Autism Bill: Committee Stage Report

Bill No 98

RESEARCH PAPER 09/52 10 June 2009

This is a report of the House of Commons Committee Stage of the Autism Bill. It complements Research Paper 09/17 prepared for the Commons Second Reading debate.

The Bill is sponsored by Cheryl Gillan MP, who drew first place in the 2008/09 ballot for Private Members' Bills. The Bill as originally introduced (Bill 10) was opposed by the Government which had announced its own proposals to publish an adult autism strategy by the end of 2009. During the Committee Stage the Government proposed an alternative version of the Bill. The Minister for Care Services, Phil Hope, introduced new clauses requiring the publication of an adult autism strategy and associated guidance, and putting this guidance on a statutory footing. The Committee agreed the Government clauses, with the support of Mrs Gillan, and negatived the Bill's original substantive clauses. Unlike the original Bill the version as amended in Committee (Bill 98), does not extend to Wales, and does not cover services for autistic children.

Thomas Powell

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Research Paper 09/52

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Summary

The Autism Bill is a Private Member's Bill introduced in the House of Commons by Cheryl Gillan with cross-party support. It was presented on 21 January 2009 and received its Second Reading on 27 February 2009.

At the Second Reading debate the Minister for Care Services, Phil Hope, set out the Government's opposition to legislating on services for people with autism. He also expanded on the Government's proposal to develop an adult autism strategy and introduce other measures that he hoped would meet campaigner's demands without the need for primary legislation. Mrs Gillan and a number of other MPs expressed their concerns that the Government could not be effectively held to their commitments without legislation, and the Bill received its Second Reading.

There were three sittings of the Public Bill Committee (PBC), on 29 April, 6 May and 13 May 2009. The first two sittings were adjourned; the first to allow a money resolution to be passed and the second to allow the Government time to come up with a form of legislation that it would be prepared to support.

At the third sitting of the Committee on 13 May the Minister for Care Services introduced new clauses that would require the publication of an adult autism strategy and associated statutory guidance. With the support of Mrs Gillan the Committee agreed the Government clauses and negatived the Bill's original clauses, apart from the clause relating to the money resolution.

The Bill as originally drafted (Bill 10) would have placed specific requirements on local authorities and NHS bodies in three main areas: the gathering of information about the number of people with autism; the planning and delivery of services; and the transition to adult services for people with autism. The new clauses agreed by the Committee would require the Secretary of State for Health to publish an adult autism strategy, to issue guidance to local authorities and NHS bodies, and provide a statutory basis to the guidance under the *Local Authority Social Services Act 1970*. These measures are in line with Government proposals set out in a letter to MPs on 19 February 2009 and reiterated by the Minister during the Second Reading debate. The Bill now provides a statutory commitment to Government proposals. It would require the strategy to be published by 1 April 2010 and the guidance to be published by 31 December 2010.

It is important to note that the new version of the Bill as amended in Committee (Bill 98), unlike the original Bill (Bill 10), does not extend to Wales, and does not cover services for autistic children. The Government intends statutory guidance with regard to children with autism to be made under provisions in the *Apprenticeships, Skills, Children and Learning Bill,* HL Bill 42 2008-09. This guidance would spell out what is expected from local authorities in respect of children with autism when they draw up their Children and Young People's Plans.

The Government's new clauses were endorsed by Mrs Gillan and agreed by the Committee without a division. No other amendments were introduced or voted upon although there were questions about how often the strategy would be reviewed, about the definition of NHS bodies (specifically whether NHS Foundation Trusts would be covered by the Bill) and about the definition of autism itself. The Report Stage is due on 19 June.

1 Background

The original intention of the Autism Bill as it was introduced on 21 January 2009 (Bill 10) was to provide better information about the numbers of people with autism and their needs and to improve local planning and delivery of services. The Bill would have required every local authority to maintain a register of autistic children within their area, and required local authorities and NHS bodies to collect data on the population of adults with autism. The Bill would have also required regulations to be made to promote the provision of services for adults and children and required local authorities to promote effective transition from child to adult services. Library Research Paper 09/17 prepared for the Second Reading debate sets out the measures proposed in the original Bill and provides background on autism spectrum disorders (ASDs) and their prevalence. It also sets out the current statutory framework and Government policy for supporting people with autism.¹

