



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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# **Data Protection and Human Rights**

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**Fourteenth Report of  
Session 2007–08**





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*Report, together with formal minutes, and oral  
and written evidence*

*Ordered by The House of Commons to be printed*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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### Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Committee Specialists), Jackie Recardo (Committee Assistant), Karen Barrett (Committee Secretary) and Sharon Still (Senior Office Clerk).

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## Summary

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A number of major lapses in the protection of data for which the Government is responsible have come to light in recent months. Personal data must be handled in accordance with the Data Protection Act (DPA). The Human Rights Act (HRA) safeguards the right to respect for personal information. Lapses in data protection may contravene the HRA. The Committee has repeatedly expressed concerns - mostly rejected by the Government - about the adequacy of safeguards on the sharing of personal information in specific bills. Government-initiated reviews of the legislative framework are now under way. In this report, the Committee highlights the importance of data protection as a human rights issue (paragraphs 1-7).

The Committee agrees with the Information Commissioner that data sharing is not, in human rights terms, objectionable in itself. But it inevitably raises human rights concerns. Government must show that any proposal for data sharing is justifiable and proportionate and that appropriate safeguards are in place (paragraphs 8-14).

The Government's response to the Committee's recommendations for the inclusion of data protection safeguards in primary legislation has generally been to suggest that the provisions of the DPA and the HRA are sufficient. The Committee fundamentally disagrees with the Government's approach of including very broad enabling provisions in primary legislation and leaving data protection safeguards to secondary legislation. Mere compliance with the HRA and DPA is not enough. Setting out the purposes of data sharing and the limitations of data sharing powers in primary legislation would give a clear message to public sector staff about data protection (paragraphs 15-21).

The Committee was surprised that the Minister of State at the Ministry of Justice, who has departmental responsibility for data protection, had no foreknowledge of the Chancellor of the Exchequer's announcement on the loss of child benefit data. The Committee recommends that the Minister's role should be enhanced and that he should champion best practice in Government and ensure that lessons are learnt from data protection breaches (paragraphs 22-26).

In the Committee's view, recent lapses in data protection are not unfortunate "one-off" events but are symptomatic of the Government's failure to take safeguards sufficiently seriously. There is insufficient respect in the public sector for the right to respect for personal data. Human rights are far from being a mainstream consideration in Government departments. The Committee has seen no evidence that departmental human rights champions have made any impact. It recommends that, in its responses to the reviews under way, the Government should state how it proposes to ensure that a culture of respect for personal data is fostered throughout Government (paragraphs 27-35).

The Committee sees the Information Commissioner as an important defender of human rights in relation to data protection. It supports proposals to enhance the Commissioner's powers and resources and his initiative for privacy impact assessments at an early stage of Government projects (paragraphs 36-40).

The Committee has expressed concern before about treatment of personal information as part of the National Identity Register. Recent breaches in data protection do not encourage

confidence about the security of data collected for it (paragraphs 41-46).

The Committee regrets that it has taken the loss of personal data affecting 25 million people for the Government to take data protection seriously. Once reviews of data protection legislation and practice have been completed, it expects the Government to take action to foster a positive culture for the protection of personal data by public sector bodies (paragraphs 41-46).



# 1 Introduction

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1. On 20 November 2007, the Chancellor of the Exchequer revealed in Parliament that HM Revenue and Customs had lost personal data, including bank account details, relating to families in receipt of child benefit, affecting around 25 million people in total.<sup>1</sup> Disks containing the information had been sent by courier to the National Audit Office on 18 October 2007, in response to a routine audit request. Far more information had been sent than had been requested and, although the information the disks contained was password-protected, the disks were not sent by registered or recorded delivery. The disks have not been found.

2. Since the Chancellor's statement in November a number of other major lapses in data protection for which the Government is responsible have come to light, including:

- The disappearance from a 'secure facility' in Iowa managed by a contractor to the Driving Standards Agency of a hard drive containing records of more than 3 million candidates for the driving theory test;<sup>2</sup>
- The loss of two disks in transit from the Driver and Vehicle Agency in Northern Ireland to the Driver and Vehicle Licensing Agency in Swansea, containing the unencrypted details of 7,500 vehicles and the names and addresses of their owners;<sup>3</sup>
- The theft of a Ministry of Defence laptop containing personal information relating to around 600,000 people, most of whom had expressed an interest in joining the Royal Navy, Royal Marines or the Royal Air Force.<sup>4</sup>

The Information Commissioner referred to "34 incidents that have been reported to us in the last 12 months".<sup>5</sup>

3. The Data Protection Act 1998 sets out a number of principles to guide the collection, processing and use of personal data by both public and private sector organisations. Responsibility for promoting and enforcing the Data Protection Act and the Freedom of Information Act 2000 rests with the Information Commissioner's Office. Speaking on Radio 4, on 21 November, Richard Thomas, the Information Commissioner, described the loss of child benefit data as "shocking" and "almost certain" to be in breach of the Data Protection Act.

4. The Human Rights Act safeguards the right to respect for private life, including the right to respect for personal information, under Article 8 of the European Convention on Human Rights (ECHR). Lapses in data protection by public sector bodies may also contravene the Human Rights Act. In our legislative scrutiny work we consider every Government bill introduced into Parliament and in recent years we have noticed a marked increase in the number of provisions in Government bills which authorise the sharing of

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<sup>1</sup> HC Deb, 20 Nov 07, cc1101-04.

<sup>2</sup> HC Deb, 17 Dec 07, cc624-26.

<sup>3</sup> HC Deb, 17 Dec 07, cc624-26 and BBC News Online, 11 Dec 07.

<sup>4</sup> HC Deb, 21 Jan 08, cc1225-27.

<sup>5</sup> Q122.

personal information, both within the public sector and between the public and the private sectors. We have repeatedly expressed concerns, from a human rights standpoint, about the adequacy of the safeguards accompanying such wide powers to share personal information, but these have, for the most part, been rejected by the Government.<sup>6</sup>

5. On 25 October 2007, the Prime Minister announced that the Information Commissioner and Dr Mark Walport, Director of the Wellcome Trust, would review the use and sharing of personal information in the public and private sectors, in particular focusing on the adequacy of the current legislative framework.<sup>7</sup> Mr Thomas and Dr Walport published their consultation paper on 12 December 2007.<sup>8</sup> A report on the loss of child benefit data by Kieran Poynter is currently being considered by Ministers and the Cabinet Secretary, Sir Gus O'Donnell, is overseeing a review of data handling procedures in Government.<sup>9</sup>

6. The Commons Justice Committee published a report on the protection of private data on 3 January 2008 and a number of other select committees have taken oral evidence on the loss of child benefit data.<sup>10</sup>

7. We heard oral evidence from Michael Wills MP on 26 November 2007 and took the opportunity to ask him about the loss of child benefit data, both in his capacity as human rights minister and in his role as minister for data sharing and data protection.<sup>11</sup> We also heard oral evidence from the Information Commissioner on 14 January 2008. In addition, we received a small amount of written evidence. We are grateful to all our witnesses for the evidence we received. We have decided to pull together some of the themes which have emerged from our legislative scrutiny work with the points that were raised in oral evidence, in particular to highlight that data protection is a human rights issue.

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<sup>6</sup> See table 1 below.

<sup>7</sup> Prime Minister's speech on liberty at the University of Westminster on 25 October 2007.

<sup>8</sup> *A consultation paper on the use and sharing of personal information in the public and private sectors*, Data Sharing Review, Dec 07.

<sup>9</sup> Appendix 3; HC Deb, 17 Dec 07, cc612-13; *Data Handling Procedures in Government: Interim Progress Report*, Cabinet Office, Dec 07.

<sup>10</sup> Justice Committee, First Report, Session 2007-08, *Protection of Private Data*, HC 154; Treasury Committee, Minutes of Evidence, *HM Revenue and Customs: Administration and Expenditure in 2006-07*, HC 57-iii; Public Accounts Committee, Minutes of Evidence, *Loss of Data by HM Revenue and Customs*, HC 200-i. Also see Home Affairs Committee, Minutes of Evidence, *Identity Cards: Data Security Issue*, HC 365-i.

<sup>11</sup> See paragraph 22 below.

## 2 Data protection and the Human Rights Act

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### Data protection and human rights

8. Personal data (which includes an individual's name, address, date of birth and national insurance number) is protected by Article 8 of the European Convention on Human Rights as part of an individual's private life. In the context of medical records, the European Court of Human Rights has stated:

The protection of personal data, particularly medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. The domestic law must afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (*MS v Sweden* (1997) 28 EHRR 313, para. 41).

The same comments could be made in respect of personal data of any kind held by any organ of the State.

9. The obligation to provide personal data, the release of personal data without consent, and the collection and storage of personal data all amount to interferences with an individual's right to respect for his or her privacy. Whether or not such interferences amount to a breach of Article 8 will depend on an assessment of whether the disclosure was "in accordance with the law", necessary in a democratic society for a legitimate aim (in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others), and proportionate. The adequacy of the safeguards in the overall regime is central to this assessment.

10. In its written memorandum, the Information Commissioner's Office noted that the Data Protection Act is derived from the European Data Protection Directive, which itself has its origins in the European Convention on Human Rights. It explained that the Data Protection Act provides practical guidance to public bodies on how to meet their obligations under the Human Rights Act to respect personal data. "It is fair to say", it concluded, "that there is a mutually supportive interplay between human rights, data protection and the work of the Information Commissioner".<sup>12</sup>

11. The right to respect for private life in Article 8 ECHR imposes a positive obligation on the State to ensure that its laws provide adequate protection against the unjustified disclosure of personal information. The Data Protection Act 1998 is an important part of the detailed implementation of that positive obligation, but its mere existence does not

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<sup>12</sup> Appendix 2, paragraphs 2, 3, 16.

exhaust the obligation on the State to provide adequate safeguards. The Data Protection Act must itself be interpreted so as to be compatible with Article 8, and it may still be necessary for legislation which authorises the disclosure of personal information to contain detailed provisions circumscribing the scope of that power and providing safeguards against its arbitrary use.

## Data sharing

12. Data sharing between public sector bodies is becoming increasingly common. In our legislative scrutiny work, we often encounter provisions to enable Government departments and other bodies to share data for a wide variety of purposes. Table 1 summarises the provisions we have commented on in recent years.<sup>13</sup>

13. In its written memorandum, the Information Commissioner's Office said that "the unnecessary or disproportionate sharing of personal information can undoubtedly have a significant negative impact on individuals". It drew attention to public concern about the mismanagement of sensitive personal information, particularly in relation to health records, tax returns, police records and adoption papers.<sup>14</sup> It went on to say, however, that:

It is wrong to see the sharing of personal information as necessarily a bad thing, one that can necessarily be opposed on data protection or human rights grounds ... The issue ... isn't whether there should be more or less information sharing, but rather what information is being shared, why it's being shared, who has access to it and what the effect of this is.<sup>15</sup>

**14. We agree that data sharing is not, in human rights terms, objectionable in itself. Indeed, the sharing of personal data may sometimes be positively required in order to discharge the State's duty to take steps to protect certain human rights, such as the right to life,<sup>16</sup> and it is also in principle capable of being justified by sufficiently weighty public interest considerations. However, the sharing of personal data will inevitably raise human rights concerns, and the more sensitive the information the stronger those concerns will be. Government must show that any proposal for data sharing is both justifiable and proportionate, and that appropriate safeguards are in place to ensure that personal data is not disclosed arbitrarily but only in circumstances where it is proportionate to do so.**

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<sup>13</sup> See paragraph 16 below.

<sup>14</sup> Appendix 2, paragraph 5.

<sup>15</sup> Ibid, paragraph 6.

<sup>16</sup> E.g. in *Edwards v UK* the failure to ensure that information was passed from the police to the prison authorities, about the risk posed by a mentally ill detainee, contributed to the finding by the European Court of Human Rights that the UK was in breach of the positive obligation to protect life when that detainee killed his cellmate. See also Nineteenth Report, session 2003-04, *Children Bill*, HC 537, HL Paper 161, paragraphs 98-117.

### 3 Data protection in legislation

15. In our legislative scrutiny work, we have often raised concerns relating to the arrangements for sharing data and recommended that, where relevant, bills should include specific data protection safeguards. In our view, appropriate safeguards include clearly defining who should be allowed to access information; to whom information may be disclosed; and the purposes for which information may be shared.

16. The Government's response has generally been to resist our recommendations. It points to the fact that public authorities must comply with the provisions of the Data Protection and Human Rights Acts and argues that, as a result, it is not necessary to put specific safeguards in primary legislation. Table 1, below, lists the Government bills in relation to which we, and our predecessors, have raised data protection concerns since the Committee was set up in 2001, and summarises the Government's response.<sup>17</sup>

**Table 1: JCHR scrutiny of data protection provisions in Government bills since 2001**

Bill	Report	Issue raised by JCHR	Government response (if any)
Anti-Terrorism, Crime and Security	2001-02, 2 <sup>nd</sup> , 5 <sup>th</sup>	Information sharing for purposes of an unlimited range of criminal investigations: JCHR concern about range of offences covered, lack of statutory criteria to guide decisions, lack of procedural safeguards.	-
Enterprise	2001-02, 18 <sup>th</sup>	Inadequate safeguards for information sharing by various public authorities (including with bodies outside of UK).	-
Crime (International Cooperation)	2002-03, 1 <sup>st</sup> , 3 <sup>rd</sup> , 7 <sup>th</sup>	Should be clarified that information sharing (relating to certain offenders) is subject to Data Protection and Human Rights Acts.	-
Community Care (Delayed Discharges etc)	2002-03, 7 <sup>th</sup> , 8 <sup>th</sup>	Concern about duty to disclose information gathered for medical purposes without consent.	Bill would not allow NHS bodies to reveal sensitive personal information without consent.
Criminal Justice	2002-03, 11 <sup>th</sup>	Overall control of the management of fingerprint and DNA databases not clearly held by a single public authority with responsibility for protecting ECHR rights. Bill provided for delegation of functions relating to the Criminal Records Bureau to third party. Uncertainty as to whether this body would be a public authority for the purposes of the Human Rights Act. More safeguards required.	Third party would be a public authority, but not willing to specify this in legislation.

<sup>17</sup> The Government is not obliged to respond to our legislative scrutiny Reports.

Bill	Report	Issue raised by JCHR	Government response (if any)
Children	2003-04, 12 <sup>th</sup> , 19 <sup>th</sup>	Lack of detail in Bill and Explanatory Notes about how provisions relating to databases complied with Article 8 ECHR.	-
Serious Organised Crime and Police	2004-05, 4 <sup>th</sup> , 8 <sup>th</sup>	Concern about the breadth of provisions for information gathering, use, storage and dissemination. Proposal to set out details in Codes of Practice inadequate.	Further safeguards in primary legislation otiose.
Commissioners for Revenue and Customs	2004-05, 6 <sup>th</sup> , 13 <sup>th</sup>	Inadequacy of safeguards relating to HMRC information sharing powers.	Would be administrative safeguards.
Gambling	2004-05, 7 <sup>th</sup>	Safeguards relating to information sharing powers not on the face of the Bill.	-
Education	2004-05, 12 <sup>th</sup>	Lack of detail in enabling provisions for collection of data on teachers and support staff.	-
Identity Cards	2005-06, 1 <sup>st</sup> , 2004-05, 5 <sup>th</sup> , 8 <sup>th</sup>	See paragraphs 41-46 below.	-
Immigration, Asylum and Nationality	2005-06, 5 <sup>th</sup> , 11 <sup>th</sup>	Key safeguards absent from the Bill.	Inclusion of safeguards in Code of Practice will provide greater level of detail than is possible in primary legislation and will be more flexible.
Electoral Administration	2005-06, 11 <sup>th</sup>	Provision for disclosure of information relating to administration of elections and prevention of fraud considerably wider and more intrusive of privacy rights than envisaged by the Government.	-
Safeguarding Vulnerable Groups	2005-06, 25 <sup>th</sup> , 31 <sup>st</sup>	Information sharing provisions may, in practice, seriously impact on the private lives of individuals working with children or vulnerable adults. Guidance should address this and point out requirements of Data Protection Act.	Remit of 'Independent Monitor' not to be extended to cover dissemination of good practice and guidance on information sharing.
Welfare Reform	2006-07, 2 <sup>nd</sup> , 11 <sup>th</sup>	Bill should be amended to limit purposes for which information may be used; not possible to assess whether regulation making powers in this area are compliant with Article 8 ECHR.	Recommendation accepted.
Offender Management	2006-07, 3 <sup>rd</sup>	Bill should be amended to restrict information disclosure to occasions where it is necessary, not merely expedient.	-

Bill	Report	Issue raised by JCHR	Government response (if any)
Serious Crime	2006-07, 12 <sup>th</sup>	Power of public authorities to share information with anti-fraud organisations is drafted in terms which are too general to be compliant with Article 8 ECHR; various amendments recommended; proposed delegation of discretion to anti-fraud organisations to decide to whom they will disclose sensitive personal data is inappropriate.	-
Child Maintenance and Other Payments	2007-08, 1 <sup>st</sup>	See paragraphs 17-19 below.	

17. A recent, and apposite, example is the Child Maintenance and Other Payments Bill, on which we reported in January 2008. The Bill provides for the establishment of the Child Maintenance and Enforcement Commission (C-MEC) which will assume certain statutory powers and responsibilities for child support currently held by the Secretary of State and exercised by the Child Support Agency. It also provides for new information sharing gateways involving C-MEC, HM Revenue and Customs and the Department for Work and Pensions.

18. We expressed concern that the proposed information sharing gateways are “very wide and allow for the broad exchange of information between the named agencies or their associated contractors for any of the broad functions to be undertaken by C-MEC, HMRC or the Department”. Following the loss of child benefit data, we recommended that the Government reconsider the adequacy of the safeguards accompanying the information sharing provisions in the Bill and reconsider whether more detailed safeguards could be included on the face of the Bill “such as more detailed provision on when information should be shared, the specific purpose for sharing information ... and including specific criteria or conditions about the use, storage and disposal of personal information”. We also raised concerns about the adequacy of the safeguards accompanying the proposal that C-MEC should have the power to share information with credit reference agencies.<sup>18</sup>

19. In its reply to our Report, the Department for Work and Pensions said that it had “carefully considered” our recommendations but was “confident our proposals strike the right balance between the individual’s right to respect for their personal information and improving administrative processes and information gathering, so as to get money more quickly to children”.<sup>19</sup> In relation to providing more details in the Bill about when information should be shared, the specific purposes for sharing information and criteria or conditions about the use, storage or disposal of personal information, the department said:

<sup>18</sup> Third Report, Session 2007-08, *Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills*, paragraphs 1.21 to 1.29.

<sup>19</sup> Twelfth Report, 2007-08, *Legislative Scrutiny: 1) Health and Social Care Bill and 2) Child Maintenance and Other Payments Bill: Government Response*, Appendix, paragraph 12.



[it] does not believe that the face of the Bill is the right place to set out practical security arrangements and data handling processes. These matters, by their very nature, require flexibility and the ability to respond, pro-actively and reactively, to the changing operational reality. By confining these matters to primary legislation we would risk tying C-MEC to outdated and counter-productive security measures, which may not be fit for purpose.<sup>20</sup>

Compliance with the Data Protection Act was also cited as sufficient to ensure that the Bill's provisions would not contravene the right to respect for private life under Article 8 ECHR.<sup>21</sup>

**20. We fundamentally disagree with the Government's approach to data sharing legislation, which is to include very broad enabling provisions in primary legislation and to leave the data protection safeguards to be set out later in secondary legislation. Where there is a demonstrable need to legislate to permit data sharing between public sector bodies, or between public and private sector bodies, the Government's intentions should be set out clearly in primary legislation. This would enable Parliament to scrutinise the Government's proposals more effectively and, bearing in mind that secondary legislation cannot usually be amended, would increase the opportunity for Parliament to hold the executive to account.**

21. Another advantage of including specific data protection provisions in primary legislation would be to help ensure that data protection is a primary concern of managers and front-line staff in the public sector. We have commented before on the need for the safeguarding and promotion of human rights to be central to the work of public sector bodies, in particular in healthcare, for example.<sup>22</sup> **The attention paid to human rights, outside of the legal department, is likely to be very scant if the concept is regarded solely in terms of compliance with the Human Rights Act. In our view, the same is true of data protection and the Data Protection Act. Setting out the purposes of data sharing and the limitations on data sharing powers in primary legislation would give a clear indication to the staff utilising such powers of the significance of data protection.** We comment below on other means of ensuring that public sector staff pay serious attention to data protection.

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<sup>20</sup> Ibid, paragraph 13.

<sup>21</sup> Ibid, paragraph 14.

<sup>22</sup> Eighteenth Report, Session 2006-07, *The Human Rights of Older People in Healthcare*, HC 378-I, HL Paper 156-I and Seventh Report, Session 2007-08, *A Life Like Any Other? The Human Rights of Adults with Learning Disabilities*, HC 73-I, HL Paper 40-I.



## 4 Data protection in Government

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### Role of the data protection minister

22. Departmental responsibility for data protection rests with the Ministry of Justice. According to the Ministry of Justice's website, the department is "responsible for data protection and data sharing, both domestically and representing the UK's interests internationally" and "develop[s] policy that strikes a balance between the many benefits of public organisations sharing information and maintaining and strengthening safeguards and privacy".<sup>23</sup> "Data protection and data sharing" is one of 13 issues for which Michael Wills MP, Minister of State at the Ministry of Justice, is responsible, along with human rights, freedom of information, constitutional renewal (excluding Lords reform) and devolution.<sup>24</sup>

23. We were surprised to discover that Mr Wills had only found out about the loss of child benefit data when the Chancellor of the Exchequer made his statement on the subject to the House of Commons.<sup>25</sup> Mr Wills said:

I would think it is perfectly reasonable for me not to be informed the moment that something like this happens ... I think the first thing the responsible officials and ministers had to do was to try and sort out what is clearly a very serious problem indeed. I would expect to be informed in due course and when it was helpful for me to be so informed, and that was the judgment that those ministers and officials obviously took.<sup>26</sup>

24. Mr Wills went on to explain that he was responsible for overseeing the data protection legislation and did not have a role in relation to specific breaches of data protection:

My responsibility is not for stopping any breaches of data protection personally, individually or even corporately within the department wherever and whenever they may occur. What this department is responsible for is the construction of a proper legislative apparatus which has proper protections in place.<sup>27</sup>

Departments have "operational independence" to implement their own data protection arrangements, within the legal framework maintained by the Ministry of Justice, explained the Minister: "we are not policemen in this department".<sup>28</sup>

**25. Having heard the Minister's comments, we are concerned that the role of data protection minister is far too limited, being related exclusively to the maintenance of the legislative framework for data protection. It is clearly sensible to require Government departments to take responsibility themselves for abiding by the Data Protection Act, but we would expect there to be a degree of inter-departmental co-**

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<sup>23</sup> <http://www.justice.gov.uk/whatwedo/datasharingandprotection.htm> as at 24 February 2008.

