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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

POLICE REFORM AND SOCIAL RESPONSIBILITY BILL

Fourth Sitting

Thursday 20 January 2011

(Afternoon)

CONTENTS

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Monday 24 January 2011

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Joe Benton, †Mr Christopher Chope

† Brokenshire, James *(Parliamentary Under-Secretary of State for the Home Department)*
Burley, Mr Aidan *(Cannock Chase)* (Con)
† Coaker, Vernon *(Gedling)* (Lab)
† Crockart, Mike *(Edinburgh West)* (LD)
Donaldson, Mr Jeffrey M. *(Lagan Valley)* (DUP)
† Efford, Clive *(Eltham)* (Lab)
† Ellis, Michael *(Northampton North)* (Con)
† Herbert, Nick *(Minister for Policing and Criminal Justice)*
† Huppert, Dr Julian *(Cambridge)* (LD)
† Johnson, Diana *(Kingston upon Hull North)* (Lab)
McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Macleod, Mary *(Brentford and Isleworth)* (Con)
† Mills, Nigel *(Amber Valley)* (Con)
† Offord, Mr Matthew *(Hendon)* (Con)
† Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Ruane, Chris *(Vale of Clwyd)* (Lab)
† Tami, Mark *(Alyn and Deeside)* (Lab)
† Wright, Jeremy *(Lord Commissioner of Her Majesty's Treasury)*

James Rhys, *Committee Clerk*

† attended the Committee

Witnesses

Shami Chakrabarti, Liberty

Lynne Owens, Metropolitan Police

Keir Starmer QC, Director of Public Prosecutions

Public Bill Committee

Thursday 20 January 2011

(Afternoon)

[Mr Christopher Chope *in the Chair*]

Police Reform and Social Responsibility Bill

1 pm

The Committee deliberated in private.

1.5 pm

On resuming—

The Chair:Thank you for coming along to help us with our deliberations. For the purposes of the record, will you briefly introduce yourselves? We shall start off with Shami.

Shami Chakrabarti: My name is Shami Chakrabarti. I am the director of Liberty, the National Council for Civil Liberties.

Lynne Owens: My name is Lynne Owens. I am assistant commissioner with the Metropolitan Police Service, currently responsible for central operations but here on behalf of the commissioner.

The Chair: Thank you. Vernon Coaker has the first question.

Q184 Vernon Coaker (Gedling) (Lab): May I start with a general question to both of you, not necessarily related to policing protests outside Parliament, which we shall come to? What is your view of part 1 of the Bill and the police commissioner proposals?

Shami Chakrabarti: We at Liberty have profound concerns about part 1. I understand that people want the police, who do incredibly important work, to be accountable, but accountability to what or to whom and what is the best mechanism for delivering that? Our firm view is that, with all the problems that we might read about in that or this operation at particular times, the tradition of policing in this country is fundamentally sound. The traditions of Robert Peel and the first commissioners, Rowan and Mayne, were very sound in their thinking. The police need to be independent. They need to be non-partisan. To some extent, they need to be above politics.

I do not think that having a local politician direct the police is any more comforting than having a Home Secretary with too much operational control over the police. I do not take much comfort from the supposed checks and balances in the Bill. It is very dangerous to put so much political pressure on people who are independent. They are independent in the way that judges should be independent. Police are part of the rule of law. They are not part of the political Executive, and I am not sure that the Bill understands that.

Q185 Vernon Coaker: So it is politicisation that concerns you.

Shami Chakrabarti: If I am honest, that is the bit. There are other things in the Bill that I am happy to answer questions about. I hope that you have had the opportunity to read our analysis, but my biggest long-term, fundamental concern with the Bill is the pressure that it puts on the traditions of non-partisanship, independence and accountability to the rule of law that chief constables have had for hundreds of years in this country.

Q186 Vernon Coaker: Assistant commissioner, is there anything that you want to add in respect of commissioners?

Lynne Owens: Our position would be the same as that of the Association of Chief Police Officers on this issue. It is not up to police officers to define how we should be governed or held accountable. We are clearly too important a service not to be accountable. We are accountable to the law. We are accountable to the public, and we are accountable to the people whom we serve in accordance with that law.

Q187 Michael Ellis (Northampton North) (Con): An entity like the police authorities that are currently in existence are almost anonymous to the general public at large. Will not the focus on strategic direction via the police and crime commissioners simply be an up-front approach that the general public will be able to connect and associate with, and replace a largely anonymous entity such as police authorities? Is not the danger that of confusing operational issues with the strategic direction of the police, the point that you made?

Shami Chakrabarti: I think that it is a nice idea to talk about a distinction between operations and strategic direction, but in practice that can be quite a fluffy distinction. I take your point about anonymous elected representatives rather than dynamic, charismatic individuals, but having an individual with so much political power would create bigger potential tension between the independent chief constable and the elected politician.

I note that the Commissioner for Victims and Witnesses gave evidence a couple of days ago and has the opposite view to my own. There was not a full transcript of that evidence available, but I understand the view is almost a vision of policing by "X Factor", where people should be able to text in who has been nicked, who should be nicked and the level of sentence. I am afraid that the kind of vision put out by Ms Casey is exactly my concern about the expectations raised by the Bill and the dangers that lie in the detailed scheme.

Q188 Dr Julian Huppert (Cambridge) (LD): What system for holding the police to account would you like to see? Would it be the current system of police authorities? It is clearly not what is proposed in the Bill. What would you like to see in an ideal world?

Shami Chakrabarti: I have not seen hard evidence that the current tripartite arrangements are a particular problem. Any model in a great old democracy like ours is subject to evolution and reform, but what is proposed here is a revolution, which in my view is without real justification. I have not seen the evidence to justify such a massive revolution in what has been a policing tradition much admired all over the world for non-partisanship and consent-based policing. If somebody wants to come

up with hard evidence of the precise ways in which the system is failing, I would be happy to be persuaded, but I have not seen any.

Q189 Michael Ellis: There have been suggestions, have there not, of political partisanship in the current system? I do not want to necessarily quote examples, but in the current system there have been such suggestions not far from the Palace of Westminster, have there not?

Shami Chakrabarti: I have to say that I and my colleagues at Liberty have in recent years been critical of attempts to politicise policing. That includes some senior police officers in recent years, who we thought were doing the opposite. They were trying to interfere in politics, just as there is a danger if politicians try to interfere in individual operations. Those were anomalies and wrong, but the system that is being proposed here will lead to a lot more of that in practice, particularly with the charismatic, mandated, local, elected police commissioner who will find commenting on high-profile operations, numbers and visibility irresistible. Some of those concerns have quite rightly been expressed by senior police officers, including the current Metropolitan Police Commissioner.

Q190 The Minister for Policing and Criminal Justice (Nick Herbert): I am amused that Liberty of all organisations should be expressing reservations about democratically elected politicians. If not democratically elected politicians to hold the police to account, then who? Is it not the case that police and crime commissioners will have broadly the same powers as police authorities? And what about the case of London? Is it Liberty's position that the mayoral oversight of the police in London should be reversed? Should we hand that oversight to some independent body of non-elected wise men, perhaps? It would be terribly inconvenient, of course, that they might represent the public's view.

Shami Chakrabarti: The fundamental difference between us, if I may say so, Minister—I have had the pleasure of debating these issues with you in the past—is that I think that democracy needs another component. It is not just about elections. All of you here are incredibly important people. You are representatives. You have been elected and you make all sorts of incredibly important decisions, including drafting and setting legislation. But democracy also needs the rule of law. It needs independent judges, for example. Are you suggesting that the judges should be elected and not be independent wise men and women? Do we think that the public would be more comfortable in the context, for example, of the rows over parliamentary expenses if those investigations, potential prosecutions and sentences were more in the hands of other politicians? How would you feel if you, or your colleagues' expenses, were being investigated by an elected person?

Q191 Nick Herbert: The Met are accountable to the Mayor of London, so the existing system has an elected politician with oversight of the Met—the very force that you are talking about in relation to the investigation of expenses. Are you saying that you would reverse that and that that is problematic?

Shami Chakrabarti: I think that there are dangers in the current system. I am suggesting an evolutionary approach to the whole system as it is now both in London and around the country. I do not think the system is perfect anywhere, but I must say that there are dangers in the current model, even in London. It is too early to tell how that will work in practice. However, even under the current London arrangements, in the right circumstances, with the wrong personalities involved—

Q192 Chris Ruane (Vale of Clwyd) (Lab): The last chief constable.

Shami Chakrabarti: Absolutely. There is a real danger of politicisation, even in the current London model.

The Chair: Chris, Matthew and Clive want to come in.

Chris Ruane: In the interests of progress, I must withdraw my question.

Q193 Mr Matthew Offord (Hendon) (Con): In his evidence to Committee, Rob Garnham quoted the Association of Police Authorities' independent research, which was conducted by Ipsos MORI. That research found that the public liked the idea of an individual who could be held to account. How do you feel about that?

Shami Chakrabarti: I like the idea that everybody should be held to account, but the police need to be accountable to the law. All sorts of things have been discussed this week about undercover officers, and so on. The answer to those problems is that people want to know that, whether you are a politician or a policeman, if you have breached the law, you will be held accountable. The police are in the very special position of enforcing the law; but they must also be subject to it. The ultimate accountability is to the law, the judiciary and so on.

Of course, accountability for budgets and such matters must have a democratic input. We have that under the current arrangements, but it is not operational direction, however, nor even strategy in the way that has been described, which sounds operational to me.

Q194 Mr Offord: But in this day and age, with the amount of scrutiny of MPs, police officers, you, and all of us—particularly by the media—if there were any hint of politicisation, it would surely emerge.

Shami Chakrabarti: As has been put to me by your colleague, Mr Ellis, that has emerged in recent times and, as a result of the criticism and scrutiny, people have moved back into their more traditional roles. I admire the current commissioner and the president of ACPO for being sensitive to the dangers of politicisation and for trying hard not to overstep their roles, which was not always the case in the past. All I suggest is that the model as defined in part 1 of the Bill creates, effectively, a lot of operational power for the single individual politician.

