

WEDNESDAY 11 JUNE 2008

Present

Goodlad, L (Chairman)
Lyell of Markyate, L
Morris of Aberavon, L
Norton of Louth, L
O’Cathain, B
Peston, L
Quin, B
Rodgers of Quarry Bank, L
Rowlands, L
Woolf, L

Witnesses: **Councillor Hazel Harding CBE, Ms Donna Sidwell and Mr David Holland,**
Local Government Association, examined.

Q770 Chairman: Councillor Harding, Ms Sidwell and Mr Holland, may I welcome you warmly to this committee and thank you for coming? We are not being televised but we are being recorded. Could I ask you to identify yourselves for the record?

Ms Sidwell: My name is Donna Sidwell. I work for LACORS (Local Authority Coordinators of Regulatory Services). We are here on behalf of local authorities in England, Wales, Scotland and Northern Ireland and the Local Government Association, Welsh Local Government Association, Convention of Scottish Local Authorities and Northern Ireland Local Government Association.

Councillor Harding: I am Hazel Harding and I am Leader of Lancashire County Council and I am the Chair of the Local Government Association Safer Communities Board.

Mr Holland: My name is David Holland. I work for Cardiff Council and I have the consumer protection brief for that local authority.

Q771 Chairman: Thank you. Could I begin by asking about closed-circuit television? Do you think that the apparent ineffectiveness of CCTV that we read about in the newspapers in preventing antisocial behaviour and crime in public places justifies its continual proliferation throughout the country and by local authorities?

Councillor Harding: My perception and that of my colleagues from various councils is that CCTV is very popular with law-abiding members of the public who see it as a preventative and feel much safer. Because crime levels and some forms of antisocial behaviour have fallen, what we are dealing with now in many very safe areas is a perception that people have that they are not as safe as they used to be. CCTV is something that councils are facing demands for day after day from members of the public who think it would actually make them safe and they would feel safer because of it. There are some good examples of how CCTV has helped perhaps not always to prevent but certainly to detect crime and as such it has been very useful. A very good case in point is Ipswich where the dreadful murders of the women working on the streets were solved quicker because of the CCTV coverage. Actually it was Ipswich Council's CCTV which placed the girls in particular places at certain times and also the eventual killer who was caught. The police accepted that it was faster because they were able to see where the victims and the perpetrator were. It was a very good example of how in fact crime was probably prevented because I do not think, short of being caught, it was going to stop at that point. That is an extreme example and a very tragic one. In terms of antisocial behaviour, I do not think necessarily that people out on the streets sometimes causing mayhem look at where the cameras are or behave differently because of it, but I do think that it does enable prosecutions and, as such, is very useful. Many of the CCTVs, though, that actually record antisocial behaviour are not council-owned; they are owned by local businesses. Most of the council ones are actually monitoring traffic.

Q772 Baroness Quin: Probably all of us have seen very fuzzy pictures from CCTV. Is your impression that the technology is improving and it is becoming more effective? Obviously they have been around for quite a long time now.

Councillor Harding: Yes, the quality of the cameras does make a huge difference. Digital images are much more easily seen and people are more easily identified if there is better quality, and they are improving.

Q773 Lord Rowlands: Could you help us to explain what procedures and processes a local authority goes through before it establishes these cameras? For example, in a high street or a park, what process does the local authority go through by way of consultation and assessment of privacy issues before establishing the cameras?

Mr Holland: I will try to answer that. My answer would be based on my experience in Cardiff. Our CCTV codes of practice are designed against national guidance and they are designed in consultation with the police, with our own legal service and I guess we are very much looking at the core function of a local authority, which is to protect and serve the local community. Yes, we want to bear in mind people's right to privacy. For me, the overriding role for the council is to protect its community. The rotation of those cameras is primarily, as Councillor Harding said, about traffic flows in a city like Cardiff. If the cameras are located in parks and high streets and other areas that have attracted complaints of nuisance, for example on an International day in Cardiff when the streets are very full and they stay very full in the evenings as well, they are located at the request of the police to make sure that law and order is observed and that people can come into Cardiff, enjoy the day and go away and want to come back again. I think that is very much what the council wants to achieve.

Q774 Lord Rowlands: Is there a form of planning process? What sort of process takes place?

Mr Holland: Every time the CCTV code of practice is reviewed, consultation will be carried out internally and externally with community safety partnerships and the like to establish the scope of that code, what it should cover and how those cameras would be deployed. That is set out in Cardiff's code. I would suggest if every council has a similar code those can be produced to a committee in evidence, should it wish to see them, so that you can see the issues that are considered about the location of CCTV.

Q775 Lord Rowlands: How do you assess privacy issues in that context?

Mr Holland: The privacy issues will look into things like the Regulation of Investigatory Powers Act, which perhaps we can talk about afterwards, and around whether it is necessary to have those things in there and whether they are a proportionate response to the issues under examination.

Q776 Lord Morris of Aberavon: What is the interface between local government and the police on these issues? When I was an MP I spent a pleasant quarter of an hour in the Chief Constable's office in Carmarthen looking at what had happened on the previous Saturday night in Carmarthen: antisocial behaviour, actions of ruffians and violence. I do not know why it was in the police headquarters' office. What is the interface?

