identify where human trafficking is being committed. The ironic thing at the moment is that Police Scotland officers are given a legal definition that is the Palermo protocol because it is much simpler than Scots law. It would also allow prosecutors, when the Procurator Fiscal is marking the case, to identify cases of trafficking a lot better. That is the second thing—a much more robust and clear definition based on the Palermo protocol.

It would also make changes in our criminal justice institutions—the police and the Crown Office—to allow them to develop specialisms in human trafficking. It would stop the criminalisation of victims of human trafficking. As you know, the EU directive provides for this. I am not clear, and I do not think the Justice Secretary has been clear in Scotland, whether Scots law is currently compliant with this. According to the Anti-Trafficking Monitoring Group report last year, we know that we currently have at least double the amount of victims of trafficking in our jails in Scotland as we do traffickers. We know we have 10 victims of trafficking in our jails, but currently we have five traffickers in our jails. It would put in primary legislation stopping the criminalisation of victims. I am sure we can come on to that later.

Particularly close to my heart in this Bill is the survivor service. The survivor service that the Bill provides for is about care of victims. It is the most important part of the Bill. It puts minimum standards of care for victims in the law in Scotland so that they have a legal right to those standards of care. I am sure I can go on to talk about that later as well. That replaces the national referral mechanism and makes it much more comprehensive, holistic and focused on victims' needs. The sixth thing is that it also engages the private sector, regulators and civil society against human trafficking.

Joyce Watson: I am here as the Chair of the all-party group on human trafficking of women and children in Wales. As you know, we wrote a report, "Knowing No Boundaries," and in 2010 the Welsh Assembly Government decided to take note of that report. As a consequence we have the only Anti-Trafficking Co-ordinator in the UK. That person has been in situ since 2011. The whole thrust of the role of the Anti-Trafficking Co-ordinator is that they starts by looking at the victim rather than the perpetrator, but that does not mean that those are mutually exclusive. The reason for the all-party group, and the way the report came out, was that unless you have a witness, unless you nurture the victim, you are never going to prosecute the crime. It is focused very much in that direction. There were seven recommendations in the report. Of course, key to that was the all Wales Anti-Trafficking Co-ordinator. That person is now known as the all Wales Slavery Co-ordinator. There has been a change and the Government have agreed that change.

Starting from a base, the first thing that has to be recognised when dealing with trafficking or slavery is the gathering and sharing of experience and expertise from those who will have to come into contact and then deal appropriately with persons who have been trafficked and the perpetrators—the traffickers. To that end, moving forward to 2014, many of the recommendations that were put in the report have taken place. I have gone through one, which was the appointment. That has certainly taken place. The gathering and sharing of expertise from relevant authorities with a view to the victims of trafficking, irrespective of location in Wales, has also been achieved, as has the co-ordination of relevant training for professionals. That is key. The report demonstrated that, while people sometimes had the wit about them, it was by luck and not judgment that they perhaps recognised somebody who might have been a victim of trafficking—by the way, it only focused on children. They really did not know what to do, because there was no real guidance. There was nobody to speak to and there was no unifying evidence or support that would allow that person to think they had made the right decision.

Fast-forwarding to the perpetrator, if the people at the coalface, so to speak—I am Welsh so I suppose I can speak about the coal face—do not

know what they are doing and do not feel empowered to do it, you are not really going to move forward. To that end, training has been delivered. We are looking at accrediting it through Swansea university. It has been delivered to the people who will most likely come into contact with victims, but it has also been delivered to the senior investigating officers in the police authorities. On top of that, it is training that is uniform in its delivery, so that, if you are going to gather evidence consequently, you will know at least that the evidence gathering has started from exactly the same principles, and that everyone is working to exactly the same criteria.

Quite clearly there are problems with the gathering of evidence. There are problems at the moment with even knowing how many people have been trafficked. That comes within the Bill. At the moment, you know full well that it is mandatory for children who are trafficked to go through the national referral mechanism, but it is not the case for adults. There are huge issues about the NRM, and why some will volunteer themselves to go through it and others will not.

Q961 Chairman: We will come back to that, Joyce. Is there anything else?

Joyce Watson: In Wales, we have done an awful lot about raising the profile. We have had a national TV advert that has gone out at peak times right across Wales. There have been posters on the backs of buses. I think it would be difficult to find anybody in Wales who has not at least seen or heard something about trafficking.

Q962 Chairman: Maurice, what are the unique aspects about your Bill that we should learn from?

Lord Morrow: Thank you very much and good afternoon, everyone. My Bill has a considerable number of things to offer. I know it has been said that my Bill deals specifically with human trafficking and exploitation and does not deal with forced labour, but, in fact, it does. I do not know whether everyone around the table today has read my Bill or not; if you haven't, I thoroughly recommend it to you.

My Bill seeks to do four specific things. First, it seeks to make the current offences much more effective. Secondly, it provides assistance and support to victims, including a children's trafficking guardian. Thirdly, it increases the special measures available for human trafficking victims during interviews and when they go to court. Lastly, it ensures that there is an annual strategy for tackling human trafficking and forced labour in Northern Ireland.

I am working closely with the Department of Justice on my Bill. We agree on some clauses. It would not be truthful to say that we agree on every clause, because we don't, but I think I can confidently state that we

have much more agreement today than we did when I started on this journey. When I first met the Minister, he was either sceptical of what I was attempting to do or plainly just did not agree with what I was trying to do—maybe that is a better way to put it.

I want to be careful not to misquote him, because I do not like being misquoted myself; I have been misquoted about a thousand times already in relation to this Bill and I know how painful it is. It is true to say that the Minister and I are much closer today than when we started down this road. We have already been in the position where we were able to write a joint letter to the Justice Committee, who are presently scrutinising my Bill—it is at that stage. In that communiqué, we outlined where we had agreement; there is now considerable agreement between the Minister and myself. We were truthful and said that there were areas where we did not agree. We also said that there were areas that potentially we were going to agree on. We have reached a position now where the Minister clearly understands me and I clearly understand him. I hope that at the end of the day we will have a clear understanding between us in relation to all aspects of the Bill. I am not saying that we will get to the position where there will be total agreement on each and every clause. I suspect that is not possible.

Chairman: We are also aiming to understand you, Maurice. To that end, Fiona has a question.

Q963 Fiona Bruce: May I welcome you and repeat one of the questions that Baroness Kennedy asked, which was whether you would support a UK-wide approach to tackling modern day slavery. Bearing in mind that we very much want a victim-centred approach in all that we do—I was very pleased to hear all of you mention victims so clearly as a priority—what do you see that we would need to change in the draft Bill presented by the UK Government in order for us to achieve this and for you to support it?

Lord Morrow: The answer to your question is yes and no. That is the way we in Ulster answer questions.

Chairman: We are only interested in the yes bits.