Q195 Mr Offord: Effectively, you say. So the reality is not operational power.

Shami Chakrabarti: To me—

Q196 Mr Offord: To you.

Shami Chakrabarti: To me it looks like operational power. With the greatest respect to Mr Ellis's proposition, I do not see how the Bill separates what is called strategy from what is called operations.

Q197 Clive Efford (Eltham) (Lab): The one example where a single individual is at the top of a democratically-elected body is that of the Mayor, through the Metropolitan Police Authority. With that experience in mind, where have the problems arisen? The Mayor has been severely admonished by the Standards Board for England for overstepping the mark, and we have had statements from various police officers when people have said that they have gone the other way and got involved in politics. From the experience in London so far, where are the flaws that the Bill should address?

Shami Chakrabarti: The first thing about London and the mayoralty issue is that the dangers are possibly not as great as they are in the rest of the country, because the Mayor has so much else to worry about. In practice, the Mayor has transport and all sorts of other things on his plate.

Q198 Chris Ruane: There is Kit Malthouse.

Shami Chakrabarti: Well, the Deputy Mayor figure is, perhaps, of greater interest. I am not privy to the day-to-day relationship between the Mayor or the Deputy Mayor and the commissioner. I have a lot of personal respect for the Mayor. When you are designing a system, however, that you want to last for hundreds of years, it must be robust, regardless of gentlemanly conduct and nice people. There must be checks and balances to deal with someone who really did want to interfere.

Q199 Clive Efford: Does the Bill need to be more prescriptive about roles, how far the elected body can go, and how far the chief officer can go?

Shami Chakrabarti: If the Bill is to proceed, and there is to be a revolution, it must be lot more prescriptive to safeguard the independence of operational policing.

As for the current situation in London, I am not privy enough to details that are probably not yet even in the public domain. In particular, I want to know how budget setting works and how the money influences operational behaviour. We all know that the person who holds the purse strings in any organisation wields a lot of power. In the mayoral arrangement, there is that budget setting lever and I want to know more about how that works in practice.

Q200 Clive Efford: You were nodding, Lynne.

Lynne Owens: Yes, I speak as a current Metropolitan police officer, but I have also worked in two county forces—Kent and Surrey. The current model operates effectively, if you are using London as the example of one force. Effectively, because of the size of the Metropolitan Police Service, we are the equivalent of a region. On operational independence, we absolutely support the Government's desire to strengthen local accountability and local democratic accountability, but our nervousness relates to how that will amalgamate to deal with the national functions—counter-terrorism, protective services and major crime investigation. While the drafting of the legislation talks about having regard to a strategic policing requirement, you can absolutely understand the pressure that a locally elected politician may feel to the very visible, accessible parts of policing that we all think are very important. There is, however, another side of policing, which is not always visible or easily explained to the communities. It is when you aggregate it to a country-wide model that, if the Bill is not strengthened, there could be issues in how we service some of those most critical incidents. We would lose the balance in our model.

The Chair: Vernon, do you want come back on this?

Vernon Coaker: I was going to move on, Chair, if I may.

The Chair: Do Bridget or Mary want to come in on this particular aspect?

Q201 Bridget Phillipson (Houghton and Sunderland South) (Lab): Just two points. Obviously it is your view that the proposal is a very fundamental change to how we do policing. We have also had it suggested to us that the Government should pilot this, before they roll it out across the whole country. What would your thoughts be on that? Should they proceed ahead regardless? My other question is on regional variation. For example, my force is Northumbria, which is a huge force area going from the Scottish border down to Durham. They would have one police commissioner, as would Durham, which is a much smaller force. At the moment, we have a police authority which recognises the breadth of geography. Instead, you would have one person covering my area, who may have been elected in Berwick. I am not sure how that would improve accountability, when it comes to local people and their often very local concerns about the nature of policing.

Lynne Owens: I absolutely recognise that that is the challenge of the model. As I have said, I have worked in other forces. If I compare London with Surrey, in London we have 32 unitary authorities, answerable through the London Assembly to the Mayor. In Surrey, there is one county council and 11 borough and district councils. Under the current structure, which we would be applying to the force structure—the 43 force structure in England and Wales—you would end up with these democratically accountable people responsible for very different size subsections of the community. I think that presents us with an issue.

Q202 Bridget Phillipson: Do you have any views on pilots?

Lynne Owens: My nervousness about pilots is on how you would choose what those pilots are. One of the concerns of the chief police officers at the moment is how it aggregates to the whole. If you were to choose all large forces or all small forces, you might not fully understand the impact. We would rather see the Bill strengthened, particularly with the "have regard to" aspect of the strategic policing requirement, to make it a fundamental responsibility of any independent police commissioner to consider that broadest aspect of policing.

Q203 Mary Macleod (Brentford and Isleworth) (Con): My question is to the assistant commissioner. We have the example in London of the Mayor and the Mayor's office with responsibility for policing and, as far as I know—I commend the police for what they do—in London, crime has come down and more knives are off the street and a great job has been done. Do you feel, with this Bill and with the police and crime commissioner role across the country, that you will still have the operational independence in London to do your job effectively?

Lynne Owens: One of the things that has been said in consultation documents and by Ministers is that communities do not have confidence in policing. That is something that we would challenge for the reasons that you say—crime has come down, we have taken more knives off the streets and confidence levels in policing are rising. In terms of our delivery against the current model, we would say that our performance has improved. Whether a change in governance would improve that any further, it would not be for me to comment. It is not for us to define how we are governed. We are currently operating under a police authority structure in London. We have not moved to the new model yet, so we have the checks and balances for that model. It remains to be seen whether that will change when the full proposals in the Bill are implemented.

Q204 Mary Macleod: Do you currently feel that you have that operational independence?

Lynne Owens: Yes. Clearly, there are conversations between the commissioner and various members of the police authority in different environments, but at the moment, we feel that we have that operational independence.

Shami Chakrabarti: I am glad to hear that. After the G20 public order situation last year, I spoke at a big policing conference at, I think, Wembley stadium. It was all about how to deal with challenging public order situations that are difficult for the police. There were police officers from all over the world. Just before I spoke, I heard Mr Malthouse, the deputy Mayor, speak about his vision of coping with those types of situations. He will no doubt correct me if I am wrong, but my understanding of his contribution was that he thought that elected representatives needed to be in the control room, closer to the actual operation as it developed. In a sense, as with Ms Casey's remarks, I was pretty chilled by that. I think it is even more important in difficult political and divisive times, times of strife and public order situations that elected politicians and partisan people are removed from that heated situation. Once again, I have heard a vision of the future, and it is not one that is completely compatible with my idea of operational independence.

Chris Ruane: They should have learnt the lessons of the miners' strike.

Q205 Vernon Coaker: To reassure the assistant commissioner, one of the amendments that we have tabled today would make a police and crime commissioner and the chief constable consider the strategic policing requirement in order to try to address the point that you have made, about it just being around a local issue.

On a broader point, on the repeal of the Serious Organised Crime and Police Act 2005 provisions and the changes that the Bill outlines, the Home Secretary said that that would restore the right to peaceful protest around Parliament. There is quite a degree of change there. How do you both feel generally about the changes that the Bill proposes? We will come on to some of the specifics later, but generally, do you feel that the change in the Bill strikes a better balance between protests, civil liberties and the powers that you, assistant commissioner, are given to do your job? I would like to hear some general thoughts on the changes proposed in the Bill from both of you.

Lynne Owens: This debate goes back to 2007, and the parliamentary Committee that followed, which found that the powers that currently exist do not fully enable us to work within the law. However, in relation to the policing of Parliament square, it is important that Parliament makes it clear to those who wish to exercise their democratic right to protest what is and what is not acceptable. I am not sure that the Bill in its current form gives that level of clarity. For example, it is not clear to protesters, the general public, parliamentarians and indeed the police what level of access is required to Parliament at different times. It is therefore quite difficult for us to police events.

My fear about the proposals in the Bill is that they deal with a specific issue—one that we saw in the square as we walked past it today—and the question is whether they are well placed for the potential policing of future protests. We would support the repeal of the measures, but we would ask for more work to be done on whether public order legislation can be redefined to include some of those broader aspects that would pay consideration to human rights legislation. At the moment, what is proposed in the Bill will leave it up to individual officers to have to exercise the assessment about whether it is proportionate and lawful. Certainly, in the cases that we have had to date, we have been relatively unsuccessful in individual cases in enforcing legislation because of the Human Rights Act 1998. We think there needs to be more thought, and it needs to be enclosed in primary legislation.

Shami Chakrabarti: I am very disappointed in the clauses in the Bill, because I do not think they achieve the commitment of both governing parties to restore the right to peaceful protest in Parliament square. To be fair, the restrictions are now narrower—it is a narrower geographical area, and that is something. However, the rationale behind giving officers the power to direct that you cannot have a sleeping bag makes no sense to me. One assumes that you will be able to have a sleeping bag if you are wearing a "Kate and Wills" T-shirt but not if you are wearing a "Stop the War" T-shirt. My understanding of the politics of this is that Parliament square has got to be tidy; it has got to be pristine, because people from all over the world are going to come to this wonderful event in the spring. That wonderful event is going to happen in the oldest unbroken democracy on earth. Let people come and see what democracy looks like. It is about dissent. Sometimes it is irritating; sometimes it is a bit noisy; sometimes a bit messy. Those are not justifications for dragging people away or taking away their sleeping bags.

Q206 Michael Ellis: Surely you do not think it is appropriate for people to be allowed to camp for years in a public square, without abiding by the same rules, laws and norms of society that everybody else has to. Of course, the right to protest is fundamental, but effectively to live for years in a location is an affront, is it not?

Shami Chakrabarti: I wonder whether it is an affront. My general proposition is that this is an exceptional power that has been taken for Parliament square, but the normal law of the land should be able to apply throughout.

Q207 Michael Ellis: Is it not the other way round? If it were in a park, or square in a town somewhere else, I strongly suggest that that encampment would not have

been allowed to continue for 10 years. Is it not being given special attention because it is here?

