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GENERAL COMMITTEES

Public Bill Committee

PROTECTION OF FREEDOMS BILL

Fourth Sitting

Thursday 24 March 2011

(Afternoon)

CONTENTS

Examination of witnesses.

Adjourned till Tuesday 29 March at half-past Ten o'clock.

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The Committee consisted of the following Members:

Chairs: † MARTIN CATON, MR GARY STREETER

Baker, Steve (<i>Wycombe</i>) (Con)	† Johnson, Diana (<i>Kingston upon Hull North</i>) (Lab)
Blackwood, Nicola (<i>Oxford West and Abingdon</i>) (Con)	† Johnson, Gareth (<i>Dartford</i>) (Con)
† Brake, Tom (<i>Carshalton and Wallington</i>) (LD)	Opperman, Guy (<i>Hexham</i>) (Con)
† Brokenshire, James (<i>Parliamentary Under-Secretary of State for the Home Department</i>)	† Robertson, John (<i>Glasgow North West</i>) (Lab)
† Buckland, Mr Robert (<i>South Swindon</i>) (Con)	† Shannon, Jim (<i>Strangford</i>) (DUP)
Chapman, Mrs Jenny (<i>Darlington</i>) (Lab)	† Tami, Mark (<i>Alyn and Deeside</i>) (Lab)
† Chishti, Rehman (<i>Gillingham and Rainham</i>) (Con)	Watson, Mr Tom (<i>West Bromwich East</i>) (Lab)
† Coaker, Vernon (<i>Gedling</i>) (Lab)	† Wright, Jeremy (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Efford, Clive (<i>Eltham</i>) (Lab)	Annette Toft, Rhiannon Hollis, Sarah Davies, <i>Committee Clerks</i>
† Ellis, Michael (<i>Northampton North</i>) (Con)	
† Featherstone, Lynne (<i>Minister for Equalities</i>)	† attended the Committee

Witnesses

Colin Reid, Policy and Public Affairs Manager (NI), NSPCC

Derek Twine, Chief Executive, The Scout Association

Ben Summerskill, Chief Executive, Stonewall

Councillor Les Lawrence, Birmingham City Council, Vice Chair of Local Government Association Safe and Stronger Communities Board

Dave Holland, Operational Manager, Consumer Protection Cardiff Council, Local Government Association

Edmund King, President, Automobile Association

Jo Abbott, Communications Manager, RAC Foundation

Patrick Troy, Chief Executive, British Parking Association

Bill Butler, Chief Executive, Security Industry Authority

Andrew Rennison, Interim CCTV Regulator

Steve Jolly, Birmingham Against Spy Cameras

Public Bill Committee

Thursday 24 March 2011

(Afternoon)

[MARTIN CATON *in the Chair*]

Protection of Freedoms Bill

1 pm

The Committee deliberated in private.

1.9 pm

On resuming—

The Chair: We will now hear oral evidence from the NSPCC, the Scout Association and Stonewall. Welcome to our deliberations. I remind all hon. Members that questions should be limited to matters within the scope of the Bill and that we must stick strictly to the timings in the programme motion that the Committee agreed. I hope that I do not have to interrupt anyone in mid-sentence, but I will do so if need be.

Q351 Jim Shannon (Strangford) (DUP): It is good that the issue of vetting for work with 16 and 17-year-olds is coming back in. I would like to ask you a couple of questions quickly. I am conscious of what Mr Caton said; he moves us along and we do not hang about. In your opinion, is it not time for the Independent Safeguarding Authority to publish detailed management information on referrals and barring decisions in England, Wales and Northern Ireland? That would help to inform decision making and the development of the legislation and the vetting arrangements generally. That is a specific issue for me back home, but it applies to England and Wales as well.

Derek Twine: If you want brevity, the answer is yes please. The point, though, is to recognise that there are other prime purposes, but the overall management information would help us to do our jobs better as well, in terms of the nature of issues that were being addressed and even the geography of what we needed to attend to for our own management within our own voluntary organisation, in terms of what to watch for, what to guard against and what to include in our training as well as in our safeguarding practices.

Colin Reid: The ISA is now in the unique position of getting a lot of management information on both referrals and who it is barring, and it will be very useful in providing an evidence base to sectors or areas where there are particular risks, enabling us all to develop the arrangements within vetting and barring.

Ben Summerskill: I do not think I have anything to add to that.

Q352 Jim Shannon: It is good to hear the accent from back home. Some people here cannot understand me, but at least I know one person can. Would the NSPCC agree that, in line with the Government's desire to facilitate the portability of Criminal Records Bureau

certificates, and to ensure that loopholes do not appear, barring information needs to be provided on CRB disclosures for both work in regulated activity and work where a CRB certificate can be obtained, and do the amendments to the criteria that you have seen for barring cause you any concerns?

Colin Reid: This is a very important and complex issue. We are very supportive of the Government's intention to bring about portability of checks. We think this is very important. It will simplify the system for organisations and individuals. One of the major criticisms about CRB checks is that multiple checks have to be done for multiple positions, so portability is key to us. I suppose it is a complicated area, because currently under the Police Act regulations it is possible for barring information to be made available to posts that are outside regulated activity, and we think that is important as well. We think it will help the portability if that is the case. Really, we would like to see portability within the children's sector, whether someone is working strictly within regulated activity as defined by the Act, or non-regulated activity. We understand that there are other circumstances in which barring information needs to be provided, for example culture adopting, but certainly if we could streamline the system it will help with portability.

Derek Twine: I echo that. I believe that is important in terms of efficiency—efficient not only in terms of the administration of the regime, but also in terms of the volunteer himself or herself, which is really the anxiety that we have. Currently, many of our volunteers within our own organisation—we have 100,000 of them—are carrying not just a disclosure for their scouting activity but they are carrying them also for work that they do as a sports coach and/or as a school governor and/or for their employment, and anything we can do to get that system much more streamlined would be of great benefit to them as individuals, as well as to those individual organisations for cross-checking.

Q353 Jim Shannon: Do you have any concerns about the proposed changes of the definitions of vulnerable adults and regulated activity in relation to vulnerable adults?

Derek Twine: From our perspective in the Scout Association, that is not territory in which we are heavily engaged. Ours is much more concerned with the safeguarding of children. We do extend occasionally into vulnerable adults because the opportunity to volunteer is open, but that is picked up on a much smaller scale and we take specialist advice for that. Our greatest preoccupation is for the half a million young people that we have in the organisation, and arrangements for the adults who work with them.

Q354 Clive Efford (Eltham) (Lab): Do you think that the distinction between “supervised” and “unsupervised” activities is sufficient within the Bill?

Derek Twine: No, but I suspect that you want me to amplify that a little.

Clive Efford: I do.

Derek Twine: The lack of clarity continues to give us some concern. Let me set that comment in context. We really believe that tremendous progress is being made

with the Bill, with the work that has gone on to get to this point and with the recognition of some of the points that have been made even in the discussions to date. However, we continue to have concerns with regard to the definitions of “regulated activity” and “supervision”. That is because in an environment where adult volunteers are working with young people, with other adults assisting, “supervision” can mean for some people that a qualified adult who has his or her disclosure is present somewhere, and there are three or four adults doing other things. Alternatively, it can imply that the adult who is engaged with young people is constantly being supervised.

Let me describe to you—it will become obvious as I ask you to visualise it—an evening activity, which might be in an activity centre or a community building where there is a group of scouts or guides. There is one adult who is the leader in charge and who is providing supervision. However, at any one time in the course of that evening or that Saturday afternoon or that residential, there are three or four other adults, each one with a small group of three or six young people in a separate part of the building or in a separate part of that campsite or activity centre, doing some map reading, some craft activity or some drama. Therefore “supervision”, unless it is more tightly defined, could be interpreted in many hundreds of different ways. In our experience, “frequent contact” and “close contact” need to be definitions that are brought into the Bill.

Colin Reid: That is also our position. It is not possible under vetting and barring to draw up a perfect system—it does not exist. There are thresholds that were established under the safeguarding vulnerable groups scheme and thresholds will be established under amendments to the Bill. That is fine. It is about taking a proportionate risk-based approach to things.

We have had helpful discussions with the Home Office about this issue. From our point of view, the important thing is that there is a tight definition of “supervision”, so that it does not encompass someone who comes in unsupervised and ends up running scouts, football or whatever. We had a discussion about perhaps changing the wording or having rephrased wording around “close and constant supervision”. Certainly we would welcome guidance from the Government about exactly what “supervision” is and is not.

Q355 Clive Efford: So would it be fair to say that, as the Bill is currently drafted, you do not think that there are sufficient safeguards? What concerns me—it is what lies behind my question—is that the Bill does not take account of the fact that people who are seeking to get close to young children to do them harm are prepared to bide their time and operate over time.

Derek Twine: I think that that is absolutely right and I think that we also have to bring into this discussion the fact that we are not just safeguarding children on that afternoon or evening when there is contact. We are also safeguarding children in terms of relationships being formed, which can then extend into social media contact, such as, “Give me your Facebook address or e-mail address and I’ll be in touch with you at another time.” That is something that we need to safeguard against, in addition to what might be happening on a Tuesday evening, or on a Saturday or Sunday at a residential. That is why we are concerned about those definitions.

Q356 Michael Ellis (Northampton North) (Con): Are you satisfied with the provisions relating to informing employers and potential employers of a person’s status? The Bill contains provisions about that process, as I am sure you know. I would be interested to hear your views, particularly on the issue of the consent of an individual being required before an employer can be informed if the individual has been barred.

Derek Twine: Our understanding is that our concerns, which were expressed when the proposals were being talked about initially, have been addressed, in the sense that there is a sequencing issue. That makes sense from a human rights perspective, as opposed to a situation in which there would only be a disclosure to the individual and not to the organisation, which can come later. So the opportunity to address an appeal for a misreporting can be undertaken. That has been helpful.

May I use my answer to your particular question to pick up on another significant point? We have just used the word “employer”. For us, it is a significant point—one that we would wish to place on record here—that we do not see a distinction between someone who is in paid employment with an employer and someone who is a volunteer engaged with young people. We believe that to be an artificial distinction when it comes to safeguarding young people, particularly in their leisure time activity, their sports and their non-formal education. I recognise that I am diverting a bit from your question, but that is an important point when dealing with that.

Q357 Michael Ellis: If I can just clarify, I acknowledge what you say about volunteers and employment, but the principle in relation to proportionality and human rights is not something that you have any objections to. You are quite happy that it is appropriate, under the circumstances, that the consent of an individual is required before a third party is informed about potential barring, so that errors can be corrected.

Derek Twine: Provided that that was not then at the expense of the commissioning organisation or the commissioning employer being informed at a later stage. For example, a period of grace could enable the person receiving his or her own disclosure to reflect upon it, certainly if there is any surprise there. Secondly, I believe that an appeal against information could be appropriate, as long as it did not take so long that it slowed down the whole mechanic of recruiting employees or recruiting volunteers.

Q358 Diana Johnson (Kingston upon Hull North) (Lab): I was interested in what you said about sector-specific CRB checks. That is certainly something that a number of witnesses have said they would find helpful. May I ask about the effect on organisations like the Scouts? Girlguiding UK also put in a submission that set out concerns about how this will work practically in terms of presenting a criminal record check to a local, often volunteer group—like the Scouts or Girlguiding UK—to look at that CRB check and take a view. Can you talk us through the kinds of issues that have been raised for your organisation?

Derek Twine: The initial expression of how this was going to work was what caused Girlguiding UK and us in the Scouts Association and other voluntary organisations to express concerns. The impression that was given

initially was that the disclosure would go to the individual, then he or she would go to another volunteer in the community—the person in charge of their local volunteer community group—to show their disclosure, which may contain information that is not relevant to the decision on whether to use them or not, but which is sensitive information about something that may have happened well in the past but could be seen as embarrassing or damaging to other aspects of character, if abused in terms of chitter-chatter within the local community.

That is quite different from the approach that we have welcomed, and that our volunteers have welcomed thus far, with the disclosure going to the individual and to the commissioning organisation—in our case, coming to our UK-level office. The only people who then see that are individuals trained to make those judgments in a national safeguarding office and the individual who gets their own disclosure, so there is no embarrassment within the wider community. We form a decision that says, “As far as the organisation is concerned, this person is suitable, based upon this information.” Using them locally will depend on other features such as interview and local references. We don’t just rely on this, but it is a tool in the toolbox.

The proposition that this would be something that was shared with somebody else in the local community was of great concern to us. Likewise, there is the huge bureaucracy of a volunteer doing this. It is all right with your job, because if you are in your job place, you can give it to the HR manager, but in your local village or the estate on which you live or the tower block or whatever, you have to find an evening when you are free to take it around. If you then find that the person whom you are taking it to is not in, you lose a lot of time and momentum for the good will to volunteer. The sharing of information and the added bureaucracy and demands on the individual were our two concerns if that was to be the way in which it was going to be handled.

Q359 Diana Johnson: Just so I am clear, as it is set out in the Bill, that is the way it is going to be handled, unless the Bill is amended.

Derek Twine: Unless the Bill is amended, yes. That is why we are pressing for this adjustment.

Q360 Diana Johnson: As the Bill is drafted at the moment, and that is what is before the Committee, there is no reference to 16 and 17-year-olds. I just wondered whether witnesses wanted to comment on that and whether it is something that the Bill needs to address.

Derek Twine: Many of us who are working with young people across a wide range of ages believe that it should encompass 16 and 17-year-olds as well.

Colin Reid: We have had some helpful discussions, and our chief executive has met with the Minister. The Minister has written to us on this particular issue. We certainly welcome the proposal and the recognition that 16 and 17-year-olds are a particularly vulnerable group in certain settings. The proposal, as we understand it, places 16 and 17-year-olds back, or leave as is, in the Safeguarding Vulnerable Groups Act 2006.

Diana Johnson: I am sorry. I did not catch that.

Colin Reid: We welcome the Minister’s intention to try and bring 16 and 17-year-olds back into scope in the main.

Diana Johnson: Oh, the Minister intends to bring in 16 and 17-year-olds. We are in some difficulty because it is not in the Bill and we have not been apprised of this.