On the 19 February 2009, before the Second Reading of the Bill, Phil Hope, Minister for Care Services, and Sarah McCarthy-Fry MP, Minister for Schools and Learners, sent a joint letter to Members announcing that the Government intends to publish a strategy for adults with autism by the end of 2009 (and to consult on this from April 2009).² The letter contained commitments to introduce statutory guidance about services for adults with autism, and to other measures specifically addressing issues raised by the Bill. The letter also explained that new regulations and statutory guidance would be issued to ensure that the needs of disabled children, including children with autism, would be properly reflected in Children and Young People's Plans.³

In the letter of 19 February, and in the subsequent Second Reading debate, Mr Hope, made it clear that although the Government supported the objectives of the Bill it did not consider legislation to be the best way of achieving them. A summary of the Second Reading debate is provided in the following section.

2 Second Reading debate

The Bill received a Second Reading on 27 February 2009.⁴ During the debate several Members drew on personal experiences, and the experiences of their constituents, to highlight the problems faced by children and adults with autism. This summary notes some of the issues raised in what was a wide-ranging debate; it is not intended to be a full account of all points made or of all individual contributions. Members are advised to consult the debate if they wish to check whether particular subjects were raised or what was said by individual Members.

Introducing the Bill, Cheryl Gillan thanked the National Autistic Society for their support in its preparation and development. She described the purpose of the Bill and how this would address the problems faced by children and adults with autism. She said she was "delighted and thrilled" by the Government's commitment to introduce an adult autism strategy but said that the Bill was a vehicle to examine the Government's proposals, and that these could be examined in more detail in Committee. Mrs Gillan and a number of other Members taking part in the debate commented that it was necessary for the Bill to go on to Committee Stage in order to keep up the pressure on the Government, to ensure that it fulfilled its promises.

The Library's Bill gateway pages provide information on the progress of the Bill and links to relevant information to users of the Parliamentary Intranet.

² For further information about the proposals set out in this letter to MPs see Research Paper 09/17, which was prepared for the Second Reading debate on the Bill.

³ Under provisions in the *Apprenticeships, Skills, Children and Learning Bill*, subject to this being given Royal Assent and to a consultation process.

⁴ HC Deb 27 February 2009 cc483-547

⁵ *Ibid.* c488

To support this argument a number of Members referred to a Government commitment, made in May 2008, to conduct an autism prevalence study; a study that they noted had yet to be commissioned.⁶

Clause 6 of the original Bill (Bill 10) extended to Wales, and Mrs Gillan described this as a "vehicle" to allow her to discuss relevant issues in Wales. She acknowledged that the measures contained in the Bill were a devolved matter and that she would seek to withdraw the provisions relating to Wales if given certain assurances by the Welsh Assembly Government.⁷

Janet Dean, chair of the All-Party Parliamentary Group on Autism, spoke about the group's role in raising awareness of autism. She also mentioned a number of studies into issues affecting people with autism that the group had commissioned. In particular, she referred to the group's *Manifesto for Autism*, published in 2003, which set specific objectives to deliver better services and support for people with autism over a ten year period. The group's 5 year progress report, *Half-way there*, was published in October 2008. Mrs Dean also mentioned the group's current inquiry on the transition to adult services.⁸

The Ministers' letter to Members of 19 February 2009 made a commitment to introduce statutory guidance. Some Members raised concerns about whether local authorities would adhere to this guidance if the Government issued it under section 7 of the *Local Authority Social Services Act 1970*. Angela Browning noted that a Department of Health circular about services for people with Asperger Syndrome, issued in 2001 under this section of the 1970 Act, was widely ignored. Department of Health circular about services for people with Asperger Syndrome, issued in 2001 under this section of the 1970 Act, was widely ignored.