Shami Chakrabarti: If that is the case, then whichever laws and powers you would use in that encampment anywhere else, ought to be applicable to Parliament square, at the very least. We have heard a bit about the Public Order Act, which allows all sorts of restrictions. Perhaps you think you would be in breach of planning permission.

Q208 Michael Ellis: Perhaps we should ask the assistant commissioner that.

The Chair: You must allow the witness to answer the question.

Michael Ellis: I am sorry; I am going back to court.

Lynne Owens: I think your question is whether we would, as a police service, have allowed the encampment to continue as long as it has. We have been in constant conversation with the Home Office and have tried to use every power within our current remit, and appropriately applying the Human Rights Act. Unfortunately, we have been unsuccessful at different stages in the process, both ourselves and the Crown Prosecution Service and, indeed, through civil courts. There are currently cases outstanding, into which it would not be appropriate to go into in any great detail. The challenge for us is that the Human Rights Act does allow for protest. Of course, this piece of Parliament square is the most protested piece of land in the country.

Shami Chakrabarti: Rightly so.

Lynne Owens: The challenge for us in that circumstance is for Parliament to have a debate about what level of protest is acceptable, whether there is any area within that protest area that you would like to be kept free at any time, and for that to be enshrined in primary legislation. The Bill gives us a discretionary power. Individual officers then have to justify their actions under the human rights legislation, and so far we have not been successful in implementing it in that way.

Shami Chakrabarti: The permanence of this demonstration seems to be a concern, but whatever your views on war and peace, when a democracy is at war, there will be for the duration of that war some people who protest. There will be peace protesters. That happens in all healthy democracies. If it is about structures, I am assuming that elsewhere in the country laws on planning permission are implemented. I come back to the question of the rationale for the restriction. Proposition number one: there is a right to peaceful protest. It is not absolute; it can be limited, but it has to be limited for good reason. I say that irritation is not a good enough reason; it is not a proportionate reason for limiting peaceful dissent.

Q209 Mary Macleod: If I could come back to you on that, I am very supportive of peaceful protests, but as an individual, do I not have freedom and rights too? Right now, as a Londoner, I am prevented from enjoying Parliament square because of the views of the people protesting on there. Is there not a balance to be struck?

Shami Chakrabarti: I do not understand what it is you are not able to enjoy. Is this the argument about the vista?

Q210 Mary Macleod: Well, I do not like the view, but that is beside the point, it is irrelevant. I cannot walk across the square; I cannot eat my lunch in the middle. When there were all the tents there and the mess they made with it, there was no way I could enjoy that part of the square as part of London.

Shami Chakrabarti: If there are issues about obstruction, you deal with the obstruction. If there are issues about disproportionate interference with traffic or with other things, you focus on that in legislation, and that is sort of the approach of the Public Order Act. The approach of these clauses is very different, simply saying that there is a power to direct that people's sleeping bags will be removed. It is not linked to the harm. Proportionality is not built into this legislation in the way that it is to some extent built into general public order legislation, which balances the rights and freedoms of different groups of people.

Lynne Owens: I will just come back on that other aspect. If you look at the current rules we can, as Shami has rightly said, arrest people for obstruction and we can put them before the court in consultation with the Crown Prosecution Service. At some point, however, whether or not we are successful in that prosecution, that case will close and the individual will have a right to return to the square. Although I note that the Bill includes a draft on a condition being imposed in the court prohibiting them from coming back to an area for a period of time, again that will have to be a proportionality test. Even if that case is successful, what is to prohibit that person returning or indeed being replaced by somebody else?

My concern is just whether the practical application will seek the resolution that I think you are seeking. A far broader debate that talks about what sorts of behaviours are acceptable in the square and for what period, defined in legislation under the Public Order Act, will be far more helpful than this. I am not sure that this will achieve the aims simply because of the behaviour we have seen of the people currently protesting in that environment.

Q211 The Parliamentary Under-Secretary of State for the Home Department (James Brokenshire): I just wanted to perhaps take a step back and look at where we are and where we have got to. What are the panel's views on the existing regime and on the Serious Organised Crime and Police Act 2005? It might be helpful to understand the current context, and perhaps I can then explore the purposes or nature of the changes. It is always helpful to understand, because Shami has said that it may have had a chilling effect on process under the existing regime. I think it would be helpful to hear both from the police operationally and from Ms Chakrabarti what the themes around SOCPA are at the moment.

Lynne Owens: SOCPA has been useful in many operations. The challenge that we now face, since a parliamentary Committee decided that it was less workable, is one for us and the Crown Prosecution Service to make successful cases at court, because the conditions and the way in which it operates are a challenge to us.

We absolutely agree that SOCPA needs to be replaced. What we are suggesting, however, is that it should not be repealed without replacing it with something that is slightly more thoughtful in terms of covering a broader

remit than that which is currently covered here. I have already raised issues such as what behaviour is acceptable and what areas of Parliament should and can be accessed at any time. Making the distinctions between static, assembly and protest, which are currently three different groups, through primary legislation that would have to take into account the human rights legislation would be a better way forward than the subsets as we see them here. They are at risk of taking us back to where we are with SOCPA, which is that individuals may be taken out for short periods of time but will have the capacity to return. You see an awful lot of resource having to be played into constantly removing people from the square who then have every right to return.

Q212 James Brokenshire: To be clear, and I think this is in part Ms Chakrabarti's point about the special natures and distinctions that are drawn, as a consequence of the changes, the Public Order Act and the general regime that operates around the country, subject to the specific provisions in the Bill, would then reapply.

Lynne Owens: Yes.

Shami Chakrabarti: I would agree with all of that, but I would also say that we were really horrified at the SOCPA provisions. We found it absolutely chilling and incredibly unsavoury that people in Britain should have to apply for permission to do incredibly trivial, minor, peaceful acts not only in Parliament square but in a much greater vicinity. This was most famous with Maya Evans, who was arrested because she read out the names of dead soldiers and dead Iraqis and she had not asked for permission. It put the police in a terrible, invidious position to have to enforce something that was so disproportionate. What we have now is something that is more geographically limited, but as we have heard from the assistant commissioner, it still offends that basic proposition, as it is singling out an area that ought to be precious for demonstration, and not excluded from demonstration. Instead of concentrating on the harm that has been done, general public order legislation tends to approach restrictions in terms of why the restriction is justified, which may be because people cannot get on with things, because the traffic cannot move, because there is an obstruction, or because there is a public order danger, and so on. Here, however, there is no justification of that kind. It is just very specific: prohibited activities include loudhailers, tents and sleeping bags. Why? Because we do not want you and your demonstration in the seat of our democracy.

Q213 James Brokenshire: May I challenge that point and the concept behind it? The issue that some people have raised, and I will raise it in the generic sense, is that having a permanent encampment may actually frustrate protests. Parliament square is the centre of the nation and the centre of protest, in that way, and if you allowed permanent encampment and therefore, permanent protest by one group on the square, that would frustrate and prevent others from protesting. I am interested in whether you would accept that there may need to be a way of regulating—hence the reason for looking at permanent encampment, rather than protest—and seeking to address the potential problem, instead of saying, in some ways, "We don't want protest here." We should say, "We accept that there should be protest, but when it transgresses into permanent encampment it frustrates other protests."

Shami Chakrabarti: Rather than concentrating on whether it is a permanent encampment, a sleeping bag, or a loudhailer, it is better to concentrate on the harm that you are trying to address. In your case, I think you are suggesting that the harm you are trying to address is other people who are not getting the opportunity to protest. Perhaps, in more generally framed public order legislation, you would say that one can impose limitations that are necessary and proportionate to first, public order; secondly, national security; thirdly, preventing obstruction; and, fourthly, facilitating the protest rights of others. To me, that is a much more human rights-compliant, sensible approach to public order legislation than only saying prohibited activities include loudhailers, tents, and so on.

Q214 James Brokenshire: However, you can see that that could help facilitate such a situation. Even if you do not necessarily agree with the specific approach, you accept the general principle that there could be a conflict between protests.

Shami Chakrabarti: I accept that free expression and protest rights are not unqualified, and that I do not have an unqualified right to restrict the rights and freedoms of others, including people exercising their protest rights. I am not sure, however, that that is really what is going on here. I am well connected with protest movements because of my job, and I have not heard thousands of complaints from other protesters saying that they are not getting access to Parliament square because of these wicked peace protesters. You might have an objection to structures, and perhaps elsewhere in the country that is dealt with by planning permission. I think, however, that it is inevitable in a healthy democracy that when a country is at war, there will be some kind of constant peace presence and peace demonstration. That is just how it works in a democracy.

Lynne Owens: May I come back to the point about the behaviour of protesters? A challenge that we have in policing these events is that the behaviour of protesters changes in accordance with the legislation. Something that we currently see is people acting as lone protesters, or as lone voices. If we are going to look at amendments to the Bill, the Committee might want to consider whether there is any opportunity for the measure to apply to single protesters as much as it does to groups. Another thing that we would lose with the repeal of SOCPA would provisions that apply to security as well as safety, which for Parliament are different from elsewhere in the country. So, that might be something else the Committee would want to consider.

Q215 Dr Huppert: Perhaps I could move on to the details of what is proposed in the Bill and the directions power. I would be grateful to hear your thoughts are on the proposals.

It is proposed that directions can be given on a range of things, which we have already mentioned. They can be given orally, either by police officers, or by a range of other people—they may be council employees, or they may not be—who are authorised to do so. Presumably, they would not necessarily be uniformed or particularly trained—there is nothing in the measure to say that they would be. These oral directions then last for 90 days, with no record of that, unless they are changed. If they are breached, there is a power for confiscation with

reasonable force—again, either by police officers or by non-officers who may not be involved. How comfortable are you with the various steps in this process, in particular, with non-police officers having power to use reasonable force and with giving the direction on the 90-day period orally?

Lynne Owens: On the use of force, I am nervous about an extension of that law. Of course, individual citizens already have a right to use reasonable force to protect themselves or their property, and the measure would be an extension of that. Obviously, police officers are currently answerable to the law, but we operate with a lot of training, within a legislative framework, and with a significantly negotiated police regulatory structure and a misconduct procedure. The provision on the use of force would make us nervous. At the moment, when people are asked to move, they are generally asked to do so by bailiffs, and we stand by to prevent a breach of the peace in those circumstances.