Lord Morrow: The Modern Slavery Bill is a criminal justice Bill. Since criminal justice is a devolved matter, it is for the Assembly to determine how these matters are to be dealt with in Northern Ireland. Furthermore, I think that the Modern Slavery Bill is significantly lacking in having no measures on victim support. That is a very big omission. I would like to see that changed and corrected. There are issues that touch on victim support that are UK-wide: for instance, how the NRM operates and the immigration rights of victims. If these were to be changed, I would support the UK approach. That is why I am hesitant at the moment.

Jenny Marra: I do not feel I have jurisdiction to support a UK proposal. My elected mandate is for the devolved powers of the Scottish Parliament. Of course, human trafficking is a UK-wide and Europe-wide issue. It is a global issue, and co-ordinated action between all devolved levels of Government and even local authorities is critically important. Fundamentally I believe that we have to put the powers and policies on trafficking at the correct levels of Government that are best placed to achieve it. I know that you are familiar, Chair, with the consultation paper. It is a unique thing, but it strikes me that Lord Morrow's evidence in relation to the Northern Ireland proposal sounds similar. Our measures drill down into our communities, because our communities are the places where the trafficking abuse is taking place. I do not think that Westminster would ever have the jurisdiction to legislate into our communities. It would be very unusual for the Scottish Parliament to pass a Legislative Consent Motion to legislate on Scots law, on policing, child protection and all the agencies that come into that. All of these issues are best dealt with in Scotland, and that is why we have put the Scottish proposal together.

Q964 Chairman: Maurice put his finger on the great weakness of the Bill, which is the absence of the face of the victim. Fiona was asking whether you could tell us a bit more about your charter. What can we learn from you to put into the UK Bill on the victims? I will then ask Joyce to come in on that.

Jenny Marra: As I said in my first answer, Chair, my proposal for the survivor service is the thing closest to my heart, and the most important thing about our Bill. We have some victims of trafficking who have been through horrific experiences. It is about getting a legal right for them to those services, and for guardianship for children through the legal process and all of these things.

Q965 Chairman: But would that be on the face of the record, Jenny, or will you give power for the Minister to make orders to guarantee that service?

Jenny Marra: The legal right to these services would be on the face of the Bill. I think that is critically important. At the moment, support for victims of human trafficking is managed very well by people who work for agencies, but the funding of those agencies is at the will and the policy priorities of each individual Government in Scotland, or I suppose in any jurisdiction. It is really important to have a legal right. I am not in a position to tell the UK Parliament what to do, but I would assume that the priorities for this Parliament would be exactly the same—to make sure that those legal rights for protection are in place as well.

Q966 Chairman: Joyce, what advice would you give us for our victim protection?

Joyce Watson: I think I have already talked about it. On putting together a Bill that is going to look after the victims, we in the all-party group are currently looking at children in particular and advocacy on behalf of children, or guardians. We have not completed that work as yet. I cannot pre-empt anything of course, but I suspect we would support legal guardians being recognised. It is back to whether you really want to get to the perpetrator. If you want to get to the perpetrator you support the victim. We all understand that. I would expect to be able to say that, once that work is completed, we would be very keen to see it in place. It would certainly start there.

The other issue in terms of the Bill is that it will of course affect Wales, because it is an England and Wales Bill. We just had Silk 2 yesterday, so we will see how that goes. The main concern for me is the way that the proposed commissioner will interact with our co-ordinator, and how those two fit together. My understanding is that that is still in the pipeline of thinking, rather than the resolution.

Q967 Chairman: We are going to come back to that because it is important.

Joyce Watson: It is extremely important for us in Wales.

Q968 Michael Connarty: There is a slight difference on this. The UK is the immigration authority for the United Kingdom. Unless you change your aspiration on independence, it is likely to be a UK responsibility post-September. Therefore, clearly the problem that has been identified, not only in some of your own speeches but also by Scottish Government Ministers, is that the UK Border Agency and its relationship to the national referral mechanism is the big problem. I think Lord Morrow was referring to the immigration status of victims, where the victim falls into the hole of immigration breach before they ever get to the point of being treated properly as victims. Do you have a view on the UK Bill's ability, or do you think we should devolve immigration policy to Scotland?

Jenny Marra: No; I do not think we should devolve immigration policy to Scotland. The survivor service that we have proposed replaces the NRM. Current understanding of human trafficking is that it is a big problem about immigration and our borders. We have to take a realistic view of this. No matter how well trained our border police and our border agencies are in these matters, criminals will find a way of getting victims into our country. They will. What we need to do is make our communities a very unwelcome place for traffickers. That is why the survivor service in my Bill concentrates the resources of the

community against trafficking. I will give an example. I pushed Police Scotland for six months on how they train their police officers on human trafficking. They said to me, "We do train our police officers. We do, we do, we do." I said, "I would like to come and see your training sessions." They resisted me, but eventually they let me go down to Tulliallan, the police training college not far from your constituency, and I sat in on a Friday morning training session for police officers. I very quickly realised that the 12 men being trained in the room—all men—were not police officers on the streets of Dundee, Glasgow and Aberdeen; they were our border police. They were the police who man our borders when you go into Edinburgh airport, the port at Stranraer and Prestwick airport. This was the first time they were being trained in human trafficking. Human trafficking has been a crime in Scotland for over 12 years. This was the first time that they were being trained and it was just a few months ago. It was an introductory session.

It is a misnomer to concentrate on the immigration part and the UKBA. We need to make our communities a very unwelcome place for human traffickers. That is why the NRM puts together a Government agency with people who are working with trafficking victims to make decisions about them, and it takes out a lot of the immigration locus. I absolutely support, as you know, that immigration law should remain within the United Kingdom.

Q969 Baroness Butler-Sloss: We are struggling a bit with definitions in the Bill; we do not like the current definitions, and we are wondering what to recommend in their place. We are looking at an overall umbrella of the word "exploitation" to set out things like trafficking, forced labour and so on. Your various proposals all focus on human trafficking rather than modern slavery. Would they exclude, in the view of any of you, domestic servitude or forced labour, or indeed begging or theft by children and so on?

Jenny Marra: Thank you for your question, Baroness. The answer is no, they would not exclude that. I understand that the Committee has been focusing on trying to drill down what is meant by modern slavery. Part of that has been to tease out the difference between modern slavery and human trafficking.

I was particularly interested to hear from Myria Vassiliadou, the EU's Anti-Trafficking Co-ordinator. She attended the launch of my Bill last September in Edinburgh. In her evidence to this Committee last week, I believe she told you that trafficking and slavery are two distinct legal phenomena. Is that right? She went on to say, quite importantly, that not all trafficking victims are slaves. The Palermo protocol, which is the EU directive definition of human trafficking, and the Council of Europe

definition of human trafficking, is the legal genesis of my Bill. It is what I want to use to define the crime of human trafficking.

The protocol is helpful in defining trafficking by three essential elements. The first is action—for example, the transfer, recruitment or harbouring of persons. The second is the means—for example, the threat or use of force. Thirdly, and most importantly to this question, is purpose—for example, forced labour, slavery or servitude. It says “for example,” and that is critical because the last part of the definition included in the Palermo protocol does cover slavery. The list of purposes for which people are trafficked is left non-exhaustive, meaning that any potential purpose could be put to a court for deliberation. This is important for encompassing the evolving nature of the crime of human trafficking while also already identifying specifically slavery and forced labour. We went for the option of human trafficking because it encompasses slavery, but it allows us to take in much more, and get the support to victims. I hope that makes sense.