Ann Milton, speaking for the Conservatives, supported the Bill and also stated that in her view statutory guidance issued under section 7 of the 1970 Act would not be sufficient. Oliver Letwin and some other Members challenged the Minister's claim, made in the letter to Members on 19 February, that legislation would make the delivery of change more difficult. 12

Speaking for the Government, Phil Hope, Minister for Care Services, attempted to give the cast-iron guarantees that some Members had sought regarding the Government's intentions. He started by describing the proposals for consultation on an adult autism strategy, and for statutory guidance. Mr Hope confirmed that it was the Government's intention to issue this guidance under section 7 of the 1970 Act. He also clarified that the strategy and guidance would apply to adults with autism. Mr Hope stated the Government intended statutory guidance with regard to children with autism to be made under provisions in the *Apprenticeships, Skills, Children and Learning Bill* 2008-09. He said that this guidance would spell out what is expected from local authorities in respect of children with autism when they draw up their Children and Young People's Plans. 14

Mr Hope also referred to the other commitments that had been given in his letter of 19 February. These included funding for research and an announcement of new commissioning guidance for local authorities and primary care trusts. Mr Hope also

⁶ *Ibid.* c511

⁷ *Ibid.* c492-3

⁸ *Ibid.* c494-99

Section 7(1) of the Local Authority Social Services Act 1970 states that "Local authorities shall, in the exercise of their social services functions, including the exercise of any discretion conferred by any relevant enactment, act under the general guidance of the Secretary of State."

¹⁰ HC Deb 27 February 2009 c513

¹¹ *Ibid.* c522

¹² *Ibid.* c525

¹³ *Ibid.* c539-45

¹⁴ *Ibid.* c541

explained why he believed primary legislation was not the best means of securing the desired outcomes for people with autism:

We all know that legislation can be a very blunt and crude instrument for driving through change, especially when the end we seek is better awareness and better use of the expertise and resources that are already in the system. We need to preserve for councils the freedom and flexibility that they need to meet the complex web of local needs—not to avoid them, but to meet those needs in ways that are relevant to them in their area. ¹⁵

Mrs Gillan moved the closure motion during Mr Hope's speech and the Bill received its Second Reading.¹⁶

3 National Audit Office Report, Supporting people with autism through adulthood

During the Second Reading debate Angela Browning noted that, as a member of the Public Accounts Committee, she had asked the National Audit Office (NAO) to report on services for adults with autism. The said she expected the NAO to report on the gaps in existing services as well as the economics of dealing with autism. During the short debate on the money resolution for the Bill on 5 May Cheryl Gillan noted that the NAO's report was expected shortly, and that this would provide a more detailed analysis of the effectiveness of expenditure in this area. The Public Accounts Committee Pu

The NAO report, *Supporting people with autism through adulthood*, was published on 5 June 2009, after the Public Bill Committee had concluded its business. The NAO report states that it focuses on services for adults because children's services are more developed than those for adults, and they have been considered by other recent investigations such as the Bercow review. The NAO report makes a number of recommendations to make services more effective and improve value for money. These include calls for better awareness of the numbers of people with autism; for better understanding and improved joint working, amongst those providing health, social care, benefits, education and employment services; and for specialist support to improve the transition from childhood to adult services.

4 Public Bill Committee

The Public Bill Committee (PBC) had three sittings, on 29 April, 6 May and 13 May 2009. Its membership is given in the Appendix below. There were no oral evidence-taking sessions and no written evidence was published by the Committee. At the first sitting on 29 April the Chairman Roger Gale explained that a money resolution would have to be agreed before the provisions of the Bill that would impose a charge on public funds could be considered. As clauses 2, 4 and 5 of the original Bill would have imposed significant charges on public funds Mrs Gillan proposed adjourning until 6 May. She also noted that this would give the Committee time to consider the consultation document on the adult autism strategy that had been published by the Government earlier that day.²⁰ The Minister for Care Services, Phil Hope, reiterated the Government's position regarding the Bill, that "rigid legislation ties the

¹⁵ *Ibid.* c545

The full text of what Mr Hope intended to say in his speech is available on the National Autistic Society website.

¹⁷ HC Deb 27 February 2009 c513

¹⁸ HC Deb 5 May 2009 c140

Bercow Review of Services for Children and Young People (o to 19) with Speech, language And Communications Needs, July 2008.