Shami Chakrabarti: I am very concerned about the on-the-spot injunction issued by the police officer, the council employee, or whoever. Because it is a prohibited activity, there is an on-the-spot injunction—no balancing exercise, or any of the argument you would have in a court, or the fairness and process that comes with court injunction proceedings. I am also very nervous about non-police personnel exercising those powers. Technically, we all have the power of citizen's arrest, but with the exception of Mr Straw and a few other politicians who have exercised it over the years, most of us do not run around arresting one another, and most of us would be ill-equipped to do so effectively and sensibly.

In recent history, police powers have been exercised by local authority staff using surveillance under the Regulation of Investigatory Powers Act 2000. It is not popular with people and it does not feel right. These people are not properly trained, particularly in the concept of proportionality. It is very dangerous even for the police; this scheme puts them in an invidious position.

Q216 Mr Offord: But we have door supervisors who have that power and training, and regulation through the Security Industry Authority. Do you have a problem with them as well?

Chris Ruane: Absolutely.

Mr Offord: Perhaps it is your behaviour.

Shami Chakrabarti: My general instinct is that the police are better equipped than almost anyone to exercise coercive power in this country, but this is even more sensitive, because it is about demonstrations—it is political and heated before you go into that situation. It all begins with the on-the-spot injunction, and then the coercive power.

Q217 Clive Efford: On the issue of non-uniformed officers, I have heard from the police in the past that they are concerned about people being warranted with certain powers when they are not in uniform. I am interested in clarity about people knowing their rights and with whom they are dealing. For instance, I think The Highway Code still says, "a uniformed officer" or "a traffic warden on point duty"—it is a long time since I did my advanced driving test. Would you care to comment on that?

Shami Chakrabarti: It goes back to the best traditions of policing as they have evolved over time. We do not have a militaristic police force even in challenging public order situations. The police come from the citizenry and the community, and I understand and respect all of that. None the less, it is incredibly important, as you suggest, that we know who the person is, that they have proper authority and that they have been properly trained. That is why the commissioner was so clear after G20 that it was wrong for officers to cover their identity numbers. That is about accountability to the law. When somebody else is wearing something else—possibly not in any uniform and looking like they might be a traffic warden or whatever—it does not feel like consent-based policing. It does not feel like that person has proper authority, and that will lead to all kinds of resentments. Remember, this is a politicised situation because it is about protest. The risks of resentment and trouble as a result of the attempted use of the powers are even greater than they would be in a normal arrest situation.

Q218 Clive Efford: I mentioned that. We have seen recent controversy about individual police officers not being able to be identified, yet the Bill suggests a move towards people not in uniform being given powers.

Shami Chakrabarti: To be blunt, over the past 15 or 20 years, there has been a tradition of involving the police in trespass and nuisance situations, which are not classic crimes. I think that is a problem. Aggravated trespass is often used against demonstrators. To my mind, trespass is a civil matter, and it should be for people to go to civil law, and the police should have a minimal role in that sort of situation. That has been bad enough, and that was 15 years ago or something.

The police are now being used as bouncers or to tidy up Parliament square, and it is not only the police, but other untrained agents wearing whatever. It is a recipe for making difficult situations worse. There will always be demonstrations in central London. At particular times, there will be more or less demonstration: when you are at war, there will be peace protesters; when there is a recession, there will be student demonstrators; and so on. Let us not have a public order framework that makes that even more difficult and divisive.

Q219 Mike Crockart (Edinburgh West) (LD): I want to echo the point that you have just made. Having policed public order situations in a previous occupation, I know that it is difficult enough as a police officer to get a lawful order given by a uniform to be accepted and acted upon, especially in stressful situations. You tend to find that different types of people will accept it, and others will say, "Who do you think you are?" and, "Don't you know who I am?" We are potentially exacerbating that situation by asking those same people to accept that same type of, albeit lawful, order from a non-uniformed person, and we could make the situation worse.

Shami Chakrabarti: Absolutely.

Q220 Michael Ellis: I want to go back a step and perhaps bring in the assistant commissioner. The focus on the rights of people who want to protest frustrates a lot of people. What about the human rights of people who want to be passers-by and to have quiet enjoyment of that facility? What about people who want to enjoy

the statues and monuments in an area such as Parliament square? What about the human rights of the residents of Westminster and the people who work here? Do you feel that the Metropolitan police are sufficiently focused on that aspect?

You have also said that your powers are insufficient to deal with the encampment. I understand that, in other parts of the country, when faced with tents of this sort, the Vagrancy Act 1935 has been applied. Do you have anything to say about that and why that has not been applied in this case? The Vagrancy Act applies to several issues, including the erecting of tents.

Lynne Owens: Starting with the first point, at both a strategic and a local level, in the judgments that constables make on a daily basis, we have to get that balance right. As I said earlier, there is a whole time line of activity over the past five years showing where we have tried to get that balance right and where we have taken action against protesters, and we have, in our view, acted appropriately and got the balance right. Some of those cases are still outstanding, having been appealed through both civil and criminal courts. I am confident that the Metropolitan Police Service absolutely respects the rights of all its citizens, including both the right to protest and the right to live safely in London and to retain confidence in doing so.

That is a tricky balance, however, which is why I think that it is important that parliamentarians put their minds to exactly what the appropriate behaviour is in Parliament square and engage that in legislation, rather than asking individual officers to make those judgments on a day-to-day basis. Those judgments are difficult, and trying to defend decisions that we have made on the back of current legislation has certainly cost the Metropolitan Police Service a lot of money in court cases. The Vagrancy Act is another example. I cannot say definitively that we have tried that, but I know that we have tried obstruction, we have tried injunctions and we have tried different versions of the law.

Q221 Michael Ellis: But you are not specifically aware of the Vagrancy Act.

Lynne Owens: I am not specifically aware of the Vagrancy Act, but I can find out for you.

Shami Chakrabarti: It goes back to what the harm is. When there is a real harm, I would argue that there is plenty of law on the statute book for dealing with it. When there is criminal damage, there is the offence of criminal damage. When there is obstruction, there are powers to deal with obstruction. When people engage in threatening and abusive behaviour there are all sorts of offences related to that. This is such a thorny question, because the harm is not really identified. It is not proportionate, is it, in a free society to say that a couple of tents of peace protesters while a country is at war are a blight on our country? I think quite the reverse.

Q222 Mary Macleod: When the mass of tents were removed was there any damage to the square?

Lynne Owens: There have been a number of episodes recently, including the most recent peace encampment. I understand from the Greater London Authority, which owns the grass, that there was considerable damage to the grass, so the area is now fenced off while that damage is repaired. As part of that process, arrests were made. On another occasion, protesters' tents were removed and we await a judicial review of that case against the Metropolitan Police Service.

Q223 Vernon Coaker: It has been interesting to hear from both of you about your views on the Bill and where we should go. I am not trying to put words in your mouth and so correct me if I am wrong, but you both seem to be saying that in many respects you can see merit in the repeal of the existing legislation but that in repealing it we need to be careful that we get the balance right. There is a lack of clarity in the Bill at present. There is real concern about the powers, particularly those of the officer, the discretion given to an officer and the extension of power to civilian employees. There is also a concern about what Parliament actually wants to happen in and around Parliament. Because that is not clear, we are not totally sure what it is we are legislating to solve.

In a sense, as the Bill goes through, the Government, with the Opposition holding them to account, need to take a step back and try to understand what we are trying to achieve over and above the statement that we have not quite got the balance right between protest and civil liberties. We would all agree that some of the things that have happened under SOCPA have not been good, but in trying to do something about that we must not create a whole set of new problems. The Public Order Act 1986 gives a basis for taking this forward but that on its own will not be sufficient to give you clarity as a serving police officer or to address Liberty's concerns about the balance of that process. As a simple supplementary question to the assistant commissioner, if this were passed, how would you get rid of what is there now, and on a practical policing level, what would you have to do to ensure that it did not return? I know that might sound a really simplistic question.

Lynne Owens: My real fear about this is that if this is imposed, of course we will do our duty. We will enforce the legislation. We would have to do our own test under the Human Rights Act 1998. If, having done that test on the balance that you described, we decided to take action, we might well ask officers to use force and potentially extreme force in the removal of those people and those tents. If, in consultation with the Crown Prosecution Service, we were successful in securing a conviction, there is nothing to stop those same individuals or indeed a subset of those individuals returning two days, three days, a week or a month later, and being in exactly the same position. That is what makes me nervous. You end up in this circular position where you are consistently removing different people and putting them before the courts. The question is whether that is sustainable both in resource terms and public confidence terms because of how it would present both to Parliament and to policing.

Shami Chakrabarti: They are not bouncers; the police have enough on their plate. They are there to deal with genuine situations of public order danger and security and so on and so forth. But why should they tidy up Parliament square? I say to all of you with huge respect, go back to what the harm is.

Q224 Mr Offord: Why should they be there all the time? Why should we suffer that?

Shami Chakrabarti: Forgive me, but what are you suffering?

Q225 Mr Offord: My hon. Friend the Member for Brentford and Isleworth has already said that we cannot use Parliament Square. I tried to do that before I was elected. I went over to the peace camp when it existed, and they made it very clear that I should not be there.

Shami Chakrabarti: If that is about intimidation, there is a law to deal with that. If it is about just physical occupation so that nobody else can be there because every square metre is occupied, you can have proportionate restrictions on that. There are all sorts of restrictions that you can impose under the Public Order Act 1986 for all those legitimate purposes. Why have something so harsh and so specific that will turn the police into your bouncers when they have better and more important things to do?

Mr Offord: I do not accept that police are bouncers when they are enforcing the law.

The Chair: Will people address their remarks through the Chair because otherwise we will be setting a bad example? People may be looking in from outside. I will ask Bridget to bring some order.