<sup>24</sup> <http://www.justice.gov.uk/about/wills.htm> as at 24 February 2008.

<sup>25</sup> Q5.

<sup>26</sup> Qq9, 12.

<sup>27</sup> Q17.

<sup>28</sup> Q24.

ordination to share best practice and help deal with the fall-out from significant breaches of data protection by departments. We heard no evidence that any co-ordinating activity of this sort is currently carried out: if it is, then the data protection minister is not involved.

26. We recommend that the role of data protection minister should be enhanced. In addition to overseeing the data protection legislation, the data protection minister should have a high-profile role within Government, championing best practice in data protection and ensuring that lessons are learnt from breaches of data protection.

### Promoting data protection and human rights in Government

27. We commented earlier on the importance of ensuring that public sector staff who handle personal data are fully aware of the requirements of data protection legislation.<sup>29</sup> On this point, Mr Wills said:

There are always two dimensions to any kind of security issue. One is the technological apparatus and the framework within it but also you have to have the right sort of culture ... There was no question that if people had the idea of the right to privacy burning in the forefront of their minds we would have a far smaller number of these sorts of revelations and these sorts of deplorable breaches.<sup>30</sup>

We share the Minister's view. **Recent breaches in data protection appear mostly to have resulted from human error and procedural lapses rather than technological problems. However, it would be wrong to see these errors and lapses as unfortunate "one-off" events. In our view they are symptomatic of the Government's persistent failure to take data protection safeguards sufficiently seriously by defining data sharing powers more tightly in primary legislation and including detailed safeguards against arbitrary or unjustified disclosure. The rapid increase in the amount of data sharing has not been accompanied by a sufficiently strong commitment to the need for safeguards. The fundamental problem is a cultural one: there is insufficient respect for the right to respect for personal data in the public sector.**

28. Following lapses in data protection by Department of Transport agencies, the permanent secretary of the Department of Transport wrote to senior officials "drawing their attention to current guidance on the application of the Data Protection Act. That includes the main principles of the Act, information on handling personal data appropriately, and the role of the Information Commissioner".<sup>31</sup> **We are surprised, and disappointed, to find that senior public officials need to be reminded of the main principles of the Data Protection Act.** The Information Commissioner said about the permanent secretary's letter:

I do not think I am depressed; in many ways I welcome it, because we have been trying to say the same things for many months and years, and to be able to have our

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<sup>29</sup> Paragraph 21.

<sup>30</sup> Q26.

<sup>31</sup> HC Deb, 17 Dec 07, c625.

message understood in terms of what can happen when things go wrong is perhaps not unwelcome.<sup>32</sup>

He added that he was concerned that awareness of data protection in Government might not be sustained and that it was “hugely important” to keep up momentum so that “personal information is treated just as seriously as cash inside a public authority”.<sup>33</sup>

29. We asked the Minister about the action being taken to ensure that the safeguarding and promotion of human rights, including data protection, was central to the work of all civil servants. Mr Wills replied:

Are you saying that we should have done more to mainstream human rights? Of course we should be doing more. The work continues. That is why we have human rights champions in every single government department at grade 3 official level or above ... the whole process of mainstreaming is going to take years, and in this particular case it is quite obvious that we need to do more.<sup>34</sup>

30. Staff at grade 3 level are very senior departmental managers, likely to have had little direct involvement with service delivery at the front line for many years, if ever. To be effective, they have to make all their front-line staff aware of the need for a human rights-based approach to their work. In response to our concern about this, Mr Wills said:

Service delivery is fundamental. That is precisely why we have set up this network of human rights champions throughout Whitehall, so it is mainstreamed right through into service delivery. We have to get it to the front line, absolutely right, and this is the start of that process ... we are taking action and we will continue to push on this.<sup>35</sup>

31. We asked the Information Commissioner about his contacts with the human rights champions in Government departments. We were surprised to find that he was entirely unaware of this network. He said “I do not think I have had a meeting in my five years with a human rights champion as such”.<sup>36</sup> Jonathan Bamford, Assistant Information Commissioner, said that he “was not aware that there were human rights champions that also dealt with data protection”.<sup>37</sup>

32. During our oral evidence session with the minister on 26 November 2007 we asked for further details about the work being done to ensure human rights were an issue of mainstream concern in Government departments. Mr Edward Adams, head of the Human Rights Division at the Ministry of Justice, said:

In the follow-through of the human rights programme each department will obviously have the overall responsibility for mainstreaming human rights within their own business and have an action plan for the delivery of in-house training and

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<sup>32</sup> Q137.

<sup>33</sup> Ibid.

<sup>34</sup> Q18.

<sup>35</sup> Q21 and see Q70.

<sup>36</sup> Q138.

<sup>37</sup> Q139.

guidance to their own front-line staff ... I hope that in future times when the Minister comes back we will have generated much better examples of how it is bedded in the process of the service delivery by front-line staff because it is certainly an aspect of the areas upon which departments are now increasingly concentrating.<sup>38</sup>

33. Following up these comments, we asked to be sent a human rights action plan but were told by the Minister:

The action plans are for my Department to use when communicating at official level with other Government departments to discuss the development and implementation of training and guidance requirements, including dissemination of best practice and distribution of MoJ generic human rights guidance. The action plans are not intended for wider circulation as they are only for internal reference.<sup>39</sup>

**34. It is clear to us from a great deal of our work, and in particular recently our inquiries into human rights of older people in healthcare and adults with learning disabilities, as well as from this inquiry, that human rights are far from being a mainstream consideration in Government departments. The Minister has identified the cultural barrier to ensuring that personal data is adequately protected by the staff who handle it, but much more needs to be done to tackle this problem successfully. We have so far seen no evidence that the human rights champions in departments have made any impact, particularly in relation to front line staff. We will continue to scrutinise their work carefully.**

**35. We await the outcomes of the various reviews of data protection with interest. We expect the Government to keep us informed about its proposals for reform in this area. We recommend that, in its responses to the reviews, the Government should acknowledge the close connection between data protection and human rights; and explain how it proposes to ensure that a culture of respect for personal data is fostered throughout Government.**

## **Role of the Information Commissioner**

36. In his oral evidence, the Information Commissioner said “that the protection of personal information has not been taken as seriously as, in my view, it should be” and that there had been evidence of “indifferent or even begrudging attitudes towards data protection”. He went on to say that “this may have manifested itself in the powers available to my office, and also the resources available for my office”.<sup>40</sup>

37. Mr Thomas suggested that recent events, particularly the loss of child benefit data, had led to a “very, very sharp turn-around in attitudes” towards data protection.<sup>41</sup> He went on to add that “it should not take a train crash to prevent casualties on the railway; but we have had a train crash and that has served as a wake-up call”.<sup>42</sup>

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<sup>38</sup> Q67.

<sup>39</sup> Appendix 3.

<sup>40</sup> Q112.

<sup>41</sup> Q123.

<sup>42</sup> Q137.

38. Shortly after the announcement to the House about the loss of child benefit data, the Prime Minister announced that the Information Commissioner will be given “the power to spot-check Departments, to do everything in his power and our power to secure the protection of data”.<sup>43</sup> In its written evidence, the Information Commissioner’s Office said:

The Commissioner has asked for additional powers for his office, in particular the power to inspect the processing of personal data without a data controller’s consent. In response to the recent HMRC security breach the Government has agreed that he should have this power at least in relation to processing by Government departments. Provided he receives sufficient funding, the ICO’s involvement in inspection should help provide reassurance to the public that their information will be handled safely and securely.<sup>44</sup>

**39. We see the Information Commissioner as an important defender of human rights in relation to data protection and freedom of information. His office should be regarded as an important part of the national human rights machinery. We support proposals to enhance the Commissioner’s powers and the resources at his disposal to ensure that he can discharge his responsibilities more effectively.**

### **Privacy impact assessments**

40. The Information Commissioner told us about the privacy impact assessment handbook which his office had launched in December. Privacy impact assessments are intended to ensure that privacy concerns are systematically identified and addressed at an early stage in a project’s conception, rather than “bolted’ on later as an expensive and inadequate afterthought”.<sup>45</sup> The Information Commissioner said he had brought this initiative to the attention of Sir Gus O’Donnell’s review of data security across Government and was also receiving support from the Ministry of Justice.<sup>46</sup> **We support initiatives to ensure that data protection issues are dealt with at an early stage in the planning of Government projects, including legislative proposals. We intend to scrutinise how privacy impact assessments are used in practice.**

### **National Identity Scheme**

41. Our predecessors published two Reports on the Identity Cards Bill in the last Parliament and we published a further Report on the Bill in 2005 before it finally reached the statute book.<sup>47</sup> The main focus of these Reports can be summarised as follows:

The difficulties of human rights compliance in this Bill relate not to the issue of ID cards, either on a voluntary or a compulsory basis, but to the related provision for the

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<sup>43</sup> HC Deb, 21 Nov 07, c1179.

<sup>44</sup> Appendix 2, paragraph 10.

<sup>45</sup> Ibid, paragraph 11-13.

<sup>46</sup> Qq164-66.

<sup>47</sup> Fifth Report, Session 2004-05, *Identity Cards Bill*, HL Paper 35, HC 283; Eighth Report, Session 2004-05, *Scrutiny: Fourth Progress Report*, HL Paper 60, HC 388 (hereafter *Eighth Report*); First Report, Session 2005-06, *Legislative Scrutiny: First Progress Report*, HL Paper 48, HC 560.

gathering, storage and in particular the disclosure of personal information as part of the National Identity Register to be established under the Bill.<sup>48</sup>

42. The Identity Cards Bill was an enabling provision and the details of the scheme will be set out in secondary legislation. Our predecessors expressed their concern that the opportunity for parliamentary scrutiny of the human rights compatibility of the identity cards scheme will therefore be limited.<sup>49</sup> They also drew attention to the scale of the personal information which may be held on the National Identity Register.<sup>50</sup>

43. The Information Commissioner told us he had been “consistently sceptical” about the database aspects of the project and that he still sought “absolute clarity as to the rationale and purpose for the identity card scheme”. He went on to add that:

it is one thing to collect basic identity information – name, address, date of birth and so on; but if one is going to record details of every time that card is used or every time that card is passed through a reader of some sort, one then begins to build up a very detailed picture of the daily lives of citizens ... That does go to the heart of the relationship between state and citizens.<sup>51</sup>

In addition, he said he was concerned with issues such as who had access to the data on the database, and under what circumstances, and the purposes for which data was collected and used.<sup>52</sup>

44. We share the concerns expressed by the Information Commissioner about the National Identity Register, which also mirror the views of our predecessors in their work on the Identity Cards Bill. Identity cards do not in themselves raise issues of human rights compatibility. The creation and maintenance of a national identity database, however, must involve safeguards, both to ensure that the information which is collected is proportionate to the purposes for which it is required and to limit access to data to those who need it.

45. We received a letter from a number of academics specialising in IT security who claimed that the Government’s confidence in biometric security was “based on a fairy-tale view of the capabilities of the technology”. In this inquiry, we have not tested their view of the effectiveness of biometric technology in limiting the impact of human error. In the light of recent events, however, they argued that the use of the most advanced technology available would not necessarily prevent human error causing lapses in data protection:

Biometric checks at the time of usage do not of themselves make any difference whatsoever to the possibility of the type of disaster that has just occurred at HMRC. This type of data leakage, which occurs regularly across Government, will continue to occur until there is a radical change in the culture both of system designer and system users. The safety, security and privacy of personal data has to become the

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<sup>48</sup> *Eighth Report*, paragraph 1.3.

<sup>49</sup> *Ibid*, paragraph 1.5.

<sup>50</sup> *Ibid*, paragraphs 1.6-1.13.

<sup>51</sup> Q169.

<sup>52</sup> *Ibid*.

primary requirement in the design, implementation, operation and auditing of systems of this kind.<sup>53</sup>

46. The Minister told us “we obviously are going to have to look at the National Identity Register again” following the loss of child benefit data and that the Government “will have to learn the lessons”.<sup>54</sup> The Information Commissioner suggested that, when it came to concerns about the national identity scheme, Ministers were “listening to us a great deal more actively and more seriously in the last month or so than before”.<sup>55</sup> When we asked the Minister about reviewing policy for the National Identity Register, he said:

I did not in my evidence make any commitment myself to review this project. My colleagues in the Home Office will of course be taking into account any developments that may influence the implementation of the National Identity Register, including issues relating to data protection.<sup>56</sup>

**47. Recent breaches in data protection by Government departments do not encourage us to feel confident about the security of data collected as part of the National Identity Register project. We intend to take a close interest in the Government’s detailed proposals for the National Identity Register as and when they emerge.**

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<sup>53</sup> Appendix 1.

<sup>54</sup> Q32.

<sup>55</sup> Q173.

<sup>56</sup> Appendix 3.



## 5 Conclusion

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48. We were struck by the Information Commissioner's comments in his oral evidence about the Government's attitude to data protection. He said:

I am certainly pleased that as a result of recent events the issues are being taken a great deal more seriously inside the Ministry of Justice at official level and at the political level. It is rather sad that it has taken these events to achieve that result. In my view, it is unfortunate that the seriousness that I now detect has not been there before.<sup>57</sup>

**49. We regret that it has taken the loss of personal data affecting 25 million people – a “train crash”, in the words of the Information Commissioner – for the Government to take data protection seriously. Data protection is a human rights issue and should not be treated as a fringe concern, a matter for rarely-consulted policy documents and procedures which are all too easily ignored. The recent data protection breaches have revealed the complacency of the Government's repeated refusal to accept our recommendations that more detailed limits and safeguards be included in Government bills which authorise the sharing of personal data. The problem is symptomatic of a deeper problem to which we have drawn attention in recent reports and on which we recently commented in our annual Report on our work for 2007: the failure to root human rights in the mainstream of departmental decision-making.**

50. We note that the Government has launched a number of reviews of data protection legislation and practice. Once those reviews have been completed, we expect the Government to take action to foster a positive culture for the protection of personal data by public sector bodies. This will enable the Government to reap the benefits of data sharing, where it is considered desirable, without calling into question the right of ordinary people for respect for their personal lives.

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<sup>57</sup> Q154.



## Conclusions and recommendations

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1. We agree that data sharing is not, in human rights terms, objectionable in itself. Indeed, the sharing of personal data may sometimes be positively required in order to discharge the State's duty to take steps to protect certain human rights, such as the right to life, and it is also in principle capable of being justified by sufficiently weighty public interest considerations. However, the sharing of personal data will inevitably raise human rights concerns, and the more sensitive the information the stronger those concerns will be. Government must show that any proposal for data sharing is both justifiable and proportionate, and that appropriate safeguards are in place to ensure that personal data is not disclosed arbitrarily but only in circumstances where it is proportionate to do so. (Paragraph 14)
2. We fundamentally disagree with the Government's approach to data sharing legislation, which is to include very broad enabling provisions in primary legislation and to leave the data protection safeguards to be set out later in secondary legislation. Where there is a demonstrable need to legislate to permit data sharing between public sector bodies, or between public and private sector bodies, the Government's intentions should be set out clearly in primary legislation. This would enable Parliament to scrutinise the Government's proposals more effectively and, bearing in mind that secondary legislation cannot usually be amended, would increase the opportunity for Parliament to hold the executive to account. (Paragraph 20)
3. The attention paid to human rights, outside of the legal department, is likely to be very scant if the concept is regarded solely in terms of compliance with the Human Rights Act. In our view, the same is true of data protection and the Data Protection Act. Setting out the purposes of data sharing and the limitations on data sharing powers in primary legislation would give a clear indication to the staff utilising such powers of the significance of data protection. (Paragraph 21)
4. Having heard the Minister's comments, we are concerned that the role of data protection minister is far too limited, being related exclusively to the maintenance of the legislative framework for data protection. It is clearly sensible to require Government departments to take responsibility themselves for abiding by the Data Protection Act, but we would expect there to be a degree of inter-departmental co-ordination to share best practice and help deal with the fall-out from significant breaches of data protection by departments. We heard no evidence that any co-ordinating activity of this sort is currently carried out: if it is, then the data protection minister is not involved. (Paragraph 25)
5. We recommend that the role of data protection minister should be enhanced. In addition to overseeing the data protection legislation, the data protection minister should have a high-profile role within Government, championing best practice in data protection and ensuring that lessons are learnt from breaches of data protection. (Paragraph 26)
6. Recent breaches in data protection appear mostly to have resulted from human error and procedural lapses rather than technological problems. However, it would be

wrong to see these errors and lapses as unfortunate “one-off” events. In our view they are symptomatic of the Government’s persistent failure to take data protection safeguards sufficiently seriously by defining data sharing powers more tightly in primary legislation and including detailed safeguards against arbitrary or unjustified disclosure. The rapid increase in the amount of data sharing has not been accompanied by a sufficiently strong commitment to the need for safeguards. The fundamental problem is a cultural one: there is insufficient respect for the right to respect for personal data in the public sector. (Paragraph 27)

7. We are surprised, and disappointed, to find that senior public officials need to be reminded of the main principles of the Data Protection Act. (Paragraph 28)
8. It is clear to us from a great deal of our work, and in particular recently our inquiries into human rights of older people in healthcare and adults with learning disabilities, as well as from this inquiry, that human rights are far from being a mainstream consideration in Government departments. The Minister has identified the cultural barrier to ensuring that personal data is adequately protected by the staff who handle it, but much more needs to be done to tackle this problem successfully. We have so far seen no evidence that the human rights champions in departments have made any impact, particularly in relation to front line staff. We will continue to scrutinise their work carefully. (Paragraph 34)
9. We await the outcomes of the various reviews of data protection with interest. We expect the Government to keep us informed about its proposals for reform in this area. We recommend that, in its responses to the reviews, the Government should acknowledge the close connection between data protection and human rights; and explain how it proposes to ensure that a culture of respect for personal data is fostered throughout Government. (Paragraph 35)
10. We see the Information Commissioner as an important defender of human rights in relation to data protection and freedom of information. His office should be regarded as an important part of the national human rights machinery. We support proposals to enhance the Commissioner’s powers and the resources at his disposal to ensure that he can discharge his responsibilities more effectively. (Paragraph 39)
11. We support initiatives to ensure that data protection issues are dealt with at an early stage in the planning of Government projects, including legislative proposals. We intend to scrutinise how privacy impact assessments are used in practice. (Paragraph 40)
12. Recent breaches in data protection by Government departments do not encourage us to feel confident about the security of data collected as part of the National Identity Register project. We intend to take a close interest in the Government’s detailed proposals for the National Identity Register as and when they emerge. (Paragraph 47)
13. We regret that it has taken the loss of personal data affecting 25 million people – a “train crash”, in the words of the Information Commissioner – for the Government to take data protection seriously. Data protection is a human rights issue and should not be treated as a fringe concern, a matter for rarely-consulted policy documents

and procedures which are all too easily ignored. The recent data protection breaches have revealed the complacency of the Government's repeated refusal to accept our recommendations that more detailed limits and safeguards be included in Government bills which authorise the sharing of personal data. The problem is symptomatic of a deeper problem to which we have drawn attention in recent reports and on which we recently commented in our annual Report on our work for 2007: the failure to root human rights in the mainstream of departmental decision-making. (Paragraph 49)

14. We note that the Government has launched a number of reviews of data protection legislation and practice. Once those reviews have been completed, we expect the Government to take action to foster a positive culture for the protection of personal data by public sector bodies. This will enable the Government to reap the benefits of data sharing, where it is considered desirable, without calling into question the right of ordinary people for respect for their personal lives. (Paragraph 50)

# Formal Minutes

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**Tuesday 4 March 2008**

Members present:

Mr Andrew Dismore MP, in the Chair

Baroness Stern

Mr Virendra Sharma MP

Lord Morris of Handsworth

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Draft Report [Data Protection and Human Rights], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 50 read and agreed to.

Summary read and agreed to.

Several Papers were ordered to be appended to the Report.

*Resolved*, That the Report be the Fourteenth Report of the Committee to each House.

*Ordered*, That the Chairman make the Report to the House of Commons and that Baroness Stern make the Report to the House of Lords.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Monday 10 March at 8.45am.]