The Chair: It is fortunate that I intended to call the Minister next, so perhaps we will get some clarification.

Q361 The Minister for Equalities (Lynne Featherstone): On that particular point, we have been having dialogue with the NSPCC and others about provisions in the Bill. We have indicated that we fully understand and accept the arguments about working with 16 and 17-year-olds and that they should be within the scope of regulated activity. It is one of a number of things that we are considering as amendments to part 5 of the Bill and we will give the Committee proper notice of all Government amendments in the usual way when we come to our conclusions.

May I raise one issue about supervision? It does not matter whether we are talking about a volunteer or a paid employee who is in a supervisory position—it could be a scout master for example—the supervisory role is very distinct. You referred to two or three adults who might go off into another place and be alone with children. Do you think that the person in the supervisory role has a duty of responsibility over anything and anyone who is working with children and therefore that is the key position in terms of making sure that children are safeguarded rather than a momentary point at which an adult—a parent volunteer or whoever—might be alone with children?

Derek Twine: Yes, we do. The “leader in charge” would be the phrase that we would use there. That person has additional responsibilities for the whole of the activity or the whole of the evening to undertake risk assessment and do everything that they can with risk management. That extends into safeguarding issues and everything to do with training and the suitability of the individuals. However, that still leaves open the ability of those individuals who are entrusted to develop their relationships. The whole point about non-formal youth work is that it is founded on relationships. It is not just doing the activity, it is the relationship between the adult and the young person which helps the young person grow, develop and progress. Inherent in the nature of what we do is the building of relationships between adults and young people. There is a responsibility of the leader in charge, but that responsibility also incorporates recognising the expectation of parents that that leader will have done everything that they could have done to look at the characteristics and the quality of the other volunteers.

Q362 Lynne Featherstone: Do you think that leader in charge would be more or less inclined to pursue that responsibility if a box had been ticked?

Derek Twine: I can speak for our own organisation. I also know that Girlguiding UK and several others understand that the concept of that particular box being ticked is just one of several boxes that need to be ticked. There is not dependency, totally and solely, on a disclosure. I mentioned earlier things to do with local references, support, interviewing and suitability for leadership in the kind of activity that we do. It is not a naive dependency just on this. Equally, if it was available, it is a route that should be followed for helping to be robust in our responsibilities for safeguarding.

Colin Reid: We would endorse that position. Vetting in itself is only one part of good practice; it will not screen every unsuitable person out. Organisations need good practice guidance, codes of conduct, good employment practices, a culture of child protection and systems to report. Those things in conjunction with vetting will make organisations safe.

Q363 Vernon Coaker (Gedling) (Lab): On criminal record checks, the Bill says that there will now not be criminal record checks for people under 16. Do you have any comment on that? There were 5,000 checks made of people who were 15 or under. In your experience, were any of those criminal record checks such that information came to light that would have caused you concern about those young people?

Colin Reid: I cannot be specific about your question because I do not have the answer. It might be something that CRB officials will advise on further. In the scheme of things, there are some young children who may pose a risk, who have committed criminal offences and whose information needs to be shared for posts that involve work with other children. But that is not something that I have a lot of information on.

Q364 Vernon Coaker: Just to press you, Mr Reid, do you think that 16 is the right age at which the state should say, "This is the age from which we will ask for a criminal record check?"

Colin Reid: I think it is not unreasonable.

Q365 Vernon Coaker: You do not think it should be any younger. The majority of those 5,000 are 15-year-olds, for example. Perhaps that is just not in your experience. Mr Twine, has that caused an issue for you at all?

Derek Twine: It has not caused an issue for us. I would certainly agree with the NSPCC response on that. I will happily go back to my own organisation and check to see if I have missed anything and provide that to you or the Committee. I believe that the age of 16 is one that we would be content to accept as the benchmark.

Vernon Coaker: I think that is very helpful because it is a big change and, as I say, there were thousands of applications. If it is agreeable, it would be helpful for Mr Twine to check that, if he is offering to do so.

Derek Twine: I will check and come back to you.

The Chair: That would be very helpful. Thank you very much.

Q366 The Parliamentary Under-Secretary of State for the Home Department (James Brokenshire): Just before we leave the vetting and barring arena, could you comment on the changed approach that is outlined in the Bill contrasted with the preceding approach that has been indicated in relation to the Independent Safeguarding Authority? What is the impact of lots of people having to register first under the previous arrangement? What do you think the benefits or changes will be as a consequence of taking the approach adopted in the Bill contrasted with perhaps the preceding approach that has been outlined?

Derek Twine: The direction that is being taken to enable incoming potential volunteers to have an early experience of volunteering when they get to the point of confirming that they wish to be a volunteer in the

Scouts or a similar organisation is welcomed. It was attitudinal interpretation under a previous regime that saw this as a lot of bureaucracy that had to be gone through before you could even become a volunteer. We welcome moving forward to allow these early stages of tasting volunteering before encountering a process that is about ensuring safeguarding arrangements are in place. We are grateful that that is something that has been taken on board. As I said at the beginning, there is much that lies behind this section of the Bill that is reflecting comments and experiences of the previous regime and is a commentary upon that. We note that our comments have been listened to.

Q367 James Brokenshire: Did you or the NSPCC have any concerns that by taking the formal registration requirement—I heard what you said about vetting being one part of the process but not the whole part—it might give an impression that because somebody was registered that meant you could almost step back and relax a bit, knowing that the registration was there?

Colin Reid: That is important. That is why the Government guidance needs to indicate that there are many other steps that organisations have to take beyond simply carrying out a vetting check. From our point of view, the previous system was, in effect, two systems. It was ISA registration and it did not do away with the need to do CRB checks. Probably where we are going is where we should have gone at the start. We will have one system that should be as portable as possible. That is the issue that people raise time and again. It is not about vetting itself; it is about the numerous CRB checks that they have to do in various different roles. So one check that is portable across a range of sectors would be welcomed by a raft of organisations. It would make the system simpler and it would cut out bureaucracy.

The Chair: I am calling Diana Johnson now, but I am afraid that this will have to be our last question under the subject heading of "vetting and barring".

Q368 Diana Johnson: I just want to return to the criminal records issue and I want to explore something with you. Let us refer to the very well known case of Ian Huntley and to what happened in that case. If I understand correctly, prior to his committing those terrible murders Huntley had been investigated by the police on nine separate occasions, eight times for sexual assault and rape, mostly of girls between 11 and 15. There were no convictions prior to the murders. If there was a person like that again, a standard CRB check would not disclose any of that information, would it? That person could then put themselves forward as a volunteer and if they were engaged in an activity that is not regulated and they went along with their portable CRB check to show to a volunteer group, say a Scout group or a Girl Guide group, the group would look at that check and think, "This person's fine." Can you just reassure me that such examples will not cause major problems?

Colin Reid: There were two problems with Ian Huntley's vetting check—one was the process and one was the information. Non-conviction police information is really very important and we certainly welcomed Sunita Mason's review, which said that non-conviction data would continue to be provided under CRB certificates. It is very important for all employers and organisations to ensure that, when

they refer information about children who have been harmed, they also refer that information to the police and local social services, in line with Government guidance, to ensure that it is picked up.

There is a safety net here, which is policing information and non-conviction data that is disclosed on a CRB certificate. It is very important in protecting children and we would hope that, in future circumstances and through the system improvements that have been made to the CRB, that information on someone like Ian Huntley would be revealed on a CRB certificate.

Q369 Diana Johnson: But just on the point of regulated activity, if someone like that wants to be a volunteer they do not need to have a CRB check, do they?

Colin Reid: Well, they can have a CRB check, because there is a capacity within the Police Act regulations for one to be conducted. That is a matter for employers, to look at circumstances of local jobs that they consider to be a risk. Not everything is in regulated activity. There are many exceptions. We understand the reasons why that is the case. You have to draw the threshold somewhere. But there are options to carry out CRB checks in other circumstances. I suppose that one suggestion that we would make to Government to improve the Bill is to try to ensure that there is portability between outer-ring activity, if I can use that term, and regulated activity.

Derek Twine: We would totally endorse that, from the perspective of volunteering in scouting as well. It is that non-conviction information, as well as the information about convictions, that is absolutely crucial to some of our discernments. So I would reinforce that point, because that is where those judgment calls can be made about suitability to engage with young people.

I would link that with the point that the Minister made earlier with regard to, "It's not just ticking this box." We have other cases where, even if there is disclosure that comes back that is "clear", there would be other safeguards within the community, through the other arrangements that we have within the organisation that said that, in spite of that "clear" status, we are still not comfortable with that person being a volunteer in our organisation. You referred to Huntley. I would go back even to Hamilton in Dunblane, where he was perceived, on the basis of non-conviction information, to be acceptable to work with young people, but we in scouting had said no, because other people in the community and people in the Scout Association had said, "Regardless of that, your behaviour is not appropriate for our organisation."

Colin Reid: We support the concept of not having unmerited checking. We think that you should not be checking everything. I think that checking everything distorts what the CRB and the ISA are about, and we welcome structures being put in place to stop unmerited and unsuitable checks being carried out, because that has been one of the issues that has dogged this scheme, where people have felt that they need to get checks for a one-off disco in a school. That really does not help any of us in the protection of children.

The Chair: I think that is a useful point to move on to our next question, which is also on criminal record checks.

Q370 Rehman Chishti (Gillingham and Rainham) (Con): A lot of questions have been raised about the criminal records check, in terms of the non-sensitive

conviction material being disclosed. Am I right in thinking that at the moment police have the common law powers to disclose non-sensitive convictions and, linked to that, the new threshold has been changed from something that might be relevant to something that is reasonably believed to be relevant before it has been disclosed? Do you think that is the right way forward?

Colin Reid: The police have a common law power to disclose information for the detection of crime or the prevention of crime, which is given effect in part V of the Police Act. We do not have any particular difficulty about ensuring that a proper standard is applied across England, Wales and Northern Ireland to the disclosure of relevant information by the police. Our understanding is that there may not be a level playing field. It is important that only information that is relevant for vetting purposes is disclosed on the criminal record certificates, not information that is not relevant. We certainly do not have any difficulty with improved standards in this area.

Q371 Rehman Chishti: And in your view, does the system that is being put forward—from "might" to being reasonably believed—strike the right balance?

Colin Reid: I think that if it is properly implemented, yes, it should strike the right balance.

Derek Twine: I think it would be important within that to ensure that although it is a police decision, there is some consistency in the application of the power. As a national organisation, we are conscious that the approach to interpreting disclosure can vary from force to force.

Q372 Rehman Chishti: Do you see any problem with individuals being given a chance to see information that is held against them before it is given to the employer, and even being able to challenge it?

Derek Twine: I return to a point that was made earlier: it depends on the time frame, and the employer or the commissioning voluntary organisation must get that information and be the place at which that discernment is made. That picks up on the fact that it is more likely to be an appropriate discernment if it is made by someone centrally in the organisation who is trained and competent, rather than by another peer within the local volunteer community.

Q373 Rehman Chishti: Finally, with regard to the underlying principle in terms of the interests of justice and fairness, it must be right for an individual to be able to see what is going ahead and to be able to challenge that. Is that right?

Derek Twine: I think that that is appropriate.

Q374 John Robertson (Glasgow North West) (Lab): On that last point about being able to challenge, you said a bit earlier that people, even though they had a pass in their checks, were subsequently found not to be suitable because of what other people in the community had been saying. How much checking is done of what people are saying to ensure that it is not just tittle-tattle?

Derek Twine: That is a very valid point. If I can describe it from the point of view of our organisation, in each local community—we call them Scout districts—we have an appointment panel of people who are drawn

from the community. They are trained in discernment for appropriateness of working, particularly with a specific age range, such as six and seven-year-olds or eight to 13-year-olds, and they look at the suitability of leadership style and the suitability of how they form relationships with young people. It is not just what is being spoken about at the school gate or in the local Tesco; it is actually people who have that capacity in the community in which they live.

Q375 John Robertson: How effective are the provisions for actually updating checks? I think the best example would be what would happen if an individual had an ordinary check and you wanted to get a higher-grade check. How do you think these things sit with the new provisions?

Derek Twine: As we operate at the moment, we have the requirement for all adults who work in roles involving any access without supervision to undertake the disclosures. We do that at enhanced level for CRB disclosures at the moment. At the moment, we look to update that—if it is not an online process and if it is not just access to the ISA register—every five years.

Q376 John Robertson: In all the bodies—I must get Mr Summerskill to come in and say something—how long does it take for somebody you want to help your organisation actually to receive the check after they have been checked?

Derek Twine: From our point of view, it is really interesting that since we have had the ability to undertake the disclosure online, it has taken about 10 days.

Q377 John Robertson: How do you think that will be affected by the fact that the individual will receive the check, when you may or may not even see it?

Derek Twine: That was exactly what lay behind my saying, provided it does not slow down the process for far too long. More will be frustrated that it takes them longer than will be pleased that they had the opportunity to deal with one of the very rare errors. There is an issue of proportion.

Q378 John Robertson: I have a small question. Do people work for you while they are waiting on the result of the check?

Derek Twine: They have much closer supervision, and some go away because they are frustrated.

Q379 John Robertson: Would you know if they received a check that said they should not be working there? They could still be working for you because the individual receives the check and not the body in question.

Derek Twine: For a short period, and that is why it is important that it is time-limited between when the individual has receipt of the check, and the 10 or 14 days in which to register a concern or an appeal. Thereafter, it would automatically go to the organisation.

Q380 John Robertson: So you accept that is an anomaly that should be addressed?

Derek Twine: And it is one that needs to be addressed within the Bill.

The Chair: We need to move on to the consensual gay sex provisions.

Q381 Diana Johnson: I start with a question to Mr Summerskill. Are you satisfied with the role of the Secretary of State in this procedure, or would you have preferred a route through the courts to deal with this?

Ben Summerskill: We do not have a problem with the role of the Secretary of State. We should not forget that quite a lot of the people who are affected by this are historically quite bruised by their experience of policing and courts, given the circumstances of these convictions. Our principal anxiety about the process itself—I am confident that it can be resolved—is that the only appeal mechanism is immediately to the High Court. That seems slightly excessive and onerous if there has been just an administrative misunderstanding or some minor misinformation given during the process.