Q226 Bridget Phillipson: You say that Parliament square is a separate case if people want to protest there because of its national significance. Should we make legislation to deal with separate cases?

Shami Chakrabarti: That is really helpful. I need to be clearer. On the one hand, I am saying that of course people want to go and protest in Parliament square because of its significance and, therefore, we should be particularly slow to interfere with protesting in Parliament square. People want to influence all of you, and that is as it should be. On the other hand, I am also saying that generally speaking one law of the land that has general applicability—whether it is in Parliament square or another square—is probably a good idea. We need one public order framework that says, "What are the reasonable restrictions on peaceful protest and what are the proper justifications?" It can be obstruction or a risk to public safety. We should start with the justifications for interference rather than just say that we have not thought about why we want to get rid of these people, and that we are just being specific to Parliament square. You would basically be saying, "You will be prohibited here." It is much better to have a law of general applicability with all sorts of reasonable restrictions that have been expressed. Get to the crux of the harm and then use that as a justification for restrictions in public order legislation rather than have special cases and special orders for this, that and the other geographical locations.

Q227 Nigel Mills (Amber Valley) (Con): Does the long-term occupation of the square provide any security concerns for you? I know that you go round and wax seal all the drains for miles around when there is a big event. How do you cope when somebody has been there for weeks and months and when you struggle to work out what they have got hidden under their blankets?

Lynne Owens: We have had an engagement process with the people who are currently there. One of the challenges that we have had in taking cases to court when we have an event such as the opening of Parliament, is that they do allow us to search their tents and premises, which undermines our argument that they are a security concern.

Q228 Nigel Mills: So there is no concern over the royal wedding and what impact the square might have on your policing on that day?

Lynne Owens: The royal wedding is an interesting case. On previous case history, many other people come out and put up tents and sleep in sleeping bags in anticipation of watching the great event. Clearly, we are giving that some thought, because we absolutely recognise the challenge of providing security, but on our experience of dealing with the protest group who are currently there—they are a changing group of people so it would be wrong of me to try to describe them as a whole—is that they engage with us and let us address the security concerns with them.

Q229 The Chair: Julian, do you want to ask about clause 151?

Q230 Dr Huppert: I want briefly to ask about clause 145, which is about authorisation for the operation of amplified noise equipment. There is a section here which means that it can be allowed, and I hope that that might be used generously. Applications have to be made at least 21 days in advance, but can be withdrawn or varied at any time with no requirement for reasons. Are you concerned about this as a proportionate response and how would you like to see it work?

Lynne Owens: One of the concerns we have about the Bill as drafted is that that noise becomes a police responsibility. Shami mentioned earlier the issue of creep over time in relation to what is and what is not police responsibility. Noise issues are normally dealt with by the local authority, so the policing view would be that that would only be an element we would seek to use in extremis, probably when we had various protest groups looking to be in the same place at the same time. But, traditionally, noise issues are not dealt with by police officers.

Shami Chakrabarti: I would argue once again that, with the idea of a law of general application, you should have a law on what safe and appropriate levels of noise are in different areas. In residential areas, one level might be appropriate; in busy central London, it might be another level. If people are constantly breaching whatever the law of general application is, there might be some circumstances where it is better for the police to enforce than local bureaucrats. Why is there something special for Parliament square? Why should it be prohibited to use noise equipment in Parliament square? Why do you not just deal with something that so clearly breaches the appropriate decibel level and if that is proportionate, seize the equipment after the fact. Is it not chilling that people should have to apply effectively for special permission to demonstrate in Parliament square? That was the invidious nature of the SOCPA provisions and that is still here.

Q231 Dr Huppert: I shall turn to clause 151, which is a single clause on a separate issue to do with arrest warrants and universal jurisdiction. Shami, you have argued that the clause would:

"unjustifiably undermine exercise of the right of private prosecution".

Could you perhaps start off by commenting on why you see that as a problem. Is there any problem with the current system that needs to be fixed? If so, how could it be fixed instead.

Shami Chakrabarti: First, it is right that in a mature and modern democracy most criminal prosecutions are brought by the authorities. That is incredibly important because the vulnerable need the powerful to stand up for them and bring prosecutions. We should not just be left to prosecute criminality by ourselves. But, none the less, over time, it has been an important safeguard that when the authorities have other preoccupations—particularly domestic rather than international preoccupations—there is the ability to bring a private prosecution. There are already safeguards in place to stop that being abusive, vexatious and so on, such as the ability of the Director of Public Prosecutions to take over a prosecution that is frivolous and vexatious, and end it. That is appropriate as well.

My concern about this provision in the Bill is that it largely addresses a fear rather than a reality. I am not aware of warrants that have been issued against foreign dignitaries that are causing huge problems to Britain's foreign relations. The courts have not been silly about this. There is no evidence, once more, that there is a real problem. I know that there is a perceived problem in that perhaps some people in Governments around the world think that they are going to be in jeopardy of some kind of political stunt or some kind of arrest when they arrive in Britain.

Proposition No. 1: there is diplomatic immunity for all sorts of people currently serving in Government and as diplomats. Secondly, even when there is not diplomatic immunity, the courts are not pursuing warrants frivolously. If there is any concern or perceived concern that has to be addressed, would it not be better to put the DPP on notice that there is an application for a warrant, so that he can make the alternative case, rather than effectively to give him a veto over arrest, which sometimes would have to happen very quickly if a potential or alleged war criminal were passing through? That would be a better balance for dealing with concerns, but I do not think that concerns are really borne out by much evidence.

Q232 Michael Ellis: Do you not think that the state should be involved in initiating serious prosecutions? These qualifying offences include hijacking, piracy, the taking of hostages and the like, aviation and maritime security. My first question is should the state not primarily initiate such serious prosecutions? Secondly, I am interested to hear you talk about and almost dismiss the fact that this is fear rather than reality, because in many arguments do you not make the counterpoint that you are just as concerned about the fear that members of the public might have, for example, of the state's overacting or having overarching powers? Are you not singing two different tunes, if I can put it that way?

To paraphrase what you have said, you have referred to the courts not being silly and that they will behave themselves and do the right thing. But is not the whole point of this that at the moment there are almost no provisions for the courts to get involved before the damage is done? The harm we are trying to address is the application for arrest. There is considerable harm in the fear of arrest, even if it is only for a few weeks. If I were to say to you, "There is a danger that, if you come to my part of town, you will be arrested," even if that is a relatively unlikely eventuality, it would affect your travelling to my part of town, would it not?

Shami Chakrabarti: Absolutely, the fear of arrest is not a good thing for innocent people to be worried about. Whether they are young ethnic minority men in Hackney or visiting foreign dignitaries, I would not want anybody to be subject to inappropriate arrest. You are right that I should look at my own argument and at people's perceptions as well as looking at the reality.

Evidence needs to be put on the table, though. Sometimes you have to reassure people and not always with legislation. On the issue of whether the state should be bringing serious prosecutions, of course it should. You are right that many of these crimes ought to be prosecuted by states, if not by international organisations, but the world is a big place as well as a small one. All sorts of potential crimes against humanity may have been perpetrated across the world, but they will not necessarily be a prime preoccupation of the assistant commissioner here, or others, at a particular time. Sometimes it might be a human rights organisation, or a group of private individuals, that is aware of the particular concern, at least in a moment speedy enough to apply to the court for a warrant. Realistically, down the track the state will engage and make a decision about whether to take over that prosecution—to discontinue it or to pursue it. If you will forgive me for saying it, you are not right to say that the courts are not involved.

Michael Ellis: Well, at the earlier stage they are not.

Shami Chakrabarti: You have to apply for the warrant. If, as you suggest, I am being unfair about people's fears of being arrested, the better way to deal with that is to put the DPP on notice. If the DPP knows that an application has been made for a warrant, the DPP can put any countervailing argument, such as there being an immunity or the application being completely frivolous and vexatious. That would be better than creating an absolute veto, which would get in the way of private prosecution.

Q233 Michael Ellis: At the moment, almost no evidence is required at the earliest stage for an arrest warrant to be issued—prima facie evidence, somebody alleging something. Effectively, that is enough, and has been enough, for an arrest warrant to be issued, which in many cases has caused diplomatic incidents. I am concerned about the respect for this country overseas and the respect for our rule of law, about which you have already spoken. Does it not bring our legal system into disrepute that the current system can be used for posturing and grandstanding by politically motivated organisations that are trying to score a cheap point? It is all very well that the courts can get more involved after the committal stage—cases can then be thrown out, and they often have been—but the damage has been done and some weeks have elapsed.

Shami Chakrabarti: I agree that arrest should not be a stunt. If that is the concern, I agree with it. People should not be in fear of a frivolous arrest that is an end in itself, rather than a serious intention to bring a prosecution based on evidence. But I am not aware of all of the cases of abuse that you are describing. None the less, if you think that they may come and that the threshold is too low, let us look to the threshold of

evidence for such warrants. I would also say that a better way to involve the DPP, rather than to give him a veto over the warrant, is to put him on notice, so that he can put the countervailing argument to the magistrate. He can either give a knockout argument that the person is a serving diplomat and has immunity, so that there must not be a mistake or a warrant issued in anger, or he can say, "This is vexatious—I've spoken to the Foreign Office and consulted colleagues around the world, and there is just no credible prospect of a prosecution." That would be a better balance, because it preserves private prosecution—it does not give the DPP the absolute right to block a magistrate's decision—but it would deal with the reasonable concerns that you are talking about.

Q234 Dr Huppert: As I understand from the briefing note, which cites a written answer from the Lord Chancellor, there were 10 applications for arrest warrants in the last 10 years, of which only two were granted. First, does that suggest that there is already a proper filtering process? May I also ask about the issue of fear? Given that the Government, with the DPP's involvement, could not presumably give anybody an assurance that they would not be arrested—unless they were leaning very heavily on the DPP—is there not anyway the fear that somebody could be arrested, with or without the DPP's involvement?

Shami Chakrabarti: Anyone can be arrested. Even Mr Green, now a Minister of State in the Home Office, was once arrested—wrongly and outrageously, in my view. In a democracy, none of us is immune from arrest. If we worry too much about that all the time, we will not enjoy our lives and that would be slightly paranoid behaviour, despite the Damian Green case.