# List of Witnesses

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<b>Monday 26 November 2007</b>	
Mr Michael Wills MP, Human Rights Minister	Ev 1
Mr Edward Adams, Head of Human Rights Division, Ministry of Justice	Ev 1
<b>Monday 14 January 2008</b>	
Mr Richard Thomas, Information Commissioner	Ev 17
Mr Jonathan Bamford, Assistant Information Commissioner	Ev 17

## List of Written Evidence

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1 Letter from Professor Ross Anderson & Dr Richard Clayton, University of Cambridge Computer Laboratory & Dr Ian Brown, Oxford Internet Institute, University of Oxford, dated 26 November 2007	Ev 29
2 Memorandum by the Information Commissioner, dated 20 December 2007	Ev 30
3 Letter from Michael Wills MP, Minister of State, Ministry of Justice, dated 8 February 2008	Ev 31

# Report from the Joint Committee on Human Rights in this Parliament

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## The following reports have been produced

### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132

### Session 2006-07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287

Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
Seventeenth Report	Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers	HL Paper 134/HC 790
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume I- Report and Formal Minutes	HL Paper 156-I/HC 378-I
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume II- Oral and Written Evidence	HL Paper 156-II/HC 378-II
Nineteenth Report	Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning	HL Paper 157/HC 394
Twentieth Report	Highly Skilled Migrants: Changes to the Immigration Rules	HL Paper 173/HC 993
Twenty-first Report	Human Trafficking: Update	HL Paper 179/HC 1056

#### Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766



Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888
Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915
Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 144/HC 989
Sixteenth Report	Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 154/HC 1022
Seventeenth Report	Legislative Scrutiny: Eighth Progress Report	HL Paper 164/HC 1062
Eighteenth Report	Legislative Scrutiny: Ninth Progress Report	HL Paper 177/ HC 1098
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes	HL Paper 185-I/ HC 701-I
Twentieth Report	Legislative Scrutiny: Tenth Progress Report	HL Paper 186/HC 1138
Twenty-first Report	Legislative Scrutiny: Eleventh Progress Report	HL Paper 201/HC 1216
Twenty-second Report	Legislative Scrutiny: Twelfth Progress Report	HL Paper 233/HC 1547
Twenty-third Report	The Committee's Future Working Practices	HL Paper 239/HC 1575
Twenty-fourth Report	Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention	HL Paper 240/HC 1576
Twenty-fifth Report	Legislative Scrutiny: Thirteenth Progress Report	HL Paper 241/HC 1577
Twenty-sixth Report	Human trafficking	HL Paper 245-I/HC 1127-I
Twenty-seventh Report	Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill	HL Paper 246/HC 1625
Twenty-eighth Report	Legislative Scrutiny: Fourteenth Progress Report	HL Paper 247/HC 1626
Twenty-ninth Report	Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 248/HC 1627
Thirtieth Report	Government Response to the Committee's Nineteenth Report of this Session: The UN Convention Against Torture (UNCAT)	HL Paper 276/HC 1714
Thirty-first Report	Legislative Scrutiny: Final Progress Report	HL Paper 277/HC 1715
Thirty-second Report	The Human Rights Act: the DCA and Home Office Reviews	HL Paper 278/HC 1716

# Oral evidence

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## Taken before the Joint Committee on Human Rights

on Monday 26 November 2007

Members present:

Mr Andrew Dismore, in the Chair

Lester of Herne Hill, L  
Morris of Handsworth, L  
Onslow, E  
Stern, B

Dr Evan Harris  
Mr Virendra Sharma

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*Witnesses:* **Mr Michael Wills MP**, Human Rights Minister, and **Mr Edward Adams**, Head of the Human Rights Division, Ministry of Justice, examined.

**Chairman:** Good afternoon, everybody. This is another session with Michael Wills, the Human Rights Minister, who is accompanied by Edward Adams, Head of the Human Rights Division at the Ministry of Justice. Welcome to you both. We would like it to be a bit more than an annual occasion but it seems to have developed that way recently where the Minister comes to talk to us about the work of his department.

**Lord Lester of Herne Hill:** Chairman, perhaps I ought to declare that I am independent adviser to the Justice Secretary on some aspects of constitutional reform and will therefore not be taking part in questioning on those aspects on which I have already advised Mr Wills and Mr Straw.

**Q1 Chairman:** When you were previously Human Rights Minister some five years ago you told us that the spring shoots of a new human rights culture were emerging. Do you think that has actually happened? Has that culture flourished as much as you might have hoped and expected?

**Mr Wills:** Yes, I think it has flourished, actually. I think there has been a lot of progress. Under this department's previous incarnation, the DCA, I think the previous Lord Chancellor and Baroness Ashton did a lot of good work to try and implant a culture of human rights in Whitehall in the first instance and I think it is taking root, so I do think there has been really significant progress. I think that is measured by our confidence that we can now move to the second stage of entrenching human rights in our culture with the announcement of our taking forward of a British Bill of Rights and Duties on which we are going to start consulting shortly.

**Q2 Chairman:** One of the themes that we have been raising with ministers recently has been the importance of mainstreaming human rights throughout government departments, so I think we will be coming back to that in more detail later on, but one of the key things that needs mainstreaming is data protection, would you not agree?

**Mr Wills:** I think not as a human right necessarily but just in its own right it is very important.

**Q3 Chairman:** But would you not recognise that protection of data is a key human rights issue under Article 8 of the Convention?

**Mr Wills:** Of course it is, and the right to privacy is very important.

**Q4 Chairman:** One of the things that it says in your handbook for officials is that all public authorities have an obligation under Convention rights, which means that they must understand those rights and take them into account in their day-to-day work, and that that is the case whether they are delivering a service directly to the public or devising new policies and procedures.

**Mr Wills:** Absolutely right.

**Q5 Chairman:** So, in relation to the events of last week, when were you first told about the loss of child benefit data by HMRC and what was your reaction?

**Mr Wills:** I am afraid I learnt about it when I heard the statement in the House of Commons.

**Q6 Chairman:** So do you think there was a systemic failure within HMRC or in not protecting data adequately?

**Mr Wills:** It is far too soon for me to be able to judge that. As you know, there are a number of reviews going on and we will have to wait for the outcome of that to judge whether it is systemic. What happened is certainly wrong, it is deeply regrettable and the Prime Minister has already apologised for it.

**Q7 Chairman:** When the Chancellor made the statement last week he referred to the HMRC rules governing standing procedures of security and access to data and the transit of data. Can we have copies of that and also any subsequent changes?

**Mr Wills:** I am assuming we can make that available, yes, and I can see no reason why not.

**Q8 Chairman:** Could we also have the manual of protective security which the Prime Minister referred to in his statement?

**Mr Wills:** I am not sure. That may contain confidential information. I will have to look at that. If it is possible to do it without compromising security then of course.

**Q9 Chairman:** Thank you, but do you not find it rather surprising as the data protection Minister that you were not informed earlier, prior to the Chancellor's statement?

**Mr Wills:** I think there are a number of reasons and I think the first thing the responsible officials and ministers had to do was to try and sort out what is clearly a very serious problem indeed. I would expect to be informed in due course and when it was helpful for me to be so informed, and that was the judgment that those ministers and officials obviously took.

**Q10 Earl of Onslow:** That really does strike me, with the greatest respect, as not being a frightfully satisfactory answer. The Government was informed, I think, at the beginning of November by the Prime Minister. You are the data protection Minister. Surely you should have been informed absolutely immediately because data were not being protected; therefore the data protection ministry should have been doing something about it, should it not, as night follows day?

**Mr Wills:** With great respect, I am not sure I agree with that. When something like this happens, and it is deeply unfortunate and everybody accepts that it is a serious problem and we have to put it right immediately, we have to review why it happened and make sure that wherever possible whatever possible is done to make sure that something like this never happens again.

**Q11 Earl of Onslow:** Sorry; may I interrupt? Just a minute. You said—

**Mr Wills:** I had not actually come to the substance of my disagreement with—

**Q12 Chairman:** Let the Minister answer.

**Mr Wills:** If you take that as the starting point then I would think it is perfectly reasonable for me not to be informed the moment that something like this happens. I would expect, and I hope everyone would expect, the responsible officials and the responsible ministers to do everything they could first of all to discover the extent of the problem and then do whatever they could to put the problem right immediately. At that point comes the task of looking to what we can do systemically to make sure that something like this never happens again. That is the point when I would expect this department to become centrally involved, and we are.

**Q13 Earl of Onslow:** But you said, "It must be put right immediately". You are the data protection Minister. How can you begin to put it right when you do not even know that the problem has happened?

**Mr Wills:** We have responsibility for the data protection regulations, their enforcement and any changes in legislation that might be necessary. As it happens, you will have noticed that in the Prime

Minister's speech on 25 October he announced that there would be a wide-ranging review of data sharing conducted by the Information Commissioner, Richard Thomas, and Dr Mark Walport. That is a review that has been conducted with support from the Ministry of Justice. Those arrangements are already in place. They will inevitably look at this particular incident and draw the lessons from that in any recommendations that they make.

**Q14 Chairman:** The problem, you see, Michael, is that if this is a general issue throughout Government the more it is dug around by the media the more examples come to light of quite large amounts of data, some of it very personal, being sent unencrypted through the ordinary mail or through ordinary courier services. *The Sunday Times* this weekend had a whole series of examples and quotes from people. We have had another story today about judges' details being sent around. There were previous stories about information going to an assurance company being lost. There was a question about missing laptop computers. This all seems to build up a pretty serious picture and if you are the minister responsible for data protection and all this has been going on have you been agitating behind the scenes to have something done about data security?

**Mr Wills:** As I say, on 25 October the Prime Minister made a speech which announced a review on data sharing. The genesis of that review comes from this department and it was many weeks in gestation and it reached its announcement on 25 October, so I hope that will answer your question.

**Q15 Earl of Onslow:** Of how many of these leaks which have been reported in the newspaper were you aware before they were reported in the newspaper and, if so, what did you do about them?

**Mr Wills:** The answer to the ones that have been mentioned is none.

**Q16 Earl of Onslow:** So you have lots of leaks from your department and you do not know anything about them and you have done nothing about them?

**Mr Wills:** At the moment—

**Chairman:** Not necessarily leaks from his department.

**Q17 Earl of Onslow:** I beg your pardon. I withdraw that. There are lots of leaks, you know nothing about it and you are the Minister of data protection. It does seem to be an awfully jolly job to have if you cannot do anything about it.

**Mr Wills:** At the moment we have a number of press stories, all of which are being looked into and we are trying to ascertain the facts. As I say, my responsibility is not for stopping any breaches of data protection personally, individually or even corporately within the department wherever and whenever they may occur. What this department is responsible for is the construction of a proper legislative apparatus which has proper protections in place. We have quite a stringent regime. We are

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about to make it more stringent. The Criminal Justice Bill, which is going through committee at the moment, has proposals to increase the penalties for the knowing or reckless misuse of data, including disclosure, imposing imprisonment terms of up to two years, so it is not as if we have been doing nothing to make sure that these protections are stringent. We have been doing a lot. We had already announced, before any of these leaks happened, a thorough-going review by two people, who I think everybody accepts are eminently well suited to carry out such a review, and when they produce their recommendations, which they have been asked to do within a very short framework of time, before any of these revelations, so-called, came out into the public domain, we will take them very seriously and we will move very swiftly on them. I am not quite sure what else realistically you would expect us to be doing in these circumstances.

**Q18 Chairman:** This comes back to my original point about mainstreaming human rights considerations throughout government, does it not? You have introduced this quite stringent series of requirements in relation to data. If the private sector had done what Government have done they would have been had for breakfast. The problem here is that the Government is not doing what it is preaching. If we are talking about mainstreaming human rights considerations throughout government one of those key human rights considerations, which you accepted at the start of our discussion, is the need for data protection. The debate within HMRC, so far as we have seen it in the exchange of emails and so forth about what data to send to the National Audit Office, seems to have revolved around the cost considerations and no-one seems to have thought about the question of data protection, the privacy of individuals concerned, never mind the legality of supplying information that was not requested in the first place. Does that not concern you as the data protection Minister?

**Mr Wills:** Of course it concerns me. I am not quite sure what the issue is. Are you saying we are in agreement that something wrong has happened here? Are you saying that we should have done more to mainstream human rights? Of course we should be doing more. The work continues. That is why we have human rights champions in every single government department at grade 3 official level or above. That is precisely why, because the whole process of mainstreaming is going to take years, and in this particular case it is quite obvious that we need to do more. We are doing more, it was obvious to us before any of these revelations, hence the initiatives that we have taken before any of these revelations, as I said, and obviously we must learn the lessons. Something wrong has happened here. Something bad has happened here. We are reviewing it, we will learn the lessons and we will take action accordingly.

**Q19 Chairman:** That is very pleasing to know, though it seems a bit like closing the stable door. The fact is we have been highlighting these problems for some time. In our scrutiny work this Committee has

produced 15 separate reports repeatedly drawing attention to the lack of safeguards in primary legislation to protect the right to privacy when the Government seeks to collect, store or share personal information. Every time we have made those recommendations the Government has effectively rejected them in one way or another. Does this episode not show that our concerns are valid and that much more needs to be done to protect these data?

**Mr Wills:** Of course your concerns are valid and they have been proved to be valid but they are concerns that this department shares. We shared them before these latest revelations and I keep coming back to the action that we have already taken. We took this because there is always a duty on all of us to be particularly careful about all these matters, and we are, and that is why we took the action we did before these latest revelations, so really we are, I think, pretty much in the same place as this. If you are saying to us, "You have not succeeded finally and completely in mainstreaming a human rights culture throughout Whitehall and throughout the public sector so that nothing will ever go wrong again", I agree with that too. There is always a job to do and we have still got to do it.

**Q20 Chairman:** That would take an awfully long time.

**Mr Wills:** Good. We agree on that too.

**Q21 Chairman:** One of my concerns about mainstreaming is that there has been far too little emphasis on service delivery aspects and I am very concerned that this key human rights issue has not been part of that mainstreaming work, but let us move on.

**Mr Wills:** At the risk of agreeing with you again can I just say that service delivery is fundamental. That is precisely why we have set up this network of human rights champions throughout Whitehall, so it is mainstreamed right through into service delivery. We have to get it to the front line, absolutely right, and this is the start of that process, but that is why these officials are at such a high level. These are grade 3 and above, so I do agree with you on that but we are taking action and we will continue to push on this.

**Q22 Earl of Onslow:** I have a very important supplementary on this. Three nights ago on *Panorama* there was a boffin from Cambridge, Professor somebody-or-other, an expert on computers, and he made this point. He said that if you have a very large computer database with hundreds of thousands of people having access to it, and he quoted the National Health one and others, you are bound, as night follows day, to have serious breaches of security; it cannot be helped, whereas if you have much smaller databases with, say, 100,000 people or 10,000 people on it with only two or three people who have access to it, you may have more of those databases but the damage that can be done by breach of security is much less. He said that he had warned Government about this time and time again.

He also said that what happened the other day was a certainty to arrive and he had told Government that this was the case. How, as Minister for data protection, have you either not been made aware of that advice or have you ignored it?

**Mr Wills:** I was not aware of it until I too saw him on television making this exact point. It is something that has clearly got to be looked at again. I do not know what occasions he is referring to; he was rather imprecise about when he said he told Government, exactly which bit of Government he told and when, and I am afraid until I know the detail I cannot comment. All I can say to you is that as the data protection Minister I was not aware of this advice. It seems to me certainly something that needs to be investigated, possibly as part of all of the reviews that are currently under way. It is obviously an important point that needs to be considered. What consideration will in the end be given to it and what consideration has been given to it in the past I am afraid I just cannot tell you.

**Q23 Earl of Onslow:** So you were not aware of the breaches until you heard them in the Commons, you were not aware of this piece of advice and you were not aware until you read it in the newspapers of all the other breaches there have been. I therefore have to reluctantly come to the conclusion, what is the point of the data protection ministry?

**Mr Wills:** I have tried to—

**Q24 Earl of Onslow:** I know you have, with very good temper, I hasten to add.

**Mr Wills:** If I may try again, with the Chairman's permission, we are responsible for maintaining the legislative framework for data protection. That is our job. At the moment it exists in a particular form. We had already come to the conclusion that parts of it needed toughening up and parts of it needed reviewing, and that is precisely what we put in place. That is our responsibility and that is what we have done. As a result of these revelations, some of which are facts, some of which are allegations and claims (and we need to be careful to distinguish between them, with respect), we need to take advice on what the consequences should be from people who advise us on these things. That is precisely what we are doing and we will take the necessary action in legislation or regulation or whatever other means we have to maintain an appropriate framework for that. That is the point. We are not policemen in this department. We do not go around putting in the security checks and balances in every single public authority or Whitehall department or whatever. That is not our job. These departments have operational independence and they do that themselves. They have to do it within the law and that framing of the law is our responsibility. That is what we are doing, so I hope that helps you a little bit with your question.

**Q25 Lord Lester of Herne Hill:** Minister, I first came across this problem when I was in the Home Office in the seventies and when Sir Kenneth Lindop did his very important report, that I would love you to

read, explaining the problems about government computers and privacy. The problem was foreseen more than 30 years ago. This Committee in its various reports, referring to what you rightly describe as the proper legislative apparatus, have suggested that the legislation should do at least three things. First of all it should define who should have access to the information, secondly, to whom it may be disclosed, and, thirdly, for what purposes. Much of that is, I think, covered by existing data protection but my first question is, without prejudice to the review, would it not be sensible to look again at those recommendations in looking at the future legislative design?

**Mr Wills:** Yes.

**Q26 Lord Lester of Herne Hill:** Thank you. The other matter is not about legislation or human error but is about building adequate safeguards into the computer software itself. Taking the Earl of Onslow's point that the professor made the other day about the systemic problems of a huge database operating with thousands and thousands of agencies and people, is it feasible to consider building into the computer software gateways and checks on gateways so that an official cannot simply have access and pass it on without having to cross various thresholds in the computer programme, because, given that all human beings make mistakes, can there not be safeguards built in now, however expensive, in order to reduce the risk of human error?

**Mr Wills:** Again, and forgive me for straying somewhat outside my own brief on this, I think the answer to that is yes, and a lot of material is already password protected. As it is, a lot of material is encrypted anyway. There are always two dimensions to any kind of security issue. One is the technological apparatus and the framework within it but also you have to have the right sort of culture and that goes to the Chairman's original question about mainstreaming human rights culture. There was no question that if people had the idea of the right to privacy burning in the forefront of their minds and everyone who handled sensitive data had that burning in the forefront of their minds we would have a far smaller number of these sorts of revelations and these sorts of deplorable breaches, and, of course, that is right. The question is how you implant that kind of culture best within organisations and that is what the reviews are going to be looking at.

**Q27 Lord Lester of Herne Hill:** And how you implant it into the computer programmes so they cannot easily be hacked.

**Mr Wills:** Yes, of course. The hacking, the malicious access to information, is another series of issues. This is carelessness, I think, as far as one can tell at this moment, but, of course, one has to look at all these things and the technological fixes, if you like, can enhance and reinforce the human culture that should make these sorts of breaches rare in future, if not non-existent, as we all desperately hope they will be.

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**Q28 Earl of Onslow:** With regard to password protection, any five-year old, like all our grandchildren at that age who seem to get on with computers much more easily than we can, could break most passwords in about five minutes. To have any serious method of security information has to be encrypted, does it not?

**Mr Wills:** I hope I was not saying, and I hope you did not understand me to be saying, that passwords are a panacea; they are clearly not. They are just an example of the sort of thing that Lord Lester was referring to, as indeed is encryption as well, and, of course, encryption is far more powerful, you are right.

**Q29 Dr Harris:** The Government has a positive obligation to help people enjoy their Article 8 rights to privacy, so I was just wondering whether you, as data protection Minister, had ever been supportive of the case made by the Information Commissioner to have more powers to check what was going on, or whether you followed the standard government approach of saying no up till now to those requests.

**Mr Wills:** No, I am supportive of it, and I have been in dialogue with them. When I was first appointed they came to see me and made this particular case to me. I asked them to come forward with proposals. When I went to visit them in Wilmslow earlier this month we discussed it again and I encouraged them and they told me they were going to come forward with detailed proposals for us to consider and I am waiting to receive those detailed proposals now. Obviously, when we have got them we will have a look at them and we will look at them very carefully in the light of recent events.

**Q30 Dr Harris:** It will be, rather sadly, like shutting the stable door after the horse has died.

**Mr Wills:** There are two or three things to say. I am not sure that even if those powers had been in place, whatever the Information Commissioner requests and assuming that we think they are practicable and doable, that would necessarily have prevented what has happened in the case of HMRC. It is not necessarily the case. It is also not the case, and I do not think anyone in this room would think it is the case, that we have seen the last of such events. I do not think anyone could say this was never going to recur and therefore any measures that we take forward in future may be of help in preventing such future occasions. We cannot be complacent; I think everybody would agree about that.

**Q31 Dr Harris:** The point I was making is that there is a positive duty on you as data protection Minister and the Human Rights Minister. Do you not think there is a case that you should have been pressing for these powers yourself rather than simply being the passive recipient of requests by the Information Commissioner, or indeed the active recipient? Neither of those should have been appropriate. You should have been proposing yourself, "How can we beef this up? How can we put in extra protections?"

**Mr Wills:** I am flattered that you think I have the competence to come forward with legislative proposals on my own. I am grateful to you for your trust in me. I prefer to take advice from the office that is charged statutorily with doing this job. I have a huge respect for the work they do. In my view they do an excellent job in every area, including freedom of information and data protection, and I met them, which was very shortly after—and, forgive me, I cannot remember the exact date—I took this job. They came with their agenda. I was very happy with the agenda. I felt that as they had proposed it would be courteous of me as a new Minister in this job (although having been in it some years ago) I should listen to what they said. I embraced what they said enthusiastically. I do not regard that as being a passive recipient. I have encouraged them to come forward. As I understand it they are coming forward. I do not regard that as a passive act. I think it is behaving properly, if I may say so.

**Q32 Baroness Stern:** Minister, this Committee at the time raised a lot of concerns about the Identity Cards Bill. We were very worried about the amount of information collected about each one of us and the number of people and organisations who would have access to it. The Government's response at the time was to tell us not to worry, it would be fine. I was not convinced then and I must say I am even less convinced now. You are a very convincing Minister so could you now convince me that there is nothing to worry about with all this information about all of us being on the ID cards database?

**Mr Wills:** I am not sure whether I am convincing. I am certainly not complacent about anything, so I would never start any evidence to any committee by saying, "You have nothing to worry about". In fact, one of the values of your Committee, if I may say, is that you do worry about things, rightly so, and you make us worry about things which we should do because no-one should ever be complacent about this. We obviously are going to have to look at the National Identity Register again in the light of this. We will have to learn the lessons. I cannot tell you what they are now, but what I am absolutely certain about is that everything will have to be scrutinised. We will have to take evidence from the various reviews and then we will assess it again. Once that procedure has been in place—and we are not talking months and months here; these reviews are all due to report very rapidly—I would be happy to come back and talk to you in more detail about it. I certainly would not say to anybody, "Don't worry about anything".