Department of Health press release, *Autism consultation launches*, 29 April 2009.

hands of those making such efforts and will do more harm than good". However, the Minister commented that he had tabled a money resolution for the Bill; this was agreed on 5 May. 22

At the Committee's second sitting on 6 May Mrs Gillan proposed a further adjournment because she was involved in negotiations with Ministers: "to see whether we can come up with a form of legislation that the Government feel able to accept". ²³

4.1 The Government's new clauses

Following these negotiations with Mrs Gillan, officials at the Department of Health prepared five entirely new clauses, and Mr Hope introduced and spoke to these at the Committee's third sitting on 13 May. New clause 1 deals with the adult autism strategy, new clause 2 covers guidance to local authorities and NHS bodies, to secure the implementation of the strategy, and new clause 3 places this guidance on a statutory basis under section 7 of the *Local Authority Social Services Act 1970*. New clause 4 concerns interpretation and new clause 5 covers the extent, commencement and short title.²⁴

New clause 1 would put the Government's existing commitment to publish an adult autism strategy on a statutory footing, and states that this must be published no later that 1 April 2010. Speaking to this new clause, Mr Hope explained that setting a statutory deadline for publication is a significant departure from normal legislative practice. He also noted that the Government intends to publish the strategy by the end of 2009 but that setting the deadline for 1 April 2010 provides a sensible margin of flexibility.²⁵

Subsections (4) and (5) would require the Secretary of State for Health to keep the strategy under review and require that if he revises it he must publish it as revised. Dr Steven Ladyman asked how often the strategy would be reviewed and other Members called for the Minister to consider yearly reviews (although no amendments were tabled). Mr Hope explained that the intention was that there should be a continual review process rather than a review at arbitrarily specified intervals.²⁶ Mrs Gillan commented that she favoured the idea of a continual review process which would be able to respond rapidly to developments in autism, and she would be concerned if part of the legislation were to inhibit that process.²⁷

Subsection (6) would require the Secretary of State to consult and seek the participation of such persons as he considers appropriate in preparing or revising the strategy. As with other parts of the clause this provides a basis in statute for measures announced by the Government on 29 April, in this case, for the establishment of an external reference group chaired by Mark Lever, Chief Executive of the National Autistic Society.²⁸

²¹ PCB Deb 29 April 2009 c9

²² HC Deb 5 May 2009 c140

²³ *Ibid.* c20

Note that in the Bill as amended in PBC [Bill 98] clause 5 deals with expenses (and is the same as clause 8 of the original Bill (Bill 10)). New clause 5 (the extent, commencement and short title), as introduced in the PBC, is now clause 6 of the Bill.

²⁵ PCB Deb 13 May 2009 c26-7

²⁶ *Ibid.* c27

²⁷ *Ibid.* c29

The external reference group also includes individuals with autism, parents and carers of adults with autism, representatives of organisations which support people with autism, health and social care professionals, employers and education professionals.

Subsections (7) and (8) would ensure that if the consultation process and the publication of the strategy take place before the Bill comes into force they will still fulfil the statutory duty of the Secretary of State.²⁹

Mr Hope explained that much of clause 1 represents no more than the Government has already committed to, and that its purpose is to give Members, stakeholders and the public a means of holding the Government to account on the delivery of its commitments.³⁰

New Clause 2 would require the Secretary of State for Health to issue guidance to local authorities, NHS bodies and NHS Foundation Trusts, by 31 December 2010, in order to secure the implementation of the strategy. There are subsections that would require the Secretary of State to keep the guidance under review, to consult and seek the participation of local authorities and NHS bodies, and to ensure that if these steps are taken before the section comes into force they will still fulfil the Secretary of State's statutory duties.31

Subsection (5) would guarantee that the guidance issued under this section must include guidance on the following key areas:

- (a) the provision of relevant services for the purpose of diagnosing autistic spectrum conditions in adults:
- (b) the identification of adults with such conditions;
- (c) the assessment of the needs of adults with such conditions for relevant services;
- (d) planning in relation to the provision of relevant services to persons with autistic spectrum conditions as they move from being children to adults:
- (e) other planning in relation to the provision of relevant services to adults with autistic spectrum conditions;
- (f) the training of staff who provide relevant services to adults with such conditions;
- (g) local arrangements for leadership in relation to the provision of relevant services to adults with such conditions.

Mr Hope explained that this list represented the minimum that the guidance will need to cover if it is to be effective in improving services for people with autism. One of the major objectives of the original Autism Bill was to improve the information about the population of adults with autism. 32 Mrs Gillan and other Members asked whether this would be addressed in the guidance. Mr Hope stated that paragraphs 5(b) and (c) taken together met their point about information and data gathering.33

Some of the other key areas listed in subsection 5 also address matters that had appeared in clause 5 of the original Bill. Clause 5 of the original Bill would have introduced a new duty for the Secretary of State to promote the provision of services and support by local authorities and NHS bodies to adults with autism. This duty would have been performed by making regulations, and Clause 5(3) had set out the specific items that the regulations must make provision for. Like subsection 5 of the current Bill (Bill 98) these had included the training of staff and the provision of diagnostic and assessment services.