Why should I not worry that I will be arrested when I leave after giving my evidence today? I should not worry, basically because I have faith in the police generally. I have been doing my job and being a nuisance for many years and I have not been arrested yet. It is because I genuinely have trust in the people who could arrest me, who are the police.

The concern raised by Mr Ellis is that there might be visiting dignitaries or diplomats who think that magistrates might frivolously grant an arrest warrant, and therefore they do not have the confidence that I have. You cite statistics suggesting that they should have more confidence in magistrates, but Mr Ellis has put the countervailing view that it does not take much, in that a magistrate may be misled by the person applying for a warrant and so on. That is a potential argument for saying that the DPP ought to be put on notice, so that the other side of the argument can be put. That is a fairer approach than to give him a complete veto.

Q235 Dr Huppert: If the DPP was on notice or had a veto, how could you ensure timeliness? How quickly might we want the DPP to respond, and what would be realistic for the DPP to do?

Shami Chakrabarti: That is the problem. The police will tell you that arrests sometimes have to be done quickly, whether they are of a potential war criminal or of a common-or-garden criminal in this country. That is why notice would be better than veto, because veto means that nobody can do anything—the magistrate cannot proceed until the DPP has done so and, frankly, the DPP is busy with all sorts of other crimes. I would have thought that giving notice is less likely to hold up proceedings, because if the DPP chooses not to intervene or takes too long, the magistrate can form his own view. But that would give the authorities the opportunity to pipe up if they feel that they need to, because there is a real Mr Ellis-type concern about false information being given to a magistrate for the purposes of a stunt rather than of a prosecution, for example.

Q236 The Chair: If there are no more questions? Yes, Lynne, you would like to make a contribution.

Lynne Owens: On a point of clarification about demonstrations, we clearly had a tricky time before Christmas, and we have certainly been notified of future demonstrations. Clarity about what behaviour is and is not acceptable in and around Parliament is a real necessity for us in terms of planning going forward. We are very happy to operate within whatever framework you would suggest. Just to make more strongly a point that I am not sure I made strongly enough earlier, in the current confusion of legislation we have descriptions of marches, protests, single assemblies and assemblies. Each of those different descriptors has what is and what is not allowed, so individual protest groups can manipulate—perhaps that is harsh—or use those words to place our negotiation with them about how we facilitate their peaceful protest. We are absolutely committed to facilitate that peaceful protest, but we cannot do that if there is not clarity from either side about what the expectations are.

On that last point, at the moment there is no notification period for an assembly, so a group or an individual can choose to assemble outside Parliament and there is not even a notification requirement. At the very least, we would like that to be included, not because there would be any need to put conditions—there is no bid from us for that—but, if different groups are going to protest over the next 12 to 18 months, it would help our policing environment to be able to facilitate that peacefulness if we know who is there, so that we can stop different groups clashing with one another.

The Chair: Thank you both very much indeed for informing this Committee's proceedings so effectively.

Shami Chakrabarti: If I may, thank you for calling me and, in particular, for allowing me to share the session with the assistant commissioner.

2.21 pm

The Chair: We will now move straight on to Keir Starmer. You do not need any introduction as the Director of Public Prosecutions. Thank you very much indeed for coming.

Q237 Mr Offord: I apologise, Mr Starmer, for hurrying you—I understand from one of the previous witnesses that you are a very busy man, so I do not want to waste your time. I want to ask about clause 151. What is the standard of evidence that you will seek in order to give your consent to a warrant under that particular piece of the legislation?

Keir Starmer: Will you forgive me if I spend some time explaining the current procedure, because that has informed the approach that we intend to take? I hope that it will help put it in a proper context.

The position at the moment is that any private individual can go before a magistrate with information and ask for an arrest warrant. Broadly speaking, what they have to show at that stage is that they are alleging an offence known to law and that what they allege shows a prima facie case, in that the elements are laid out—the magistrate will not see the evidence, but, on a prima facie basis, the elements will be laid out. The court has jurisdiction, which obviously affects the immunity position, that any applicable time limits have been complied with—there is a retrospective element to some of these offences—and that, where necessary, it has the authority to proceed. If it can show all that, the magistrate can then issue an arrest warrant.

Normally, the arrest warrant is to be executed by a police officer, and it is an arrest warrant not to take the person to a police station, but to bring them to court as soon as possible. Once the warrant is executed, that will very often be the same afternoon or the next morning, Sundays and bank holidays excepted. At that stage, the court proceedings begin. The court can remand the individual or bail them and so on.

In all cases within the clause in question—apart from piracy, which is an odd exception, but most of the cases have universal jurisdiction—the Attorney-General's consent is needed. Very soon after that exercise, consideration will have to be given by the Attorney-General as to whether or not he consents to the proceedings. The timing of the consent is important because consent has to be given as soon as reasonably practicable, and always before the plea. There is some recent case law on that. If consent is not given before the plea is entered, the case becomes a nullity. That is important in terms of the approach that we have taken. It is clear from that that there is a threshold for the magistrate to issue the warrant at the moment. Things will then move very fast because, once in custody the individual has to be put before the court swiftly, as you would expect. Before he or she enters a plea, the Attorney-General has to consider consent.

Most of the cases are indictable cases, so there will be a period between arrest and entering the plea, but it can vary. The Attorney-General will act as swiftly as reasonably practicable. When he comes to consider the case, the principles that he will apply are essentially the principles taken from "The Code for Crown Prosecutors". Is there sufficient evidence to provide a realistic prospect of conviction, and is it in the public interest? That is the test that we apply to all the cases of public prosecutors. If that test is not made out, he will not give his consent and the case falls.

In temporal terms, there is a short window between the warrant and A-G's consent. There is another important feature: because the warrant is issued at the behest of a private prosecutor at the moment, there is no power to interview or search the individual or their premises. They are all police powers, only exercisable by police officers. Therefore, the opportunity for anyone to bridge the evidential gap between prima facie or what is needed for the warrant and the test that the Attorney will apply is pretty limited. In an ordinary case, we might expect that the interview would throw something up. You might expect that the search would throw something up, either of the person or of the money. None of that will happen, so within a reasonably short period the Attorney will apply the consent test.

Forgive that preamble, but it informs how we approach the matter. We have approached it on the basis that the offences are obviously serious international offences, and England and Wales should not be a safe haven. That is a general understanding. When there is sufficient evidence, and it is in the public interest, there should be a prosecution and the Crown Prosecution Service would prosecute. We have also approached it on the basis that we should be transparent and accountable, so we intend to publish guidelines on our approach to the exercise. Everyone will then know in advance how we shall deal with the decision whether or not to give consent. I accept that any decision about that consent would be susceptible to judicial review so, if we get it wrong, someone can go to court to challenge us. I would not quarrel with that proposition. I certainly would not advance the argument that it is a non-reviewable decision.

I should add that we have a stand-in, ad hoc committee when individuals or groups with a particular interest in such areas consult us. We meet about every six months. We had a meeting last week. Among others, we have talked to Amnesty about such matters. I shall describe our overall view and what we intend to put in the guidance. It is not detailed, and the guidance will not come out until the legislation is in place. Our much preferred route is that, if anyone wants to pursue a crime of universal jurisdiction as set out in the clause, they should engage us very early in the process. They should come to us with whatever evidence they have, and we will undertake to look at it and to advise. What often happens in such cases is that there is some evidence, but it may or may not be in admissible form. For evidence from abroad to be admissible in our courts is fraught with all sorts of difficulties, so early engagement is necessary.

If there is a case that we think ought properly to be investigated, our preference is that it should be referred by us to the police and that they should then investigate. That allows them to collate the evidence and to exercise all the powers that the private individual cannot exercise. So there is a huge advantage in the case going to the police and we would encourage that. So we say, "Come to us early. We will put people in place. This is an important issue." We would try to direct people down that route. There will be cases in which people do not want to go down that route, or—this is the most acute problem—in which time is of the essence, and it is simply not possible to do that. There may be a need to go for a warrant for arrest. In those circumstances, we would propose applying the code test, so we would broadly apply the principles of, "Is there sufficient evidence to provide a realistic prospect of conviction?" and, "Is it in the public interest?" If those tests are satisfied, I give consent to the warrant.

So we are now in the "time is tight" category, or the individual may not be prepared to pass this over to the police to investigate. You then get the "time is very, very tight" category, in which even more difficult decisions have to be made. The approach that we propose to take there—if we are talking about a matter of hours—is to apply what in our code we call a threshold test. It is not asking ourselves the question, "Is there already sufficient evidence?", which is what we would ask in most cases, but "Is this a case in which there is enough to satisfy us that within a reasonable period of time there will be sufficient evidence to provide a realistic prospect of conviction?"

Quite rightly, a number of groups and individuals have said to us, "We may have practically everything. We just need to change the nature of the evidence and it won't take long. You surely wouldn't refuse us consent on that basis?" So we have an exception that allows us to apply the threshold test—is there enough for reasonable suspicion and do we anticipate that, within a reasonable period, the evidential gap, as it were, could be plugged? There would then be sufficient evidence for a realistic prospect of conviction. That prompts the question, what is a reasonable period? It seems to us that it is probably best measured in the period between the application for arrest and the likely time that the Attorney-General will consider consent, because that is the existing window. That is the only period that can sensibly be used for that purpose.

It is a long answer, but it comes to this. We will usually apply the code test—evidential sufficiency and public interest. In very acute cases we would apply the threshold test to give a bit of room, but we would have to be persuaded that any gap in the evidence could actually be made up in quite a tight window time-wise. If we are satisfied with that, we will then give consent. As I have said, I would accept the proposition that the decision one way or the other should be susceptible to judicial review, so that if we get it wrong, we can be challenged in the High Court.

Q238 Dr Huppert: Thank you for coming, Mr Starmer. It is much appreciated and will be helpful to the Committee. May I step back for a second? I mentioned earlier—you were in the room—that in the last 10 years there have apparently been 10 applications for arrest warrants, two of which were granted. Is there a problem with the current system that needs to be fixed, and exactly what is that problem?