**Q33 Baroness Stern:** So I should for the moment go on worrying?

**Mr Wills:** You should go on questioning us and holding us up to scrutiny, which you do very well, if I may say.

**Q34 Earl of Onslow:** If you do find that the professor, whom we both saw the other day, is right and it is impossible to have proper security with large numbers of people having access to a file, and

large numbers of people will have access to the identity card file, will it then be government policy to say that the risk of Article 8 human rights breaches and not protecting our privacy will be such that in fact we ought to drop the identity card scheme altogether? I recall that my father romped up and down the north African desert in a clapped-out Matilda tank trying to stop people with funny hats on saying, “Ihre Papieren, bitte”, which was the object of the exercise in 1941. Will you be prepared then, in other words, to re-think the identity card scheme if the risk of breach is too great?

**Mr Wills:** Look: I think there are so many hypotheticals in that, if I may say, that—

**Q35 Earl of Onslow:** I do not think there are.

**Mr Wills:** No, I think there are, because with all these things there are very complex trade-offs that have to be made and what the learned professor appeared to be arguing for, just in the clip that I saw, and I think he has been quite frequently on television in the last few days and we may have seen different clips of him, was a very particular approach to this issue. I cannot tell you now how that plays out in practice. All these policy areas are very complex, they involve difficult trade-offs and they involve questions of money, apart from anything else, and public policy benefits, all of which are complicated trade-offs that I cannot possibly give you a definitive answer on now. I am very happy to come back when I have looked at what the learned professor said. I am very happy to come back, as I have already said, after the reviews have reported, and give you a more definitive answer with that information, but it would be wrong and misleading of me to give an answer based on really not very much except a 30-second clip of a professor at this stage. I am not saying I will not come back to you with an answer but not today, I am afraid.

**Q36 Chairman:** Can you give us an indication of the timetable for the review?

**Mr Wills:** Obviously there are a number of reviews; there is a review conducted by the Cabinet Secretary and so on, but my understanding is, and again this is primarily in the hands of Richard Thomas and Mark Walport, that they have been asked to report early in 2008, so I would expect certainly by the spring to have a pretty good idea of what their findings were. They are going to be responsible for driving the review. They are aware of the urgency we attach to the review and I am sure they will deliver within that kind of time frame.

**Q37 Lord Lester of Herne Hill:** Would it be possible to think about a rather more simple approach to identity cards in which the card was used to prove your identity, something which Lord Onslow's father apparently objected to but which I personally would not, as distinct from seeking to prove a whole lot of other things about yourself which go beyond your simple identity? Would that not be worth thinking about in order to garner rather wider support for the idea?

**Mr Wills:** All I can say is that it is always worth going on thinking about everything. As far as I am aware the number of identifiers in the identity card were not that many. There were ten fingerprints, irises and that sort of thing. If you really want definitive answers on identity cards you would be better advised to talk to the minister who is responsible for identity cards. As data protection Minister and Human Rights Minister my concerns are with those particular aspects of it and clearly there are issues here, which we are addressing, as I have said.

**Q38 Chairman:** Perhaps I can wind up this part of the session by picking up on that last point. Next Monday we have the report stage of the Child Maintenance and Other Payments Bill in our House. The Bill allows HMRC to have sharing of information with the Child Maintenance Enforcement Commission, credit reference agencies and lots of other people too. When we expressed concern about this to the minister, in his response he explained that as the Bill's provisions replicated existing information-sharing gateways, which we have just been exploring some of the inadequacies of, HMRC would be bound to act compatibly. Well, fine, but at no point in the minister's response does he refer to the provisions of the Data Protection Act or the safeguards which are going to be afforded to the information which will be held and shared by HMRC and the other bodies.

**Mr Wills:** Perhaps he had mainstreamed them so much into his consciousness that they were internalised and he just assumed they were internalised for all of you as well.

**Q39 Chairman:** Perhaps you might like to have a word with the Secretary of State for Work and Pensions on his response to see if he might like to think about some of those issues before report stage.

**Mr Wills:** I shall certainly pass this on to him, with pleasure.

**Q40 Chairman:** Perhaps we can move on to more familiar territory. I would like to go on to the meaning of “public authority”, which is something I know you have been particularly interested in. When Ivan Lewis was here a couple of weeks ago he told me, and in the House in health questions, that the Government intended to use “an appropriate legislative slot” to put right the YL case anomaly. Have you any idea what that new legislation is going to cover? Will it just be care homes or all sectors? What about self-funders?

**Mr Wills:** Thank you for giving me the opportunity to talk about this. As you know, Chairman, this is a matter of great concern to your Committee but also to my Department and to the Department of Health particularly. The House of Lords judgment is not one that we had necessarily expected. We think it does create an anomaly which has to be put right, and if I may I would like to update the Committee on where our thinking is on this at the moment. Despite the judgment, which is worth remembering was a narrow judgment; it was a judgment of three

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to two, we are committed to ensuring that publicly funded residents of independent care homes are covered by the Human Rights Act, but the issue of the definition of “public authority” obviously goes much wider than care homes. It is of interest to matters of public policy throughout Whitehall, so it is very important that whatever solution we find legislatively is effective and lasting. It is crucial for all those people who are going to be affected by this that they have a solution which is stable and sustainable and that we do not run the risk of this sudden uncertainty which the *YL* case has created, for example. We will start addressing this issue in the consultation process on the British Bill of Rights and Duties which is beginning early in the new year and we hope to draw on a very wide range of expertise to do so, including, if I may say, your Committee. In the meantime we realise that we need to take action more rapidly than that, so my colleagues in the Department of Health also are going to take action in the Health and Social Care Bill which is having its Second Reading as we speak. They are going to use the Bill to strengthen the regulatory powers that the Bill introduces to ensure that the new Care Quality Commission can enforce regulatory requirements which are in line with the relative provisions of the Human Rights Act, and this will apply to all older and vulnerable people in care. It will also underline that the purpose of regulation is to establish basic minimum standards that protect people’s dignity and human rights, and that regardless of the scope of the remedies provided under the Human Rights Act we expect that all care homes will respect the human rights of all of their residents. We have all got the same goal, which is to make sure that older and vulnerable people receive proper care, and it is important that there is no gap in individual remedies, but a systematic change can only really be brought about through the regulatory framework and that is what we are trying to achieve. I hope that gives some indication of where we are going. It is not a final answer as of today but I hope it gives you some indication of how we intend to move forward, and move forward we shall.

**Q41 Chairman:** I think that is very helpful in relation to the care homes side. It does not deal with the fundamental problem of the Human Rights Act not applying to care homes, but there is also the wider question of the applicability of the Act to privatised and contracted-out services more generally. When the Act was first introduced, as you know, all the assumptions at the time by Government were that it would include privatised and contracted-out services and when I put this to the former Prime Minister in the Liaison Committee he was very clear that this had to be the case because otherwise it would undermine the whole question of privatising and contracting out services if people were going to end up with lesser protection as a result. Do I get it from your answer that the Government is questioning that original assumption and what the former Prime Minister had to say?

**Mr Wills:** No. I think what you should take from that answer is the fact that as a matter of principle it should apply wherever the functions of a public authority are being discharged. However, as with all legislation, Government has to be extremely careful about unintended consequences. We have to be very careful that in trying to do the right thing we do not inadvertently do some wrong things, and there are some issues around this where we have to be careful that we do not damage other objectives of public policy and that is something on which we are going to consult. Let me make it quite clear, however. The reason that we are going forward in this way is that we believe there needs to be some sort of redefinition of the phrase “public authority”.

**Q42 Chairman:** So in 1998 when the Government made those statements there were unexpected consequences that were not perceived in 1998, or are they new unforeseen consequences?

**Mr Wills:** There are two things. First, I do not think anyone would have expected the *YL* judgment to come down in the way that it did. Maybe we should have done. We took a different approach, as you know, with the Freedom of Information Act in how we designated public authorities. We need to look at this. Legislation rarely, if ever, works in precisely the way that Parliament intends it to work and that is why we have to keep reviewing it and scrutinising what we are doing. That is precisely what we are going to do, but, please, I do not want anything in my answer to be construed as anything other than that we take this issue extremely seriously. We intend to move forward on it rapidly.

**Q43 Chairman:** When may we expect a reply to our report on the meaning of “public authority”, which is something like six months overdue?

**Mr Wills:** Soon.

**Q44 Earl of Onslow:** I think where this *YL* judgment is particularly dangerous is over the privatised prisons. Baroness Stern, who is a much bigger expert on this than I am, told me when I was whispering to her, “We think they are covered”, but it would be quite catastrophic, I suggest, if they turned out not to be covered. Lord Lester tells me that the Law Lords said that they were, but are you happy with that?

**Mr Wills:** If Lord Lester says so I definitely bow before his judgment.

**Lord Lester of Herne Hill:** Dangerous!

**Q45 Earl of Onslow:** Dangerous—thank you. Would you check up both on my worries and Lord Lester’s legal knowledge because it is very important?

**Mr Wills:** I will, and I will write to the Committee, if I may, on precisely that point.

**Q46 Chairman:** Just to let you know, I will be tabling a 10-Minute Rule Bill on this issue, as I did last year, so we will be keeping a very close eye on it over the next few months.



**Mr Wills:** Can I say that we would very much welcome both your personal and the Committee's involvement in this process. We must get this right now, but we need to explore all the possibilities. We very much hope to be able to draw on your wisdom as we go forward, but we will be going forward soon.

**Q47 Earl of Onslow:** The Government is beginning to consult on the case for a Bill of Rights and Duties. Are you yet convinced that a new Bill of Rights is necessary?

**Mr Wills:** I think our starting point is that it would be beneficial, yes, but if there is absolutely no appetite out there for it then obviously we will think again. Our starting point is yes, we always said that the Human Rights Act was, as it were, the first stage. I think the now Lord Chancellor said as the then Home Secretary that the Human Rights Act was a floor, not a ceiling, and we now want to build on that. We think there are a number of good reasons to do so, but, as I say, we are going to consult on all these issues.

**Q48 Earl of Onslow:** I probably come from a slightly different position than a lot of my committee colleagues because it seems to me that the real people whom a Bill of Rights should be holding in check are Her Majesty's ministers because all executives tend to overreach themselves, all executives tend to want to boss people about, all people tend to think of abolishing the rights of jury, all of these sorts of things, and it seems to me it is on this area, this almost 17<sup>th</sup> century attitude to government, that the Bill of Rights should concentrate.

**Mr Wills:** I do not want to surprise you too much but I fundamentally agree with the thrust of what you are saying.

**Q49 Earl of Onslow:** Good.

**Mr Wills:** That is the main reason we are bringing forward the Constitutional Reform Bill which will surrender or limit the powers of the executive. We agree with the fundamental analysis that for over 50 years, through most of the 20<sup>th</sup> century in fact, the powers of the executive have increased at the expense of Parliament. It has gone too far, it needs to be rebalanced.

**Q50 Earl of Onslow:** Yes, but it is surely with a Bill of Rights which is asking Parliament not to pass certain legislation, and we all know, since Lord Chief Justice Coke's rules for saying that laws which were passed by Parliament could be overturned, that that has now, since 1688, gone. We have got the Human Rights Act method of saying that you cannot repeal a parliamentary Act; you just point out that it is not compatible with whatever. Surely one has to have a Bill of Rights which says, "It is not compatible with a Bill of Rights to abolish jury trial, to lock people up without trial for long periods", in other words *habeus corpus* and all those ancient and great English liberties.

**Mr Wills:** You may well find those sorts of things featured in a new Bill of Rights. That is one of the things on which we will consult, but I would if I may

just draw your attention to the fact that if your fundamental problem is the overweening power of the executive there are a number of ways of fettering that. We have a rich ecology of constitutional arrangements in this country and they all have a very valuable role to play. It is not necessarily the case that the court should be the dominant or exclusive means of fettering the executive. Parliament has a fundamental role to play, many would say a much more important role than the courts, for example.

**Q51 Earl of Onslow:** I completely agree on that, but that means that the whole of the Labour Party should be made up of Bob Marshall Andrews and the whole of the Conservative Party ought to be made up of some other maverick.

**Mr Wills:** I am not sure we will be consulting on this proposal.

**Q52 Earl of Onslow:** No. It is because the House of Commons, and to a lesser extent our House, is not doing what it should do in controlling the executive that to me a Bill of Rights seems to be necessary. How do you put more backbone into the House of Commons so that it does say to ministers occasionally, "You cannot have this Bill. You cannot do that. You must not do that"?

**Mr Wills:** I think you will find the Constitutional Reform Bill does make quite significant steps towards doing just that thing. It may be in your view not sufficient but it is certainly a step in that direction, and there are lots of other arrangements that we have put into place which do fetter the executive and do constrain, as it were, the sorts of actions by the executive which we saw throughout the 20<sup>th</sup> century. This is not a recent thing. May I just put in a plug for freedom of information here? I think it was the great American jurist Justice Brandeis who said that sunlight is the best disinfectant. You open up the workings of government.

**Q53 Earl of Onslow:** I am afraid to say my party did not approve of a Freedom of Information Act, but we do not feel in any way bound by that decision.

**Mr Wills:** We think this is a very important constitutional institution now and one that we are extending, as again the Prime Minister announced on 25 October, and we are now out for consultation on how that will work. There are a number of different mechanisms in answer to your question but I think we are broadly in the same place on this.

**Q54 Chairman:** Before we move off this, on the question of economic and social rights we seem to be pretty well ruled out. Last week, talking about eminent jurists, Justice Albie Sachs of the South African Constitutional Court said to us when we were talking to him about the economic and social rights in their constitution and whether we should do that, "A country that does not have social and economic rights in its constitution is a country without aspirations for the future". What would you say to that?

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**Mr Wills:** I would say it is a very interesting comment. I think most politicians in this country think that the decisions on economic and social rights are for democratically accountable politicians to make. In the end they are difficult to make without making complex decisions about the allocation of scarce resources for which we are accountable to the British people in regular elections.

**Q55 Chairman:** As they are in South Africa, and as they have a whole series of checks and balances within their constitution and in the way the system operates.

**Mr Wills:** I would not presume to comment on the constitutional arrangements of South Africa. My job is to represent my constituents in this Parliament appropriately and I think that you have to be extremely careful once you start taking powers away from Parliament which properly and historically have always belonged there. These are difficult issues. Courts will always take a decision on the evidence and the facts of the case before them, rightly and properly so. Politicians, whatever decision they take, have to take account of all the other decisions that are in some way contingent and dependent on that particular decision, not least about funding. They are difficult trade-offs, they are complicated. Politicians sometimes get them right, sometimes get them wrong, but the crucial thing is that we are all regularly accountable to the people of this country for those decisions. I think that is very important and precious and I do not think we should jeopardise it for whatever reason.

**Q56 Baroness Stern:** Minister, you would agree that public understanding of the Human Rights Act is not very good in many ways and that the media coverage can be described sometimes as misleading, and that is a polite way of putting it. In May Lord Falconer and Baroness Ashton came to give evidence to us and they told us about a campaign called “Common Sense, Common Values”, which was set up to try and clear up these misunderstandings and promote a better informed view. Could you tell us anything about what has happened to that campaign lately?

**Mr Wills:** It has worked very well, I think. It was set up to address a particular set of issues. A lot of work was done on it. Some of it is still continuing. There is still a national archives exhibition on human rights and so on. We have now moved into a slightly different phase about human rights with the announcement of the British Bill of Rights and Duties, so this campaign is superseded now. That is not to say it was not important and it is not to say that the fundamental point about misperceptions about human rights has not got to be addressed. We have got to do that and part of the process of this consultation on the British Bill of Rights and Duties is precisely to do that. I think things like the *YL* case are beginning to change the mood about this because people are beginning to realise that human rights are not just for a small number of people who are deemed to be in some way unworthy of human rights, but actually are about vulnerable people in

general and some of those vulnerable people are the elderly who need protection and feel they need protection. It is an issue that we have to deal with and we have to make sure, for example, that the British people, to whom I and my parliamentary colleagues are responsible and accountable, are aware that almost all rights are accompanied by responsibilities and duties; I think that is one of the things that was not properly brought out at the beginning, and that a small minority of people who do not deserve rights have somehow got rights and they are somehow at the expense of the rest of us. That is a profound misunderstanding of it and if we had done, to be honest, a better job at the beginning of explaining that duties and responsibilities are inherent in the ECHR and the way that the Human Rights Act is applied and applied in the courts is proportionate, and it does take account of necessity and all these other things, then I think we would not be in quite the position we are in. We know we have got to address it. “Common Values, Common Sense” was the start of doing that and we are going to continue doing it.

**Q57 Baroness Stern:** I wonder whether the department collected any evidence as to whether the campaign had made any difference, that is, fewer stories in the newspapers that were wrong or more positive stories. Did you collect any evidence to suggest that “Common Sense, Common Values” had made any difference?

**Mr Wills:** It was a campaign before my time, so you will forgive me, but as I understand it the idea was more to set up a process which would continue, that we would set up networks of human rights champions, we would have a rebuttal unit, which is still very effective and works very well, that every time you got one of these frankly wrong stories in the press about someone having human rights for Kentucky Fried Chicken (actually profoundly wrong stories in the press), they would be rebutted quickly so they would not gain the sort of currency which you had. We know that journalists are very prone to just going to the last set of cuttings to build up the next story and rapid rebuttal, in the phrase, can do a lot to discourage that sort of thing. I think the idea was primarily to set up a process which would continue and is continuing to start having that sort of effect. I am not sure that we have collected the evidence now. I think we could probably do so. Can I turn to Edward on this?

**Mr Adams:** It is very difficult systematically to count the incidences in particular of newspaper stories and I am not sure that there exists the hard data that one can ever really present statistically, but from my own scrutiny of the media, just to take the example of the old canard of the Human Rights Act having been used by a famous prisoner to obtain gay pornography in his cell, I have not seen that story in the media for the last three months and it was quite a common one before that. That is a sort of anecdotal indication that some of the steps that the Minister has outlined have begun to have an effect, at least

within the media, and that one would hope in time would feed through into public perceptions, but I think that is quite a slow process.

**Q58 Chairman:** It was referred to by the Leader of the Opposition in a recent speech, I understand.

**Mr Adams:** I was talking about the media rather than politicians.

**Mr Wills:** Maybe he needs to update his cutting service.

**Q59 Chairman:** I think he probably does.

**Mr Wills:** Can I just say that we will get quite a good sense of this as we go about consulting on the British Bill of Rights and Duties. We will get a sense of how far Her Majesty's Opposition would feel that this is something they can work with constructively to get to some sort of agreed position on it or whether they want to make political points out of it, for example.

**Q60 Earl of Onslow:** You talk about the Bill of Rights and Duties. If my history teaches me correctly, and I think it does on this, neither the 1689 Bill of Rights nor the amendments to the American Constitution mention any form of duties on the part of the subject or citizen. Once you start imposing rights on individual people you are starting to boss them about, and surely the object of the state is that it must not boss people about unless it absolutely has to, and so it should be a Bill of Rights, which means that these are rights which are designed to protect the subject from arbitrary government and in a funny way duties does not come into that.

**Mr Wills:** With great respect, I am not sure I agree with that. First of all, the responsibilities and duties are inherent in most of the rights that are set out in the ECHR and it is right that they should be. Philosophically rights are nearly always accompanied by responsibilities. That position goes back a very long way. We have to look at this in a particular historical context. In the context that you are talking about there was a particular issue about the relationship of the state to the individual. There still is and you were right to draw attention to it and that will be fundamental, but individuals do also have responsibilities for community, perhaps embodied in the state, but they also have responsibilities to each other. Those sets of responsibilities are not necessarily ones for government to impose. You cannot impose a duty to be a good neighbour on somebody. You can set up all kinds of mechanisms to encourage it, but to impose it, absolutely not.

**Q61 Earl of Onslow:** Our common law and tradition basically say that we can do anything we like unless we are told by the Queen in Parliament not to. If you have a rights culture, like the French, a Bill of Rights, that is something which is automatically prescribed and limited, whereas the old-fashioned liberty of the subject is unlimited unless you are checked. There seems to me a fundamental and important difference between those two concepts and our one is the grander and more noble of the two ideas.

**Mr Wills:** There is certainly a difference between them. It depends where you stand about the value you attach to each of them, but that is a slightly different point from the importance of responsibilities in the mix, and I think acknowledging that we all have responsibilities to each other, and this is an acknowledgement; this is not new.

**Q62 Earl of Onslow:** No, of course, but you cannot put that in statute.

**Mr Wills:** There are some responsibilities and duties which are in statute already.

**Q63 Mr Sharma:** Minister, my questions will be related to the Human Rights Commission and the Government relationship. How is the relationship developing between the Human Rights Division of the Ministry of Justice and the Equality and Human Rights Commission?

**Mr Wills:** It is evolving because it is very recent. The EHRC is just over a month old. I have already met Trevor Phillips, the Chairman, two or three times to discuss ways in which we can work together. It is clearly an important innovation. We have funded £10 million worth of their budget, the strand of their work that relates to human rights. Clearly equality is very important to the Government and there is an inter-ministerial group that has been set up by the Leader of the House of which I am a member and that will clearly discuss the relationships with the EHRC. We are not the sponsor department, obviously that is for the GEO, but we do have a very important interest in ensuring that human rights have the priority that they should be given within this new organisation and we have every expectation that they will be given that priority.

**Q64 Mr Sharma:** Does it feel strange to be the Human Rights Minister but not to have responsibility for the work of the UK's Human Rights Commission?

**Mr Wills:** I suppose I have been around Whitehall so long that nothing seems very strange to me any more about the allocation of work. Where the responsibility resides is less important than what happens on a day-to-day basis. We have an inter-ministerial group which is one of the key organisms in government business. As the Human Rights Minister I will maintain very close relationships with the Commission and am bound to do so, so no, I do not feel particularly alien from the process at all. I intend to be, and I think I will be, fundamental to it.