Q382 Diana Johnson: What would your preference be in terms of an appeal?

Ben Summerskill: On the face of it, we would be happy if the officials themselves were involved in doing that, similar to when the officials were doing the first approvals. As I said, we are slightly anxious that there may be a genuine error or misunderstanding and the only remedy that is offered to a person when that has arisen—I think it is outlined in clause 98—is to take legal action.

Q383 Diana Johnson: Are you satisfied with that being a purely written procedure? Would you like to have an oral hearing, or an opportunity to present oral evidence?

Ben Summerskill: We are reasonably satisfied on the basis of what is being proposed that it is a written procedure. We are also mindful that quite a lot of people involved have difficulty talking about what actually happened to them, and that might be onerous, too.

I would just say that this has been characterised as a measure that will affect only elderly people who want to work or volunteer, but that is not true. We are aware of the case of a 17-year-old who was prosecuted in 1998 for having unlawful sex; he was below the age of consent, and had sex with someone who was above it. That, of course, gives the lie to the notion that these protections were ever there to protect young people. He will be only 30 now.

Q384 Diana Johnson: Are you satisfied with the conditions for disregarding convictions that are set out in the Bill?

Ben Summerskill: In summary, we are satisfied. We would like to test very slightly the scope of the convictions themselves, because we are alive to the fact that various police forces—on the whole they are responsible—are extremely creative in the various offences, some of them common law offences, that they use in order to prosecute people. It would be nice if they were that creative in apprehending burglars. We are not clear yet that the scope that is outlined necessarily catches every one of the offences that Ministers and the Government clearly intend to capture.

Q385 Tom Brake (Carshalton and Wallington) (LD): You said that you were happy with the Secretary of State's role, and that you think many people would not want there to be a court aspect to this, but do you think there are some people who might want that option?

Ben Summerskill: Clearly, we cannot possibly say that we can speak on behalf of everyone who is affected, not least because the only way of knowing who is affected is to have access to the police national computer, which obviously you would only have if you were a police officer or an employee of the *News of the World*. We would always be hesitant about saying that we speak on behalf of every single person who is affected. We are aware that there might be a disincentive for people to present their cases if they have to present them orally.

Q386 Tom Brake: Do you think there is more that could be done to automate this process in terms of individuals not having to make a request?

Ben Summerskill: We pay tribute to the work of officials on this issue. We first met them eight years ago, and I think they have done their very best to unpick it, but the difficulty about automation is that there are many records of these offences where, because of the nature of the offence—it was an age of consent offence—there is no record of the age of the other party involved, so if you automatically disregarded all the offences you might be disregarding offences where people under 16 were involved or indeed where there was coercion.

Q387 Michael Ellis: That leads me on to my point. Do you think the proposed changes to the law go far enough? You referred to common law offences and imaginative prosecuting decisions by the police historically. What do you say about that?

Ben Summerskill: Our view is that, subject to the qualifications that I have expressed, we are reasonably comfortable with the proposals that are being made, and we completely recognise that you must make sure you are not disregarding offences that might be genuinely damaging, and still would quite properly be criminal offences.

Q388 Gareth Johnson (Dartford) (Con): Mr Summerskill, do you have any idea of the number of people who are likely to be affected by these provisions, and what proportion of them are likely to want to take advantage of these proposals?

Ben Summerskill: As I said, not being a police officer or an employee of the *News of the World*, we do not know the numbers. We do not have access to that intelligence. We come across dozens of cases every year, and we are approached by people. Our estimate would be probably more than 10,000. The difficulty also is that you do not know whether people are deceased. I said that this affects young people, but it also affects older people. Even when they have retired, they may be keen to volunteer but be anxious about presenting themselves as volunteers because of the scrutiny to which they will be subject.

Q389 Gareth Johnson: You are not sure what proportion. You say you are contacted by dozens of people each year.

Ben Summerskill: Again, that is a question that is impossible to answer. We do not know what proportion of the 10,000 might wish to go through the process. As I said, one reason is that people were traumatised. I was

speaking to someone the other day who was beaten up by the Metropolitan police every time he was arrested, and rehearsing some of these things is very difficult for them. The other issue that is important and that we hope to explore with officials is that people are anxious about being contacted by post. We cannot forget that some people are living with a same-sex partner or it may be their wife now, and this may be part of their history. They may feel that it is important to present themselves somewhere where the issue can be dealt with, but it is impossible to be absolutely certain about the number who would want to take advantage of these protections.

Q390 James Brokenshire: Mr Summerskill, some of the questions have been quite technical and focused on the Bill, but I think you have alluded to some of this in some of your responses. Can you give the Committee some impression of the impact that the disclosure of such convictions has had on a number of the individuals who have been concerned and who have contacted you? What are the real life implications?

Ben Summerskill: Some of them are very clear that even though an employer nowadays is well aware that the offence would no longer be unlawful, they would be made to feel extremely uncomfortable. Other examples include people who are general practitioners or who are regulated by the Nursing and Midwifery Council where, as a normal part of the scrutiny to which you are subject, you have to declare convictions that in all other circumstances would be spent. They feel deeply, deeply anxious about these things being raised. It is very similar to the situation that gay people were in historically in relation to the security services. You could not say you were gay before appointment. If you announced you were gay afterwards, you were told that you had been dishonest at the point when you were subject to scrutiny. The protections that the Bill proposes for people in those positions are hugely welcomed by them. They feel it would be relieving them of an anxiety that has overshadowed most of their professional career.

Q391 Tom Brake: Briefly going back to automation, clearly you have outlined that that is not possible in some cases because you do not know the age of the people involved. But would you know that in some cases, and therefore you could partially automate the process at least for some people? Presumably there are some issues about data protection, freedom of information and having to inform them, and they would be worried about receiving notification by post in the way that you set out.

Ben Summerskill: I think, with respect, that that is probably a question you need to put to Ministers rather than me because we do not have control of the records concerned. Officials have also expressed an anxiety that given the volume of cases overall, you would be making estimates about whether cases were appropriately dealt with or not. The other issue that arises is the slight difficulty of someone receiving a letter marked "On Her Majesty's Service" from the Home Secretary, and someone's partner saying, "What's all this?" Or, indeed, as is highly likely to arise, such a letter going to an address that they no longer occupy.

The Chair: If Members have no further questions to this set of witnesses, that brings us to the end of this part of our evidence session. Thank you very much for your contributions.

1.59 pm

We will now hear evidence from the Local Government Association and the Welsh Local Government Association. Our first questions are about CCTV. I call Gareth Johnson.

Q392 Gareth Johnson: Good afternoon, Mr Holland and Councillor Lawrence. What is your general reaction to the proposals on CCTV? Do you see a need for it? Do you have any concerns that it may in any way restrict local authorities carrying out their duties?

Councillor Lawrence: The Local Government Group perceives the new code of practice—I will start with that—as a useful resource for local authorities, specifically if it becomes a single source of guidance and advice, because there is a lot of good practice. There is a lot of information that, if drawn into a single set of clear and transparent items, will be, in itself, a benefit that would be welcomed.

Two notes of caution, if I may. One is in relation to data. Quite rightly, there is concern that if the data burdens become onerous, that will become an increased cost, which could be a disadvantage. The other thing that perhaps needs to be clarified, if one is to avoid confusion, is that there are two commissioners who have oversight in this arena. One always wants to ensure what I call clarity of response and clarity of understanding between the police and local authorities. I think that would need to be made clear. I am not questioning the need for two commissioners, just trying to ensure that there is no confusion.

The final point that I want to make is that, quite rightly, all local authority CCTV cameras are regulated under the Data Protection Act and under the jurisdiction of the Information Commissioner. However, our own cameras equate to only a very small percentage—something in excess of 3%—of the total number of CCTV cameras in existence. It is not cameras that are internal to premises that are private, but cameras that are trained on public spaces, whether they are external to buildings or whether they are in places like the areas of a bank that people enter, supermarkets, trains and so on. We feel that there should be regulations to oversee those cameras as well. In the concept of public space, those regulations should be extended to apply not only to local authority cameras, but to those within the private sector in the area deemed to be defined as public space.

Q393 Gareth Johnson: Can I confirm something? In a nutshell, you welcome the fact that there will be more regulation, but you feel we should be moving more into the private sector as well. Is that essentially what you are saying?

Councillor Lawrence: The Bill itself does not prescribe more regulation. All I am saying is that the existing regulation that applies to local authorities should be extended to apply to those organisations that have cameras trained on what is deemed to be public space.

Q394 Gareth Johnson: But the essence of the Bill in terms of CCTV is the proposal to have a code of practice that relates to publicly owned cameras. Do you welcome that?

Councillor Lawrence: Very much.

Dave Holland: Our concern is that two codes could be in existence and running in parallel. If there is to be a code, we would like one, for clarity. I stress that CCTV use by local authorities is around safety and around traffic zones and so on. We are concerned that the new codes properly represent what CCTV is used for.

Q395 Vernon Coaker: Good afternoon to you both. Following Gareth Johnson's question, you know as well as I do that there is no enforcement power in the code of practice, but one of the reasons why the Bill contains these proposals is the apparently widespread perception that local authorities are massively abusing their powers, and that there is, therefore, a need for this crackdown in the Bill to protect the majority of people out there who are having their freedom eroded. What is your view of that?

Dave Holland: That is what I was starting to allude to. There seems to be a misconception about what local authorities might use their CCTV cameras for. As Councillor Lawrence said, they represent about 3% of cameras in use in the UK at the moment. If you walk into Cardiff tomorrow, you will see a bank of cameras focused on the streets, and they are monitored by police officers. You will see a bank of cameras to the right that are focused on the major highways and those are monitored by council officers. They are in the same room, but we are quite clear about what the police and the local authority role is. It is a partnership. To suggest that councils abuse the use of CCTV is very far from the truth.

Q396 Vernon Coaker: What is your view, Councillor Lawrence?

Councillor Lawrence: It would not be different. That is why I made the point at the beginning about the two commissioners who in a sense provide oversight of both the police and the local authorities. I am not saying that they should not exist, but we just want to make absolutely certain that there is no confusion between the two and that there is a code that applies equally to all organisations.

Q397 Vernon Coaker: That is interesting. There may be a case for having one commissioner. What about the proposal in the Bill that when local authorities apply for permission to get communications data, directed surveillance or covert intelligence they will now be required to apply for judicial authority? Do you think that is proportionate? Will it encourage local authorities to do that? Will it put them off? What do you think the cost will be? What will the process be? What are your comments on those proposals?

Dave Holland: If I understand the wider context, it really means that there is public concern about snooping. If you read the parliamentary reports of Sir Paul and Sir Christopher, they are quite clear that many of the media reports are inaccurate. Sir Paul clearly states that his inspectors found no evidence of any trivial misuse of communications data powers.

Sir Christopher made similar observations around surveillance. Local authorities are being unfairly criticised for the use of covert surveillance. Much of it flows from the media. The people who come and visit us and undertake inspections in depth are telling you—they are your own parliamentary watchdogs—that it is not happening.

If going to magistrates gives the public greater confidence, then, in terms of directed surveillance, yes. What we want to do is achieve public confidence in what local authorities do. Our role is to protect our communities. If that means greater clarity, that is fine. What we want to avoid is bureaucracy.

In Wales, we have just proposed closing up to 18 magistrates courts. The number of magistrates courts in the country is reducing. Hence, those that remain will get a lot busier. If we put in a level of bureaucracy, it sometimes means that we might not be able to react as quickly as we would like.

In terms of obtaining communications data and asking a magistrate to tell us who the subscriber for a telephone number is, that may be perceived as being a little too bureaucratic. If we want to access things such as call data, I think that is a further step that we can look at.

Generally, we would have no qualms about going in front of magistrates. My officers do so quite regularly for warrants to enter premises, and they have to justify why they want to do it. My profession would be quite happy to do that if it gives greater public confidence.

Q398 Tom Brake: I just wanted to follow up the question about the Regulation of Investigatory Powers Act 2000. Are you saying that none of the stories in the press about RIPA powers being used to catch people whose dogs are fouling the pavement and about the idea of bin Stasi, to which a previous Home Secretary referred, is true?

Dave Holland: I am not saying that none of that is true. What I am saying is that if you read Sir Paul Kennedy's report, he says—

Q399 Tom Brake: That is slightly different, as he said in the evidence he gave us yesterday. He accepts that those stories about dog fouling and bin Stasi do not actually apply to his area of activity.

Dave Holland: No, but Sir Christopher makes similar comments in his report. I cannot tell you that a local authority has not used covert surveillance to deal with dog fouling, because it has happened. The debate is whether dog fouling was deemed an insignificant issue at the time. Some took the view that it was. Sir Christopher, in an unusual step, made an observation about the risk to the health of young people playing in parks. It was a moot subject at the time.

There is the case of Poole, which is being pushed quite heavily in the media. Poole got it wrong. What I would say to you is the fact that RIPA exists and a set of protocols had to be followed meant that we could go back, dissect that and understand why it went wrong. That is why local authorities need to be within the RIPA regime; it makes us accountable. It is why I am in front of you today. You are challenging me about what I do, why I do it and how I do it. I absolutely welcome that. My own councillors in Cardiff challenge me regularly, every year. I would not say that we do not get it wrong. The fact that it causes such an issue in the media is perhaps a reflection of how rarely we get it wrong. When we do, it generates some stories.

Q400 Mark Tami (Alyn and Deeside) (Lab): In the main, do you have councillors, MPs, or Assembly Members of all political parties asking for more or less CCTV coverage?

Councillor Lawrence: The answer in general is, yes, more CCTV.

Mark Tami: I thought it might be.

Councillor Lawrence: But sometimes, of course, when you have more CCTV, it can cause an equal and reverse response. We have a good example of that in Birmingham. It has to be in proportion to that which gives rise to the request. Certainly, in many of our shopping centres and in many of the fixed areas where people congregate and there are known instances of crime and so on, there is properly that provision to enable CCTV to be used to protect and safeguard not only individuals, but premises. We have to begin to consider very carefully where do you use it not so much on a permanent basis, but to deal with an issue that arises in a particular community and locality; for example, in relation to antisocial behaviour, where you want to detect groups of people who are behaving in a way that acts to the detriment of a community.