Keir Starmer: On the figures, I have roughly the same figure and therefore I do not quarrel with that. There is a bit of a health warning, which is that these applications are private, they are not reported and it is conceivable that there is further information, but I would not quarrel with the premise that there have been about 10 in the last year.

Q239 Dr Huppert: In the last year or 10 years?

Keir Starmer: In the last 10 years. As for the question, is there a problem and does it need fixing? I will not be drawn into that. I am not here advocating or defending a change. I am simply here saying, "If this is to be the provision, this is how I see it as being a workable provision, and this is the approach that I would take."

Q240 Dr Huppert: You talked about very fast responses. Realistically, how quickly could you respond? If somebody said, "A plane's landing in a few hours," would it be realistic to expect you to carry out even a threshold test within that time?

Keir Starmer: It depends, but it is pretty unlikely. In our most recent example we were asked, with 24 hours to go, to look at a file, and we did. We continued to look at it after the various applications began to be made. It is quite a big ask, however, because these are serious offences with serious consequences. Often the evidence that has been gathered will be in lever-arch files rather than envelopes, and technical rules of admissibility must be considered.

We are engaging with the main groups who are most concerned and we are encouraging them to come to us early, because if we can avoid the late situation, so much the better. We have agreed to have a live walk-through of a typical case with them, which I hope will be useful, so that they can understand better what the rules of evidence will be and what our constraints are. So, there is a lot of up-front preparation and engagement.

We have lawyers who are—and will be—available to work at short notice. However, if we are put on two hours' notice of somebody landing and are given two or three lever-arch files, it is pretty unlikely that we will be able to get through that exercise.

Q241 Dr Huppert: What sort of time window would be deliverable?

Keir Starmer: Irritatingly for you, I cannot give an answer to that, because it depends on the case. The volume of material will be the key factor. The moment I commit to a time, I begin to tie my hands. We have people who can work around the clock and we have enough trained people so that someone is always available. When we were called upon to do that in 2009, we worked solidly from the moment we were handed the material, so there is no lack of will. But to say that it will take two days, or three days, is to invite a problem, because the next case will probably be 10 lever-arch files. In other words, it just depends. We would act as quickly as we could, but we must act carefully, because we have a legal test to apply.

Q242 Clive Efford: What, if any, are the current flaws with the need to provide prima facie evidence to a magistrate?

Keir Starmer: I am not willing to be drawn on the flaw. As I have said, I am not advocating the same position or a changed position; I am completely neutral. If Parliament considers that that is an appropriate way in which to proceed, what view does a transparent and accountable prosecutor take to the exercise? That is what I have focused on. I am unwilling to be drawn on whether there are problems, because that is not my concern.

Q243 Clive Efford: Fair enough.

I am a lay person—I am fortunate enough not to be a lawyer—so, will you explain the key differences between the level of prima facie evidence that would be required by a magistrate, and what would be required by you?

Keir Starmer: The classic difference would be a bare allegation that you punched me. That is enough—that is prima facie evidence. The sort of exercise that we would go through would be to look at your statement and any other witness statements. We would ask about how that would go in court, about other available evidence, and about whether there were any medical injuries. Then there would be the question of judgment—whether there was a realistic prospect that the case would succeed at court.

Q244 Clive Efford: But is that a significant difference? Is that something that the magistrate does not have to consider?

Keir Starmer: Magistrates do not have to consider that and they would not usually look at the evidence—there is a nice argument about whether they can, but for

present purposes, there is no obligation for them to do so. They can proceed on the basis of what is, essentially, an information laid before them. So, they have to ask themselves the question: "Looking at this written allegation, are the elements of the offence made out and, if proven, would that be a prima facie case?"

We would have to examine the evidence itself—all of it—and reach a view on whether there was a realistic prospect of conviction. It is a higher threshold and a different exercise—I accept that.

Q245 Clive Efford: Is there any way to introduce a guarantee that someone cannot flee while you are going through that process?

Keir Starmer: Not that I can think of, because the warrant is intended to be the device. A magistrate should issue a warrant only if he or she is satisfied that you cannot otherwise get the person before the court. You would, therefore, only be issuing a warrant for arrest on the basis that it is the sort of case in which it is necessary, otherwise we might invite the person by way of summons.

Q246 Michael Ellis: There is not such a guarantee for other criminal offences on the statute book, either, is there? Before an arrest warrant is issued, there is nothing to stop an individual from fleeing if they are charged with shoplifting or grievous bodily harm.

Keir Starmer: No.

Q247 Michael Ellis: I now return to the prima facie test. At the moment, if Joe says, "Pete punched me", that is prima facie evidence—just the fact that Joe has said that he has been punched by somebody else. That would be enough for an arrest warrant to be issued against a VIP.

Keir Starmer: All I was seeking to do in giving my answer was to demonstrate the difference between a prima facie case and a reasonable prospect of conviction. Assuming that, without regard to anything else, an allegation is a prima facie offence; the exercise of considering whether there is a reasonable prospect of conviction is a much more sophisticated analysis. There could be an allegation that you punched me, but you might have 10 witnesses who say that something else happened, and a professional prosecutor might say that, in those circumstances, the case was pretty unlikely to succeed.

Q248 Michael Ellis: At the moment, the magistrate would not have to look at any evidence, and the bold allegation, on the face of it, in and of itself, can be accepted and an arrest warrant will follow. This is an increased provision—we are referring to it as an increased provision to have a realistic prospect of conviction, but it actually just brings it on to an even keel with all the other laws in England does it not? Does the Crown Prosecution Service not have to be satisfied that there is a realistic prospect of conviction and that it is in the public interest to prosecute for every other offence?

Keir Starmer: Yes, that is right.

Q249 Dr Huppert: Not for an arrest.

Keir Starmer: Not for an arrest or warrant, but, to prosecute, every case is determined according to the code, so it is one test for all cases.

Q250 Michael Ellis: But the CPS prosecutes only if it believes that there is a reasonable chance of securing a conviction, and that means that the CPS does not engage in malicious, vexatious or opportunistic prosecutions. It is much more robust than the threshold of evidence needed to begin a private prosecution, as it currently stands. Is that right?

Keir Starmer: It is a higher test. I accept that straight away.

Q251 Michael Ellis: There is a list of qualifying offences, including piracy and so on. As far as you are concerned, does that cover it all? Could a clever lawyer discover another offence and perhaps get round the safeguards that are in the Bill by finding something else?

Keir Starmer: It would be very dangerous to answer that question. This covers all the offences of universal jurisdiction and involves cases where the act was outside the jurisdiction, and therefore it is focused on a particular type of case with particular conduct. Everything else that either is not universal jurisdiction or is within the territory of England and Wales will be dealt with in the ordinary way in any event.

Q252 Nigel Mills: You will have to forgive me, because not being a lawyer I may be misunderstanding some stuff. I would normally expect that the level of evidence you would need for an arrest would be less than to go ahead with a prosecution. To my layman's eye you appear to be applying the same test to allowing the arrest warrant as you would be looking at to go ahead with a prosecution. The Bill says that the warrant only needs to be issued with your consent. It is not forcing you to go to any particular degree of proof before you give that consent. Is there not some risk that you are putting too much emphasis on what you are trying to do—more than you actually need to?

Keir Starmer: I do not think so, but in a sense we are taking on board any points that people make to us throughout this process. This is our proposed approach. These cases are slightly different. It is true to say that where the police are involved in an ordinary case the test for arrest is reasonable suspicion, as everybody knows, and that the test for a prosecution is whether there is a realistic prospect of conviction. They are slightly different tests, but that is largely premised on the understanding that in the gap between arrest and charge, there is a lot the police could do by way of evidence gathering, because they have powers of interview, search, seizure, production and so on. Cases either make it, as it were, to the charging threshold or they do not. But in that gap between arrest and charge, quite a lot can happen. In many cases, the police can be satisfied that, while they are not necessarily at the charging threshold when they arrest, they think they will be by the time it comes to charge.

These cases are slightly different, because the time frame is much tighter. Once you have someone in custody and you have to bring them before the court, then the clock is ticking straight away. Secondly, and realistically, I am not saying the evidential gap can never be made up, because maybe you just need different signatures on a witness statement from abroad or something, but broadly speaking the chances of making up the evidential gap where there is a private prosecution are much, much

less, because you just do not have the powers. Other than that which you could do without the person in custody, there is not much else you can do.

Q253 Nigel Mills: Say we were in the super-fast situation that you outlined and I have eight ring binders full of evidence, but we need to get the arrest warrant issued in two hours. You appear to be suggesting that you need to go through all eight ring binders and give it deep consideration. Do you not have the scope to look at the key bits and say, "Actually, this looks like a pretty reasonable one, I'll consent to the warrant to buy myself some time to read the full file"?

Keir Starmer: That is not the approach that we would take. It is true to say that you can read into a file in more ways than one. You do not have to start on page 1 and work through, as everybody knows. You can go to the key statements and form a view swiftly by looking at the key material, and anybody sensible would do that. I do not quarrel with that proposition. I would not accept an approach that says, "Well I'm not really sure about this. I haven't got time to read it, but I'll give consent and look at it on Sunday".

Nigel Mills: That was not quite what I suggested.

Keir Starmer: No. Once there is a legal test in place, we would have to satisfy ourselves that it was met by a proper analysis of the evidence. We would act with speed and as experienced prosecutors we would know the key documents, but if you are going to do it properly it takes a bit of time.

Q254 Dr Huppert: I have two further areas of questioning. First, you talked about judging the public interest. When judging the public interest for the purposes of consenting, or not, to an arrest warrant, who would you take representations from? Would you, for example, take representations from the Government as to what they felt they would prefer you to do?

Keir Starmer: The common public interest factors are set out in our code, so they are there for people to see. I think it is inevitable in most of these cases that we would consult the Attorney-General, and it would be open to the Attorney-General to consult Ministers. But the code is clear, and I am clear, that the decision is the decision of the Director of Public Prosecutions, taken independently. Therefore, it is right to take into account any views that are put forward. It would be quite wrong simply to follow the views because they were put forward. It has got be an independent decision and that is, as I understand it, part of the reasoning behind having the DPP giving consent at this stage—so that independent consideration can be given. I am clear that in any sensitive case, whether it is one of these cases or any other, there is a protocol between me and the Attorney-General that envisages consultation which is done day in, day out.