Joyce Watson: I quote from the annual report of our all Wales Anti-Human Trafficking Co-ordinator. It includes “domestic servitude, sexual exploitation, labour exploitation, criminal exploitation and human tissue/organ harvesting.” That is clear enough and it is an example; it is not exclusive. I hope that answers your question somewhat succinctly.

Lord Morrow: When I first drafted my Bill, I did not seek to consolidate or amend criminal offences. Therefore, I have referred only to the existing offences. Furthermore, the offences I refer to in my Bill are both human trafficking offences and slavery offences. There is an increased focus on policing and prosecuting the forced labour offences that occur in Northern Ireland. We already know that the three main reasons for trafficking are sexual exploitation, forced labour and servitude. My Bill also includes forced begging.

Q970 Sir Andrew Stunell: The Scottish Government and the Northern Ireland Government have both said, I think, that they want the anti-slavery commissioner in our Bill to apply to the whole of the United Kingdom. I am not clear if I have understood exactly where you are on that. I would be interested to know whether you think that there is a role for that function in your state.

Jenny Marra: My Bill as originally proposed did not have a proposal for a commissioner, but we do have—

Q971 Chairman: To be fair, your Bill was before our Bill, wasn't it?

Jenny Marra: Yes. I wanted to come on to say that the consultation to my Bill has now closed, but we received a number of consultation

responses that were favourable to the idea of a commissioner. That is something I would like to consider at stage two, which is the first opportunity to put down amendments to the Bill. There is a good argument for it. Perhaps I could share anecdotally that my office has received a number of calls. I would call them, in political jargon, signposting calls. They are from organisations like Women's Aid who are working in our communities. The local authorities that they are turning to for support for the victims of trafficking they are dealing with do not have the skills, and they do not know who to turn to for help. The agencies that should be able to help them—local authorities, Police Scotland and perhaps the Scottish Government—are not getting the correct information. I see those calls coming in and I try to direct them as best I possibly can, but that would probably be a job for a commissioner in Scotland.

To go on to the UK and Scottish aspect, we have several commissioners in Scotland. We have a Commissioner for Children. If there were to be a commissioner's role, it would have to be devolved in Scotland as well, because the work they would do, as in the example I just gave, would be so close with the police, social workers, 32 local authorities, the Crown Office and all the agencies that are devolved in our communities. My preference would be for a commissioner in Scotland.

Q972 Sir Andrew Stunell: A devolved commissioner.

Jenny Marra: Yes.

Q973 Mrs Spelman: The problem is that the United Kingdom is the member state in law, but that could change if Scotland decided to leave the Union. The requirement under the EU directive is for the member state to have a rapporteur. We have signed up to this directive so we are bound to have a rapporteur; our commissioner is essentially our rapporteur. We had a Dutch rapporteur this morning. They have had a rapporteur in post since the year 2000, so we can benefit from the experience of others, but we are bound to have one by the thing we have signed. The question to each of you is, how does this UK-wide rapporteur, required under the European directive, which we as a member state have to comply with, work with what you have established? I am particularly keen to ask Joyce about the role of the co-ordinator. As I understand it, that is not in statute but it is quite clear that it is effective even without statutory underpinning. How would you see that role fitting together with the rapporteur—in our terms, commissioner—which we have to put in place?

Joyce Watson: I am speaking here as Joyce Watson and not as a member of the ruling group in the Assembly. I need to make that clear. I would like to think that they could be mutually exclusive in the roles

they carry out but that they could work together. This really comes back to what has been said about community approaches. Our trafficking co-ordinator does speak to community groups. Wales, like everywhere else, has an abundance of community groups that feed into our thinking and our own legislation. He really does have a wealth of knowledge and understanding of what is happening in Wales, because he has been there for some time. There has been an expansion; there are another two people helping him in his role.

My hope would be that the commissioner, who, as you have explained, has to be put in place, works at least to understand and report back at a UK level the things that we are doing and, hopefully, enhances any opportunities that we have. The original question was whether we had to have a UK approach. Of course we have to have a UK approach; there is no doubt about that—one of the biggest cases we have had in Wales was trafficking through Ireland. It is just about people being comfortable—that is the word—in their roles. It is for the Governments to agree, if you like, the principles under which the two people occupying those roles will engage with each other.

Q974 Mrs Spelman: Do you envisage a protocol or something like that?

Joyce Watson: I would expect there to be a mutually agreed protocol that everybody is happy with. As I said, and I will repeat again, that is my view. I am sure that would be the right way forward.

Q975 The Lord Bishop of Derby: Jenny, I want to ask you how you propose to legislate for the non-prosecution of victims. What do you want to do about that?

Jenny Marra: The EU directive provides for the non-prosecution of victims. The UK is signed up to that directive, so it should be illegal across the United Kingdom to find victims of human trafficking in our jails. Unfortunately, that is not the reality, despite the fact that the directive is in force. It came into force on 6 April of last year. I have written several times to the Justice Secretary in Scotland to ask him if Scots law is compliant with this, and if we are not imprisoning victims. He has not been clear as to whether that is the case. That is one of the reasons why I feel we need to put non-criminalisation of victims on the face of primary legislation in the Scottish Parliament.

I was telling you that we have—that I know of—double the amount of victims of human trafficking in our jails than traffickers. That is a continual problem. There are still, I believe, a couple of young Vietnamese boys in Polmont young offenders institution—Michael knows this as well—and it is my view that they should not be there. We need it on the face of primary legislation.

Q976 The Lord Bishop of Derby: You talk about non-prosecution and non-criminalisation. How do you think that should be pitched on the face of the Bill?

Jenny Marra: I am sorry; could you say that again?

Q977 The Lord Bishop of Derby: I asked about non-prosecution and then you mentioned non-criminalisation. I just wonder how you think it should be pitched on the face of the Bill, to get to this issue.

Jenny Marra: I suppose pitched to the public it would be non-criminalisation. I think that word means more to them. You could have a prosecution, but, if in a court of law there was sufficient evidence of trafficking, the prosecution would fall.

Q978 The Lord Bishop of Derby: What would the criteria be?

Jenny Marra: I would have to look at the exact detail as to how that would work. The judiciary would do that. The recommendation in the directive is that that is the situation across the European Union.

Q979 Lord Warner: This is a question for Lord Morrow. As we understand your Bill, it proposes blanket immunity for victims of human trafficking who have committed criminal offences. Does that extend to very serious offences such as murder or terrorist offences?

Lord Morrow: This was a very difficult one. When I carried out consultation on my Bill, which ran for some eight weeks, I paid attention to the whole consultation and what people were saying, but I particularly wanted to see what was being said in relation to this matter. I must state that it was never envisaged that my Bill would exclude and give immunity to people who had committed such serious crimes as murder. We have another problem, which I suspect none of the other regions of the United Kingdom has, which is those involved in paramilitarism.