We have concentrated a lot on loan sharks in Birmingham. Where do they operate? How do they operate? At what time of the day? What are the techniques they are using? That is not a permanent CCTV presence. Of course, domehawks are used quite often by the police as a deterrent. But you move those around. Two things need to happen. First, there needs always to be independent scrutiny available to ensure that such use can be challenged, questioned and audited. Secondly, we need to ensure that we act with the full knowledge of the communities in which we are seeking to apply this. We need to ensure that they do not see it, as happened in Birmingham, as a misuse, and the intended purpose was not the reason purported to be its application in the first place. It is a question of how we ensure the independent scrutiny—the auditing and the challenging—to give confidence to the public about how it is being used.

Q401 James Brokenshire: I was interested in the comments from both Mr Holland and Councillor Lawrence about the need for public confidence and support. That, in many ways, is reflected in the response to the question from Mr Tami.

Councillor Lawrence, I know you are from the west Midlands and are therefore quite familiar with the Birmingham situation. Can you explain what impact that sort of issue has on public confidence in the ability of the council and the police to do the very thing that both of you have indicated you want to use CCTV to deliver?

Councillor Lawrence: If I can take the particular instance to which you refer, it seriously undermined relationships—relationships within the community and between the community, the local authority and the police. And it was as much for the nature of that which the community did not know and could not see as for the original reason that the cameras were installed. That was because there were two types of cameras—what I call the covert camera and the very public camera. The camera stuck at the top of the lamp-post was actually the type of facility that the community wanted, because of some of the activities with shoplifting and antisocial behaviour in particular roads. The covert cameras not only took pictures but actually recorded conversations. That seriously undermined the relationship with the

police, because there had not been the full consultation and the openness and transparency with the community that there should have been.

Q402 James Brokenshire: Did that have the impact of creating suspicion about those overt public cameras and how they might be used? In other words, was there more of the impression of being spied on rather than protected?

Councillor Lawrence: Yes.

Q403 Michael Ellis: Further to that, do you think that it is an appropriate state of affairs that, for example, there are apparently more CCTV cameras in a place such as the Shetland islands, which has a population of 30,000 people, than there are in the whole of San Francisco, which has a population of more than 3 million people?

Moreover, you have referred to proportionality, as many other witnesses have done. But can you say something about the false sense of security that many people get from CCTV cameras? There is the suggestion that because a CCTV camera is present it will always catch everything that happens, it will always be facing the right direction, it will always be working, it will always be focused correctly and the images will be of good enough quality.

Dave Holland: There have been some pretty important occasions when CCTV has captured instances of significant crime. When we submit our written evidence to you, we will give you some details of instances where some outrageous criminal acts have been performed and CCTV has captured them. That needs to be stated clearly. Does CCTV give you a false sense of security? The evidence that I have from my own city is that people feel more comfortable that those CCTV cameras are there.

Q404 Michael Ellis: Do you think there could be an impression of a sort of Orwellian atmosphere of oppression? Can I put something to you? I have been a barrister in criminal practice for 17 years and I have had recourse to use CCTV camera images in evidence on many occasions. It does not always result in conviction for the reasons—[*Interruption.*] I do not know if I have the whole Committee's attention, but I seem to remember being relatively quiet when other questions were being asked. I think that you know the point that I am making, Mr Holland. Do you wish to say anything about it, or would you like to answer a different question?

Dave Holland: I will try to answer your question. Speaking very much from a local authority perspective, as I said earlier the local authority's role in using CCTV is primarily around traffic flows. The Orwellian state that you might be describing, where we have more focus on streets and so on, is very much a matter for the police, and it is a crime and disorder issue.

Councillor Lawrence: It is an interesting discussion, in which we should perhaps differentiate between what I call the fixed and the mobile. As an elected member—I can think of my own ward and my own experience—I know the extent to which communities want to work with the police and with the local authority to deal with specific problems, not displacing the problem to another community but dealing with the miscreants who are causing the problem. If you make phone calls to the police, they have a time within which they can respond and usually in that time the groups that cause antisocial behaviour,

in many instances in different parts of the city, have disappeared, whereas if you have the domehawk camera, the trick is, do you have a film in it or don't you? That in itself begins to become a cautionary thought for those who want to cause the problem. That is utilised in a way that is of benefit to the communities that are being plagued by such matters, and it gives them the confidence that, over a period of time, those who are causing the problem can be recorded, identified and dealt with.

That, in my mind, is a proper use of such facilities. I do not think you would want to contend that we should not, as elected members and in conjunction with the police, seek to protect our communities in a way that is of benefit to them in the long term, but that equally deals with those who perhaps have an agenda that is not to the benefit of the community in which they may live.

Q405 Michael Ellis: Of course that is right, Councillor Lawrence, but is there not a balance that responsible, elected officials have to draw in many areas of life? Our constituents wish to be secure, but they do not wish to be spied on. That is a way of putting it, is it not?

Councillor Lawrence: I would agree with that sentiment entirely.

Q406 Clive Efford: Can we not sum all this up—the incident in the community in Birmingham, the concerns about CCTV spying on people, recording conversations without notifying the community, and the requests that we get from communities to have more and more CCTV—by saying that this is about engagement with local people on how we go about it, rather than shock horror numbers of CCTV cameras and saying that the oppressive state is spying on us all? I have CCTV cameras on my high street because every other town centre around there had CCTV cameras and we then had a major crime wave and the local community then demanded them. Is it not about how we manage this? This is a sledgehammer to crack a nut.

Councillor Lawrence: I think it is important that we, as elected members, manage the expectations and perceptions of those whom we represent. It would be totally inappropriate if we created a false perception that, by putting up some cameras, everybody would be totally and for ever safe. We would not be doing our job properly if we allowed that perception to arise, and we would be leaving officers in a difficult position, because they are the ones who, more often than not, actually have to deal with the community. Yes, we have a responsibility to make certain that it is proportionate to the issues at hand but, at the same time, that it is used for a sound purpose and that we do not put one on every lamp post on every corner of every street. That would be totally inappropriate.

Q407 Tom Brake: To follow up that point, it would be useful from your perspective for the code of practice to set out situations in which CCTV may be cost-effective. Have either of you ever done any studies on the cost-effectiveness or otherwise of the CCTV schemes that you have introduced? Clearly, they are quite labour-intensive. If they are to work effectively, you have to have a number of people sitting and looking at the cameras for 24 hours a day, 365 days a year.

Dave Holland: I am not aware of any studies, but if

they exist I will make sure that they are brought to the attention of the Committee through the Local Government Association. In terms of the code of practice, which is where you started, we absolutely welcome it. Most local authorities have codes of practice on how to use their CCTV systems. I suspect that if you looked at them you would see a degree of difference. We would welcome a code of practice, but we would go back to what we said at the outset—the Information Commissioner has guidance for us. If the new code of practice comes into being, can we please have one set of guidance and maybe one commissioner to provide guidance on the guidance?

The Chair: We move further into RIPA territory now.

Q408 James Brokenshire: On that last point, as you know, the consultation on the code is ongoing, and I am sure you will contribute to it. On the RIPA provisions, you will be aware that they came from Lord Macdonald's review of the proposals put forward by the Government. Do you believe that the proposals strike the right balance, addressing the public's concerns about surveillance, which is the public confidence issue, while allowing councils to tackle serious crime?

Dave Holland: I think some of the concerns are perhaps unfounded, but clearly public confidence is absolutely vital, so if the proposals for us to go to magistrates are what is needed to gain public confidence, we, in local authorities, will make it work. We want to avoid bureaucracy, but we will make it work. Clearly those changes need to be introduced carefully. How will the surveillance commissioners deal with authorisations given by magistrates? My understanding at the moment is that the surveillance commissioners have no remit to inspect the judiciary. If the decision is moved away from me as an authorising officer taking a quasi-judicial role, for which I am accountable right now, and given to the judiciary, I do not understand how the surveillance commissioners could exercise their inspection role and then report to Parliament fully on what has happened.

The other concern is that we want officers to be able to attend magistrates courts and be able to present the evidence to magistrates as they would for an entry warrant. As the Bill is constructed at the moment, a legal professional may be required to do that. It may be that our solicitors will not have the information to provide the court with what is necessary to allow it to make a full and reasoned judgment.

Councillor Lawrence: I would not want anybody to run away with the idea that surveillance is being used every day, when actually the whole purpose of surveillance is that it is a last resort. There needs to be a clear definition of what a serious crime is. To give an example, I think most people would accept that fly-tipping is serious, whereas the dropping of a piece of litter in the street is not. Equally, surveillance becomes very important when you are looking into serious issues such as child labour gangs, dangerous toys or food that should have been destroyed being recycled back into the food chain—all those sorts of areas. Often, covert surveillance using RIPA powers is the only way to gather sufficient evidence to enable local authorities to work with the police to undertake the necessary action to bring those who have perpetrated such acts to justice.

At the moment, the local government group cannot see any aspect of the Bill that would challenge the

continuance of that particular practice, but we will constantly monitor the Bill as it goes through to ensure that the powers are not being significantly reduced. Perhaps just some clarity of threshold about what a serious crime is would be helpful.

Dave Holland: And the fact that the Bill mentions six months is good for us. There would clearly be exceptions, which have been acknowledged. There is a £20,000 fine for selling alcohol to minors, which the Government have recently increased, but there is no imprisonment. That needs to be considered with the test purchasing regime. There might be other occasions where the Bill could preclude us from using covert surveillance where it might be necessary and proportionate. As Councillor Lawrence says, we will continue to look at that and engage with the Government as much as we can to make this work. There is no interest in councils snooping on their residents. If they think we are snooping, we will not have public confidence, and that is the end game—confidence and the community believing that we will protect them.

The Chair: We can move on to the powers of entry provisions now.

Q409 Michael Ellis: Gentlemen, do you think that it is appropriate that there are 1,200 powers in England and Wales to enter a person's home? I know that the principle of an Englishman's home being his castle is probably long gone and buried, but we apparently have powers now to enter people's homes to search for bees' nests or to examine pot plants. Do you think that is appropriate or do you think that the powers of entry outlined for repeal within the provisions of the Bill have outlived their purpose?

Dave Holland: I was not aware that there are 1,200 powers of entry.

Q410 Michael Ellis: Apparently so. I have not counted them all myself, but so I am told.

Dave Holland: There are many hundreds of powers of entry to business premises. Trading standards officers, environmental health officers and the like use those every day to discharge their statutory duties. If those powers of entry are there, they are clearly contained in statutes and Parliament put them there, presumably for a reason. If those powers exist, they went through parliamentary scrutiny.

The Health and Safety at Work, etc. Act 1974 aside, I cannot immediately think how trading standards officers or environmental health officers might have a power to enter domestic premises without recourse to a magistrates court and a warrant. The 1974 Act allows entry into domestic premises if there is a risk of danger. But the day-to-day regulation that we enforce through environmental protection legislation or food legislation does not allow entry to domestic premises. It talks about business premises at a reasonable hour and producing evidence of your credentials.

As for the powers of entry to domestic premises, I am not sure where you get 1,200 powers from. I would be very intrigued to find the beekeepers legislation that you mentioned earlier. Mainstream powers of entry go

to a justice. You get a warrant. Again, we have to satisfy the magistrate that there is real need to enter someone's domestic premises.

Quite often, we have instances of counterfeiting taking place in garages and bedrooms. You do not need a great deal of space now to manufacture large amounts of counterfeit DVDs and the like. Even then, while there is a business activity going on in those premises, we would go to a magistrate and ask for a warrant. The magistrate will decide whether that is granted.

Q411 Michael Ellis: So, as far as proportionality is concerned, you can see no problem with any of the provisions that allow involuntary entry into someone's private premises? You spoke about parliamentary scrutiny having been applied to all the previous legislation. Of course, parliamentary scrutiny is being applied to this proposed legislation as well. Do you agree that the powers of entry outlined for repeal in schedule 2 have outlived their purpose?

Dave Holland: I do not have schedule 2 to hand, so I cannot immediately answer that. I cannot answer whether they contain involuntary entries to domestic premises. What I am saying is that in the discharge of a local authority's main duties under trading standards and public health legislation, those powers do not extend to the entry of domestic premises without a magistrate's warrant.

Councillor Lawrence: To give you an interesting example, if there is a pirate radio station being operated from a private residence, the relevant piece of legislation under which action is taken goes all the way back to 1947. In that instance, you are right, there has been a long history of legislation that gives authorities the right and the power to enter, but it has to be on a very specific, well evidenced, well argued basis that allows the particular warrant to be issued.

Council officers do not have the power arbitrarily to enter, nor would they want such a power to be applied to residential premises.

Q412 Vernon Coaker: May I respectfully ask whether Mr Holland and Councillor Lawrence would mind having a look in detail at schedule 2? What it does is repeal things that are regarded as out of date. The Government then dress that up as protecting freedom. I am interested in whether actually any of the loss of the powers contained in that schedule would adversely impact upon your ability to do the jobs that you would want to do, which is the point of Mr Ellis's question. Some of them appear out of date. It would be helpful to the Committee to know whether any of the powers of entry that are repealed would make a difference.

May I ask a question that builds on that? The Government not only have the schedule that repeals the existing powers; they have an order-making power that allows them to repeal any other power that they think is out of date, inappropriate or disproportionate. Have you had any discussions with the Government about any of this, or have you heard from them about any other powers that they think are disproportionate? Again, have you any view on the fact that the Government have a blanket power by order to take away any other power of entry? I have a question on schedule 2 and a more

specific question about whether you have had any consultation about any of this or if it has just appeared out of the blue.