**Q65 Mr Sharma:** During the inquiry into older people in healthcare, which was before my time, one of the main findings was that human rights do not usually provide the framework within which our public services are delivered. Too often front-line staff do not think in terms of the human rights of the people they deal with. Are we right to view this as a systemic problem?

**Mr Wills:** I am not sure it is a systemic problem. I certainly think there is a huge opportunity for improving the delivery of public services, including

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for elderly people, by adopting a human rights framework. I think it provides often a very helpful framework, as I say, but one by which front-line staff can approach issues like dignity and respect. It is an important culture rating mechanism if I may say, and I certainly think we can do more on that.

**Q66 Earl of Onslow:** We were told by several witnesses that they regarded the Human Rights Act as a lever by which they could get the service, which I must say I would have thought we should give whether there is a Human Rights Act or not. You do not leave people lying about in unchanged bedclothes in a filthy state, period, but they would find it very useful because it could be used as a lever to make sure that better services could be provided. Is that your experience?

**Mr Wills:** Yes, it is. I agree with that and I think it is important. Front-line staff work under huge pressure a lot of the time in very sensitive and delicate circumstances often, and sometimes they would welcome having that clarity of purpose. All of us when we do any job have to imbibe a culture. We have to learn what is important, what is not important, what choices you make day to day. It does not matter what job you do. In a human rights framework that emphasis on dignity and respect can be very important. I agree with you: many people do not need it. Many people instinctively behave in that sort of way but not everybody does and, as you will be aware and as the Committee will be aware, there are lots of cases where the human rights legislation has been important in bringing precisely those issues to people's attention rather forcefully.

**Q67 Mr Sharma:** Can you give some specific examples of how you ensure front-line staff understand the importance of human rights in their day-to-day work?

**Mr Wills:** We have done some work internally on this and it is very interesting. There are specific cases where failings have been revealed. By definition it is quite difficult to provide you with specific instances where somebody has suddenly said, "If it had not been for the Human Rights Act I would never have thought of that", but that is almost by definition impossible to find. What we can see is quite a lot of evidence that generally it can be very helpful, and I think what we need to do with other colleagues is think how we can continue to mainstream a human rights culture in the delivery of public services to achieve those sorts of outcomes.

**Mr Adams:** Could I add to that? In the follow-through of the human rights programme each department will obviously have the overall responsibility for mainstreaming human rights within their own business and have an action plan for the delivery of in-house training and guidance to their own front-line staff, I am sure. I hope that in future times when the Minister comes back we will have generated much better examples of how that is bedded in in the process of the service delivery by front-line staff because it is certainly an aspect of the areas upon which departments now are increasingly concentrating.

**Q68 Mr Sharma:** I am sure we will be interested to hear those when the time comes. Lord Falconer said in May that he wanted to maintain the ad hoc ministerial group on human rights in order to help mainstream human rights. His successor wrote in July to say that "no meetings are planned" and "Ministers will be taking a view as to whether the group should meet again in the future". What has happened to that ad hoc ministerial group on human rights?

**Mr Wills:** I think because we have taken a decision to move to the next stage of discussion which will be about a British Bill of Rights and Duties we will move to that point of consultation. Ministers will be involved in this. If we see a particular need to do it we will reconvene it but at the moment our colleagues will want to focus on the next stage. In each department there is a human rights champion who will take it forward. It is not a matter of neglect. It is a question of where we want to focus ministers' minds. As Edward has just said, we are going to drive it forward, both in terms of Whitehall and in terms of front-line delivery, but in terms of the ad hoc ministerial group, which was really to deal with the aftermath of the review of the implementation of the Human Rights Act which the previous Lord Chancellor set into place, we do not see a need for that particular mechanism. It does not mean that this issue has been sidelined in any way, let me stress that.

**Q69 Chairman:** Just picking up on that last point, the human rights champions, as I understand it, are grade 3.

**Mr Wills:** Or above.

**Q70 Chairman:** Is that really where ministerial responsibility should lie because the real problem is not from the top; the problem is at the bottom? It is the mainstream argument again. How do you get it down to the bottom where the local management are really what counts to try and make sure this mainstreaming happens? Grade 3 is somewhere away in the stratosphere to the average person on the front line.

**Mr Wills:** They are champions and part of it is to take it right the way through the whole chain of delivery, and Edward has just described some of the other mechanisms which we will be taking along. What ministers need to focus on, and I think in itself this will be an educative process, is where we go now with human rights. What should be in this Bill of Rights and Duties? That process of consultation, that process of discussion, which will go very widely, and I just want to stress that we intend this to be both intensive and extensive, will in itself be an educative process. We know we have more to do and you are right to draw that to our attention. It will take time. We are talking about cultural change here, not flicking a switch. It is changing people's attitudes and inevitably it takes time, but we are not relaxing about this. We do not think we have done it and we know that we have to do more.

**Q71 Chairman:** One last point about the Commission and the new emphasis placed by the Prime Minister on the issue of the importance of Parliament. Do you think the Government should reconsider our recommendation that the Commission should report directly to Parliament, be funded directly by Parliament and be appointed by an independent body not accountable to Parliament?

**Mr Wills:** Let me consider that, not at the moment. Let me reflect on it in the light of experience over the next three to six months.

**Q72 Dr Harris:** See you in three to six months on that one. You are aware, because we had an informal chat, about the concerns we have about the variability and quality of the human rights explanations in the Explanatory Notes as they are currently put for compatibility to help us interpret and accept the statement of compatibility given by the Minister. Have you made an assessment of the quality of that material because we have already told you and I am telling you now that we feel it has improved but varies too much and it is no good having lots of good ones if it is all ruined by a series of poor ones? Have you made an assessment and if you see a particularly bad example what do you do to stop it coming up again and again?

**Mr Wills:** I will answer the question but I would like to tease out a little bit more. You say the variability. Have you noticed this in the bills this session, or is this more historic than that.

**Q73 Dr Harris:** We have noticed an improvement in recent times but we still note the variability. What we have not seen is a small improvement across the board. We have seen some that are good showing what could be achieved and yet others which are inadequate. I can give you some examples but I am not sure we have time to do that right now. Accept that from me and we will write to you, if we need to, giving you the examples.

**Mr Wills:** I completely understand why you want to see this improvement. We would agree that the quality was unacceptably variable. My understanding is that the system has got much better through the committee which considers legislation and the Human Rights Division officials have been much more active in briefing them and making sure that proper account of the human rights consideration is given. Our understanding is that the improvement has been really considerable recently. We accept that it was variable before now but there is a much more vigorous intervention by this Department in legislation through that particular committee and it is our understanding that this is producing the desired effect. If it does not seem to you that that is the case then we will have to look at it again because we share with you the desire that you should have an adequate basis on which you should proceed to scrutiny.

**Q74 Dr Harris:** Clearly something has happened, or it is consistent with something happening, because we are seeing some good practice whereas previously

that was quite rare. Nevertheless, I think we would want to be the judge, since we are doing the scrutiny, of how well it has gone. To be constructive, would it help if we were to produce guidance saying what we wanted to see that you could use and disseminate if you felt that you could sign up to it also?

**Mr Wills:** I certainly think it would be very helpful to have that. I just have to add a caveat. There are some things that we could not necessarily accept to do with legal advice and so on. It would be extremely helpful. We want to get to the same position. We need to give you absolutely the best basis on which to scrutinise this legislation from a human rights perspective. It would be extremely helpful to have your views on what you needed, particularly to draw our attention to failings, as you would see them, in what has come forward, particularly recently since we have tried to put these new procedures in place.

**Q75 Dr Harris:** We might do that. We might produce some guidance and ask you to have a look at it, but at the same time you might say, "Right, let's do an audit of the bills in this Queen's Speech" so you can see what you think from the outside. I know your officials are doing that but you may agree with us, and if we can then agree guidance and how good it is looking at the stuff that has already come out then maybe we will be of the same mind.

**Mr Wills:** An exchange of views on this with the detailed evidence in front of us will be extremely helpful and help us make perhaps more rapid progress than we have in the past.

**Q76 Dr Harris:** It just saves letter exchanges.

**Mr Wills:** Why do we not sit down with officials, you designate who you want to be part of this process, we will put the right people, and Edward will do it, and try to work this through? We certainly want to be in the same place.

**Dr Harris:** There are three ideas that you have covered there and we will consider them. Thank you for that constructive response.

**Q77 Lord Lester of Herne Hill:** Can I just add that unfortunately I do not think it is correct that recent practice is all as good as it could be, and I can explain that hereafter. The reason it really matters is obviously because it would save a lot of time of this Committee if we were shown everything we could be shown, subject to the legal advice exception. We have been pressing for this now for several years. Speaking for myself, I think there is no difficulty in cutting out the strictly legal advice and giving the Committee all the rest so that we can cut down the number of questions we have to ask you because we see the full material in advance. I would like to take advantage of your offer to discuss this with officials as well to give them an example where there is not perfect practice yet.

**Mr Wills:** I am sorry, I hope I was not suggesting that it is as good as it can be because clearly nothing ever is, we should never be complacent. Let us just sit down and work it out. There are some areas, as you recognise, where we cannot go but let us just try

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and see where we can get to an agreed position as quickly as possible because it is in everyone's interests.

**Q78 Baroness Stern:** Can we have a little discussion now about the right of individual petition under the International Covenant. In 2005, as you will remember, the Government ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and described that as an "experiment". Following that, two cases were lodged against the UK both of which were declared inadmissible. Just two. Could you tell us what steps you took at the time to ensure that civil society was aware that, from March 2005, individuals could complain of individual human rights violations to the CEDAW Committee?

**Mr Wills:** Because I was not around at the time, if I may I will hand over to Edward on that.

**Mr Adams:** I am afraid we did not take any specific steps to draw the attention of civil society to that, but I think that was because we regard the Government Equalities Office as being primarily the department that sponsors that particular seminar. There was a seminar held by the Human Rights Lawyers' Association which did ensure that those lawyers who were working in this field were well aware of the changes that had been made.

**Q79 Baroness Stern:** Thank you. Since it was an "experiment", I understand you are going to review it. You told us in August, I think it was you, Minister, that you were going to publish the report of this review "when Parliament returns". Has Parliament returned and, if so, where is it?

**Mr Wills:** Sadly, I was overoptimistic about the delivery of this review. I can only apologise for that. That was the best information I had at the time and it turns out that the timetable has slipped.

**Q80 Baroness Stern:** Do we have a date?

**Mr Wills:** I do not have a date. I am told it is imminent, perhaps early in the New Year. I will take further steps to find out exactly where it is in the process. It is not delaying it, there is an independent reviewer conducting it and we are in his hands. I will do it as soon as I can. I will take steps to find out exactly where it is.

**Mr Adams:** Could I add that one of the reasons for the delay was that we did wish to wait until the second of the two cases to which you referred reached a specific outcome in the process so that we would be in a much better position to review two cases rather than one.

**Q81 Chairman:** When did that happen, the second case? When did it reach that stage?

**Mr Adams:** I would have to confirm the date in writing but I think it was over the summer that it was declared inadmissible by the committee.

**Q82 Baroness Stern:** Since it appears that the ratification did not lead to an avalanche—nobody could describe two cases as an avalanche—are you now proposing to permit the right of individual

petition under the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination or the Convention on the Rights of Persons with Disabilities, which we understand the UK Government is going to ratify in 2008, so the Minister told us? Are you now going to open up individual petition under all those covenants?

**Mr Wills:** I think we will review that when we have got the result of this particular review of the experience. Clearly the number of applications will be an issue.

**Q83 Chairman:** The review you have just done on the two cases—

**Mr Wills:** Is being done.

**Q84 Chairman:** That is being done on the two cases on the Women's Convention, that review is not going to consider whether this should be extended, you are going to have another review after that?

**Mr Wills:** No, we are going to have a look at that review and make a decision. It will look not only at how many people have used this particular facility, and we will have to take account of a number of different factors there, but also the cost to the taxpayer, the overall utility of it bearing in mind the Government's view, as you know, is that it has failed to see great utility in this particular process—

**Q85 Chairman:** If you do not tell people about it, it is not surprising, is it?

**Mr Wills:** Given the remedies that are already available in this country, that is the point. We believe there are a wide range of remedies available in all these areas already and, therefore, you have to look at what extra value is added and at what cost, and that is what we will be looking at once we have this review.

**Q86 Lord Lester of Herne Hill:** Minister, I do not want to sound like Captain Ahab pursuing Moby Dick because I have been banging on about this for several years. When we signed up to CEDAW, the individual mechanism, there were very full remedies under the sex discrimination and equal pay legislation and, therefore, it was unlikely to ripen into anything significant at all. The present position, as you know, is that black people do not have similar access to the CERD mechanism and none of us has access to the ICCPR mechanism and the gap, and it is really the only gap but it is important, is on the equality without discrimination guarantee. What I do not understand, and I have never really had an explanation yet, and if you cannot answer today it would be lovely to know at some point, is this: what is it about the UK that makes it difficult for us when every other member of the EU has accepted it and all but three Members of the 47 of the Council of Europe have accepted it and in the Commonwealth all the big nations of the Commonwealth, except India, have accepted it? Why is it that we still have this problem that we cannot sign up to these individual complaint mechanisms either for CERD or ICCPR now and before Human Rights Day?

**Mr Wills:** You asked a very specific question and I am almost tempted to answer it, which was what is it about the UK and that would tempt me into realms of speculation on culture, history, politics and all the rest of it, but I will not, I am going to resist this temptation. If I may, I will give you a full and considered answer when we have got the result of the review. There are issues here. I have to wait for the review. We have commissioned it and it is imminent. I do apologise for the fact that it did not arrive when I wrote originally that it would arrive. In the end, these UN committees are not courts, they cannot produce legal rulings, they cannot award damages, and therefore one has to always run the slide rule over it and ask what is the utility of them, and that will be part of my answer to you, which I will give you once the review is published.

**Lord Lester of Herne Hill:** When you decide to accept. Thank you very much.

**Q87 Earl of Onslow:** It appears we have not signed yet the European Convention on Nationality. Why not?

**Mr Wills:** For reasons of both principle and practice. It is at odds with UK nationality law and we think it does not necessarily address certain very important questions. Particularly now, my understanding is that the Council of Europe are looking at this again to look at its relationship to issues around terrorism and, therefore, we will wait and see what the results of their deliberations are before we come to any further conclusions on this.

**Q88 Earl of Onslow:** For my own information, because I am really very blind on this issue, what are the differences which we find? I think you are saying we do not need to sign it.

**Mr Wills:** We made various amendments to our nationality law in 2002 to facilitate signature and ratification, but the law is still at odds with the Convention in some respects, particularly in relation to the deprivation of nationality which follows the introduction of new legislation on this in 2006. That is one of the key reasons for this. We know that the Council of Europe, and several bodies of it, are looking again at the challenges posed by the threat of terrorism in the context of immigration and nationality and it is quite possible that a new instrument on nationality which could replace or at least significantly modify the 1997 Convention is going to emerge from those deliberations that better fit the challenges that we now face and that might make it easier for us to sign.

**Q89 Chairman:** Can I ask you about the CEDAW Committee who are reviewing the human rights record on women next summer. Have you co-ordinated with other departments to ensure that the rights of women not to be subjected to sexual violence, and to have their attackers brought to justice, are adequately protected in the UK so that when this comes to be considered by CEDAW we will get a clean bill of health?

**Mr Wills:** We will get a clean bill of health.

**Q90 Chairman:** Will we, that is the question?

**Mr Wills:** What are we doing to make sure that we do, is that the question?

**Q91 Chairman:** Yes.

**Mr Adams:** I really do not want to appear unhelpful, Chairman, but that is an issue in respect of which the Minister here is not the lead minister. The lead department on that Convention is the Government Equalities Office, so it is their ministers who will be leading on the UK's response to that. I am afraid we are not briefed to respond.

**Q92 Chairman:** Could I ask more generally what your division does within Government to promote international instruments? Are you going round trying to persuade people to sign up? For example, what involvement do you have in relation to the Minister for Disabled People on the signature to that convention?

**Mr Adams:** You have picked on another of the conventions on which the Ministry of Justice is not the lead ministry, the Department for Work and Pensions leads on that particular convention.

**Q93 Chairman:** Are you co-ordinating this at all or is it just everybody doing their own thing?

**Mr Adams:** The department which has the lead responsibility for the convention in question co-ordinates. For example, in relation to the International Covenant on Civil and Political Rights, yes, that is one where we are in the lead and we do co-ordinate and we were the ones who put together our latest response to that committee, if I may say I think one of only two countries that have ever submitted a report on time to the UN in response to that committee, and it is now our job to go round Whitehall and make sure that all of the angles are covered and all of the material is in for the response. We only do that in respect of those conventions on which our ministers are in the lead.

**Q94 Lord Lester of Herne Hill:** In Australia and New Zealand they print the government response reports to the UN Human Rights Committee. I have only just woken up to the fact that yours is available, I imagine, on the net. Are you making it very widely available? Does one have to go on the Internet to get hold of it or is it printed as a publication?

**Mr Adams:** It is printed as a publication from the Department. We will send copies to anyone who wants it. As you say, it is also on our website. As we always do in these cases, we worked quite closely with civil society and the relevant NGOs and we have provided all of them with a copy of our response and will be meeting with them in Geneva in due course when the committee is considering our examination.

**Q95 Chairman:** So you do co-ordinate with other departments on the reports to the UN Human Rights Council?

**Mr Adams:** Yes.

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**Q96 Chairman:** How do you intend to feed back the Human Rights Council's final observations to other departments? What are you doing to reply to their response?

**Mr Adams:** Until we see what their response is it is hard for me to speculate exactly how that will work. As you will be aware, this is a new procedure, one of which the UK is very pleased to be one of the first to go through the universal period of examination; indeed, we volunteered to do so. We will very much be feeling our way with the UN. All I would wish to say at this stage is we will do whatever we consider necessary to ensure the Council's views are widely disseminated within Whitehall so that departments can learn the necessary lessons from them.

**Q97 Dr Harris:** I wanted to ask about declarations of incompatibility, what you do about them, and European Court judgments that are against the UK and what you do about them, and particularly when. You will be aware of our report on this called *Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights*, our 16<sup>th</sup> report of Session 2006-07, which was published way back in June 2007. While we had responses on the specific cases, which we would normally expect within two months, you asked for extra time to respond to what I think we would consider the very important general points about overall delay, almost in some cases failure, for there to be effective remedy and failure to deal with the responses. As I understand it, we are still waiting for substantive replies to the recommendations in that part of the report. It is nearly six months on now and it is recommendations about delay, so you can see the rather sad coincidence of the fact that I am now pressing you about delays to responses to recommendations about delay.

**Mr Wills:** I can understand that. As you know, I did respond on specific cases two or three months ago.

**Q98 Dr Harris:** Yes.

**Mr Wills:** The wider recommendations are obviously very important. There is merit in a better system of oversight. I think we would agree with a lot of what you have recommended. We have to work with the FCO on this, as you are aware. It is a complex area and the officials are working closely with their colleagues from the FCO. We want to see if a workable system can be established. I know you want to see action and there is a problem here but we will get back to you by January on this with an answer as to whether we think there is a workable system that could be set up here.

**Q99 Dr Harris:** The beginning or end of January?

**Mr Wills:** Given my record on promising delivery I think I would be prudent to say the end of January.

**Q100 Dr Harris:** The Government says it is pro-human rights, and we had that discussion earlier and I do not doubt your sincerity on this, but then it is very depressing, as you will be aware, for us to hear from the Department of the Execution of Judgments in the Human Rights Directorate in the Council of

Europe that the delay in implementation of Strasbourg judgments was one of the main concerns in relation to the UK. Given that we have this additional problem of lack of retrospectivity and lack of effective remedy it all adds up to a very unhappy picture for us to be able to say in international circles while preaching to other countries that we take our own obligations seriously. We do not have time now to go into all of the recommendations that you say you are going to respond to by the end of January, but I just wanted to ask whether you would find it helpful for Parliament, and perhaps this Committee within Parliament, to engage even more proactively with you, and some of our recommendations are about you reporting such declarations to us within a certain timescale, and whether you think for departments where you are not necessarily the lead that would be a useful thing?

**Mr Wills:** Are you talking about European Court judgments or declarations?

**Q101 Dr Harris:** Both.

**Mr Wills:** They are different issues. I think we have a very good record on human rights in this country. We are proud that we brought in the Human Rights Act; we think it is successful legislation, it has done good and we want to build on it. I have no problem holding my head up in international forums on this particular issue. That is not to sound complacent, we can always improve, but I would take issue with the characterisation that you gave of this country in your remarks. On declarations of incompatibility, we have acted swiftly to remedy some declarations of incompatibility, others have taken longer. Undoubtedly, some of them are complicated and there are two or three outstanding issues. We are pressing colleagues—it is my responsibility to press colleagues—to resolve these matters. In two cases there were particular legal issues. They thought they had come to a way forward and it then turned out there was conflicting legal advice and they had to go back and look again at it. All I can say is we take these matters very seriously. I have been pressing the responsible ministers in the last few days again to act quickly. You are right to draw our attention to it and we do take it very seriously. As regards us engaging with you, it can only be helpful in the process. We do want to engage with you and if there are specific measures that we can take forward jointly we shall. I suggest we explore those issues when we are in a position to respond on the Court judgments by the end of January.

**Q102 Dr Harris:** I was not just giving my view when I was critical, I was quoting Strasbourg.

**Mr Wills:** Then I disagree with them.

**Q103 Dr Harris:** Okay, fine. I would say they do not have a political axe to grind in particular unless you really upset them.



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*Mr Wills:* It does not mean they cannot be wrong.

**Q104 Dr Harris:** I was going to ask you, but we do not have time, about the delays in *Connors* and *Hurst*, and we can argue about why it is that these have not been rectified, but on something specific in relation to *Morris* and *Gabaj*, can you tell us when the Government proposes to remedy the incompatibilities in *Morris* and *Gabaj* and when the remedial order will be published, because you have said that there will be a remedial order early in the new session?