My aim in including this clause in my Bill was to protect vulnerable people, particularly children, from being prosecuted and punished for crimes they were forced to commit by their traffickers. My Bill responds to the article 26 convention rights and article 8 directive rights that, if a victim of trafficking commits a crime which "they have been compelled to commit as a direct consequence of being subjected to an act of trafficking," they should be "protected from prosecution." As I said, there have been strong views expressed about whether the clause in my Bill is needed or not, and whether the clause should remain in the Bill or not. I acknowledge that the current wording of the clause has its flaws. As I have already stated, I never intended it to be a protection against

prosecution for murder. I am currently considering potential amendments to the clause, and also even considering whether the clause should remain in the Bill at all. I am taking a wide range of advice on this particular issue. I also expect that the Justice Committee of the Northern Ireland Assembly, which is currently taking evidence on my Bill, will offer some suggestions and amendments in relation to this particular clause. I accept that it is not a black-and-white issue; it is a very difficult one, and it is one that I will be giving a lot of thought to before we come to a final position in relation to this matter. I have heard what you have said, and I take the point.

Lord Warner: That is very helpful; thank you very much.

Q980 Baroness Doocey: Would you outline the role you envisage for child trafficking guardians? Can you tell us why you believe that they should have statutory responsibility?

Lord Morrow: I am not the oldest person in the United Kingdom, but I have spent the best years of my life working with those who are on the margins of society, and trying to assist those who I feel need assistance through politicians or others. I take the view that our children are our greatest asset. I believe that we have a moral duty and indeed a statutory and legal obligation to give them whatever protection we possibly can.

I have supported a child trafficking guardian because it is internationally recognised as best practice. My proposal is that a trafficked child should have an adult who can work with them as they navigate all the different agencies they will need to deal with. In 2013, "Still at Risk" looked at the experience of trafficked children, and recommended the development of a role for an independent and trusted adult, whose role would "ensure that all potential victims of trafficking are able to understand their rights, ensure that their voice is heard in decisions that affect them and are supported effectively through the different legal processes they are engaged in."

My Bill proposes that this position should be set in statute: a guardian should be appointed as soon as possible after they have been identified; they should be recognised by other agencies as having a legitimate role working in the best interests of the child; and they should ensure that there is suitable training. I am proposing that this is a statutory position so that there is clarity about the role of the guardian and that the appropriate funding is made available. It is also a strong signal that we are actively supporting trafficked children as much as we possibly can. We gave a lot of thought to that before we put it in. I have outlined as best I can why I feel it is so important.

Jenny Marra: There is also a proposal in my Bill to have guardianship for child victims. I am reminded of a debate we had in the Scottish

Parliament very recently about case companions for adult victims of crime. That proposal was not supported, but the fact that there was a serious debate on an amendment in Parliament means it would be completely crazy that you would not have one appointed person seeing a child who has been severely abused, manipulated and taken away from its family, possibly for payment, and all of the horrific things that happen in the case of trafficking. You could not have a Bill on this without putting a guardianship service in place for children.

Q981 Baroness Doocey: Do you believe that there should be a separate offence for children who are trafficked, as opposed to adults who are trafficked?

Jenny Marra: Our proposal puts some child-specific rights into the survivor standards. One of those is the guardian. I do not believe we have a separate crime. I am sure that would be something for the judiciary to consider in sentencing.

Q982 Baroness Doocey: Lord Morrow, what is your view on that?

Lord Morrow: I would draw your attention to what the GRETA report on compliance with the European convention said: "A system of guardianship is essential to ensure the children's protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing," and they recommended that "all unaccompanied minors who are potential victims of trafficking should be assigned a legal guardian." They went on to say that a system of child trafficking guardians would fulfil this role, giving a trafficked child someone who would be a constant support, able both to accompany and speak on behalf of the child throughout their interactions with the state and ensuring that each child received the assistance they were entitled to.

Q983 Baroness Doocey: But in addition to guardians do you think there needs to be a separate offence for children?

Lord Morrow: Yes, I do.

Joyce Watson: I know we have no jurisdiction in Wales, but I would strongly urge guardianship. If we think about it—and you said you are trying to take a person-centred approach—it is absolutely unrealistic to ask a child to keep on repeating their story. Quite frankly, they won't. If we take it back to where I started, if you want successful prosecutions, you have to have good witnesses. The only way you are going to have good witnesses when it comes to children is if they feel supported all the way through the process that might lead ultimately—hopefully it will—to prosecution. I am not going to particularly answer

the question as to whether you need separate legislation for children, but you will certainly need to think differently about the crime against the child.

Chairman: That is an immensely important distinction, Joyce.

Q984 Lord Warner: Jenny, could you clarify for me how your survivor service works alongside and with existing statutory services for safeguarding and protecting children? Is it on its own, or is it in some way bolted in to these other existing long-standing services that are around?

Jenny Marra: I would hope it is bolted in seamlessly, Lord Warner. It replaces the national referral mechanism and gives a legal right to that support. This is why it is so important that it is legislated for in the devolved settlement: it takes the child protection services we already have and gives their legal right of protection to the victims of trafficking. It is utilising the services we already have in our communities, but giving the victims of trafficking the legal right to those services that are already established and already have the link. That is how it would work.

Q985 Lord Warner: It is a portal into existing services, in effect.

Jenny Marra: Yes. It is supposed to be a much more effective and guaranteed portal into those services.

Lord Warner: That is helpful; thank you very much.

Chairman: All of this has been very helpful. I think you will see when we do our report how helpful you have been. Thank you all very much.

Q986 Michael Connarty: I still have a problem in my mind. I do not know whether I have judged it correctly, but Lord Morrow seemed to say that, if we could change the way victims are treated by the immigration authorities, he would lean towards the ability of the UK to have an overarching Bill that might be useful. Jenny seemed to say that, although she did not want immigration to be devolved, she did not have a view on the UK Bill. I remember when the report on which Jenny's Bill is based was launched by Helena Kennedy, and the Justice Minister of Scotland said that the problem with all of this was the UK Border Agency and the NRM. How do we resolve that? It would appear that we have to resolve it at UK level to allow your Bill to function, unless the UK Border Agency is still seen as a problem, in that breach of migration means you get sent home. That is the reality for victims. At the moment victims

outwith the EU get sent home or get put into prison. Very few of them go into the NRM. They disappear 40 days after the NRM process.

Am I picking up correctly that the UK treatment of victims in immigration would solve some of the problems that Lord Morrow has? Do you think it has to be done at UK level to solve some of the problems that your own Bill might have, Jenny, if we did not amend that relationship, and the NRM and the UK Border Agency continue to take people and send them home for breaching immigration laws; and all those victims would be expelled? I do not know how we resolve that.

Chairman: I thought the distinction Joyce made between necessarily having something on the face of the record but changing people's attitudes was also one that we needed to bear in mind when we are talking about the Border Agency.

Michael Connarty: You can only change that by legislation, but the NRM is not a statutory body.