Dave Holland: I personally have not, but I know that colleagues sitting behind me, through the Local Government Association, will have had some discussions with the Government around the consumer landscape review and things like that. On the clause to ensure that powers of entry are not used inappropriately, I do not have a problem as long as local government is properly consulted and there is not a knee-jerk reaction to wiping the powers away. Earlier, on the way here, Councillor Lawrence and I were having a conversation about pieces of legislation like the Consumer Credit Act. That Act was traditionally used to inspect premises to make sure that credit agreements, credit adverts and so on were being done appropriately and legally. Recently, we have been using the Consumer Credit Act to challenge loan sharks—illegal moneylending. The powers contained in the Act allow us to take down some of the most unsavoury characters in local communities; people who do real harm in local communities. Councillor Lawrence has the English unit under his wing and the Welsh unit sits with me. You have only to see some of the comments from the judiciary about the cases we are currently putting in front of them to see the damage that loan sharks do in communities.

Sometimes a piece of legislation will be used for more than one purpose. The regulations to protect consumers from unfair trading are used to challenge rogue traders, who damage vulnerable people in your constituencies. We have too many pieces of evidence that show how elderly people have lost ten of thousands of pounds to rogues. At the moment in south Wales, a nice organised scheme is running. The rogue goes in and does some work to the house that does not need doing. In comes the second rogue and says, "That's wrong. I can fix it for you." Then, of all the cheek, a third rogue appears and says he is from the south Wales trading standards service, that he has arrested the first two and for another £3,000 the person will get all their money back. That piece of legislation tackles them in the same way that it is used to inspect high street premises. With these powers, you should be very careful what you choose to determine as unnecessary and inappropriate. Local government has to be involved in that discussion. We would absolutely welcome it.

Councillor Lawrence: I will commit to officers going through schedule 2 in detail and give you a response from the local authority perspective.

The Chair: We would be very grateful.

Q413 Tom Brake: When you do that it might also be useful if you were to say which powers you use consistently. Ninety-five per cent. of the time, you will probably have 10 powers that you are using. I suspect that we may need to ask other organisations to respond on schedule 2. For instance, I doubt that the police have used the powers under the Hypnotism Act 1952 to go into premises to see whether entertainment related to hypnotism is taking place. I am sure that you will have some interesting reading of the schedule.

The Chair: If you can only remember it. You will have to be very quick because we only have one minute left.

Dave Holland: I just want to make one other observation on this. Of course, many of the powers in the legislation do not derive from Parliament. Many of them come from Europe through European regulations that we receive as local authorities and are required to enforce.

The Chair: I am sorry; I misled the Committee. We actually have five minutes, but I do not have any Members indicating that they want to ask further questions. If there are no further questions for this set of witnesses, that brings us to the end of this part of the evidence session. I thank you very much, and we look forward to hearing your further evidence.

2.41 pm

The Chair: We will now hear evidence from the AA, the RAC Foundation, the British Parking Association and the Security Industry Authority. I welcome you to the Committee.

Q414 Diana Johnson: I would like to ask about the consultation that has taken place on the proposal in clause 54 to stop all wheel-clamping on private land. As I understand it, when wheel-clamping was being legislated against in the previous Parliament there was full consultation with interested parties, so I would like to know what consultation has taken place with regard to the proposed change.

Edmund King: I am Edmund King, president of the AA and visiting professor of transport at Newcastle university.

Over the past three or four years, there have been a number of consultations on wheel-clamping on private land because, as many MPs will know, it has been a serious problem. Your letter bags have been pretty full of horrific cases over the years, from three-year-old girls in Doncaster being taken hostage, to clampers demanding sexual favours and police officers being clamped.

When the licensing was brought in via the Security Industry Authority legislation, there was also a consultation. We participated fully in that, and I believe that we were in front of a scrutiny Committee similar to this one, looking at some of the aspects of wheel-clamping. So, there have been a number of occasions for organisations such as ours, members of the public and other interested bodies to put their views across.

Q415 Diana Johnson: May I interrupt at that point? I think that this is the first time that removing the right to wheel-clamp has been put forward as the preferred method.

Edmund King: Yes.

Q416 Diana Johnson: What consultation has there been on that? According to my understanding, it has never been consulted on before.

Patrick Troy: I am Patrick Troy, chief executive of the British Parking Association.

The truth of the matter is that there has been no consultation on the proposal to ban clamping and removal on private land. Indeed, there was a consultation the year before last on how to deal with rogue clampers, and the proposal under the previous Government was

to introduce company licensing for clampers. That Bill became an Act, but it was never enacted in the new Parliament. The consultation that took place during that period never put forward the proposal to ban clamping. That was never an option that consultees were asked for their thoughts on, and therefore those thoughts were not given.

This proposal has never had a consultation process attached to it, which is a shame because the issue here is absolutely, as Edmund says, about dealing with rogue clamping activities. It is also a much wider issue about the management of private land, and we would like to see a much wider debate about that. The big risk with the legislation as it is phrased is that rogue clampers will simply become rogue ticketers if we do not address that wider issue at the same time.

Q417 Diana Johnson: Perhaps the panel will be able to help me. I asked a question about powers already in law that have never been enacted regarding the regulation of wheel clampers. The Minister said that they had not been enacted as an interim measure before moving to the Bill because of the cost. Is my understanding correct? Would the cost of the regulation have been borne by the sector and not the Government or local authorities?

Bill Butler: I am Bill Butler, chief executive of the Security Industry Authority. You are correct that the costs of licences would have been borne by the sector, but the cost of establishing the regime would have been borne by the Government through the Home Office. Also, the commencement would have taken some time. Had the legislation been enacted soon after it became law in April last year, the earliest commencement date would have been next April.

Q418 Diana Johnson: That is helpful. Thank you. I want to ask specifically about part of the clause. I am little confused about clause 54(3) and wondered whether the panel might be able to help me. If a private car parking space has a barrier, and a motorist who is not entitled to park there drives into that car park and is ticketed, as allowed in the Bill, am I right to assume that the owner of the land can put the barrier down and stop the person from leaving the car park? As well as having a ticket, they will be stopped from moving their car. Is that correct?

Patrick Troy: I think I can help you. I have looked at the clause over and over again, and it seems to be an odd provision. In simple terms, the first three subsections of clause 54 are key. Subsection (1) is about banning clamping and removal on private land, subsection (2) states that that cannot be got around by someone putting up a sign that says, "If you enter my land I will clamp you", meaning that someone would have given consent. Subsection (3), however, seems to state that that does not apply as long as there is a gate or a barrier on the land.

I suspect the intent behind the clause is to protect the typical multi-storey car park that is managed in the familiar way through pay-on-foot equipment in town centres. Those operators cannot be accused of having immobilised a vehicle when the barrier was not raised, perhaps because someone has not paid. Of course, that creates a big loophole because it allows any rogue operator to buy a piece of land, and as long as they put

a gate on that land and a sign that says, “I’m going to clamp you if you enter this land”, the vehicle can still be clamped. That is what the clause appears to say, and I cannot see any other interpretation that could be put on it. There is a danger of allowing the rogue operator to continue, and all the Act will do is put the legitimate clamping operator out of action. I am sure that is not the Bill’s intention.

Q419 Clive Efford: Is there a danger that the provisions in the Bill will cause rogue clampers to behave in another way? It is not simple just to put a boot on a car any more, but they will find some other means. Has anyone given that any consideration?

Edmund King: Yes, indeed we have and it is a concern of ours. First, we fully support the outlawing of clamping. That happened in Scotland in 1992. There is a concern that some of those clampers will then go into private ticketing, and the worry there is that the same kind of intimidation tactics we have seen used by many of the rogue clampers could be tried again—whether or not it is a private car park—when four burly chaps come over and suggest that you pay £500.

Our concern comes in clause 56 about private ticketing, in that it suggests that the keeper of the car could be statutorily liable, yet there is no independent appeal built into it, and there is no statutory legislation on what the parking company should do. I shall give an example.

A company, which seems to be incredibly profitable, is carrying out private ticketing. Its website says, “Welcome to the ultimate recession-proof business opportunity” which has “limitless earnings potential”. All the company does is to suggest to you, Mr Efford, that if you have a small piece of land and wanted to make some money you could apply to my company, and I will send you some parking notices.

You will take your digital camera and take pictures of the cars of neighbours you do not like or of anyone who parks there, and send the pictures to me. I will then apply to the Driver and Vehicle Licensing Agency for their details, send out tickets, and if 60% pay up, which they currently do, I’ll give you £10 for each ticket and pocket the rest. That company claims to have 1,200 agents who ticket in that way.

Our concern is that even though that company claims to be a member of the British Parking Association, the 1,200 people are, as far as we know, just individuals. There is no control, and our worry is that the clampers who have been making money for nothing for the past 10 years are not going to give up, so they will be looking for loopholes that already exist and try to exploit them. That is why I think some sections of the Bill need to be tightened up, even though they are well intended.

Bill Butler: We were involved in some of the research before the legislation was passed by the last Parliament. The issues that were identified as areas where business licensing would have required a condition for compliance were quality of signage, level of fees, methods of payment available to people, the time interval before a clamp is put on, the evidence required, records management after the event, and the process of appeal, plus clamping and impounding rules.

I agree that, with the exception of the specific matters relating to clamping, the same issues are likely to apply to ticketing. It is also fair to say that our experience in

licensing other sectors is that there is always a risk of displacement of activity. It is not quite the law of unintended consequences, but being aware of how robust the arrangements are for the alternatives is probably as important as the option on taking out clamping.

Patrick Troy: Our principal concern has always been that if we get rid of the rogue clampers—these people are criminals, and there is no other term for them—they will simply move into another form of criminal activity, which will probably be rogue ticketing. We know that there are examples of operators ticketing vehicles and making off with the money that is paid by motorists who are ignorant of their rights in the process. Typically, about 40% of motorists will simply pay a ticket if it is put on their vehicle, and do not ask questions, often because they know they are in the wrong. But that is not the point. The point is that rogue ticketers are not subject to any control or code of practice, and we feel they should be.

This is an unregulated area, and the British Parking Association has long sought regulation of the whole private parking sector so that we can sort it out once and for all. The two things that are important in the need for regulation is, first, keeper liability—the clause that Edmund just referred to—placing the onus on the keeper of the vehicle rather than the driver for liability for any parking ticket issued and, secondly, an independent appeal service so that the motorist has protection in all circumstances. They can always appeal to the person who issued them with the ticket, but clearly that will not be seen as independent. There needs to be a separate, independent system, very similar to the one that exists for local authorities.

Jo Abbott: The RAC Foundation would support regulation of the private parking industry, and we strongly believe that the Government should be involved. Mr King precisely described a situation of what we sometimes refer to as third-party ticketing, where a firm allows another agent to issue the tickets. The Government are complicit in that process, because they are allowing DVLA data to be released to a car parking firm that is a member of the BPA and is allowed to access DVLA records. That means that all the firms that Mr King referred to—the ones in a recession-proof business now—are able, with the Government’s approval, to access data given to the DVLA by motorists for another purpose entirely.

Q420 Gareth Johnson: Can you give us clarification on a couple of points? I do not think any of us dispute that there are some rogue clampers out there, and we all want to do all we can to tackle that problem. I have heard what the British Parking Association says about clause 54, and the concerns that you have about the wording. You feel, I assume, that there should be some changes to that clause before the Bill goes to the next stage. We have also had some submissions from the AA where it was clearly said that it does not believe that there should be any changes to the clause. I wondered if we could discuss what direction you are coming from on that, and whether it is the feeling that the AA would like to see it stay as it is, unchanged, or whether it agrees with the British Parking Association that something is fundamentally wrong with the clause.

Edmund King: Our point on clause 54 is the fact that we support the outlawing of wheel-clamping on private land, which is something we have campaigned for. As

Patrick Troy pointed out, there appears to be an anomaly with the question of barriers. That needs to be tightened up.

Q421 Gareth Johnson: When you said in your submission that you do not feel that there should be any dilution of the clause, what you mean is—

Edmund King: Outlawing of wheel-clamping on private land per se.

Q422 Gareth Johnson: Therefore, you would like to see it changed, but you do not want to see the principles diluted.

Edmund King: Yes.

Q423 Michael Ellis: There is some recognition, then, that this provision goes a long way to addressing a decade of cowboy practice and you are happy with that. Is it not fair to say that there is a difference between wheel-clamping and ticketing, in that wheel-clamping, which immobilises a vehicle, is far more intimidating than ticketing would be? Of course, intimidation would also be possible with ticketing, but it would require the official to remain in situ to wait for the offender—I use the term loosely—to come back, whereas now, the offender can drive off and wait to be called to come back, and the intimidation happens then. There is quite a big difference.

Edmund King: There is. I accept that point. The intimidation comes in a separate way through ticketing. On our main concerns, I can give a couple of recent examples from colleagues at the AA; perhaps they should learn to park a bit better. When parking in a supermarket, one person strayed over one of the white lines; it was a big, empty supermarket, with no one parked there. Because they had strayed over a line, they got one of those private tickets. We said to the young lady concerned that she should try and appeal, and perhaps not pay it. The intimidation was the threat of bailiffs and the fact that her husband was out of work and did not want his credit rating to be affected. There are immense problems with bailiffs, and that system seems to be almost as lucrative as it is for some of our friends.

If we look in this edition of *Parking News*, which I went through this morning, there are 29 advertisements for bailiffs. You can take your choice from the “big and bold” bailiffs, or those who use pictures of stars at night to make it seem a soft, cuddly thing. Our concern about intimidation is that, no, it is not as bad as having your vehicle taken hostage but we have numerous cases of people who pay up because they are scared of the bailiffs.

Michael Ellis: I should declare an interest, because I have been clamped by a private organisation. [*Interruption.*] “Probably correctly,” Mr Tami says.

Mark Tami: No, I said you probably just bought a new car.

Q424 Michael Ellis: No, I did not. Mr King, on a serious note, Scotland has not permitted clamping of this sort for 20 years; it got it right 20 years ago. What

do you have to say about that? Does that example provide any useful lessons that should be reflected on, not only in respect of the provisions of the Bill but the points that you are making about ticketing?

Jo Abbott: May I respond to that? It is quite difficult to get hold of information about what actually happens north of the border on private land when it comes to nuisance parking and so on. However, it is quite plain from reports about ticketing that it is not the cosy situation we might be led to believe it is. In fact, Mrs Anne McGuire MP reported to the Commons that she had encountered ticketers on private land who had been threatening; their other behaviour was not very good either.