*Mr Wills:* That was what I was specifically referring to in these two cases. As I understand it, the relevant departments, the DCLG and the Home Office, had come to an agreement about a proposed solution but they have had to reconsider that because they had further legal advice about what the Government required. As I say, we are pressing them to come to a new resolution on this issue and we shall continue to do so.

**Q105 Dr Harris:** How about a performance monitoring target in this area?

*Mr Wills:* Well, actually you may have noticed this Government is moving away from setting too many targets, so you are suggesting that we reverse that.

**Q106 Dr Harris:** Just one, maybe an average. A clever target just to keep you on your toes.

*Mr Wills:* To mainstream the culture of rapid response.

**Q107 Dr Harris:** Yes.

*Mr Wills:* We will certainly consider that.

**Q108 Chairman:** Thank you very much. Is there anything you would like to add that we have not covered?

*Mr Wills:* I think you have taken me through the agenda pretty thoroughly.

**Chairman:** Thank you very much, Minister, and Mr Adams.

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**Monday 14 January 2008**

Members present:

Mr Andrew Dismore, in the Chair

Dubs, L  
Lester of Herne Hill, L  
Morris of Handsworth, L  
Onslow, E  
Stern, B

John Austin  
Mr Virendra Sharma  
Mr Richard Shepherd  
Dr Evan Harris

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*Witnesses:* **Mr Richard Thomas**, Information Commissioner, and **Mr Jonathan Bamford**, Assistant Commissioner, gave evidence.

**Q109 Chairman:** Good afternoon. This is our opening session on data protection and human rights. We are joined today by the witnesses Richard Thomas, who is the Information Commissioner, and Jonathan Bamford, who is the Assistant Commissioner. Do either of you want to make any opening remarks, or do you want to get straight on to it?

**Mr Thomas:** Thank you, Chairman. Can I just say just a very few words to very much welcome the interest of this Committee in the subject of data protection. Clearly, there are very close linkages between the human rights agenda and data protection issues. I think I would like to make an opening point that recent events have accelerated a trend whereby privacy and the protection of personal information is moving from the margins to become a key factor in safeguarding the interests of individuals, but also in raising reputational risk issues, both political and commercial, from the point of view of organisations holding personal information. Much of this has been fuelled by an explosion of technological change, whereby personal information is collected and used in ways now that create challenges for all concerned, which perhaps have not come into focus before. There is now a vast array of storage means that are increasingly used to hold personal information, and this presents challenges in managing that data that are multiplying all the time. The data breaches which have perhaps stimulated this current inquiry are really just one aspect that has clearly placed the spotlight on data protection recently; but there are many wider issues than just concerns about the security of data. These are challenges that are facing the public and private sectors alike; it is not just a public sector issue. I think there are issues in terms of the cultural approaches to data protection, governance and accountability issues, and then various specifics in terms of how data breaches are to be handled, but also in terms of the regulatory framework affecting the collection and use of information.

**Q110 Chairman:** Thank you for that snapshot. To what extent do you see data protection and privacy as human rights issues?

**Mr Thomas:** Clearly, there are very close linkages. Article 8 of the European Convention affects us most directly in this country, and I take it obviously that people are familiar with the language and interpretation of Article 8. It is clear that the data protection regime, currently the European Directive on Data Protection and the United Kingdom Act of 1988 all flow from that fundamental concept of human rights. If one looks at the preamble to the European Directive, for example, and the debates at European level about data protection, one sees a great deal of reference back to fundamental rights and freedoms. Although one can argue whether they are parallel or whether one somehow flows from the other, I think there are clearly very close connections; and I think there is a widespread recognition that data protection is a manifestation of the Article 8 right. Indeed, for organisations to understand and follow the requirements of the data protection legislation, that is a practical means to ensure that they are respecting the rights guaranteed by Article 8.

**Q111 Chairman:** But does the Human Rights Act come into your work at all, or is it seen as something parallel to one side?

**Mr Thomas:** It is very much a context, Chairman. My own organisation, of course, is a public authority and therefore we are bound to have reference to the Convention rights in the discharge of all our responsibilities; but without referring to the Human Rights Convention on everything we do—I would not want to give that impression—but certainly we and those we talk to are aware of the context in which the data protection legislation comes into effect in this country.

**Q112 Chairman:** Everybody always wants more value for their particular pitch, and that is inevitable, but how have budgetary constraints impacted on everything that you feel that you should be doing that you are not doing? Would it make any difference, for example, to some of the things we have seen going on over the last few months?

**Mr Thomas:** Let us just say a few words about resources, because I think it does go to the cultural point I made earlier. I am concerned, certainly in the past, that the protection of personal information has

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not been taken as seriously as, in my view, it should be. There has not been sufficient seriousness towards the integrity and respect for personal information, which is needed, with some somewhat indifferent or even begrudging attitudes towards data protection. I think this may have manifested itself in the powers available to my office, and also the resources available for my office. We are funded for data protection by the fees that are paid by data controllers. This is quite different from the freedom of information responsibilities I have, which are funded by grant aid from the Government. They are separate revenue streams, and we cannot use one to pay for the other. The grand total for data protection is about £10 million. That, in passing, is just over double the budget for freedom of information—but that is a story, perhaps for another day. However, £10 million for data protection is not very much when you compare that to the funding available to the Health and Safety Executive, which is £890 million, and the funding available to the Financial Services Authority, which is £269 million. I could go on with other examples, but £10 million is really a very small amount to run a regulatory regime where we have three different sorts of responsibilities. We are there to promote good practice. We are there to adjudicate on complaints, and we are there as policemen to take enforcement with the limited powers that we do have, where people require some sort of regulatory action. For inspections and audits, we have very few staff indeed; we have just a handful of staff for the entire country, with something like 280,000 data controllers, private and public sector organisations that have notified that they are processing personal information. We can only carry out an inspection with the consent of an organisation, so we do not have the power to demand to see what is going on inside the organisation. We put a lot of emphasis on giving guidance and helping organisations get it right. Our strategy is to do our very best to help organisations understand and get a grip on what is required in terms of data protection and help them to get it right, and then just take enforcement action in those very exceptional circumstances where a minority are perhaps persistently ignoring their obligations. I do not wish to give the impression that you could double or quadruple our resources and some of the problems of recent months would not have happened. That is not the case. I am saying that we have a culture where perhaps until very recently these matters have not been taken with sufficient seriousness inside organisations.

**Q113 Chairman:** If I were to put a specific point to you, is there anything that you feel you should have done over the last few months that you could not do because of resource constraints?

**Mr Thomas:** I do not think that is the case, Chairman, but we could have done things differently. If we had more resource and more power, then we might have done more in terms of checking that organisations were treating security and other aspects with sufficient seriousness. In July of this year I published my annual report to

Parliament. That was a set-piece occasion and I took the opportunity with the annual report to sound a very clear warning about the importance of taking security seriously. I made reference to a number of private and public organisations. In the public sector I referred to security breaches that had occurred in bodies linked to the Department of Health, the Foreign and Commonwealth Office where they had a problem with their website; and in the private sector we have come across banks and other financial institutions where there have been security breaches. I sounded quite a stark warning, saying this had to be taken seriously. I was reflecting in part developments in the United States, where there had been some major data breaches, and recognising reputational problems that had occurred for organisations if they had got it wrong. The examples I gave and the language I used did generate a great deal of press and other publicity at that time back in July. I did say then that it was a matter that had to be taken seriously at the top of organisations. I said that really this does require new attitude and new thinking, and that that should be led from the top of organisations. It is sad that some four or five months later we had the saga involving the loss of the disks with details of 25 million individuals on those disks, which were lost by HMRC, which has brought the situation into sharper focus since I gave my warning in July.

**Q114 Lord Lester of Herne Hill:** Obviously, data protection and freedom of information are two sides of the same coin, which is why your office rightly deals with both. There is plenty of regulation so far as data protection is concerned internationally—the Council of Europe and the EU. On the freedom of information side, the Council of Europe is negotiating a completely new convention. How influential is your office in Government negotiations on, for example, the new Freedom of Information Draft Convention? Are you consulted and are your views conveyed in the course of negotiations, for example?

**Mr Thomas:** The short answer, Lord Lester, is “no”. This is a matter for Government. The Ministry of Justice is leading the discussions and negotiations, I believe, at that stage. To my knowledge, we have not been consulted about any of the specifics arising out of the discussion. I am aware of the discussions and the negotiations going forward, but I do not think that I or my office have received any direct requests from the Ministry of Justice to assist in that process. Having said that, we are not slow to bring forward our views on a range of issues, and I am sure the Ministry of Justice is familiar with our thinking on most of the issues. Of course, we have had experience of administering the Freedom of Information Act now for three years—the third anniversary has just passed—and there is no shortage of awareness as to our attitude towards the legislation.

**Q115 Lord Lester of Herne Hill:** Are you kept well informed about the state of negotiations so that you can respond to that?

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**Mr Thomas:** No, we are not. I make no complaint, but we are not receiving regular reports.

**Q116 Baroness Stern:** Can we move on to some questions now about your views of the Government's record? Privacy International, I understand, recently concluded that the UK has the worst record in Europe for the protection of privacy. I think they have been calling it the "endemic surveillance society". Do you share that view; and, if you do, what do you think this says about the importance the Government places on protecting this human right?

**Mr Thomas:** I do not share the view of Privacy International in those terms. I think theirs was an impressionistic survey. I was aware of what they were saying, but I do not think that anything meaningful can be deduced by saying we are the best or the worst. I understood some of the issues they were raising, and indeed I have raised some of those myself. In November 2006 we hosted the International Conference of Privacy and Data Protection Commissioners world-wide, and we commissioned a report for that on the subject of a Surveillance Society. We had already raised some questions about whether we are sleep-walking into a surveillance society. That was a very comprehensive report, and when it was published we said: that in some respects we are quite closely monitored in this country; there are more CCTV cameras per head of population than elsewhere; and there are more and more databases. I referred in my opening remarks to this Committee about the explosion in different methodologies to collect personal information. We made the point that perhaps there are aspects of a surveillance society, not in a malign way—not in a way that one would associate with the tyrannies of eastern Europe and elsewhere—but more and more information is being collected by public and private sector organisations. More and more information is collected from the electronic footprints that each individual leaves every day in their lives in their dealings with government, their financial transactions, their use of the Internet, their use of telephones and mobile phones and so on. We wanted to start a debate, and that was some 14 months ago now. I think the debate has continued ever since. I am delighted that both the House of Commons Home Affairs Committee and the House of Lords Constitutional Affairs Committee have both started inquiries into a surveillance society, and we have given evidence to both of those. I think the debate is up and running now. I think that some of the predictions that were made in the report that we commissioned about life in the year 2016, rolling forward ten years, did give people pause for thought. I do not think anything there was undocumented. One could relate to every prediction an example of something currently under consideration or under development. If I could give you one example, Baroness Stern, the report predicted that by the time of the London Olympics in 2012, there would be flying drones, pilotless cameras in the sky—they were dubbed "the friendly eye in the sky"—monitoring crowd control. That was predicted to be

around by 2012; well, in May 2007, just six months after the report was published, Staffordshire Police were experimenting with such a drone at a rock festival. Indeed, the manufacturers of this drone said that it had the capacity to squirt "smart water" on those not behaving themselves. It does raise questions about how these cameras are to be regulated, in what circumstances they should be deployed and what controls there should be. This is only at the very experimental stage, but it is a good example of the ability of technology to keep people under ever-growing surveillance, and things are happening even faster than had been predicted in the report.

**Q117 Mr Shepherd:** This follows from the evidence you gave to the Justice Committee and their conclusions in their report earlier this month. One of them is that there is evidence of a widespread problem with Government relating to establishing systems for data protection and operating them accurately. In fact, you have made reference to that. Where is this problem? Is it at the top?

**Mr Thomas:** I think it is fairly endemic, Mr Shepherd. This Committee, I hope, will have seen the report published just before Christmas by the Cabinet Secretary, Gus O'Donnell. That documented the state of affairs across Whitehall departments. I think the responsibility for the governance of personal information must lie at the top of an organisation; and, indeed, when things go wrong reputations are at risk—as I said earlier—commercial and political reputations, and therefore somebody needs to have very clear responsibility for such matters as the rationale for collecting information in the first place; how it is to be used—if it is to be shared and, if so how; the importance of minimising data. It is not just about keeping it secure, but there are questions about whether we are collecting too much in the first place, so data minimisation is a very important theme; how you store information, when you delete it, the security arrangements, the technical standards that are being followed, how technology is used to provide safeguards—and there are various techniques whereby you can harness technology in the interests of protecting people. Hugely important, equally, are communicating to your staff, the training programmes that you need, and then arrangements for audit and reporting. I am sorry it is a long answer, but I wanted to say that you need somebody at the top to ensure the whole framework is being applied; then some of the specifics need to be given responsibility somewhere else in the organisation. For too long data protection has been left at the middle or lower inside organisations.

**Q118 Mr Shepherd:** It was just this point about the plethora of information that we are doing. We are in an age, as you well know, where governments demand the necessity for gathering the information for public protection reasons or for the efficacy of its programmes. We can pass all the laws in the world, but unless there is organisational competence and belief or commitment behind it, it comes to nothing,

as we have seen recently. It is just the genteel and gentle way in which one deals with these incredibly disturbing intrusions into the lives of the citizens of this country. You have said that political embarrassment does follow from it, but where is the accountability in any of this system?

**Mr Thomas:** There are legal obligations—

**Q119 Mr Shepherd:** But no-one has been prosecuted!

**Mr Thomas:** There have been a few, but we have very weak enforcement powers, and by and large at the moment our enforcement powers are limited to serving a notice saying, “Do not do the same again”. We have been putting forward proposals for some time to the MoJ for our powers to be increased—our powers to carry out inspections but also the need for sanctions, particularly to act as a deterrent against serious, reckless or deliberate breaches.

**Q120 Mr Shepherd:** But in the case of the loss of the child credit information, the press or those who reported it seem to have been directed to a very minor official at the bottom of the pile, and no senior official or anyone; so is this the intent of Government or is it that we make laws and we do not care whether they get acted upon?

**Mr Thomas:** I think in part that may be a question for Government. On the specifics of what happened at HMRC there is an inquiry that is being headed by PricewaterhouseCooper. My office has agreed with Mr Pointer, the senior partner of PricewaterhouseCooper, that he will carry out the full investigation; and when that is available later in the spring we will decide what, if any, enforcement action is appropriate in that particular case. I have said that it is highly likely that there have been breaches of the Data Protection Act there. We have seen the Permanent Secretary resign from his office, so perhaps one might be reminded that there was a level of accountability there.

**Q121 Mr Shepherd:** My last point on this: PricewaterhouseCooper have a very close relationship with Government, and their revenues and a large part of their income are formed from their relationship with Government. Are you satisfied in your mind—or is this going beyond the brief—that people that have such a cosy relationship with central government are best commissioned to look into the deficiencies of central government?

**Mr Thomas:** I think that is well beyond my brief, but I will benefit from their report when it is published.

**Q122 Baroness Stern:** Can we continue in this vein about the recent examples of personal data being lost or otherwise compromised. You have already made some very helpful remarks, but I would just like to ask you to slightly turn them round and very briefly say what you think the systemic causes are for the recent failings in the loss or compromise of personal data.

**Mr Thomas:** At the moment there is no obligation on any organisation to tell us about data breaches, but since the warnings I sounded in July of last year we have had a steady flow of cases that have come to our

attention. I have before me a print-out from an internal log that we are keeping, and we have some 34 incidents that have been reported to us in the last 12 months. Twelve of these preceded the HMRC incident. The rest have come to our attention more recently. Some of these are very minor indeed. Some of them are what you might call minor matters where not many people are involved, not very sensitive information—and it may have been encrypted. These are public and private. I do not say this is a comprehensive record of all breaches, because we are aware of some incidents that have been reported to the press which have not come to our attention. It is very difficult to answer your question directly what are the causes—

**Q123 Baroness Stern:** Remember, we are talking about the Government’s record.

**Mr Thomas:** I appreciate that. I will focus primarily on Government. It is difficult to generalise from these various incidents. I will attempt to do so by repeating what I said earlier in terms of perhaps there has been too much of an attitude that these are technical matters which people do not have to take with sufficient seriousness. There is a plethora of guidance in terms of British Standards, in terms of advice on information assurance from the Cabinet Office; but until recently this has not featured on the agenda of those responsible for risks inside organisations. Data protection is to quite a large extent an elaborate exercise in specialised risk management. Organisations are very much aware of the risks of propriety and the risks of mishandling money. Perhaps they have not sufficiently seen until recently that personal information is both an asset to an organisation and should be treated as a valued asset, but also as a liability if things go wrong. All the signs I have seen in the last four or five weeks have indicated a very, very sharp turn-around in attitudes—almost endless meetings, almost daily, looking at what is to be done about the problems that have come to the surface.

**Q124 Chairman:** Is the list you are talking about a confidential list?

**Mr Thomas:** It is, sir. The names are confidential, Chairman, because some organisations have told us in confidence. This is a non-statutory function; we have no obligation to maintain a register. One of the debates going on is whether there should be a stronger obligation to notify either us or the individuals concerned when there has been a breach, but we are just keeping this informally at the moment, and I think it would be unfair to read out every name and every detail, when some of these come to us in confidence.

**Q125 Chairman:** Would the same apply for public sector cases on the list?

**Mr Thomas:** Yes. I would imagine that in most cases the organisation itself would want to tell Parliament. Most of these in fact have surfaced in the public domain already, but I think it is the responsibility for sharing the information is for the organisation concerned, not for my office.

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**Q126 Chairman:** That then begs the question: are there any serious breaches on that list involving a public body—

**Mr Thomas:** No.

**Q127 Chairman:**— that has not come to public light?

**Mr Thomas:** No, nothing on the scale of HMRC.

**Q128 Chairman:** I think that would—

**Mr Thomas:** If I give you an example, Chairman, the loss of the details by the Driving Standards Agency—there were some 3 million details there. I was aware of that when I gave evidence to the Justice Committee on 4 December. It did not come to public light until a few days later, but equally I was aware that that only involved names and addresses, and there had been a high level of encryption there, so there was nothing remotely on the same scale as the loss of HMRC.

**Q129 Chairman:** I would hope not; we are talking about half the population there.

**Mr Thomas:** I am making a judgment of not just the numbers but also in terms of the sensitivity of the data and the consequences if it got into the wrong hands.

**Q130 Chairman:** So on your list of public sector breaches, are there any involving a million people or more that we have not heard about?

**Mr Thomas:** No, nothing like that, Chairman. I think it is dangerous to play the numbers game here.

**Q131 Chairman:** That is the quantity; the next one is the quality question. Are there any serious qualitative breaches in that they involved only a few hundred of people that we have not heard about?

**Mr Thomas:** We have not been able to get full details of some of these. If I could just give a hypothetical example, if health records were lost for just half a dozen people, and there was some really sensitive health data, and that got into the public domain, there may not be financial loss in the way there could be if financial data got into the wrong hands, where there were bank account details and so on, which tends to grab the attention—but health data, or details of adoption arrangements—all these are hypotheticals I stress—

**Q132 Chairman:** Right, but—

**Mr Thomas:** As you are implying, the state holds, the Government holds, a lot of personal information of a high level of sensitivity.

**Q133 Chairman:** In your subjective view, are there any qualitatively serious breaches on your list that have not come to the public attention?

**Mr Thomas:** Nothing of which I have got full details at all.<sup>1</sup>

**Chairman:** That is not quite what I asked you, is it?

**Q134 Baroness Stern:** No.

**Mr Thomas:** I am relying on my own knowledge, Chairman. Whereas there may be further announcements by departments in due course, I do not have sufficient detail to share anything of any value.

**Q135 Chairman:** So there could be on your list—

**Mr Thomas:** Nothing on my list at the moment.

**Q136 Chairman:** Nothing on your list at the moment that you would subjectively think is qualitatively serious?

**Mr Thomas:** No.

**Q137 Baroness Stern:** We have already talked about the Driving Standards Agency; can I just finish by raising that? After the loss of data the Permanent Secretary for the Department of Transport wrote to senior officials in the Department to remind them of the main principles of the Data Protection Act. Does that depress you slightly, that senior officials in a fairly major department needed to be reminded of the Data Protection Act? I think you hinted, in answer to an earlier question, that things have now changed. Do you feel that the message got through and that things have now changed?

**Mr Thomas:** It does not depress me. I suppose one has to say there is a silver lining to any cloud; but of course it should not take a train crash to prevent casualties on the railway; but we have had a train crash and that has served as a wake-up call, and I do not think the Permanent Secretary at the Department of Transport was alone in writing to the entire organisation to ensure that people were aware of the seriousness of the issues. I do not think I am depressed; in many ways I welcome it, because we have been trying to say the same things for many months and years, and to be able to have our message understood in terms of what can happen when things go wrong is perhaps not unwelcome. It helps us get our message across. We have been saying these things with guidance notes, with warnings and with clarion calls in terms of the benefits of getting it right and the disbenefits of getting it wrong for a long time now. I think we are going to see more of it, so I do not think the letter sent round in December will be the last round; we have to keep the pressure up for a long time. I said that things had changed in recent weeks. One of my

<sup>1</sup> *Note by witness:* I had been informed by telephone on the morning of 14 January (the day of the hearing) by the Ministry of Defence that a laptop had been stolen with details of some 600,000 individuals who expressed an interest in military service or who had applied. As the Secretary of State made clear in his statement to the House of Commons on 21 January it was understood at that time that the laptop had been fully encrypted and this was what I was told. For this reason, and not yet having other details, I did not then consider that the incident could be described as a “qualitatively serious breach” on the same scale as the HMRC loss. This incident has subsequently been added to the ICO list to which I referred in my oral evidence.

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concerns is that we just have two months of concern, and in six months' time everyone has forgotten about it. It is hugely important to keep momentum and make this a permanent feature. That is why in my opening remarks I wanted to stress to the Committee the importance of getting the governance and accountability arrangements straight so that personal information is treated just as seriously as cash inside a public authority.