PCB Deb 13 May 2009 c.30

This subsection is analogous to subsections (7) and (8) of clause 1.

Clause 5(3)(e) of Bill 10 2008/09. Clause 5(3) stated that regulations must make provision for the collection of data on the population of adults with autism and their requirements for services and support.

PCB Deb 13 May 2009 c31

New Clause 3 would place the guidance on a statutory footing and, as Mr Hope noted, would fulfil a Government commitment to do this under Section 7 of the *Local Authority Social Services Act 1970*. Mr Hope went on to explain that Section 7 of 1970 Act gives the Secretary of State powers to issue general guidance to local authorities, and that:

Local authorities are then required to exercise their social service functions in accordance with that guidance. Over the years, a body of case law has established that this requirement is more than simply taking account of any guidance under section 7. Local authorities are expected to act in accordance with such guidance unless they can show compelling reasons not to do so. A local authority that ignored guidance issued under section 7, or arbitrarily chose to disregard it, would be acting unlawfully and could find itself subject to judicial review or default action by the Secretary of State. Thus, although not law in the same way that regulations are law, the obligation to act in accordance with section 7 guidance is very strong and such guidance is commonly referred to as statutory.³⁵

Subsection (2) would provide for guidance issued under this section to be treated as if it is general guidance under section 7 of the 1970 Act. Because the 1970 Act refers to guidance to local authorities subsection (3) would have the effect of making the statutory guidance also apply to NHS bodies. In order to do this Mr Hope explained that subsection (3) provides that, for the purpose of guidance issued under the Bill, NHS bodies are to be treated as if they were a local authority to which the provisions of the meaning of the 1970 Act apply. As a result Mr Hope confirmed that NHS bodies will be bound by the guidance to exactly the same extent as local authorities.³⁶

New Clause 4 sets out the interpretation of the different terms used in the Bill. Debate in the Committee focussed on whether NHS foundation trusts were included in the term "NHS bodies". In particular there were a number of questions from Members asking whether guidance issued under clause 2 would apply to NHS foundation trusts. Mr Hope explained that the new clauses had to distinguish the status of guidance in relation to NHS bodies from its status in relation to NHS foundation trusts. The term "NHS bodies" could not include NHS foundation trusts as these have greater autonomy than other NHS bodies. Mr Hope set out the implications of this distinction:

Although new clause 2 provides for guidance to be issued to NHS bodies, NHS foundation trusts and local authorities, the guidance will be what is normally referred to as statutory guidance only in relation to NHS bodies and local authorities. That means that NHS foundation trusts must take into account the guidance, but they are not required to act in accordance with it at all times. However, NHS bodies, as defined in the Bill, and local authorities will be required to act in accordance with the guidance, unless they have very good reason not to, and a failure to act in accordance with the guidance in any other circumstance would be unlawful. That reflects the Government's wider policy in relation to the greater autonomy of NHS foundation trusts.³⁷

Mr Hope explained that the definition of local authorities and NHS bodies only applied to England. ³⁸ He also noted that clause 1 specified that the autism strategy would only apply to England. This marks a shift from the scope of the original Bill which contained a clause extending to Wales.

³⁴ HC Deb 27 February 2009 c544

³⁵ PCB Deb 13 May 2009 c34

³⁶ *Ibid.* c35

³⁷ *Ibid.* c37

³⁸ Ibid.