Chairman: No.

Jenny Marra: I will try and answer the question as best I understand it. I tried to say at the start that this is a complex problem. Everyone here who has read all the evidence on human trafficking would agree with that. As you know, I am happy with the way powers are currently devolved in the UK. UKBA obviously has a locus here and there are problems. If Westminster is minded to legislate on that, I think it would be a good thing. What my Bill proposes is to drill down into our communities and make them a very unwelcome place for traffickers. If those two pieces of legislation are to work together—that is the way I would foresee it—I would see that as a good thing.

Chairman: We cannot really help you, Michael.

Lord Morrow: I am content enough that it remains.

Chairman: Thank you all very much.

Examination of Witnesses

Witnesses: **David Ford**, Minister for Justice, and **Simon Rogers**, Deputy Director, Protection and Organised Crime Division, Northern Ireland Department of Justice, examined.

Q987 Chairman: Simon and David, might you identify yourselves for the sake of the record and then Michael will begin.

Simon Rogers: I was just checking whether I was allowed to go before the Minister. I am Simon Rogers, Deputy Director in the Protection and Organised Crime Division of the Department of Justice in Northern Ireland.

David Ford: I am David Ford, Minister of Justice for Northern Ireland.

Q988 Michael Connarty: Thank you and welcome. It would be helpful to the Committee if you could give us an overview of the extent of the human trafficking problem in Northern Ireland, which we do not have.

David Ford: In summary, with almost 3% of the population of the United Kingdom, last year we had 2% of referrals into the NRM. From 1 April 2013 to 30 January this year, 39 potential victims were referred to the NRM from Northern Ireland; 21 adults and 18 minors, 17 potentially trafficked for sexual exploitation, 10 for labour exploitation and the other 12 as yet undetermined. We have had eight convictions for trafficking offences in Northern Ireland, including three cases that were prosecuted in the courts in Northern Ireland, three in Scotland and two as a result of a joint operation with the Swedish police, where the prosecution took place in Sweden. In that sense, we recognise that we have part of the problem that the UK has, but we are very much the smallest of the three regions within the UK in that context.

Q989 Michael Connarty: Are any particular problems created with the land border with the Republic of Ireland?

David Ford: In some senses, the border presents us with a number of challenges around the justice system generally. Having the UK's only open land border creates significant differences within Northern Ireland. It also presents us with the issue of cross-border co-operation—a high priority. Trafficking as a whole is a borderless crime. In that context there are clearly cases where trafficking occurs to Northern Ireland from the Republic; through Northern Ireland both ways; to Northern Ireland from England and from Scotland; and indeed through flights from elsewhere in the world. However, we have very good close working relationships. There is a specific sub-group of the organised crime task force which brings together a number of agencies operating in Northern Ireland, both devolved and UK-wide. There is a specific sub-group on immigration and human trafficking matters. It includes representation from An Garda Síochána. It is an example of how we are able to operate, despite the border being a potential benefit to these kinds of crimes. Good working produces that.

We have also had a number of joint events. My colleague Alan Shatter TD, Minister for Justice and Equality, and I hosted an event last October where people from north and south looked together at trafficking issues. An Garda Síochána were successful in retaining EU funding under what they called the Reach project, in which my department is associate partner, so we have used the benefits of the fact that we can get European funding by associating with people a few miles away who also speak English. That is sometimes a benefit to us.

Q990 Sir John Randall: You have previously stated that the National Crime Agency does not operate in Northern Ireland in the same way as it does in the rest of the UK, and that that could place an additional burden on the Police Service of Northern Ireland. Could you highlight any particular areas where you have concerns on that?

David Ford: The answer is nearly every area. The practical reality is that, because of political unwillingness on the part of the two Nationalist parties, the NCA does not operate in Northern Ireland in the devolved sphere, though it does operate in the reserved and excepted sphere. That is already a few months into operation, from last autumn, producing difficulties where the PSNI has to devote resources to deal with issues that would be the responsibility of the NCA in any part of England and Wales or Scotland. There is also a significant issue about having the relevant expertise. We get the benefit of the NCA's overseas reach, but that does not always translate easily. Inevitably, to some extent we are at the end of the line. There are particular problems when the NCA would be responsible for carrying out operations on the ground in GB, which they cannot do within Northern Ireland. We also, of course, do not have the other issue about the opportunity for civil recovery, because that lapsed with the demise of SOCA. We are therefore unable to pursue criminals' assets in the way that is still possible in the other two jurisdictions.

Q991 Michael Connarty: Why has the demise of SOCA taken out your ability to pursue assets?

David Ford: Because those powers are now given to the NCA. We are talking about devolved matters, and the Assembly has not agreed that the NCA should have operational powers within Northern Ireland except in the reserved sphere. They can deal with things like revenue and customs matters, but they cannot deal with ordinary organised crime, including many trafficking offences.

Q992 Lord McColl of Dulwich: Do you think there are any merits in putting victim support on a statutory footing?

David Ford: Yes, I do. We have done work around that. I was listening to Lord Morrow just ahead of me. It is part of the joint approach between us that we are looking to see how we do that. In Lord Morrow's Bill, clause 10 puts specific requirements on both my Department and the Department of Health, Social Services and Public Safety in terms of providing support, in our case for adults and in their case for children. I need to be slightly careful in the unwieldy coalition that we have in Stormont in speaking on behalf of another Minister, but my understanding is that he is quite happy to take on those powers with regard to children. Certainly we are happy enough with that clause as it is drafted. It ties in with a lot of other more general work that the DOJ has done since devolution around providing support to victims generally.

Q993 Sir John Randall: How has that worked?

David Ford: We are in the process of putting in place a statutory charter for victims, and indeed for witnesses as well. We have a variety of other measures we put through the courts, like registered intermediaries to assist those who have difficulty in giving evidence. I fear, Chair, that, if you let me go on, I would talk too much about that and too little about this particular Bill. It is an issue which has been a priority since devolution, and we have been looking at a number of different ways to ensure that the victims' experience is made less bad, since we can hardly say made better.

Q994 Chairman: Can you say how you built up the charter?

David Ford: Through significant engagement between the Department and a range of bodies—for example, Victim Support, which has a wide-ranging responsibility for victims, as they would in other parts of the UK. There has been that level of engagement to see what the needs of victims are and how we can best provide for them. We have also set up arrangements where there will be a single point of contact in a victim and witness care unit, where those who are involved in criminal cases have the opportunity to get support and to be talked through the process. Too often, people have said to us that, particularly when they have been involved in a serious crime, they get a degree of support from the police, but when things pass on into prosecution and the court system they feel that they lose out. It has been a matter of trying to find a point of contact, bringing together the work done by different agencies, to ensure that the victim and witness care unit is available to assist individuals as seamlessly as we can make it. I would not like to claim that it is entirely seamless.

Q995 Chairman: Did you say victim or witness?

David Ford: I said both, with the key issue obviously being victims, but in many cases vulnerable witnesses also benefit.