**Q138 John Austin:** The Minister told the Committee that every Government department now has a human rights champion at Grade 3 level. In answer to the Chair earlier this evening, you said very clearly that you saw data protection and privacy as part of human rights. Do you have any evidence to show that the champions the Minister told us about see data protection and privacy as part of their role as human rights champions, and do you think that those champions are effective in relation to data protection?

**Mr Thomas:** I have to say that I personally—I will ask Jonathan who has been in the office for 21 years, who may have a wider perspective than I have clocked up over five years. I do not think I have had a meeting in my five years with a human rights champion as such. Most of the people in my office come across dealing with data protection concerns until recently have been dedicated staff, doing their best, at much more middle-ranking or junior level. I do not think that we have had much awareness that data protection has focused near the top of the agenda for the human rights champions. That may change. When I have been calling for cultural change, that has to come from the top of an organisation, so I welcome the fact that there are senior people—and I have been dealing with permanent secretaries on these matters in recent weeks—but they cannot do everything; you have to empower people elsewhere in the organisation. I do not think it is a question of either/or; it is not either someone at the top or someone at the heart of the organisation; you need both. You need someone to champion the issues and someone to deliver the results on behalf of the organisation.

**Q139 John Austin:** Were either of you aware that there were these champions, aware of their existence?

**Mr Bamford:** I was not aware that there were human rights champions that also dealt with data protection. The sources I have to talk about things are interactions that tend to be on particular initiatives. We do deal at a very senior level with Government departments but it tends to be on the initiative that is there before us and what the data protection implications are and the acceptability of that.

**Mr Thomas:** I am sure it is my ignorance, Mr Austin: I have not come across the human rights champions—

**Q140 John Austin:** It is not an accusation!

**Mr Thomas:** I am sure. I have followed the human rights debate for many years and the legislation, the Bill and the Act, and being involved with human rights issues; but I have to confess that I was not aware that human rights champions were specifically engaged with data protection, and I do not think they have been is the short answer.

**Q141 John Austin:** You also indicated that if you had more resources you might be able to check more adequately whether Government departments were treating them with sufficient seriousness. To what extent are you confident that frontline staff are getting the message and that it is not just those at the top?

**Mr Thomas:** I do not think there will be many public officials now in recent weeks who are unaware of the risks—

**Q142 John Austin:** As a result of the train crash!

**Mr Thomas:** Indeed—getting it wrong. My concern, as I said earlier, is to make that a permanent feature. There has been debate about my office having stronger powers. The Government has announced already that we will have the non-statutory power to carry out spot-checks of Government departments. The Government has also announced that legislation will be introduced to give us the statutory power to carry out inspections of other public sector bodies. I made it clear that I think that power should be available right across the spectrum: I think it would be unhealthy and undesirable to distinguish between public and private in that respect. We need the same sort of power as our colleagues elsewhere in the world have to inspect for compliance with the law, regardless of the identity of the organisation that is controlling the data. In this country other regulators have the power to find out what is really going on, not just looking at policies and procedures but checking on compliance; so I very much welcome the Government's intention to take us down the road of inspection, but I made it clear that even with spot-checks of Government departments we cannot even do that without increased resources; we simply do not have the resource to do that.

**Mr Bamford:** Could I add a few things as well there? It is vitally important of course to talk about security, but there is a danger that we concentrate on security at the expense of other aspects of data protection. We have a set of provisions there that also talk about minimising the amount of information that is there in the first place, and making sure that there are proper controls surrounding it is an important aspect of that. It would be a shame if there was a concentration on security; we have to look at data protection in the round, and the balanced set of measures that were created in the first place, which includes things about transparency about what happens to information, but also minimising it in terms of the extent of information and how long it is kept for. That, in some ways, mitigates against the possible risk. We are very, very keen as well to make sure—and this deals with your point in some ways—that it is not

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just leading from the top that matters; but that there are tools to help everybody who is trying to grapple with providing better public services and using information to do that and to do it in a way that is consistent with data protection and privacy rights. We increasingly try to come forward with practical tools. To go back to the Chairman's first question about how we join data protection and human rights, one of the things we have brought forward in the last few months is a Privacy Impact Assessment handbook, which goes further than just narrow data protection issues but is a way that Government departments can also come forward with a policy initiative to think about the privacy consequences of that upstream so that they can look at the potential pitfalls and perhaps modify the plans in a particular way to deal with those and make sure that they incorporate privacy and data protection safeguards in at the outset rather than bolt them on as an expensive afterthought. It is important we look at everything in the round and do not just look at champions or things like that, but we need to make sure that we have a range of measures that help organisations generally.

**Q143 Mr Shepherd:** There is a hole in that, to the extent that some of the information is now being handled and processed outside the jurisdiction. What do you do about that—the DVLA, for instance?

**Mr Bamford:** You are right that there can be situations where they use data processors that are outside the United Kingdom. The responsibility under data protection law is still very, very firmly, in that instance with the DVLA, and they are responsible for what happens there. If you think about the privacy impact assessment model, it may be that you decide there is a risk having personal data processed somewhere else, and that is something you can consider as part of the decision to do that. That is why we are keen to provide people with tools. We have already approached the Office of Government Commerce about the idea that we embed the privacy impact assessment as part of their own gateway review process; so we are looking at big IT projects where data is going to be processed and how they do it. But privacy considerations are also mapped in at that stage, not just financial considerations. We have to look at that and provide a framework that ensures compliance across the piece, including issues like data being processed overseas.

**Q144 Mr Sharma:** In the light of all this debate on data protection, would you like to see the role of the Data Protection Minister beefed up?

**Mr Thomas:** It is always gratifying when the Minister dealing with your particular subject is at the highest possible level, so whether the Minister wishes to see me on his way to the Cabinet is for debate, I suppose, but we are happy that we have a Minister of State at the Ministry of Justice. He is responsible for policy. I meet him from time to time, and I have been putting forward to him and his officials for some time now the case for enhanced

powers and resources. I do not think it is for me to comment on what level in Government a particular minister should be, but I am also encouraged that Jack Straw, the Secretary of State for Justice, takes these matters seriously. I have spoken on the telephone with him and I am meeting both him and Michael Wills, the Minister of State, on Thursday of this week, and I will be exchanging views with them on that occasion.

**Q145 Earl of Onslow:** I am reading my conclusions from the brief now in relation to what Mr Wills, the Minister of State, said. "So you were not aware of the breaches until you heard them in the Commons, you were not aware of this piece of advice and you were not aware until you read it in the newspapers of all the other breaches there have been. I therefore have to reluctantly come to the conclusion, what is the point of the Data Protection Ministry?" He does not know what has happened until he reads it in the newspapers.

**Mr Thomas:** My Lord Onslow, I would rather not be drawn too far down that road. I will say that—

**Q146 Earl of Onslow:** I was—

**Mr Thomas:** I was genuinely pleased that when I gave evidence in the committee room next-door to this one on 14 November that as I came out from there I was door-stepped by a civil servant from the Private Office of the Financial Secretary, Jane Kennedy, who said that she wanted to talk to me about a problem, and of course that was the problem relating to the loss of HMRC data. She briefed me as to what had happened. I saw the Chancellor of the Exchequer the following morning, on Thursday 15<sup>th</sup>, and it was announced to Parliament on the Tuesday. As the Regulator—

**Q147 Chairman:** The point is, there is a joined-up Government issue, is there not? There is you being brought in and notified of particular breaches, but the issue really is that if you have a Data Protection Minister, surely the Minister ought to be informed to keep an eye on what is going on. Secondly, if you have a Minister, surely the Minister's job should be to be aware of not just a specific breach but to see whether there are any dots to be joined up when developing policy, for instance, or to be aware of the advice that has been given in relation to policy and particularly because the databases by that definition are going to be huge?

**Mr Thomas:** I am very much aware that these points were put to the Minister. If you will forgive me, I cannot be more than the appointed Commissioner with a set of standards—

**Q148 Chairman:** So when you are asked—

**Mr Thomas:** I was informed.

**Q149 Chairman:** Right. When you were asked what you think the Minister's role should be, it is not necessarily where he sits in Government; it is a question of what he actually does.

**Mr Thomas:** The Minister is responsible for policy. I am lobbying him to strengthen my powers—



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**Q150 Earl of Onslow:** He is called the Data Protection Minister. If you are First Lord of the Admiralty, you have something to do with the Navy; if you are Data Protection Minister I would assume you have something to do with data protection. Have you told the Data Protection Minister of those people who you have told us about whose things are going AWOL?

**Mr Thomas:** I have not, Lord Onslow, because I am the Data Protection Regulator; I am the one who has got the powers. It is my responsibility to receive—

**Q151 Earl of Onslow:** Do you not think it is a duty—do you think you ought not to inform the Data Protection Minister of the actions you are taking on protecting data, or is that a rather novel idea?

**Mr Thomas:** I keep him in the picture, not on the specifics of every case for every action we take, but he is broadly aware of what we are doing. Some of these he will be aware of because we are dealing with a Government department and they will also tell the Minister of Justice at the same time.

**Q152 Chairman:** If you think about the very big ones—take the HMRC one: the data of half the population—the first he knows about it is when he hears the statement in Parliament. That cannot be right, can it?

**Mr Thomas:** Well—

**Q153 Mr Shepherd:** It is about outcomes!

**Mr Thomas:** I would rather not be drawn into this. I am not a politician; I am the Commissioner and I was pleased that I was taken into the confidence of the Treasury and told about the situation; ie, my priority at that time was to minimise the risks of these disks falling into the wrong hands. I could see straight away whilst the search was going on the consequences could be very serious indeed, and I made my position clear when the news became published: the Treasury announced it and I said that this was unprecedented and on a scale beyond anything we had come across before. The questions as to what the Minister, who has not got the statutory powers that I have got, should or should not be told, with respect I think are for the Minister and not for me.

**Q154 Chairman:** We have already asked these questions anyway. The point really is that he is your mirror image in Government. You are quite right to say he does not have your investigatory powers, such as those that you do have; but he is your mirror image in Parliament and it is his job to be responsible for issues of data protection. It is your job to promote data protection in the country, as it were, and his job is within Government and Parliament. Our concern comes out of this: do you think that ultimately his job is seen as sufficiently important within Government; do you think it is seen as sufficiently important within MoJ, to make sure that he has the time, I suppose, to do things that need to be done, bearing in mind his other responsibilities? Would it be better to have a separate minister just

responsible for this? In the end, you must have a view on the political side of the mirror image view in Government!

**Mr Thomas:** I am certainly pleased that as a result of recent events the issues are being taken a great deal more seriously inside the Ministry of Justice at official level and at the political level. It is rather sad that it has taken these events to achieve that result. In my view, it is unfortunate that the seriousness that I now detect has not been there before.

**Q155 Earl of Onslow:** May I come back to this whole concept? Am I not right in saying that if you have a very large database and a very large number of people having access to it, it is not a question of a breach happens; it is a question of when a breach happens? Should therefore not the databases—and I think I heard you say earlier amenable access—should this not be policy throughout Government and throughout everybody having anything to do with these machines at all, that the minimum number of people should be chunked rather than have access across the whole thing?

**Mr Thomas:** What you are broadly saying, Lord Onslow, is consistent with the underlying data protection principles.

**Chairman:** We will come to this in more detail later on.

**Q156 Mr Sharma:** In many of our legislative scrutiny reports in recent years we have raised concerns about arrangements for information-sharing. In our view, safeguards to protect the right to privacy should be included in primary legislation, not left to secondary legislation or application of the Data Protection Act. Do you share our concerns?

**Mr Thomas:** I certainly share the broad thrust of those conclusions. I was aware of the Committee's recently published report in relation to child maintenance: that is just one example. The Committee may be aware that I was asked in October, before the HMRC saga started, by the Prime Minister, in an individual capacity, with Dr Mark Walport, who is the Chief Executive of the Wellcome Trust to undertake a review of data sharing, because this is a hugely important area. There has been a lot of misunderstanding and confusion in the whole area of where an organisation collects information for one purpose; then another organisation wants to use that. Phrases like "data-sharing" cover a very broad spectrum of activity, ranging from an individual case record being exchanged, right across the other end of the spectrum to two databases communicating on a real-time basis. It is very dangerous to generalise in this area. You cannot say all data-sharing is bad, but nor can you say all data-sharing is good. There has been perhaps in the past a bit of a tendency to think that you can improve law enforcement; you can improve the delivery of public services, just by sharing more and more information. I have been somewhat resistant to that approach. I said that the presumption needs to be the other way round. If there can be a good case made out for a particular episode of data-sharing, if there are adequate

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safeguards in place, they may be acceptable; but you should not start from the proposition, “We have got the information; therefore, we should share it” because you, and I think Lord Onslow before you, were absolutely right in saying the more that you centralise and the more that you share, the greater the risks are. This is all about keeping risks—

**Q157 Mr Shepherd:** The whole statute now is the means by which this is done. We have a piece of legislation which mandates or makes easy the transference of the vast bulk of this information right across the public sector for what are decided to be grandstand issues of protection of the public; and now we are finding it is undermining the position of the individuality of the citizen.

**Mr Thomas:** Some examples are understandable and others less so. We were pleased that the Serious Crime Bill was amended as it went through Parliament, because that had arrangements, for example, for sharing information in the interests of anti-fraud behaviour. One can understand that where one is genuinely trying to prevent or detect pieces of fraud, there can be some situations where you need to share data; but the Bill was amended, and I very much welcomed that, to put in place a code of practice after consultation with my office, to give us the powers to inspect the activity; and that seemed to me a good compromise, to provide for sharing within a regulated environment.

**Q158 Mr Shepherd:** But the statutory instruments are expanding, as you have seen in the case of the Driving Inspectorate, *et cetera*, which now have the powers to seek such information.

**Mr Thomas:** I am certainly in sympathy with the general point that if there is to be sharing, it should have as clear statutory authority as possible, and I would say that that should be primary where possible not the secondary level.

**Earl of Onslow:** What you have just said is a very good argument against identity cards.

**Chairman:** We are coming on to that.

**Q159 Baroness Stern:** Can I carry on with this topic of legislation very briefly and ask you this: do you raise your concerns with Government about specific legislative provisions; how do you do that, if you do it; and what response do you get?

**Mr Thomas:** Yes, I do, and not just with Government. The independence of the Commissioner is guaranteed by statute and is required by the European Directive. I have to be proud and robust in asserting independence. Therefore, not only do I sometimes express views to ministers, but I will do so in public, or come to Parliament. I have lost count of how many select committees I have talked to on this particular matter. Whether it is identity cards or electronic health records, ContactPoint (the children’s database), road pricing, e-borders, there has been a range of subjects in the last 12 months or so on which we have expressed views in public. I hope I am a good democrat; I recognise at the end of the day that it is for Parliament to decide what the law is. I

suspect we are coming on to identity cards, but when that was at the early stages, when there were Home Office consultations and select committee hearings, we were not slow to come forward with our point of view and express some concerns and some reservations and raise questions. When it reached the parliamentary arena, which was very controversial—it was bouncing backwards and forwards between the two Houses, and the parties were taking their positions—I do not think it is my role there to get involved in the party political debate, so we kept a much lower profile. Since the Act received Royal Assent, we have had discussions with officials about where the identity card programme might be going. Although I try to be constructive in the approach we take, we are not shy to come forward. Whether our points always get taken on board, which is the second question you asked, is for others to judge, but we have had some successes.

**Q160 Baroness Stern:** Do you think that any of the recent privacy breaches—the big ones we have been talking about here—might have been averted if there were stronger safeguards in specific pieces of legislation, rather than general reliance on the Data Protection Act?

**Mr Thomas:** I would like to see the general Act strengthened. We put forward proposals some time ago, which I know are being seriously considered. I think the Ministry of Justice is bringing out a consultation paper shortly. We are looking for much stronger sanctions and penalties for deliberate or reckless breaches of the data protection principle—not just security—as Jonathan says, it is wider than that. I think that will serve a very symbolic purpose, not just because we want to hand out punishments to people but we want to raise the awareness of the importance of taking these things seriously. In another area I produced a report for Parliament 18 months ago about the pernicious illegal trade in personal information. We came across a whole network of private detectives, investigators, who are hired by a range of people—not just newspaper journalists but also law firms, financial institutions and even local authorities—to get hold of confidential personal information. We had so much information we published a tariff of what it was costing to get hold of this. The penalties were derisory. It has been a criminal offence now since the mid-1990s. We called for the sanctions to be increased to a prison sentence, not because we want to send people to prison but because we want to raise the status of the offence to deter this sort of activity in the first place. We are delighted that that is now clause 75 of the Criminal Justice and Immigration Bill before Parliament.

**Q161 Lord Lester of Herne Hill:** In view of the problem of enforcing criminal sanctions, have you thought about a civil regime, building on, for example, the kind of thing we have in equality legislation where your agency could bring public interest proceedings to get appropriate orders and, if necessary, more effective sanctions from the courts?

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**Mr Thomas:** Thank you, Lord Lester. We have submitted a paper to the Ministry of Justice that is quite a comprehensive paper on powers and sanctions. One of the ideas we have put forward there is a civil regime, and civil penalties for those who breach the legislation in the serious ways that I was describing.

**Q162 Lord Lester of Herne Hill:** Can we have a copy?

**Mr Thomas:** I think we have offered the Committee a copy of our paper.

**Chairman:** That would be helpful.

**Q163 John Austin:** You have mentioned the Child Maintenance and Other Payments Bill, and clearly this is one that will involve a great deal of information transfer and sharing. The Minister, in his response to us, talked about compliance of legislation with the Human Rights Act, but made little or no reference to data protection. Have you been in touch with the Minister to discuss any arrangements that might be made for building stronger personal privacy protection in the Bill and into the legislation?

**Mr Bamford:** We have had discussions with the Department of Work and Pensions about the Bill. The area that we have concentrated on is the disclosure to credit reference agencies, details of the absent parent and the arrangements they have put in place for the payments of child maintenance. We have concentrated very much on that area rather than on information-sharing more generally; which was essentially a replacement for the Child Support Agency's information-sharing regime. This was very new and raised for us some real issues in terms of that you seem to have a body with a range of sanctions to try and get payments out of absent payments; and it seemed odd to us to go through a diffuse mechanism of using credit reference agencies to affect people's credit ratings to achieve that objective, which they have actually got powers for. We have had lots of dealings with credit reference agencies over the years—that is one of the areas we have most enquiries about because people are concerned about their credit rating, and we know quite a lot about how they work. It was not clear to us precisely how this works in practice with the credit reference agencies, and the issue about the fact that this is not really necessarily about a person's ability to pay—some of the issues to do with non-payment of child maintenance may be down to other reasons that are nothing to do with the ability to pay—but credit reference is clearly aimed at people's ability to service debts and do those sorts of things. There is a whole host of issues about how you affect people who have a relationship with the absent parent, who is then here; issues about the consensual basis that has been proposed for information going there, and statements about improving people's credit reference and rating when actually it can have the converse effect if more outgoings are shown, and trying to understand how that works. Those discussions are going on because we are not satisfied

at the moment about what is proposed with credit reference agencies—it is something we find unacceptable in terms of data protection principles.

**Q164 Chairman:** You mentioned earlier on about the privacy impact assessment: have you discussed with the Government how that can be used when departments are drawing up legislation so that that can be one of the tools they refer to?

**Mr Thomas:** We certainly have started those discussions. We did not publish the handbook until the beginning of December. We had a major conference in Manchester and public officials were at that conference. I think it is arousing a greater interest. Jonathan has already mentioned that we started discussions with the Office of Government Commerce to make this a feature of the procurement process where major new IT schemes are put in place which collect personal information. We are promoting this very heavily around the rest of the public sector. It is an idea that we have borrowed from elsewhere in the world. They are quite widely used in Canada and Australia. In the United States they are mandatory at the federal level. We are not putting forward the argument for mandatory use because that can become somewhat bureaucratic; this is meant to be a tool to help organisations get it right. It is a very interactive process. Some of the material may look a bit off-putting at first, but when you get into the interactive use of the privacy impact assessment, I think organisations are finding that they can be very helpful, to alert them to the sorts of questions they should be asking, and then the sort of safeguards they need to put in place. I mentioned earlier the review of data-handling which Gus O'Donnell, the Cabinet Secretary, is carrying out. He published his interim report just before Christmas. There will be a further full report in the spring. At that level I have been discussing the benefit of privacy impact assessments, and the Ministry of Justice, which has its own communication network across Government, I believe, is also promoting PIAs.

**Q165 Chairman:** This is an idea of the Ministry of Justice, in particular on the issue of data protection, to go around proselytising this idea across departments.

**Mr Thomas:** I hope that the Minister is doing this already. I hope you will give a very clear message from this Committee that it will be extremely useful.

**Q166 Chairman:** You do not know that he is doing it.

**Mr Thomas:** I do not follow his every movement, but my understanding is that his department is sympathetic to the use of PIAs.

**Mr Bamford:** We do have a systematic plan to go round and try and make sure maximum take-up, and put in place user forums and all sorts of things. One lesson that we have learnt from other jurisdictions is the need for the data protection authority to promote these to try and build competence. We have an action plan to try and take that forward in the next year. It is our office that plans to do that.

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**Q167 Lord Dubs:** ID cards or the national identity register: you have dealt with some of this but I do not want to take away your chance of elaborating on the answers you might wish to give. Ministers have been a bit optimistic in the recent past about the security of databases but in view of the recent problems what are your concerns about the proposed national identity register?

**Mr Thomas:** We have been consistently sceptical about aspects of this programme. Our concerns are focused much more on the database rather than the use of the card *per se*. We have had and still have concerns about the need for absolute clarity as to the rationale and purpose for the identity card scheme. Until one is absolutely clear what is the primary purpose, it makes it difficult for anybody to judge the acceptability of what is on the database and how that is going to be used.

**Q168 Earl of Onslow:** So you are saying you do not understand the point of an identity card! That is what I heard you then to say.