Q255 Dr Huppert: What about other organisations, such as Amnesty International? Would it also be able to contact you with its thoughts?

Keir Starmer: Yes. As I said, because we recognise that this is an important area and is of real concern, we have a sort of standing group that meets to put its general considerations. The whole point of early consultation in a particular case is that if there are evidential difficulties in a case that could be brought, we can assist in what is needed to make sure the case happens. At the end of the day, it is important to appreciate that no private prosecution for any of these offences has ever made it to trial. The only one that made it to trial was one that was investigated by the police, prosecuted by us and the evidence was carefully gathered in the way it needed to be.

Q256 Dr Huppert: But that is partly because the people did not stay in the country.

Keir Starmer: It is impossible to say, without going into the records that are not public, what happened in each of these cases. We have no difficulty in saying to groups like Amnesty, "If you have case that you want us to look at, come and talk, and we will look at it with you and look at the evidence you have. If we think it is a case that should be investigated, we will work with you to tell you what the evidential requirements are." We would try to persuade them to get the police to investigate it, because that has the best prospect of success, but it carries with it a guarantee for the individuals concerned that there is a clear legal framework as to whether they will be arrested and what their rights are if they are arrested.

Q257 Dr Huppert: There is a suggestion from Shami Chakrabarti, which I think you heard, that an alternative would be to put the DPP on notice. What do you think of that suggestion?

Keir Starmer: I had not heard it before Shami put it. If that is what Parliament thought was appropriate, we would operate on that basis. In reality, I am not sure whether it would make a considerable difference, because we would probably apply the same approach. The approach we take to prosecution is in the code, and it has been there for a very, very long time. Courts and Parliament have signed off that this is an appropriate threshold for prosecution. Therefore, whether we are on notice or legally obliged to give consent, that will be the sort of approach we would take.

Q258 Nigel Mills: In answer to Dr Huppert's question, you were talking about consulting with the Attorney-General. That becomes a bit academic, because presumably, shortly after the arrest warrant, the Attorney-General has to consent to the process going any further anyway. It strikes me as being quite unusual that, were he to disagree with you, you would go ahead, because he could just say, "No" the next day—there would not be much point. Are we not creating an independent process here, which in reality is a bit of sham?

Keir Starmer: Consultation between the DPP and the Attorney-General is regular and it often involves cases where the Attorney-General may have to consent. It acts as no inhibition on the independence that I would bring to the decision. At the end of the day, the decision is mine, it is independent and it is reviewable. If I advocated, and simply said, "Well, since the Attorney-General says that he wants this or that done, that is what I will do", I would be susceptible to judicial review, and I would probably be successfully judicially reviewed. It must be done independently. I accept that once you are consulting, the whole point is to take on

board what others have got to say, but that is an exercise that we are used to and we have to do it all the time. There is a clear legal test, and I have to apply my mind to it independently.

Q259 Michael Ellis: Can I just establish whether there are already several criminal offences on the statute books for which the DPP's consent is required?

Keir Starmer: There are a number where the DPP's consent is required, and there are a number where the Attorney-General's consent is required. I would like to say that there is a rational distinction between the two sets.

Q260 Michael Ellis: Some are historical.

Keir Starmer: Some of them are historical; you can see an emerging theme. There are two sets.

Q261 Michael Ellis: But the process that you have described is far from unique. This is a process that has been tried and tested over decades.

Keir Starmer: There are lots of cases that require the Attorney-General's consent and we prosecute them day in, day out.

Q262 Nigel Mills: How many are there that require both your and the Attorney-General's explicit consent?

Keir Starmer: I do not think that there are any that require the consent of both of us to prosecute. It is usually one or the other. This does not require both of our consent to prosecute. The consent to prosecute is the Attorney-General's.

Q263 Nigel Mills: We are in a much shorter time frame here. Effectively you are both giving consent on what is likely to be the same information.

Keir Starmer: Yes.

Q264 Dr Huppert: Can I just clarify your response to Mr Ellis? Are there other cases where your or the Attorney-General's consent is required to arrest or prosecute? Are there any other cases where consent is required to arrest, which is really what we are talking about here?

Keir Starmer: No, I do not think so. In other words, if the question is, "Would this be a power that you cannot find elsewhere in the statute book?", I think the answer is yes. I have looked at that question, and I have not found one. I do not think there is any other example where an arrest could not be carried out without my consent.

Q265 Nick Herbert: Can I follow up on the questions about the Attorney-General's involvement here, in so far as where consultation may take place? The concern that has been expressed and, I think, was alluded to by Shami Chakrabarti, relates to some kind of political dimension being added to the decision as a consequence of your involvement, by which I suppose she meant the ability of the Attorney-General to influence that decision. The concern, as we all know, is about a wider political consideration that may be made by the Government as to whether it is appropriate that a VIP should be arraigned—let's use that word—in that manner. How much regard would you take of such an intervention by the Attorney-General?

Keir Starmer: It could work in two ways. I would ordinarily consult the Attorney-General, and I think in the ordinary event, he would conduct the exercise of seeking the views of Ministers. There is a provision in the protocol where, having consulted the Attorney-General, I could seek those views myself, but I think, sensibly, given that the Attorney-General would be consenting, or not, in due course, he would conduct that exercise. He would then convey a view to me, and I would obviously take that very seriously, that exercise having been conducted. It would be relevant to the public interest consideration. I would then have to form an independent view, giving such weight to that consideration as I thought right in the circumstances of the offence. It would be a serious consideration for me to properly take into account. I do not quarrel with that.

Q266 Nick Herbert: So do you believe that forming a consideration about a wider aspect of how Ministers viewed such an arrest and the impact that that might have on our national interest would be a proper thing for the Attorney-General to do? I am asking the question because I genuinely want to know. Is that the kind of proper representation that might be made?

Keir Starmer: Yes, it is. The protocol that sets out how this works is agreed between the DPP and the Attorney-General, and that is a public document. It sets out that that is a proper exercise for the Attorney-General to engage in, and also how the Attorney-General should engage in it. It makes it clear, for the Attorney-General just as for the DPP, that if he is the decision maker, he must act independently of Government, and that the decision is his. Therefore, the exercise that he conducts is to ask other Ministers whether they have views, and if so, what their views are. Then he comes to an independent decision. That is set out in the protocol.

If the Attorney-General passed on the information to me, I would be expected to work in precisely the same way. The Attorney-General would carry out the exercise—a perfectly proper exercise. It does happen, and it is transparently provided for. I would then go through the same exercise, which is to exercise independent judgment, taking on board the serious considerations that have been given to the matter by other Ministers and the Attorney-General.

Q267 Clive Efford: Just to follow on from that, so that I can understand it, the Attorney-General can consult other Ministers to determine whether it is in the national interest for the warrant to be issued. What other public interest would you take into consideration to counter that, when you come to your balanced judgment?

Keir Starmer: Most of them are set out in the code for Crown prosecutors. To be honest in these sorts of cases, the major public interest consideration the other way would be the gravity of the offence. If you were talking about systematic torture abroad, that would be a very powerful argument for bringing a prosecution. The severity of the offence is set out in the code.

Q268 Clive Efford: What if the Attorney-General came back and said, "It's a bit embarrassing, old boy. We don't really want to cause a fuss"?

Keir Starmer: The exercise has to be gone through and we have to look at the seriousness of the offence against any points that are made by the Attorney-General or anybody else in the exercise. One has to take everything into account and come to a proper view. Assuming there is enough admissible evidence to provide a realistic prospect of conviction that someone has committed a crime of universal jurisdiction, you are already powerfully in favour of a prosecution at that stage.

The discussion earlier was about what happens when you have not reached that threshold. But when you have reached that threshold and your public prosecutor is telling you, "This is a case where there is enough evidence to provide a realistic prospect of a conviction and it is a crime of universal jurisdiction"—these are crimes of universal jurisdiction because they are really serious—it is a balancing exercise but there is already a very powerful weight in favour of prosecuting. Of course any other points have to be properly considered and that exercise has to be conducted and then a decision has to be reached. It is not easy. One cannot say in advance, "I would weight this at three, five or seven." You have to go through the exercise. I do not shrink from the fact that in most cases there will be a very powerful reason to prosecute.

Q269 Clive Efford: Just to clarify again, and sorry to push the point: if you had enough evidence and you were past the threshold of the likelihood of pursuing a successful case, could the Attorney-General still convince you not to pursue that case?

Keir Starmer: That is a hypothetical and I do not think I can answer. I am not trying to be difficult. It depends on the case.

Q270 Clive Efford: The answer is yes then.

Keir Starmer: There may be a case where there is a very powerful argument the other way. I resist giving examples. But the example that is given by others and therefore not from my mouth is where you have a fraught and difficult peace negotiation that has to take place in 24 hours in a country and you need international leaders there. I do not know. There may be a situation where you would have to carefully consider the arguments one way or the other. But that is not an argument—

Q271 Clive Efford: With all due respect to you, if it is an international leader who is popping in to go to Harrods, we probably could not arrest him anyway.

Keir Starmer: That is why hypotheticals are not very helpful in this situation. It is in the nature of a balancing exercise that you could never say, "I'll tell you the outcome before I start it." There are powerful public interest reasons to prosecute in a case that has satisfied the evidential threshold. Any views put by the Attorney-General or anybody else would have to be very seriously considered. If the Attorney-General had consulted other Ministers, of course their views would have to be seriously considered. That is the point of the exercise.

The Chair: Thank you very much indeed. You have answered the questions with exemplary clarity and precision. We are indebted to you for doing that. That brings us to the conclusion of our proceedings this afternoon.

Ordered, That further consideration be now adjourned. *—(Jeremy Wright.)*

3.5 pm

Adjourned till Tuesday 25 January at half-past Ten o'clock.