Q996 Baroness Kennedy of Cradley: What do you see as the benefits of a UK-wide response to human trafficking, specifically the benefits of extending the role of the anti-slavery commissioner to Northern Ireland?

David Ford: We are in a difficult position. I was listening carefully to the earlier remarks about the Scottish position. I was keen before I became Minister and I remain equally keen, in conjunction with the majority of the Assembly, that legislation is done through the Assembly where possible. There are clearly certain issues where, on relatively minor matters, a Legislative Consent Motion, in effect to piggy-back on Westminster legislation, is appropriate, but by and large we seek to do our own legislation to make it most appropriate for what we see as the needs of Northern Ireland.

On an issue like slavery and trafficking we wish to be part of a joined-up UK approach, but still on the basis that much of the legislation should be done separately. The approach I am currently consulting on, which could result in some amendments to Lord Morrow's Bill coming from the DOJ, would look at some slight amendments but very much tying in with the basic principle of ensuring that the UK is a cold house for traffickers. For example, we would have some slight differences, but overall we would have a similar approach in Northern Ireland to that which is adopted here.

Specifically on the issue of the commissioner, I am a member of the interdepartmental ministerial group on trafficking, which clearly has some roles to fulfil in terms of the national rapporteur at this stage, though we need to be careful as to whether a body which is purely formed by Government Ministers can satisfy that entirely. I would not wish to be an expert on European law to judge how well we match that. What I believe we would benefit from by having a UK-wide commissioner operating in Northern Ireland is that they would be able to examine the operation of all the agencies operating in Northern Ireland, whether devolved or agencies of UK Government bodies. If we simply have—as currently proposed by Lord Morrow, although he has acknowledged that there is an issue to address—a Northern Ireland rapporteur, they would not be able by Assembly legislation to look into the work of, for example, UKBA or various other agencies. The best way we can get it joined up is by having the UK commissioner, or whatever term ends up being used, operating in the devolved sphere in Northern Ireland as well.

Simon Rogers: At the moment the provision for that does not extend to Northern Ireland. Obviously, if we were going down that route, the Minister would want to look at the appointment, the reporting and so on. In other words, the commissioner would be reporting not just to

Westminster but to the Assembly in Northern Ireland. The commissioner's appointment arrangements and so on at the moment are very much focused on Westminster and the Home Office, and, subject to the Minister's consultation, obviously that would need to be altered in the Bill so that the Minister would have a role in the appointment and reporting arrangements.

David Ford: That would be a point where we would seek an LCM, if that is the way we wished to go.

Q997 Baroness Kennedy of Cradley: But it would be a benefit because the UK-wide commissioner could look at all agencies across Northern Ireland.

David Ford: Yes.

Q998 Chairman: When you were talking about the ministerial group, David, did you mean the UK one or do you have your own?

David Ford: I mean the group led by the Home Office, which has a number of Whitehall Departments and the three devolved Administrations all represented on it.

Q999 Chairman: Might we ask what your attendance record is like?

David Ford: If you wish me to be immodest, I believe my attendance record is 100% since I was appointed.

Q1000 Chairman: You are the only Minister who has that. Well done. It just shows you the attraction of London, doesn't it, and the topic of course?

David Ford: It does include attendance in part by video-conference. I have to get that on the record, because the Home Office has changed the date of the meeting from last week to two weeks' time, which means I am unable to attend it, even by video-conference.

Q1001 Chairman: How many times since you have been a member has the Prime Minister chaired it?

David Ford: The Prime Minister chaired it the day before Anti-Slavery day last October. That is the only time he has chaired it that I am aware of.

Q1002 Lord Warner: I want to move on to the national referral mechanism. As I understand it, you are proposing a two-tier NRM system

which would allow a person's experience of slavery and trafficking to be gathered through anonymous referral without the victim's consent. We have had quite a lot of witnesses before us who told us that even anonymous referral is likely to deter people from coming forward. Can you explain to us why you have gone down this route and whether you have any concerns about it?

David Ford: I have no evidence that the point you have just made is correct. I am not disputing it; I simply have no evidence of it. Part of the problem is that we have such a limited piece of information around a number of aspects of trafficking and we need to get better evidence than is currently the case. We certainly hope that by allowing anonymous referrals we will increase the number of referrals without necessarily getting into the difficulty that you are foreseeing, or that you are saying witnesses have foreseen. I am simply not aware of enough detail.

Q1003 Lord Warner: It is the NGOs who say that people are coming to them to tell them about it. Many of these people are coming from places where the police or any organ of the state—NRM would be seen as an organ of the state—would make them very fearful. They are even suspicious of anonymous referrals to a mechanism of the state. That is their argument.

David Ford: I can appreciate the point being made; I just have no knowledge as to whether that is likely to be the case or not. If we cannot gather better data than we currently have, we will not be able to tackle trafficking. The issue is how we get the best data.

Simon Rogers: At present, there is an annual assessment called the baseline assessment, looking for cases which have not come through the NRM. One of the benefits of this proposal, which potentially has the risk you highlight, is that the information will be real time; in other words, referrals will be coming in as they happen, anonymised, rather than waiting until the end of a 12-month period when there is an influx of cases from X or Y. Obviously as a law enforcement agency you want to know what is happening in real time, not to wait until the end of 12 months. The other side of it is that there would be an important element of communication around any new system, trying to provide reassurance through first responders and others. I am not saying that will work in every case, but it would certainly temper some cases.

Q1004 Chairman: When you talk about those not going through the NRM, what is the proportion of not on the official books to on the official books?

Simon Rogers: I do not have figures to give you today; I know that the increase from the official NRM figures and the baseline is not double, but it is approaching double the numbers.

Q1005 Chairman: It is quite significant, isn't it?

Simon Rogers: It is.

Q1006 Baroness Doocey: How would you ensure that you are not double or even triple-counting, on the basis that you are having anonymous data, and a lot of trafficked victims can be picked up by a variety of agencies? There could be three or four agencies reporting the same victim. How will you work that one out?

Simon Rogers: In a jurisdiction like Northern Ireland we have the benefit of being small. Therefore, I think the different agencies will pick that up. Also, the number of first responders is not that great and the duty will be placed on them to make these referrals, not on anyone who comes into contact with a potential victim. There is that risk, but the difficulty we have is that, on the one hand, people are saying we don't have enough information. For example, in Northern Ireland, we are doing a major piece of work at the minute trying to work out where we should be targeting our resources. Is it urban, rural or at ports? Without this sort of information, you are largely guessing. It is a double-edged sword. Yes, you want to protect the victims, and that is the first thing all law enforcement agencies will say to you; it is protect and support first and prosecute second, in terms of evidence and so on. But we do not have the information coming through, so we have to find a way of increasing that without jeopardising or putting at risk the potential victims.

Q1007 Baroness Doocey: I understand what you are saying, but I still cannot see how you could guarantee with anonymous data that you are not picking up the same victim three or four times. I understand entirely that you need data, but surely the data you need must be absolutely correct.

Simon Rogers: When you are talking in Northern Ireland terms of up to 40 cases per annum, it is not going to be the issue that I suspect it will be for England and Wales.