4.2 Debate on the Government's new clauses

Mrs Gillan recommended that the Committee vote in favour of the new clauses introduced by the Government and warmly welcomed the approach taken by Mr Hope and officials at the Department of Health:

I also want to say that, in all my years as a parliamentarian, I have never seen a Minister and his team of officials respond in such a courteous and rapid fashion to a subject that I believe needs to be remedied through legislation. He should be rightly proud of moving the new clauses today, because it shows Parliament at its best. We have seen a problem, identified the needs of a very large group of people and their families in our society and we are acting together to try to bring some alleviation and common sense.³⁹

Mrs Gillan commented that although the Minister had gone further than she and the charities involved had asked there was still some fine tuning to be done. She hoped that this would be possible at Report and Third Reading.⁴⁰ In particular, Mrs Gillan called for there to be a named contact at the Department of Health to act as an "interface" for people with autism and their carers.⁴¹ Mrs Gillan also hoped there would be co-ordination with the devolved assemblies.⁴²

Dr Stephen Ladyman asked about the definition of autism. He tabled a probing amendment [41] that would require the Secretary of State to prescribe in regulation the range of conditions covered by the strategy, rather than relying on the currently accepted definition of autism. Although he did not move the amendment Dr Ladyman said he was concerned that developments in the scientific understand of the condition might lead to people with autistic symptoms falling outside the definition of autism in the future.⁴³ Mr Hope responded that it would be inappropriate to include a definition of autism in primary legislation but that any definition used in guidance issued under the Bill would be subject to review.⁴⁴

Angela Browning expressed concerns about the misdiagnosis of autism by mental health services and wanted reassurance that guidance would apply in this area.⁴⁵ Mr Hope confirmed that the guidance would apply to NHS mental health trusts, and to all foundation trusts, which must also have regard to it.⁴⁶ He later added that he hoped that the guidance that would be issued under the Bill would specifically include issues arising from diagnosis.⁴⁷

New clauses 1 to 5 were accordingly agreed to by the Committee and added to the Bill. Having commended the Government's new clauses to the Committee Mr Hope stated that he did not support the Bill's original clauses. He noted that clause 8 on expenses should remain as this would remain part of the Government's alternative Bill.⁴⁸ Mrs Gillan supported the replacement of the original drafting of the Bill and the Committee accordingly disagreed to these original clauses. Following the Committee Stage the National Autistic Society issued a press notice welcoming the Government backing for the Bill.⁴⁹

³⁹ *Ibid.* c40

⁴⁰ *Ibid.* c41

⁴¹ Ibid.

⁴² *Ibid.* c42-43

⁴³ *Ibid.* c45-46

⁴⁴ *Ibid.* c48-49

⁴⁵ *Ibid.* c47

⁴⁶ *Ibid.* c48

⁴⁷ *Ibid.* c50

⁴⁸ *Ibid.* c39-40

⁴⁹ National Autistic Society press notice, *Cheryl Gillan's Autism Bill passes crucial milestone*, 14 May 2009.

It is important to note that the new version of the Bill as amended in Committee (Bill 98), unlike the original Bill (Bill 10), does not extend to Wales, and does not cover services for autistic children. This later point was not raised in the Public Bill Committee debate, but the Government's approach to services for autistic children was noted in the Second Reading debate on the Bill. As noted above, the Government intends to issue new regulations and statutory guidance to ensure that the needs of disabled children, including children with autism, are properly reflected in Children and Young People's Plans. This guidance would be issued under provisions in the *Apprenticeships, Skills, Children and Learning Bill* 2008-09, following a consultation process and subject to the Bill being given Royal Assent.

Appendix – Members of the Public Bill Committee

Chairman: Mr Roger Gale

Bacon, Mr Richard (South Norfolk) (Con)

Blackman, Liz (Erewash) (Lab)

Boswell, Mr Tim (Daventry) (Con)

Brooke, Annette (Mid Dorset and North Poole) (LD)

Brown, Mr Russell (Dumfries and Galloway) (Lab)

Browning, Angela (Tiverton and Honiton) (Con)

Clarke, Mr Tom (Coatbridge, Chryston and Bellshill) (Lab)

Dean, Mrs Janet (Burton) (Lab)

Gidley, Sandra (Romsey) (LD)

Gillan, Mrs Cheryl (Chesham and Amersham) (Con)

Hope, Phil (Minister of State for Care Services, Department of Health)

Humble, Mrs Joan (Blackpool North and Fleetwood) (Lab)

Ladyman, Dr Stephen (South Thanet) (Lab)

McCarthy-Fry, Sarah (Parliamentary Under-Secretary of State for Children, Schools and Families)

McDonnell, John (Hayes and Harlington) (Lab)

Milton, Anne (Guildford) (Con)

Committee Clerks: Chris Shaw, Chris Stanton