It is worth noting that the business of ticketing, as well as wheel-clamping, needs legislation. We need regulation in this area. When ordinary members of the public park, they need to feel that regulation will take care of them; there are nearly 30 million licence holders in this country, so that means that nearly every adult member of the population at some time parks a car or is involved in parking a car. The processes that are in place to protect them on private land are completely obscure, and that applies not just to their obligation to buy tickets and so on but to how they might appeal when things go wrong. Clearly, the population of Scotland has not been particularly advantaged in purchasing tickets or receiving penalty tickets as a result of no wheel-clamping, and I think that the Government should look extremely carefully at what might happen after a wheel-clamping ban.

Q425 Tom Brake: I have a question for Mr Troy. To return to the barrier issue, although clearly no wheel-clamper is ever justified in extorting huge amounts of money from people, is it not the case that at least with a barrier, the driver knows that it is a barrier, as long as it is clearly indicated, and that they are going on to land where there is some control, whereas normally the issue with private land is that people do not necessarily know that they are going on to private land?

Patrick Troy: The difficulty is that there is private land and private land. We need to define what we mean by it, because some of us might be thinking in terms of supermarket car parks, residential car parks serving flats, or our front drive. All are private land, and then you get into areas such as motorway service areas and hospital car parks. It depends what the private land is being used for, and whether a barrier is appropriate.

Of course, barriers are appropriate in many situations. I mentioned earlier the typical multi-storey car park. We would not expect to see one without barriers, but should you always expect to see barriers on people’s front drives? Should you always expect to see them in hospital car parks? It is horses for courses, I think, and landowners should be given the right to determine how best to control their land. Our primary concern with the legislation is that it removes from landowners the ability to make that decision.

The simplest way to describe this is that there are just four ways to control parking on private land: clamping, removing the vehicle, using barriers or gates with chains, and ticketing. The Bill proposes that two of those disappear completely, and that the other two remain. If that is the case, barriers will have their place, as they do now, but for situations where barriers do not apply,

ticketing will be the only alternative. That is why it is really important that a way is found to regulate ticketing properly. As we have heard, it is not regulated at the moment and it needs to be.

Q426 Tom Brake: On the issue of no longer being able to take away a vehicle, what is your, and perhaps other panel members', expectation of how a vehicle that is parked dangerously on private land will be removed, either by the police or the public authorities? How do you see that working?

Edmund King: Clause 55 allows the police to go on to private land, and we certainly support that. It is interesting that in the police recovery scheme towing away is £150; in the BPA code it is up to £250. The police have statutory guidance on what they charge, so we would support that.

Jo Abbott: The police might have the means to do that, but the RAC Foundation very much doubts that the police would actually come out if a car were just causing a nuisance. If it were absolutely causing a danger, presumably they would come out. Nuisance parking concerns the public much more than dangerous parking, because it occurs more frequently. Even the Home Office's impact assessment stated that the police would regard that—coming and towing away a car—as a discretionary act. They would not see it as a duty. I do not think that gives the public very much confidence.

Patrick Troy: It is worth saying that as a result of this legislation coming up we have been approached by a whole range of different landowners—the Association of Residential Managing Agents, the Federation of Private Residents Associations and the British Property Federation—all of which have real concerns about the ability of the police to assist when the ban is in place, and the inability that the landowners will have to control their own land, particularly in residential properties. I have been struck by the fact that there are an enormous number of residential properties around, such as blocks of flats with car parking, close to railheads or shopping centres, which are plagued with illegal parkers. Those residents' associations use the threat of clamping to achieve a level of compliance, so that residents can find a space to park when they return. When the legislation goes through, those signs will have to come down, because they will mean nothing. The landowners are concerned that simply to rely on the police in all those thousands of situations is unreasonable and cannot be expected. I do not think that the police will be in a position to respond to that kind of demand.

Edmund King: That situation has been somewhat exaggerated, because the police do not do that themselves; they have a recovery scheme and they use their agents. Indeed, it is used on motorways many thousands of times a day. The police authorise it, but they have private agents that actually carry out the towing for them. I think the AA does some of it on motorways. It is not just a question of police resources.

Q427 Vernon Coaker: There is unanimity about the agreement to outlaw clamping. The problem is what you put in its place in order to protect private land. I was interested in what Mr Troy said. His preference was, it appears to me, for some sort of licensed businesses operating some sort of ticketing system, so that rogue

ticketing does not occur. The Government's preference is to give new powers to the police, to local authorities and to those peculiar "others", who are not defined. That leads us to the same thing; are we going to have others doing ticketing instead of clamping? I just wondered what the preference of the other witnesses would be for protecting private land. If we are saying it should not be clamping, what system would best enable residents, hotels or whoever to protect their private land, given that sometimes it is just a bit of open space near a railway station?

Patrick Troy: I regret to say that there is not unanimity on the proposal to ban rogue clampers.

Q428 Vernon Coaker: I am sorry, I rephrase that. You are quite right, it is to ban rogue clampers. I wonder what everyone else would say. Apart from that, was it a fair summary of your position with respect to some sort of licence system and proper implementation?

Patrick Troy: We realise that the Government do not want to regulate in this area, so there is an opportunity for independent regulation, which is somewhere between self-regulation which we have at the moment to a degree, and no regulation or legislative statutory regulation. Our proposal for independent regulation is to make it a requirement for any parking enforcement operator to be a member of an accredited trade association; in the same way, the Government have already introduced that principle in relation to accessing DVLA keeper data.

Q429 Vernon Coaker: Using clamps or tickets—or either?

Patrick Troy: It could apply to clamping and ticketing. All private parking operators would need to be members of an accredited trade association, comply with the code of practice and be subject to the disciplinary code that would be in place to ensure that if they did not comply with the code they would be expelled and no longer be able to operate. That would deal with the problem. It is similar to the proposal under the Crime and Security Act 2010 in terms of licensing operators. I know that is not the Government's preferred option, but it is an alternative that we worked up. It would be a cheap solution and quick to operate.

Bill Butler: We have talked about the rogue clampers, and I suspect that I am one of the few people who routinely engage with people who operate as clampers when they are not clamping. The corollary of there being rogue clampers is that there are also people operating legitimately. There are 10 companies that clamp who are members of our approved contractor scheme, which means that they operate to quality standards. It would be worth remembering when we talk about rogue clampers that there is a legitimate part of the industry who are not rogue clampers, or as it says in my briefing note, "rouge clampers".

Edmund King: First, whether or not they are rogue clampers, one has to question whether, in a civilised society, immobilising someone's car under duress is the best thing to do. There are numerous examples. An 18-year-old girl going to Birmingham to see a concert paid at a pay-and-display machine, but because there was an encore at the concert she was 10 minutes late getting back to the car; it was a reputable clamping

company but it clamped her car. She was stuck in Birmingham at midnight on her own, but she lived in Cambridge. Is that just in this day and age? I think not. I therefore think that it should be outlawed.

If clamping is outlawed what should we do? What did the people in Scotland do? Where they could, where it was appropriate, people put up a chain or put up a barrier. I accept that it is not appropriate everywhere, but it would get rid of some of the problems. Frankly, that would get rid of some of the enterprising parking companies that are basically doing it for the money and not to control parking. There is a lot of that going on.

With ticketing, what do you do? With on-street ticketing, there is a good independent appeals system: the Traffic Penalty Tribunal, which is independent, and is accepted by motorists and local authorities. The parking companies pay it a levy of approximately 65p per penalty charge notice to pay for the system. It is perceived to be a fair system. That certainly is something that we would support.

Is that enough on its own? Maybe not, because what you then see is that some companies will charge outrageous amounts. An AA patrol recently got clamped while fixing someone's car on a private road, and was charged £1,080—including £50 for swearing, which I thought was a bit excessive. We polled 12,000 AA members only last week, and asked them, "Do you think private parking enforcement activity should be licensed?" Forty-nine per cent. said they thought it should be licensed by local authorities, just as they licence pubs or whatever. In order to get a license to ticket on your land, you would sign up and say that you would not charge more than x amount. You would put signs up, there would be safeguards and there would be an independent appeal. Forty-nine per cent. supported that, and 49% thought it should be controlled through legislation by the Government, which the Bill is trying to do.

There will be ticketing. We do not support motorists parking where they want, when they want and how they want. They should not do that. We feel that it has gone too far the other way. There are things that landowners could do. If there is a ticketing system, it should be a fair and just ticketing system, rather than a system where a pensioner gets charged £150 for posting a letter before they go into the pub. That is just not fair.

Bill Butler: We looked at the average release fees. While there is a wide range, our research, which was carried out between January 2006 and February 2007, showed that the average release fee for a vehicle was £87.

Edmund King: I invite you to look at our clamping dossier. You will find that the average fee is a lot higher than that.

Bill Butler: That is the result of our independent research.

Diana Johnson: In Hull, when I was clamped, it was £250 in cash to have the clamp taken off.

Mark Tami: She can't afford to buy a new car.

Q430 Diana Johnson: Returning to the issue of police involvement, do the panel have an understanding of what happens when the police are called to remove a car from private land? Is that a cost that the police will have

to pay themselves, or will they get that money from the private landowner? I want to know how it will be paid for. We know that the police have reduced budgets and are under pressure. I am trying to work out how it will work.

Edmund King: The way the police work with contractors on motorways is that it comes out of the fee that the motorist pays. In that case it is £150. Some of that goes to the police for administration and some of it goes to the contractor who physically removes the car. It is self-financing in that sense.

Q431 Diana Johnson: On the ticket that the person receives on their car, be it £100 or £200, will there be an additional amount on top? Obviously it will not be removed straight away, will it?

Edmund King: If the police were called to remove the car under these powers, the police would charge the car owner £150.

Patrick Troy: But there will be confusion, which is what you are getting at. The private landowner will have ticketed that vehicle, because they are able to, and the police will then have removed it. The driver or keeper will be liable for the ticket and for the release fee for the removal of the vehicle. There will be some confusion created, I suspect, as a result of that activity.

Q432 Diana Johnson: As a matter of interest, can you appeal the cost of the police removing the vehicle, if you are the owner of the car? Is there an appeal process for that?

Edmund King: Currently, it is not used on private land, because the police do not have the right to do so. It is currently only used on the highway or on the motorway and so on. If your car is removed from the side of the motorway, you have to pay for it, or you will not get your car back.

Q433 Clive Efford: Mr Butler, can I clarify something with your authority? In the brief it says that you carry out functions relating to licensing individuals and the voluntary approval of companies. Just for my sake, what does that mean?

Bill Butler: We license individuals who are allowed to clamp. Currently, fewer than 1,800 individuals are so licensed. They are licensed on the basis of a criminality check and a nationally accredited competency standard; they have to pass an examination, and there are certain sector-specific licence requirements on them, although they operate as employees on the whole. We also have an approved contractor scheme, which is a quality hallmark, whereby businesses across the private security industry can demonstrate that they meet national and international quality standards for how they work. That is a voluntary scheme, and 10 companies that use clamping are accredited as approved contractors, although they are not all exclusively clamping companies.

Q434 Clive Efford: But everyone in the industry has to be registered with your authority.

Bill Butler: Every individual. It is fair to say that there is a limit to what that can do, which is why the consultation on business licensing took place.

Q435 Clive Efford: Everyone is registered. What percentage of the industry complies with the rules that you set out?

Bill Butler: I could not speculate, but I can tell you that in the research period, 11% of the correspondence that we received at the SIA relating to complaints came in respect of vehicle immobilisers. There are a total of 350,000 licensed individuals, so it is a very significant percentage. Most of those complaints were about the policies of companies, not about the behaviour of the licensed individuals.

Q436 Clive Efford: Out of nearly 1,800 immobilisers, only 28 have had their licences revoked.

Bill Butler: Twenty-nine have had them revoked, and 322 people who applied never got a licence.

Clive Efford: Given the volume of complaints about activities in this industry, is that acceptable?

Bill Butler: The complaints tend to be about signage, levels of charges and the policy of the companies operating, not about the behaviour of the individuals who are licensed. Whenever there is a complaint about the individual, it is investigated to determine whether they have broken their individual licence conditions. It is not a control on the company; it is a control on the individual.

Jo Abbott: One of the reasons why the SIA has not collected more complaints—specific complaints—is that the public have found it extremely difficult to communicate with the SIA. The various motoring organisations have had hundreds of complaints, and most of them have been prefaced by the fact that they could not get through to the SIA. They would not answer the telephone. They could send an e-mail, but even on the ISA's website, it said that the e-mail probably would not be responded to. I know that the SIA has been trying to operate with its hands tied behind its back, but the SIA did not regulate the amount of the release fee. This is something that the Government could have done initially. They did not regulate the time taken to release the clamped vehicle. Nor did they regulate on the adequacy of the signage at the site where the clamping took place. So regulation really let the public down.

The legislation on clamping was fudged in the first place. Unless things are put right for the motorist, we might be here in another 10 years discussing how we might correct matters.

Edmund King: The SIA system licensed the individual, but it did nothing to stop unlawful clamping, so the SIA would not be interested in the case of someone being charged £1,000. That is not within its remit. It is only interested if the clammer has a licence. In effect, that meant it was a licence to print money. If anyone questioned the clammer, they would show you their SIA licence and then just get on with it. The system was a total failure.

Q437 Lynne Featherstone: How many of the clamping companies also ticket?

Bill Butler: We do not license for ticketing; only for clamping. I do not know, but I imagine that a number of them do. The information that the individuals who run the businesses have been giving to us over the past year is that they would move to ticketing because they did not need to be licensed to do that.

Patrick Troy: I may be able to assist. Our membership includes ticketers and clampers in our approved operator scheme. The vast majority do both—clamp and ticket. I think there are 12 out of 150-odd members in that scheme who only clamp. But of course they are not the rogue clampers, because they only clamp. No one knows how many rogue clampers there are.

The Chair: We will move on to the subject of unpaid parking fines.

Q438 Diana Johnson: Could the panel talk through the issues about making the keeper of the vehicle liable for the unpaid parking fines that may be incurred under the provisions of the Bill? Can you explain that, because it is quite difficult to fully appreciate how it will work?