David Ford: We are also looking at first responders as being the police and the local health and social care trust. That would only be two agencies in any one geographical area. That is the benefit of being a small region, where people tend to know each other and co-ordinate perhaps rather better than they can in England and Wales.

Q1008 Chairman: It is a problem though. I went to a children's charity that runs Childline, and I was with one of our special advisers. He was incredibly confident that nobody else knew about the case he had met that morning, but in fact the children's charity had already picked it up.

David Ford: But when we are talking about merely the statutory first responders we are reducing that danger.

Q1009 Baroness Butler-Sloss: I want to move to prevention and risk orders. We have rather elaborate clauses in this Bill on both those orders. Perhaps I could concentrate on the risk order. I think you are quite enthusiastic about them. What kinds of behaviour do you think the risk orders should be aimed at that would actually be serious enough to indicate that someone is about to commit or ready to commit an offence of modern slavery, but would not be suitable for normal investigation and prosecution? Where do you see these risk orders coming in?

David Ford: Certainly the aim, where at all possible, is to go for prosecution if there is adequate evidence for the standard of criminal proof. It sounds a terribly trite analogy, but it is almost like how we deal with anti-social behaviour; there can be behaviour which is clearly indicating a risk but which does not meet the burden of criminal proof. In those circumstances it is appropriate to look to a risk order to ensure that there is some regulation of the individuals, particularly when we think of the level of seriousness of the potential crimes that we are talking about.

Q1010 Baroness Butler-Sloss: Some of the evidence we have already had referred particularly to preventing people coming to the United Kingdom who are known to be traffickers. We cannot prosecute them because they are overseas, but we could prevent them from coming here. Do you see any use for a risk order for those who are actually in the jurisdiction rather than those who might be coming in?

Simon Rogers: I think there could be a use, in that, if you have intelligence that someone might be planning to traffic victims and is then planning to travel somewhere, you could restrict that. You could restrict someone's engagement with children if you have concerns about child sexual exploitation and trafficking in that field. The safeguard is that it goes to a court. This is not an Executive or indeed a law enforcement decision; you have to take your evidence to a court, and it can impose an interim or temporary order first before a fuller hearing. We think there are safeguards, but, like the Home Office, we are consulting on this. It is part of the Minister's consultation, and if

there are views expressed to the contrary obviously you will want to take those into account.

Q1011 Baroness Butler-Sloss: When do you expect your consultation to come to an end?

David Ford: It is mid-April, the 16th, I think.

Q1012 Baroness Butler-Sloss: That is too late for us then.

David Ford: I am afraid it is too late for you, but it is in time to inform us as we look at working around Lord Morrow's Bill to co-ordinate with your work.

Chairman: That's its objective, isn't it?

Q1013 Sir John Randall: Talking of Lord Morrow's proposals, with which areas do you have particular concerns? Obviously we heard there were points of agreement, but what concerns do you have?

David Ford: I suppose I should carry out my commitment to Lord Morrow as he left and say that, yes, we have significantly more agreement than we did when this process started off. Interestingly, when his Bill went through second stage in the Assembly I was attacked by somebody who did not like the Bill, on the basis that I had expressed reservations and therefore he thought that I should have been voting against the Bill at second stage. I did a quick sum and came to the conclusion that, if a third of it was okay, a third of it was potentially tweakable and a third you did not like, it was a Bill worth proceeding with.

There are three outstanding areas at the moment. The first one is the specific issue of the clause that would ban the payment for sexual services in all circumstances. We simply do not believe that we yet have the evidence on which Northern Ireland should be legislating on that basis. We have a research proposal out at the moment, which we expect to see back in the autumn time. I could quote some people who would say there are issues to be considered around prostitution, but they should perhaps be the subject of a Bill dealing with prostitution and not tacked on to a human trafficking Bill.

Lord Morrow's clause 4 specifically deals with minimum sentencing for trafficking offences. In particular, as it is currently stated, it applies to children as well as to adults. In Northern Ireland, the only minimum sentence we have prescribed by legislation is a life sentence for murder. I am unenthusiastic about going down the route of minimum sentencing in any cases, but I deem it particularly inappropriate for children. I think Lord Morrow and myself may have reached agreement on the children's

aspect, but I do not think we have reached agreement in so far as it would relate to adults.

The third contentious clause is clause 8, which is the effective blanket immunity from prosecution for those who have themselves been victims of trafficking. We certainly have cases on record where prosecution has been considered by the Public Prosecution Service in Northern Ireland, and not proceeded with on the basis of the information to hand relating to the individual having been a victim of trafficking. I believe that that is something which should be left to the DPP to decide. It should be his responsibility to determine, on the facts of each individual case, whether prosecution is appropriate, and not to have a blanket ban.

Q1014 Sir John Randall: You said somebody was opposed to Lord Morrow's Bill; I would imagine with regard to the Bill we are doing that the opposition to it will come because it is not strong enough. Do you have anybody there who is just opposed to the concept? By and large, it is a good thing, but the detail is going to be the problem. When you said that, I just wondered where that opposition came from.

David Ford: Certainly I was advised, when the Bill was originally introduced, that the legislative draftsman would not have allowed me to introduce some of its provisions as an Executive Bill because they replicated or duplicated what existed elsewhere. That is part of the concern. In a context where the Home Secretary is planning to legislate for England and Wales, and perhaps in some respects slightly for the United Kingdom, we would be very remiss if we did not follow the same principle of putting in consolidating legislation, to show that we were part of a united stance across the UK against the crime of trafficking and slavery. As I said, that particular individual is, I think, the self-appointed leader of the opposition who feels the need to oppose nearly everything that is happening.

Sir John Randall: We have them here.

Q1015 Chairman: When the Home Secretary asks you to suggest how you could improve her Bill, what would be your major suggestion?

David Ford: I need to be slightly cautious about suggesting too much. In the nicest possible way, one problem frequently appears when either the Ministry of Justice or the Home Office is considering legislation: with due respect to the people who live in Petty France and Marsham street, sometimes they do not always think of the implications for the whole of the United Kingdom when they legislate. The NCA was an example of that. I do not know whether it would have been any easier to get it agreed in Northern Ireland, but the way it was introduced did not make it easy.

The key issue for me is to ensure that, if we want a joined-up UK approach, there is appropriate consultation with and by officials in the two Departments at an appropriate early stage so that we can get co-ordination of that. Beyond that, it is the issue of accepting that the Home Secretary has a responsibility for both England and Wales and for the United Kingdom. It is a matter of how we ensure that co-ordination goes ahead. I am happy with the broad outlines of the Bill, but clearly significant parts of it are purely for England and Wales. I am not sure I should properly be telling the Home Secretary what to do there, any more than I would wish her to tell me what to do in Northern Ireland.

Chairman: Given the lack of consultation, that does not seem a realistic prospect.

Q1016 Michael Connarty: You said you thought you should leave it to the prosecutor in individual cases to decide whether there is criminalisation and a prosecution.

David Ford: Yes.