**Mr Thomas:** We are familiar with Section 1 of the Act—

**Q169 Earl of Onslow:** Sorry—if I was you, that is the answer I would have given, but I am not you!

**Mr Thomas:** Section 1, in relation to which we argued very strenuously that there should be a purpose clause—that was not there originally, so at least there is now a purpose clause. The problem is that there are a number of purposes and they are not ranked in order of priority. They are fairly wide-ranging. I am saying—and I hope this is clear to everybody—that we need to have—society generally—clarity as to the primary purpose. One can talk in terms of law enforcement or immigration control, improving public services or safeguarding against identity theft, but we need to have maximum clarity about the purpose, because only when you are clear about the purpose can you judge how much information should be collected and stored. That is where we have raised concerns. If I could just elaborate that, we have particular concerns about the suggestion of collecting what I might call transactional data. It is one thing to collect the basic identity information—name, address, date of birth and so on; but if one is going to record details of every time that card is used or every time that card is passed through a reader of some sort, one then begins to build up a very detailed picture of the daily lives of citizens. I have said in the past, and I say again, that that does go to the heart of the relationship between state and citizens. I recognise the risks involved there, and I think Government recognises the risks. In recent weeks there has been ever-increasing emphasis on the voluntary nature of the existing statutory framework, and one has far less concern about voluntary schemes than compulsory schemes. Clearly, if there is to be a move towards compulsion, that has to come back to Parliament; but perhaps that is a debate for another day. We have also focused on such issues as access to the data, who and under what circumstances has access to the database and for what purposes I think

the current situation is that perhaps the ball is in the Government's court. We can react to what comes forward but I do not think it is for us to make suggestions or to comment on hypotheticals.

**Q170 Mr Shepherd:** Is this not constructed as an involuntary system—application for passports, for instance? Once you start taking up things like that—it is programmed in the Act.

**Mr Thomas:** The legislation is voluntary in the sense that nobody can be compelled to have an identity card, but I take the point you are making, which is that it is a bit like a supermarket; “Buy one and get one free”. When you apply for a passport you only apply—

**Q171 Mr Shepherd:** It is more negative than that. That is a positive assertion. This is demanding information if you want to exercise rights that you currently have to travel abroad for instance.

**Mr Thomas:** I take the point, and I think the debate will continue.

**Q172 Lord Dubs:** Do you think the insecurity of such a database is something that the Government can do something about perhaps by avoiding transactional data, or perhaps by making the database smaller? Is there some way in which one can improve the security?

**Mr Thomas:** I think there is the obvious point that I have made before, which is data minimisation. The less you collect, the less the risk of it getting into the wrong hands. I think there is a wider point, which is that perhaps there has been a lot of faith in the power of technology but sometimes the easier it is to use a technology, the easier it can be to lose the data. There is no doubt whatsoever in my mind that the HMRC incident and one or two since then have been a massive wake-up call, and the sorts of questions that you are putting there, Lord Dubs, I am sure are being asked inside the Home Office and elsewhere as we move forward. The general point is the one you are making, which is that there are risks associated with collecting information, and they are risks that can affect large numbers of people; or they can affect small numbers of people at a very serious level. If there has been a silver lining to the recent clouds, it has been to very sharply increase awareness of those risks. I do not think it is quite enough to say that we will tighten up on security because security—as I have tried to say this afternoon—is not the end of the story.

**Q173 Lord Dubs:** So how confident are you in fact, having said all that, that the Government can deliver the secure national identity register? You say that security is not the only thing, but let us vocalise this: how confident are you in view of what has happened in recent weeks?

**Mr Thomas:** We have a long, long way to go before we see the detail of the Government's proposals. We had the legislation, which has gone through this House, and that is a framework, enabling legislation to a large extent; but we are still waiting to see the detailed arrangements and proposals for secondary

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legislation that will have to flow from the basic Act. Our last meeting, ironically, was on 14 November, the very day that I was told about the data loss, and that was the last meeting we had at official level when we were told that proposals would be coming forward at some stage. That of course was before the Home Office knew of the problems down the road at the Treasury.

**Q174 Lord Dubs:** Are the Government listening to you sufficiently?

**Mr Thomas:** Let us put it this way, Lord Dubs: they are listening to us a great deal more actively and more frequently and more seriously in the last month or so than before!

**Q175 Earl of Onslow:** The security thing is divisible into two: there is the ungodly hacking into and the incompetent leaving it on a train. I am simplifying it obviously, but those are the two—

**Mr Thomas:** I think I would repeat what I said when we made our public announcement in relation to the data breach at HMRC: there are searching questions to be asked about policies, procedures and human error. I suspect that when the Pricewaterhouse report comes out, it will uncover problems at each of those levels. To give you one example, there may be software solutions which could prevent the downloading of an entire database, and we need to find out whether that was put in place at HMRC, because I have serious questions about the ability of any individual, at whatever level in an organisation, without proper authority to be able to unload such a massive database. Many people I think were surprised that you can download so much data onto two disks, but that is secondary to the fundamental question of what safeguards are in place to prevent that sort of thing happening in the first place.

**Q176 Lord Dubs:** Michael Wills told us that the Government would review the national identity register in view of these problems. Have you any idea what has been planned?

**Mr Thomas:** No, Lord Dubs, I have not had any official communication since that meeting in November before the HMRC problems. I read the newspapers, but I have not had any message from a minister or an official on this subject.

**Q177 Lord Dubs:** Are you surprised at that, or disappointed?

**Mr Thomas:** Neutral, I think. Things have moved very fast in recent weeks and we have had Christmas inbetween, but I suspect that people will come to me when they are ready to do so.

**Q178 Chairman:** Is there anything you would like to add to any you have said?

**Mr Thomas:** I think you have given us a good run for our money, Chairman! We could talk a great deal about the programme we are putting in place to help organisations get it right. We have always tried to say that complying with data protection is a matter of enlightened self-interest. The law has got rather a mixed reputation of being rather complicated and sometimes rather difficult, and some will blame data protection too easily; but that will not happen in future. The fundamental principle that has been shown here this afternoon is that of plain English, easy to understand: and getting it right is a matter of enlightened self-interest for organisations. Our strategy has been to help organisations where possible and to be tough in the small minority of cases where we really need to intervene. I also say we are a tiny organisation and that has been a reflection of perhaps not taking some of these matters with sufficient seriousness in the past.

**Chairman:** Thank you very much.

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# Written evidence

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## Letter from Professor Ross Anderson & Dr Richard Clayton, University of Cambridge Computer Laboratory & Dr Ian Brown, Oxford Internet Institute, University of Oxford

The government, in response to the recent HMRC Child Benefit data breach, has asserted that personal information on the proposed National Identity Register (NIR) will be “biometrically secured”:

“The key thing about identity cards is, of course, that information is protected by personal biometric information. The problem at present is that, because we do not have that protection, information is much more vulnerable than it should be.”—The Chancellor, Hansard Column 1106, 20 Nov 2007, <http://www.theyworkforyou.com/debate/?id=2007-11-20a.1105.0>

“What we must ensure is that identity fraud is avoided, and the way to avoid identity fraud is to say that for passport information we will have the biometric support that is necessary, so that people can feel confident that their identity is protected.”—The Prime Minister, Hansard Column 1181, 21/11/07, <http://www.theyworkforyou.com/debate/?id=2007-11-21a.1181.5>

These assertions are based on a fairy-tale view of the capabilities of the technology, and in addition, only deal with one aspect of the problems that this type of data breach causes.

Ministers assert that people’s information will be ‘protected’ because it will be much harder for someone to pass themselves off as another individual if a biometric check is made. This presupposes that:

(a) the entire population can be successfully biometrically enrolled onto the National Identity Register, and successfully matched on every occasion thereafter—which is highly unlikely, given the performance of biometrics across mass populations generally and especially their poor performance in the only, relatively small-scale, trial to date (UKPS enrolment trial, 2004). Groups found to have particular problems with biometric checks include the elderly, the disabled and some ethnic groups such as Asian women;

(b) biometrics are “unforgeable”—which is demonstrably untrue. Biometric systems have been compromised by “spoofing” and other means on numerous occasions and, as the technology develops, techniques for subverting the systems evolve too;

(c) every ID check will be authenticated by a live biometric check against the biometric stored on the NIR or at the very least against the biometric stored on the chip on the ID card which is itself verified against the NIR. [N.B. This would represent a huge leap in the cost of the scheme which at present proposes only to check biometrics for “high value” transactions. The network of secure biometric readers alone (each far more complex and expensive than, eg a Chip & PIN card reader) would add billions to the cost of rollout and maintenance.]

Even if, in this fairy-tale land, it came to pass that (a) (b) and (c) were true after all (which we consider most unlikely), the proposed roll-out of the National Identity Scheme would mean that this level of “protection” would not—on the Home Office’s own highly optimistic projections—be extended to the entire population before the end of the next decade (ie 2020) at the earliest.

Furthermore, biometric checks at the time of usage do not of themselves make any difference whatsoever to the possibility of the type of disaster that has just occurred at HMRC. This type of data leakage, which occurs regularly across Government, will continue to occur until there is a radical change in the culture both of system designer and system users. The safety, security and privacy of personal data has to become the primary requirement in the design, implementation, operation and auditing of systems of this kind.

The inclusion of biometric data in one’s NIR record would make such a record even more valuable to fraudsters and thieves as it would—if leaked or stolen—provide the “key” to all uses of that individual’s biometrics (eg accessing personal or business information on a laptop, biometric access to bank accounts, etc.) for the rest of his or her life. Once lost, it would be impossible to issue a person with new fingerprints. One cannot change one’s fingers as one can a bank account.

However, this concentration on citizens “verifying” their identity when making transactions is only one issue amongst many when considering the leakage of personal data. Large-scale losses of personal data can have consequences well beyond an increase in identity fraud. For example, they could be potentially fatal to individuals such as the directors of Huntingdon Life Sciences, victims of domestic violence or former Northern Ireland ministers.

It is therefore our strongest recommendation that further development of a National Identity Register or National Identity Scheme (including biometric visas and ePassports) should be suspended until such time that research and development work has established beyond reasonable doubt that these are capable of operating securely, effectively and economically on the scale envisaged.

Government systems have so far paid little attention to privacy. Last week's events have very significant implications indeed for future government information systems development.

We would be pleased to clarify any of these points or provide further information if useful to the Committee.

26 November 2007

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### **Memorandum by the Information Commissioner (DP 3)**

#### **Human rights, data protection and information sharing: background paper for the Joint Committee on Human Rights**

1. The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000. He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken. The comments in this evidence are primarily from the data protection perspective.

2. The Data Protection Act (DPA) applies to all organisations that handle information about people, in both the public and private sectors. Most public sector bodies are also "public authorities" for the purposes of the Human Rights Act 1998 (HRA). This means that when public sector bodies, including governmental ones, collect, share or otherwise handle information about people, they have to do so in a way that's compatible with the right to respect for private and family life—Article 8 of the European Convention on Human Rights (ECHR). However, the DPA should help public authorities to comply with their duty under Article 8, because the European Data Protection Directive, which the DPA gives effect to in the UK, and the HRA both have their origins in the Council of Europe's European Convention on Human Rights.

3. Article 8 doesn't prohibit the collection or sharing of information about people. However, it does mean that if this is going to happen, then certain safeguards for individuals have to be put in place. The duty to have respect for private and family life is a very high-level one. Neither the HRA nor the ECHR itself provide any practical guidance to help public authorities to act in a way that ensures that the individual's right to private life is respected. However, the DPA does do this.

4. The DPA is built around a set of principles of good practice for the handling of personal information, some of which are particularly relevant in the context of information-sharing. For example, the principles require that any sharing of personal information is necessary and that any information shared is relevant, not excessive and is kept securely. The principles provide a practical framework for balancing the need for public authorities to make best use of the personal details they hold whilst respecting individuals' private lives.

5. The unnecessary or disproportionate sharing of personal information can undoubtedly have a significant negative impact on individuals. The public sector, in particular, holds some of the most personal details about people; health records, tax returns, police records, adoption papers and so forth. People do care about their personal details, particularly the more sensitive sorts of information. For example, tracking research carried out by ICO last year showed that 92% of people were concerned about the protection of their personal details—only concerns about preventing crime rank higher. In particular, the research shows high levels of public concern over the potential mismanagement of information. The highest-ranking concern is about passing or selling personal details onto other organisations. This means that if organisations handling personal information want to command public trust, they must do so in a way that is proportionate, secure, transparent and reasonable. Complying with the data protection principles will ensure that this is the case.

6. It is wrong to see the sharing of personal information as necessarily a bad thing, one that can necessarily be opposed on data protection or human rights grounds. Indeed one of the problems in the early stages of the information sharing debate was that some put forward the simplistic view that sharing more information would necessarily make things better, others the equally simplistic view that it would necessarily make things worse. However, the debate has matured and moved on. The issue now isn't whether there should be more or less information sharing, but rather what information is being shared, why it's being shared, who has access to it and what the effect of this is.

7. There is no doubt that the intelligent use and analysis of personal information can bring all sorts of benefits to society and individuals. For example, the DWP's "Tell us Once" project should make it a lot easier for citizens to update their details for official purposes, for example when they move house. Many local authorities are doing similar work to make it easier for people to access their services without having to provide the same details over and over again to the authority's various departments. Most people wouldn't object to that, indeed they'd probably expect public bodies to share personal information where this is necessary to make it easier to access public services.

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8. In crime prevention contexts the matching of data held by different organisations can reveal discrepancies that, on further investigation, may reveal, for example, that the same person is fraudulently claiming housing benefit from two neighbouring local authorities. There is no doubt that data matching techniques of this sort can contribute significantly to the detection of wrongdoing and to the protection of the public purse. It would be wrong to deny society the benefits that information sharing can bring in contexts such as this.

9. However, the benefits do need to be weighed against the privacy risk that can accompany the wider sharing of personal information and any initiative needs to be clearly justified with safeguards to minimise risk in place before information sharing takes place. The precise mechanisms will depend upon the nature of the personal information. In some instances it may be appropriate to include specific safeguards as part of legislation which facilitates information sharing by limiting the purposes for which personal information may be used, restricting the amount of personal information collected and shared and specifying restrictions on disclosure with sanctions for misuse.

10. In this connection the Commissioner has asked for additional powers for his office, in particular the power to inspect the processing of personal data without a data controller's consent. In response to the recent HMRC security breach the Government has agreed that he should have this power at least in relation to processing by Government departments. Provided he receives sufficient funding the ICO's involvement in inspection should help provide reassurance to the public that their information will be handled safely and securely.

11. The Commissioner has previously called for data protection considerations to be considered at an early stage in a new initiative to gauge whether what is envisaged is appropriate and what safeguards may need to put in place if the initiative is to proceed. This could involve a formal requirement to seek his views on initiatives which are likely to raise substantial privacy concerns.

12. The Commissioner has done much work in the past year allied to concerns about a developing surveillance society. His recent efforts have been concentrated on developing practical tools to help safeguard against the unwanted effects of a surveillance society. He has recently launched a privacy impact assessment (PIA) handbook. PIAs are used to assess the wider privacy implications of a development in its early stages to ensure that privacy concerns are systematically identified and addressed. These are common in North America and Australasia. For example, the US E-Government Act requires all proposed new uses of personal information, including information sharing, to undergo a PIA. The PIA approach is new to the UK and goes wider than just addressing data protection compliance concerns by also engaging with human rights considerations.

13. The use of PIAs should help ensure that privacy safeguards are built in to new initiatives, not "bolted on" later as an expensive and inadequate afterthought. To assist with the development of a handbook and to learn from best practice, he also commissioned a study on the use of PIAs in other countries.

14. A further approach that can also help ensure appropriate privacy protection is by the use of what have become known as privacy enhancing technologies. This involves adopting technological solutions to help maximise privacy protection or as the Royal Academy of Engineering put it in their recent report on the Surveillance Society this is exploiting engineering ingenuity to protect personal privacy. The Commissioner has long been an advocate of their use and will be embarking on further work during the forthcoming year to promote their wider use.

15. In the specific area of information sharing the Commissioner has recently published a Framework Code of Practice for Sharing Personal Information. This sets out a comprehensive, practical set of safeguards that can be put in place to minimise any impact on personal privacy that information sharing may have and, more in a more general sense, to ensure individuals' human rights are respected. Copies of the PIA handbook, international study and framework code of practice will be provided to the Joint Committee.

16. The Commissioner is himself a public authority for the purposes of the HRA. This means he must himself act, and must interpret the legislation he is responsible for enforcing, in a manner compatible with the EHCR. It is fair to say, therefore, that there is a mutually supportive interplay between human rights, data protection and the work of the Information Commissioner.

*Richard Thomas*

Information Commissioner

20 December 2007

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**Letter from Michael Wills MP, Minister of State, Ministry of Justice**

Thank you for your letter of 23 January requesting further information following correspondence with my officials in the summer and my oral evidence on 26 November 2007.

You requested copies of the HM Revenue and Customs (HMRC) rules governing standing procedures of security and access to data and the transit of data (Q7). I regret that I have been advised by HMRC that the rules governing HMRC standing procedures (as referred to by the Chancellor) cannot be provided to the Committee. It would be inappropriate to put these documents in the public domain because they provide internal security arrangements of specific Government Departments or Agencies. However HMRC has provided the following link to the Information Disclosure Guidance that deals with rules on confidentiality as applied to information by HMRC:  
<http://www.hmrc.gov.uk/manuals/idgmanual/Index.htm>

My officials discussed your request for the Manual of Protective Security (MPS) with the Cabinet Office (Q8). They advised that the MPS provides advice to Government departments on the protection of sensitive assets and is issued by the Cabinet Office on behalf of the Official Committee on Security. The Manual comprises some 2000 pages of detailed guidance and technical procedures governing the protection of sensitive government information in the context of national security. It is a protectively marked document; as such, and in accordance with established principles, anyone who wishes to have access to the Manual (or extracts or summaries) must be referred to the Head of Intelligence, Security and Resilience in the Cabinet Office.

If the Committee wishes to see the MPS, I am advised that you would need to set out in full the nature of the current line of enquiry, the reasons why the Committee wishes to see the MPS, and the use that it would make of such access. It may ease this process if your officials were to speak directly to the relevant officials in the Cabinet Office; I am happy to effect an introduction, should you wish.

In oral evidence I said I would be happy to come back after the reviews being conducted on data protection have reported (Q35). These reviews include:

- the review led by Richard Thomas and Dr. Mark Walport of the scope of the sharing of personal information and the protections that apply when personal information is shared in the public and private sector;
- the review by Kieran Poynter of HMRC's data handling procedures; and
- the review overseen by Sir Gus O'Donnell of data protection and security procedures of Government Departments.

In addition, the House of Commons Justice Committee published a report on the Protection of Personal Data on 3 January. At present, the Government is considering the interim findings of the Kieran Poynter and Cabinet Office reviews, as well as the Justice Committee report delivered in December.

On 17 December the review overseen by Sir Gus O'Donnell published *Data Handling Procedures in Government: Interim Progress Report* which sets out the findings of the review so far, updates on progress and details the next steps. Stage two of the Review will look collectively at improved standards and procedures across Whitehall. This is due to be completed in early 2008. As I said in my evidence, once all these reviews have reported back, I will be happy to revert to the Committee.

As the Committee knows, policy for the National Identity Register (Q32) rests with my colleagues in the Home Office. Contrary to what your letter suggests, I did not in my evidence make any commitment myself to review this project. My colleagues in the Home Office will of course be taking into account any developments that may influence the implementation of the National Identity Register, including issues relating to data protection.

You asked when the review of the UK's experience under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) will be available (Q80). We intend to publish the results of the Review as soon as I have had the opportunity to study its conclusions with my colleagues. I expect that this will be by the end of this month.

We are continuing to work on the scope of the Human Rights Act; it is of course barely a fortnight since I attended your Committee's mini-conference on this subject, the latest occasion on which we discussed it. We have therefore engaged closely with the Committee on this subject, but we will nevertheless respond shortly to the Committee's report on the subject for sake of the record.

Similarly, we are continuing to look at the procedures for implementing Strasbourg judgments and remedying declarations of incompatibility. While we have taken note of the Committee's recommendations, you must of course recall that for Strasbourg judgments the Committee of Ministers at the Council of Europe is the authority that oversees their implementation; we are therefore seeing what we can do to reconcile the Committee's recommendations with our obligations to the Strasbourg process. This is not straightforward, which is why I wisely chose to respond to those parts of the Committee's report to which a response was possible. We are continuing to look at this subject, and I shall come back to the Committee when I have something to report.

You asked about the consultation process on the British Bill of Rights. We have been working on a Green Paper which we will be publishing in the first part of this year. We would welcome the opportunity to consider the findings of the JCHR's own Bill of Rights enquiry, to which I have recently contributed in my letter of 24 January. We are also hoping to reflect upon the conclusions of Lord Goldsmith's independent Review on Citizenship. Publication of the Green Paper will launch a full public consultation and engagement process. We are still in the planning stages, but we envisage that this will last up to 12 months from the date of publication. The consultation will be designed to encompass all parts of British society.

You asked about the establishment of a National Preventative Mechanism (NPM) under the Optional Protocol to the United Nations Convention Against Torture (OPCAT). Overall, the establishment of the United Kingdom National Preventive Mechanism has proved more complicated than we originally envisaged. It has always been our intention that the requirements of the Protocol would be fulfilled in the UK by the continuing collective action of the existing statutory inspection bodies. There are more than twenty different types of inspection body in the UK, and that has raised issues of co-ordination and communication which have needed detailed discussion and agreement. Those discussions are well advanced, but are not concluded. We hope to announce the composition of the UK NPM by the summer. In the meantime, the existing bodies will continue to carry out their regular activities.

Lastly, you asked about the departmental action plans used for the delivery of in-house training and guidance to front-line staff about human rights, to which Edward Adams referred. The action plans are for my Department to use when communicating at official level with other Government departments to discuss the development and implementation of training and guidance requirements, including dissemination of best practice and distribution of MoJ generic human rights guidance. The action plans are not intended for wider circulation as they are only for internal reference.

*Michael Wills MP*

*8 February 2008*

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