Patrick Troy: Perhaps I could start with the BPA, which raised the issue in the first place. There has always been a concern about private land that, because it is unregulated and not subject to any regulatory law, landowners rely on the law of contract, or sometimes trespass, in order to carry out activities on private land. Under those laws the driver is liable, because it is the driver who has committed the act or misdeed, but of course they are unknown; only the keeper of the vehicle is known because they are registered at the DVLA.

The principle of keeper liability is nothing new. It applies under the Road Traffic Act 1991, which was repealed by the Traffic Management Act 2004, for all local authority activities. If you get a penalty charge notice on a yellow line you will be liable as the keeper of that vehicle. That is enshrined in that legislation and has been the case for 17 years, so it is a principle that is well understood by the motorist. May I also say that it applies in local authority car parks as well, so you can have a situation where the keeper is liable in one car park, but in the car park next door, which happens to be privately run, the driver is liable.

We have argued that particularly if clamping is to be banned, there must be a means by which landowners and their operators can manage their land properly through ticketing. The only way to do that is to make the keeper liable. There needs to be protection, and that is why we are arguing for regulation around this to ensure that that notion is not abused in any way. It would work simply by the operator issuing the ticket to the vehicle in the traditional way. The recipient of the ticket does not pay, so the operator applies for keeper details from the DVLA and writes to them to say "You must pay this ticket." It is exactly the same thing as local authorities already do up and down the country. The missing piece of the jigsaw is that there must be an independent appeals service in order to protect the keeper when they argue that they were or were not the keeper, or that they sold the vehicle, or whatever.

Edmund King: This is our major concern, because the difference is that under the Road Traffic Act, regulations are laid down by the Secretary of State that govern parking, and the restrictions, and then the companies can chase the keeper. That is regulated. If the clause was introduced without some kind of regulation system I think it would be a constitutional anomaly, because you are basically saying that an individual company could chase the keeper when there were no set rules or regulations that that driver had entered into. He entered into a contract if he did or did not see a sign. If he did not see the sign, the keeper can then be chased, and harassed by

bailiffs and so on. I do not think that the clause can stand unless it is backed up by an independent appeal process and/or licensing, or another form of regulation.

Vernon Coaker: Jim Shannon wanted to ask the same question because he has had a lot of representations, particularly on the point Mr King has just made about the pursuit of the keeper of a vehicle rather than someone who had driven it to a particular place. Mr Shannon had to go to another meeting in the Commons, but he asked me to make sure that that was put on the record.

Q439 John Robertson: I once got a parking ticket from London. Unfortunately I was not in London, but Glasgow. It all happened because of a cloned number plate. With this clause, if a cloned number plate was found, what can the keeper of the original car do to say, "I wasn't there"?

Edmund King: That is a concern for us. Currently there are a number of cases like that. Recently someone was chased for being in a McDonald's for 41 days. He went into the car park and his number plate was photographed, and then he left. He returned to the same McDonald's 41 days later, but the system was so poor that it only picked him up going back. In a case like that the keeper would be chased, even though he had a legitimate reason or otherwise for going to McDonald's. I think there are number of cases like that that come up; if the number plate is read incorrectly, or if it is a cloned plate as you say. That is why we would be concerned about this clause without something to back it up.

The Chair: If Members have no further questions for this set of witnesses, that brings us to the end of this part of the evidence session.

3.31 pm

The Chair: We will now hear evidence from Andrew Rennison, the interim CCTV regulator, and Steve Jolly, of Birmingham Against Spy Cameras.

I call Vernon Coaker to ask the first question on CCTV.

Q440 Vernon Coaker: Thank you both very much. Mr Rennison, could you just say something about the figures with respect to CCTV? The figure that is often put out is that there are 4.2 million CCTV cameras; in fact, it is sometimes put higher than that. When the witnesses from the Association of Chief Police Officers came on Tuesday, they said that they thought that the figure was actually about 1.8 million. What is your view on this? Have you made an assessment of the number of CCTV cameras?

Andrew Rennison: It is almost impossible to assess and I think that it is one of the large gaps in our current knowledge, quite frankly. I think that it is high time that we had a proper assessment of the number of cameras and the scope of surveillance. I am pleased by the work that Graeme Gerrard has done in Cheshire, because it helps to shed more light on this issue. His work was quite a detailed account of all the cameras within his force area—within the county—and then there was an extrapolation. I think that that is more accurate than the 4.2 million figure.

Q441 Vernon Coaker: You think that Mr Gerrard's figure is more accurate than the 4.2 million figure.

Andrew Rennison: Yes. But the key point for me is that, whichever way you look at the figures, the number of cameras owned by the local authorities is always a small percentage. So, whichever way you look at this, the largest percentage of cameras is actually in the private sector.

Q442 Vernon Coaker: Again, I am speaking from memory and I will be corrected if I am wrong, but it was said that the Bill would apply to approximately 29,000 or 30,000 cameras. In other words, the number of cameras affected by the provisions in the Bill is a very small proportion of the total number of cameras. Is that right?

Andrew Rennison: Initially, I think that that is correct. The CCTV User Group put the number of cameras in public ownership at about 50,000 to 60,000, so it is a small part of the total. I have long argued that regulation of CCTV cameras or surveillance cameras should encompass this broad scope and not just those cameras in local authority and police ownership. That is something that I have discussed with colleagues in Scotland, because they are developing their own CCTV strategy. I spoke at a conference a few months ago and initially I was critical of this approach of just starting with the publicly owned cameras. I thought that there should be a much broader push to start off with. A lot of the cameras I described as being in quasi-public ownership are in shopping centres and areas to which the public have free and ready access. Is there any real difference between those and local authority-owned cameras?

Having spoken at length to colleagues in Scotland, I was persuaded that the proper approach is to start with publicly owned cameras and test the water with codes of practice or whatever you want, with the full intention of expanding it later on. Trying to do all in the first throw of the dice is probably almost unachievable and puts too much pressure on things, but we have got to leave the door open to regulate much more widely further down the road.

Q443 Vernon Coaker: So the Bill should use as a starting point police and local authority cameras, but we should leave open the option of moving on? From memory, I am not sure whether there is anything in the Bill that enables the Secretary of State, by order-making power or whatever, to extend the scope of the number or type of cameras covered by the Bill.

Andrew Rennison: Yes. That is perfectly possible. I think that a lot of that will come out through the Bill into the codes of practice as well, because a lot of the detail will be contained within the codes.

Q444 Vernon Coaker: Do you think that the codes should be mandatory?

Andrew Rennison: No, I do not, at this stage. I think that the way that they are set out is more than sufficient. We have quite a good track record in the UK of complying with codes of practice along those lines, but again, the door is left open for mandatory or stronger legislation if needed. Let us see how it works. We have a lot of consultation to go through yet, with people such as Mr Jolly and many others. There are a lot of discussions

to have, and I want to be part of that before we decide once and for all how it will work. Codes of practice give the flexibility to deliver what is needed. Legislation can become restrictive if you have a statutory-based approach to it in the early days.

Q445 Gareth Johnson: Building on the answers that you have just given, am I correct in saying that if I were to go out and buy myself a closed circuit television camera system and put it up in my house for my own private use, there is no real way of telling from the figures that I own that camera? Therefore, is it fair to say that it is little more than a guesstimate to say how many cameras are in public rather than private ownership?

Andrew Rennison: It is. None of those figures are very exact, because not everyone is obliged to register their systems. There is no mechanism for registering every single camera.

Q446 Gareth Johnson: Already this Committee has heard two or three different figures on the percentage proportion of private rather than public cameras. Is it fair to say that those figures are little more than a guesstimate?

Andrew Rennison: I think that there are some intelligent guesstimates going on, but I would not describe them as robust.

Q447 Gareth Johnson: Do you agree that, inevitably, different considerations will need to be made when considering regulations or codes of practice for private cameras as opposed to public ones?

Andrew Rennison: I am not sure I do agree. My view is that the codes of practice should start with high-level principles that everyone complies with, regardless of where the cameras are and who is operating them—principles of respect for privacy and accountability. We might have to think through how they are applied in different situations, but I do not see why we would want any real difference between public and privately owned cameras. I can quote you examples of privately owned cameras with equally troubling privacy issues, such as collateral intrusion into neighbours' gardens and other areas.

Q448 Gareth Johnson: But would you not accept that there are different obligations on a local authority, for example, that puts CCTV cameras on a high street that show banks, people walking around doing their normal shopping and so on, and on a private individual with a fixed camera that operates only on their own private land?

Andrew Rennison: Yes, of course. If it operates only on their own private land and there is no intrusion into the public realm, of course there are different obligations.

Q449 Tom Brake: Do you expect that as a result of the Bill, fewer camera systems will be installed, or some existing systems will be switched off?

Andrew Rennison: I think that that is possible, but I think that there are other pressures as well that will cause systems to close. There are financial pressures on systems that might well have an impact. Part of the development of the codes of practice has to be an

impact assessment of the cost of regulation, and whether that might cause systems to close down. That has not been worked through yet. Codes of practice could yet come with some quite costly requirements, which might have an effect on the number of cameras or systems.

Q450 Tom Brake: Would it be any part of your role to look at the cost of the regulation?

Andrew Rennison: Ultimately, yes. Whoever develops the codes of practice as a regulatory function will have to do an impact assessment, which will have to look at the costs, the benefits and all the risks of doing or not doing it. I would be quite pleased to be involved in that.

Q451 Tom Brake: In terms of the effectiveness of CCTV systems—it came up in earlier evidence—have you done any work on looking at it in terms of crime reduction or reducing the fear of crime? Is the evidence clear-cut? In the past, Home Office evidence has suggested that certainly CCTV systems in car parks might be effective but, beyond that, it is not clear how good they are at cutting crime, for instance.

Andrew Rennison: That is probably the most hotly debated area around camera systems, surveillance systems, CCTV systems. I have not commissioned any research—I have no budget to do that—but I have recommended that more research be done. I think we would need to be very careful about the design of some of that research.

The research that is often quoted currently is actually quite dated, so we have people like the Campbell Collaboration who in their 2008 report neatly summarised 46 other research projects, the oldest of which was from 2006. Systems and uses of surveillance cameras have changed significantly since then.

If you can call it research, I have spent a good deal of my time visiting users of camera systems and police forces such as Cheshire, Greater Manchester and the Metropolitan police, to see how they have changed their use of the information—the images. Since I left the police five years ago, the police use of CCTV systems has changed quite significantly for the better.

The research we saw up to about 2006 was in a period when I do not think that the systems or the product were used particularly efficiently. I have seen quite a sea change in that use. Also, the technology has changed, making the product much more useable, so it is high time we did some up-to-date research, to see how people are using the product and how the product has improved, because digital technology is providing a vastly improved image quality. There is more scope there.

The flip side of that for me is that while this improvement in technology will have an impact on the effectiveness of CCTV, it also puts us on the cusp of a whole new series of problems, which I think is a clear reason for good regulation now. The technology has the potential to have an enormous impact on privacy. The modern megapixel cameras that are being put in, which are very affordable nowadays and easy to install—you can plug them into a network or into internet systems quite easily—have very clear images, with powerful optical and digital zooms. In the past, Mr Brokenshire's face in the crowd would not have been particularly clear or discernable, but that is no longer the case with more modern systems. It is much easier to pick people out in a crowd, and it is much easier to identify someone.

Add to that the advances in the software in the background—facial recognition and other software is still a few years away from being very effective, but the improvements are rapid—and that will change the picture, if you will excuse the pun, quite significantly. I think it emphasises the need for regulation now.

Q452 Michael Ellis: Mr Rennison, how do you anticipate that the proposed role of the surveillance camera commissioner will differ from your current role? What advice, if any, would you have for how that role should be developed?

Andrew Rennison: The majority of my role at the moment is actually regulating forensic science and the quality standards in the science. I got involved in CCTV cameras because there is an overlap between the two roles. When the police and others recover images and use them—if they have to do some analysis and enhance them for other work—that for me is a forensic process and has to comply with the basic rules on the use of forensics.

Q453 Michael Ellis: How often would it happen that the police would want specialist forensic analysis as opposed to ordinary viewing?

Andrew Rennison: That is quite remote, but even ordinary recovery and viewing is a basic forensic process. You still have to manage the continuity of the evidence and it is still an exhibit, so in the broadest definition of forensics, it is a forensic process. My interest is in the analytical work, such as facial recognition—facial comparison, rather—gait analysis and some other podiatry specialisms such as height analysis.

Q454 Michael Ellis: It would differ from your role a fair bit?

Andrew Rennison: It will, but there is an overlap. For example, I am working on developing standards for the expert processes in video analysis. We are doing that now. We will do some audio stuff as well shortly. But I am working to codes of practice, so in my current role I have decided that the best way to regulate the quality standards in forensic science is to publish codes of practice. There is no statutory underpinning to those codes. They are in effect voluntary codes, but we are finding ways of enforcing them that are proving, in some areas, quite effective, such as through police contracts or agreements with the Crown Prosecution Service to take a gate-keeping role. Codes of practice work for me and I have got them working in the area I am involved in.

Q455 Michael Ellis: That is interesting. I was about to ask you a supplementary about codes of practice and penalties therein. You are finding that they work quite well for you and you are finding ways of enforcement?

Andrew Rennison: We are in the forensics world, but the door is always open to talk about mandating them if we need to. I am just beginning to open those discussions, because you have early adopters—the people that will always step in and comply quickly and easily—but you also have to think about the tail-enders.

Q456 James Brokenshire: It might help the Committee if you gave some background on your appointment as the interim CCTV regulator—how it arose and the issues that led to your appointment.

Andrew Rennison: It goes back to the previous Government. I think that you, Mr Coaker, were leading in the Home Office on this at the time of the national CCTV strategy and the work that Graeme Gerrard was leading on. A commitment was given then to have some independent oversight of the quality of the use of CCTV. I was approached by Graeme Gerrard's team and the National Policing Improvement Agency to see how my model worked in the regulation of forensic science quality standards. So it was the building of codes of practice and voluntary compliance. The codes of practice were achieved through intense consultation, consensus and agreement.