Q1017 Michael Connarty: As a rule, do you think that children who are trafficked should not be criminalised—for example, young men found in cannabis factories?

David Ford: One of the key issues as to whether prosecution is appropriate or not would be the vulnerability of the individual. Clearly the younger they are, the more likely they are to be vulnerable. That is why it is very difficult to say there should be a blanket ban, and why it is appropriate to say that the prosecutor should consider on the basis of the merits of an individual case. Although I heard what was being said about Scotland, that is not the way I understand it to be happening in Northern Ireland, where we have not seen cases of vulnerable people subsequently being prosecuted.

Q1018 Michael Connarty: I can assure you that a young offender institution in my constituency has three young Vietnamese gentlemen. It is an easy collar. If you can't catch the big guys, you just catch the farmers.

My second question is much more difficult. It is about jurisdiction lying within Northern Ireland. The national referral mechanism and the UK Border Agency are totally interlinked. We have heard so much evidence in the past few weeks that the UK Border Agency and the NRM should not be involved, because basically the UK Border Agency is more likely to send someone from a non-EU country back home as an immigration breach than they are to treat them as a victim. If we can solve the problem at a UK level, would you accept that you do not need separate legislation in Northern Ireland for that immigration question? I tend to support the view

that we have been hearing; that we should not link immigration to the trafficking question and NRM, because NGOs and victims won't speak.

David Ford: Immigration is not a devolved matter, so I assume that the UK will deal with immigration on behalf of Northern Ireland as well as England and Wales and Scotland. That is the simple position. I have no role, although, for example, the UKBA would be involved with the organised crime task force in terms of its local operation. It is an example of joining up at that local operational level, but as far as policy is concerned I have to leave that because it is not a devolved matter for me.

Q1019 Michael Connarty: Are you aware of cases where trafficked people have been sent to their home country, which seems to be the strategy, when they were found in Northern Ireland?

David Ford: I am aware of cases where a variety of people have been sent home. I am not aware of anybody who has been removed from Northern Ireland who was seriously believed to have been trafficked.

Q1020 Lord McColl of Dulwich: You mentioned your opposition to the idea in the Bill of making it illegal to pay for a prostitute. If we were to do that, as has been successfully done in Sweden and is operative in Iceland and Norway, and if you abolished prostitution, you would abolish most of human trafficking, would you not?

Chairman: If you abolished genes as well.

David Ford: At the risk of being argumentative, I said—or at least I hope I said—that on the basis of the information we currently have available, I am opposed to that particular provision in the Bill. I am seeking to get the appropriate information. Certainly from what I have heard of what happens in Sweden, I remain to be convinced that the Swedish model is appropriate for any part of the UK. In particular, my understanding is that much of the prosecution in Sweden is operated on the basis of telephone intercepts that can be authorised by a police superintendent. I am not sure how that would go down in England and Wales or in Scotland, but I can imagine how a telephone intercept authorised by anybody other than the Secretary of State would go down in Northern Ireland. I doubt whether the Secretary of State would give that power to the PSNI. There are sheer practicalities in its inapplicability, whatever may be said about Sweden.

Q1021 Chairman: Is it your view that it is such a major issue on its own account that it should have its own inquiry and its own Bill and not be tacked on to ours?

David Ford: It requires a proper examination of the facts.

Q1022 Sir Andrew Stunell: David, I wonder if I could tempt you a little bit on the rest of the Bill. We are looking at ways in which the Bill can be improved. It would be unfortunate if we recommended to the Home Secretary changes that were not in fact very consistent with your views or the Northern Ireland Government's views about what would work in Northern Ireland. If we are going to be operating on quite a tight time scale, one can imagine that if last-minute changes were introduced you might well be a victim of them rather than a participant.

We are looking, for instance, at possibly changing the definitions of some of the offences. We are looking at an overall exploitation offence and so on. There are some serious questions about whether the anti-slavery commissioner should be statutory or independent of the Home Office, which in relation to Northern Ireland might be quite a significant thing—where would you want that person actually to be standing?—and the fact that the NRM is contributed to by the former UKBA but also by UKHTC for EU victims, if I can put it that way. Some of these things interact with Northern Ireland, and it would be quite helpful to have your view about where you would like the dice to roll on potential changes to the draft Bill.

David Ford: That's some question. You also have not hinted precisely where you are. When you say around offences that there will be an overall offence of exploitation, to some extent that is where I would say, "Well, you do what you think is best for England and Wales and we will do what we think is best for Northern Ireland." As long as they are not inconsistent I do not think they need to be exactly the same, but it would certainly be helpful to know any developing line of thinking, because that might affect us. We have a consultation reporting back in six weeks' time, so it would be useful to know that.

On the precise issue of the independence of the commissioner, I confess that I have not given a great deal of thought to that, except the point I noted about the role of the interdepartmental group and how it functions in the national rapporteur role at the moment. I think there is probably a need for a degree of independence, but exactly how independent I am not sure. My concern is more to ensure that a role is available for somebody to look at every part of the UK or, if I can't say that to Scotland, at least Northern Ireland as well as England and Wales. Clearly a degree of independence, with it not being totally tied into the Home Office of England and Wales if it is fulfilling a UK-wide role, might be beneficial, but there is detail there that I probably should not pretend I am too au fait with at the moment.

As far as the NRM is concerned, it is my understanding that the Home Office is going to be doing a review shortly of the operation of the NRM.

Q1023 Baroness Butler-Sloss: Not shortly; they do not yet have their terms of reference.

Chairman: The full stop comes earlier in that sentence.

Fiona Mactaggart: Maybe that is why they deferred the meeting to a date you can't make.

David Ford: I fear I will need to leave those points to your Committee members.

There clearly has been an issue. The NRM has been in place for some years and there are lessons to be learned from the way it is operated. If you are making any input to the Home Office's work on that, I will certainly be delighted to hear how it goes.

Q1024 Sir John Randall: Did I mishear you, or did you say that seizure of the assets of organised crime is now very difficult in Northern Ireland?

David Ford: We do not have powers of civil recovery since the demise of SOCA, because there is no body to carry that out within Northern Ireland.

Q1025 Sir John Randall: If we were going to strengthen our seizure of assets here, which is something we are looking at, to get in earlier and to get more money, is there a danger that we would push the problem over to you?

David Ford: We believe there is that danger, yes.

Q1026 Sir John Randall: Are there any plans in Northern Ireland to rectify this problem because of the NCA?

David Ford: At the moment, it would be polite to say that discussions are continuing with Sinn Féin and the SDLP. It would be accurate to say that neither of them has replied to letters that I wrote towards the end of January. You may have noticed that we have had a few little local difficulties over the last week or so, but that should not have stopped them replying some weeks back. I am unclear as to where they stand at this stage. It is becoming a serious point where we will have to look to see what else can be done. It appears that we will not get agreement even though, in fairness to the Home Secretary, she responded to several iterations of letters on my behalf seeking changes in order to try to mollify certain people, but we have not yet reached that point.

Chairman: Thank you very much, both of you, for your evidence.