What you find is that the vast majority of people out there just want some leadership and guidance and to work with you on these issues. They looked at how things were working for me in the forensic science world and said, "We think that could work very well in the CCTV world. Would you like to take on some of that work for us as the interim CCTV regulator?" That was working to the national CCTV strategy, so we set up a framework around that and we set up a new strategy board. I was on the verge of publishing a paper, a plan, for consultation and pulling together an advisory consultation group when the general election called a halt to things.

Q457 James Brokenshire: So there was a feeling even at that stage that there was a desire for standards, regulation and a code of practice?

Andrew Rennison: Yes.

James Brokenshire: Your experience over that time—what was your relationship like with the Information Commissioner, who gave evidence this morning? One of the issues that has been highlighted is the potential interconnection, or overlap, and therefore the need for different regulators perhaps to operate effectively together.

Andrew Rennison: I have now a very good working relationship with the Information Commissioner's office, with Mr Jonathan Bamford. I do not know whether he was one of those who gave evidence this morning, but he leads on surveillance camera issues. I have had three or four meetings with him now. We remain in touch and we will continue to do so—it is a very effective relationship. But that is how I work. My work in the forensics world and in the CCTV world is all about engaging with the key stakeholders and building those working relationships, and that includes working with the Information Commissioner.

Q458 James Brokenshire: The previous Information Commissioner published a CCTV code of practice. Has that had a jarring effect or anything like that?

Andrew Rennison: No. What was published was a very effective code. A lot of thought will have to be given to how that fits into, sits alongside or sits within a new code of practice. My initial thought is that it probably sits slightly apart, but there is clearly a very strong link. It is something to build on without a doubt.

The Chair: Mr Jolly, we have a couple of questions for you now.

Q459 Mr Robert Buckland (South Swindon) (Con): Welcome, Mr Jolly. Thank you for attending. The name of your organisation may give away your basic concerns about cameras but I was wondering whether you could

outline to us in brief your main concerns about the use of camera surveillance systems operated by the local authority or by the police.

Steve Jolly: I did not have particularly strong objections to CCTV cameras before last spring, when more than 200 cameras were installed to encircle two communities in Birmingham in what was described as a ring of steel of automatic number plate recognition cameras. Basically it created a surveillance ghetto in those two areas. It struck me as an obvious shift in the relationship between the citizen and the state and a step change in British policing. What appeared to be happening was that we were importing the policing strategies that had been developed in Northern Ireland and installing them in British cities as if that were perfectly normal and acceptable. I thought that if that were allowed to go ahead there, then it would be allowed to go ahead elsewhere until eventually it became the norm, which I think would be very wrong.

Q460 Mr Buckland: Do you think that the proposed code of practice as outlined in the Bill would be a significant and welcome step forward?

Steve Jolly: No, I do not. The code of practice is really an enabling Act which facilitates the proliferation and expansion of the use of surveillance cameras. It is concerned mainly with technical standards to do with compatibility and networking of systems. As described in the code, it is designed to be an A to Z manual of how to get the most out of your camera systems. It does not appear to have anything to do with protecting the rights of the individual. There is nothing in there about protection from surveillance.

Q461 Mr Buckland: I am looking at the provisions in the Bill. Clause 29(3)(i) refers to

“procedures for complaints or consultation”

and paragraph (g) refers to

“standards applicable to persons using or processing information obtained by virtue of systems”.

So is it not unfair to say that it is just a process guide? Are there not some welcome steps that lead more to the substance of your concerns than perhaps your evidence so far suggests?

Steve Jolly: No, I disagree. I think that we are discussing minute details rather than fundamental principles to do with freedom. The Bill and the provisions in the code of practice relate to things like how long we should retain personal data and specific details like that, rather than whether it should be taken in the first place. So, yes, there may be a complaints procedure. You mentioned consultation. Will that be an informed, proper, genuine consultation that takes account of the facts, which have not been made known to the British public, or will be it be a box-ticking exercise where we are simply told that the people want it: “We asked them if they wanted it; they said they wanted it and therefore we will install it”?

Mr Rennison referred to the Campbell Collaboration report. It is a great shame that that report, which was highly significant in illustrating the ineffectiveness of CCTV, was missed by the Lords Constitution Committee and its report into citizens and surveillance. The Campbell Collaboration report came out just after the Lords debate and report but it would have had a huge impact on the Lords report because its key finding was that

CCTV schemes in city and town centres and public housing, as well as those focused on public transport, did not have a significant effect on crime. That was not just a one-off in the research; it echoed and reinforced much of the research that preceded it.

That is not what the British public understand about CCTV. They are constantly told that it works. Every single day there will be at least one story in the media about CCTV that gives the impression that it is how we fight crime now. There is a huge gulf of disparity between the public perception of CCTV and its actual capabilities. CCTV has been promoted by successive Governments because, for whatever reason, it has been seen as either a generally good thing for society or a popular thing for MPs, councillors and Ministers. I do not think it has been driven by factual reality. If we are going to consult the public, we need to ensure that the public are properly informed, not misinformed.

Q462 Mr Buckland: May I make one final point? Thank you for your evidence, Mr Jolly. Clause 29(3)(a) states:

“Such a code may, in particular, include provision about considerations as to whether to use surveillance camera systems”.

Does that not encapsulate the considerations about having an informed debate, in a local area, say, about whether it is appropriate to even install the cameras? Does that not cover at least some of the concerns that you have properly raised?

Steve Jolly: It hints at it, but it does not provide any detail. There is more cautionary information in this document from 1994, which warns about the potential negative impacts on society that CCTV may have. It points out the drawbacks and the extent to which it can often fail to live up to expectations. So this document from 17 years ago is much more measured than the Bill we see before us today.

Q463 The Chair: I am sorry to interrupt. Will you tell us what that document is?

Steve Jolly: It is a Home Office guidance document called “CCTV: Looking Out For You”.

Q464 The Chair: And that was 1994?

Steve Jolly: Yes. We seem to have gone backwards in our thinking since then. The technology has advanced dramatically and incredibly rapidly, but the thinking on how to govern the issues of personal privacy and personal freedoms has not moved with it. In fact, if anything, it has gone backwards.

Q465 Mr Buckland: I agree with what you say, but is the Bill not at least a step back to try to redress the balance that you quite rightly raise?

Steve Jolly: I cannot see anything in the Bill or the code of practice that restricts or limits the use of surveillance cameras. In fact, the Home Secretary emphatically stated that—I cannot remember her exact words—there will be nothing that would hinder the use of such technology for the use of crime prevention. There do not seem to be any restrictions. There is nothing about limiting CCTV in schools or toilets, which would certainly be worth mentioning. It seems as if the code of practice is designed to standardise technical equipment issues to enable

networking. The focus is on the efficiency of the systems, not the privacy of those people who are being watched by it. That is my view.

Q466 Gareth Johnson: You said you were not against CCTV cameras per se until this ring of steel, as it was called, in Birmingham? Is that correct?

Steve Jolly: Yes.

Q467 Gareth Johnson: And in response to that, you set up the group Birmingham Against Spy Cameras? Presumably, therefore, if that ring of steel had not been created, you would not have set up that group and your attitude towards CCTV would have been as it was before, when you had no particular issue with it?

Steve Jolly: It was not a subject that I had given a great deal of thought to prior to that happening.

Q468 Gareth Johnson: What I am suggesting is that it seems as if your objection is the manner in which CCTV cameras can sometimes be used, rather than their very existence.

Steve Jolly: It might appear that way, but what happened in April last year, when these rings of steel were installed, was that I began researching the subject, which is something that the average member of the public does not do. They rely on their local newspaper, the national television news or the comments of their local councillor or MP, all of whom say that CCTV is wonderful and it is the way we stop crime these days. If individuals actually do their own research, they will be shocked and horrified by the truth that they discover.

Q469 Gareth Johnson: I worked for 20 years in the criminal justice system and although I concede your point that sometimes public perception of CCTV cameras can be misplaced, case after case would not have been proved in court had it not been for CCTV cameras. Conversely, clients of mine have rightly been found not guilty, directly because of the evidence. I am not saying that that makes CCTV some sort of silver bullet, but that the cameras are a very effective tool, when used properly, in the combat of crime. Do you not accept that what the Bill is trying to do is ensure that we have proper use of CCTV, rather than any kind of abolition of it?

Steve Jolly: Those individual cases, which are always referred to in these sorts of discussions, do not, in my view, justify the creation of a total surveillance society, which is where we inevitably are heading. There are no restrictions and there is no limit, so there is no end to it. It is ad infinitum—keep adding more cameras. Of course you can find individual cases, but that does not, in my view, justify this massive proliferation and expansion. Whether we have 1.8 million or 4.2 million cameras—we do not know the exact figure, as Mr Rennison has acknowledged—the statistical probability of there being anecdotal evidence of their usefulness, as claimed by the police, is inevitable due to the sheer numbers and volume, but that does not prove that CCTV is an effective tool. We go to the academic research, which is peer-reviewed studies—a meta-analysis of 41 or 44 different evaluations—which I would give more credence to, and it says that it does not work.

Q470 Rehman Chishti: Following on from that, I have also been in the criminal justice system and have prosecuted and defended cases. Would I be right in saying that CCTV has a role to play, but that, with that, one has to balance the rights of one's individual freedom and liberty?

Steve Jolly: I think we have taken the completely wrong path. I think that we have used CCTV as a sticking-plaster to convince the public that we are doing something about crime, and that it is a very easy whim for a councillor or an MP to do that, particularly because it is so popular.

Q471 Rehman Chishti: We will have to agree to disagree on some of this, but can I move on to the role of the surveillance camera commissioner? What are your views on that?

Steve Jolly: The role of the surveillance camera commissioner?

Rehman Chishti: Yes.

Steve Jolly: I think we really ought to have a privacy commissioner, as they do in Canada, rather than a commissioner in charge of surveillance cameras. I fear that having someone in charge of surveillance cameras means that the focus will be on the effectiveness and integration of the cameras and the systems, rather than the protection of the privacy of the individual, which would be the remit of the privacy commissioner if we had one.

Q472 Rehman Chishti: In terms of the House of Lords Committee that you referred to, which looked at a legally binding scheme, what are your views on that with regards to the code?

Steve Jolly: Can you repeat the question?

Rehman Chishti: With regard to the code that will be in place, the House of Lords Committee came up with the view that it had to be a legally binding scheme. What is your view on that?

Steve Jolly: On the question of whether the code of practice should or should not be legally binding, I think it makes little difference to the protection of freedoms, because that does not appear to be the purpose of the code of practice. Whether the surveillance camera commissioner will encourage operators to abide by the code of practice, or whether it will be legally enforceable, makes little difference to the protection of freedoms, which is what the Bill is supposed to be about, not the improvement of surveillance.

Q473 Tom Brake: Mr Jolly, clearly the Birmingham camera scheme is what triggered your interest, but since then you obviously feel that the whole network is inappropriate or ineffective. Are there, however, individual systems around the country, like the Birmingham one, about which you have specific concerns about the way they were introduced or what people have been led to believe about their purpose?

Steve Jolly: There was much comment on the Birmingham system, Project Champion. Much of the reporting was focused on the targeting of the Muslim community. The one thing that everyone agreed on from the beginning was that it was wrong to have had no consultation with the communities affected. Liberty,

which gave evidence earlier, took on the case and was going to take it to judicial review until West Midlands police agreed to scrap the scheme.

Discrimination and the lack of consultation were not the only objections. As I said earlier to Mr Johnson, for me it was a redrawing of the relationship between the state and the citizen. What it represented to me, and what has made me look into the whole area since, is the idea that we are no longer citizens but suspects, and we are treated as such.

Q474 Tom Brake: I understand that, but I was asking specifically whether there are any other large-scale systems like Champion that have been implemented anywhere else where you think that there are interesting parallels with the Champion system.

Steve Jolly: There are. Recently, Royston in Cambridgeshire installed a ring of steel of ANPR cameras. I do not know exactly how many cameras it installed, but it has encircled the town with them. This seems to be a worrying trend. As I said, one of my fears was that that would become the norm. There is also the village of East Stoke in Nottinghamshire, which has been awarded an ACPO “Secured by Design” award. Despite the village having only 50 houses and almost no crime, it has been surrounded and saturated with ANPR and, I believe, CCTV cameras in an effort to completely eliminate crime. The assistant chief constable there said, “This is not about reducing crime, but about providing confidence and reassurance to the residents.” We have even lost sight of the purpose of surveillance. We just seem to have come to believe that it is a wonderful thing and that if we only had more of it, we would have a better society, and I think we have it the wrong way round.

Lord Peston spoke in the House of Lords Constitution Committee debate that I referred to earlier. Anna Soubry MP agreed with him in stating that we should be calling

for fewer CCTV cameras. In a debate on crime and policing last year, when discussing the issue with Hazel Blears, she said:

“That should be the aim of everybody in this Chamber”—[*Official Report*, 8 September 2010; Vol. 515, c. 387.]

Returning to Lord Peston’s comments, he said that

“if the public want these CCTV cameras—and my ad hoc experience is that that is true—what is the correct response that those of us in public life, not least the Government, should give? Should we say, ‘If it is what they want, then it is what they ought to have even though it is not backed by any evidence at all’? Or is it our duty to educate them and tell them that they are wrong?...I certainly believe that if all CCTV cameras do is reassure you when you should not regard them as doing so, then someone ought to say to you, ‘Why don’t you think about it a little bit and realise that you are mistaken?’”—[*Official Report, House of Lords*, 19 June 2009; Vol. 711, c. 1296.]

That is where we are with this problem. It is not just CCTV. I think the problem of the ANPR network is much greater because of its ability to interrogate databases and track citizens. I believe that ACPO intends to have the ability to track every vehicle from one end of the country to the other. That is already, according to the national CCTV strategy, a core policing tool, which was introduced with no statutory instrument or legislation. We are being told that it is now an accepted part of our national infrastructure. There has been no public debate.

The Chair: If Members have no further questions for the witnesses, that brings us to the end of our business for the afternoon. I thank the witnesses for their contributions.

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

4.10 pm

Adjourned till Tuesday 29 March at half-past Ten o’clock.