Mr Holland: The interface is regular. Local authorities and police officers now spend a significant amount of time together. Under partnerships that are formed under the Crime and Disorder Act, we both have a statutory duty to reduce crime and reduce the fear of crime, which is something Councillor Harding was alluding to earlier. It is a regular thing. My trading standard's officers spend at least two full-time equivalent days a week working with police officers on issues of concern to the community.

Q777 Lord Morris of Aberavon: That is a matter for local determination. There is no national standard, is there?

Mr Holland: There is the Information Commissioner's Code of Practice on CCTV and a national CCTV strategy. I guess the demand for interaction would depend on the local authority in question. Local authorities are very diverse in their coverage.

Q778 Lord Morris of Aberavon: Whose pictures are they? Are they yours or the police's?

Mr Holland: At Cardiff the system is owned by the local authority and we have a partnership arrangement with the police. The local authority role is primarily to monitor traffic flows. It is the police that use their part of the system to combat crime and disorder.

Q779 Lord Norton of Louth: This really follows up on Lord Rowlands' question. In establishing where there is CCTV coverage, you have various criteria that have to be met before you set them up. Once they are set up, is there subsequently a review to determine whether they have met the criteria or are they just left? Are there circumstances where you decide that there is no longer a case for having coverage and actually removing them?

Mr Holland: Cardiff's CCTV code is periodically reviewed by a number of people like the stakeholders themselves and the Community Safety Partnership. It is looked at by the Office of Surveillance Commissioners when they come to do their inspections under RIPA, if I may use that acronym. It is examined on a number of different occasions and, yes, we are always asking ourselves: do we need to do it, is it necessary and is it proportionate? Those are the questions that the OSC will ask us and we want to be able to be in a position to answer that and say, "Yes, it is, because we still have issues in our community that we need to resolve".

Q780 Lord Norton of Louth: It is not that any have been withdrawn; it is just a case of more and more CCTV cameras being put up?

Mr Holland: I am not aware of any having been withdrawn. I am aware that the Government is providing local authorities considerable amounts of money for CCTVs.

Q781 Lord Lyell of Markyate: I think you are discussing overt CCTV cameras which the public can see are there. One of the points is that they will see it and either be deterred from misbehaviour or comforted that the matter is being watched. We shall no doubt be asking you a lot of questions about the difference between overt and covert, but what you are answering is overly overt, is it not?

Mr Holland: I think I am talking about mass overt surveillance, yes.

Q782 Baroness O’Cathain: What sort of reliability do these CCTV cameras have? One gets the impression that sometimes they are not working properly. Following on from that, what sort of drain on local authority finances is there in the maintenance of these cameras?

Mr Holland: I can only answer for my own local authority. They are fairly robust. We still use VHF videotapes in this day and age and we use those 12 times and then they are discarded. As I say, the Government is providing significant amounts of money to maintain CCTV and the main drive is around the reduction and detection of crime and disorder.

Q783 Chairman: Before I come to Lord Peston, can I just ask what the Local Government Association’s Safer Communities Board actually does to ensure that CCTV is used in a manner consistent with civil liberties and human rights and whether the guidance from the Information Commissioner’s Office and the Association of Chief Police Officers and other national agencies is of any relevance to what the LGA’s board does?

Councillor Harding: Certainly the LGA participated in the implementation of the National CCTV Strategy alongside the Information Commissioner. We would always advise councils of the need to ensure that people’s civil liberties and human rights were taken account of.

Q784 Lord Peston: When I used to take an interest in local government finance, it was to do with local government providing a variety of services, notably education. For reasons which I neither understand nor approve of, this Government seems to have turned against local authorities in the field of education. It would not have occurred to me – and I am talking some time in the past – that the provision of safety and security was a local authority function. Has it become a local authority function because you cannot find other things to do with yourselves?

Councillor Harding: Not at all, and certainly if I look at my own authority, and I think you would find it reflected across the piece. We regularly ask residents what are the most important issues for them. The number one issue for people in Lancashire, and we have more than one million people living in Lancashire, is to feel safe. I think it is more than something people aspire to; I think it is a basic human need. You cannot do all the other things they tell us that they want to do unless you feel safe, and that is safe in your home and safe on the streets. The police would acknowledge that they cannot help people to feel safe on their own; it is a matter for local authorities and for other partners as well.

Q785 Lord Peston: You yourself did raise what you might call the distinction – and this committee has been bombarded with this distinction – between the public perception of feeling safe and the reality. I live in Suffolk, not far from Ipswich for that matter, and I would guess if you read the local papers in that part of the world that the public perception is that it is not a very safe place. The reality is it is an indescribably safe place. What worries me a bit is that no-one seems to be speaking out by saying, “What is the fuss all about?” It is rather like the ghastly thing in today’s newspapers that we are going to run out of petrol. We are not going to run out of petrol but nonetheless to sell newspapers that is the headline the press puts in. Do you have a role yourself, apart from putting the cameras up, of trying to get over, and

it depends where you are talking about, that this is a very safe part of the country rather than the reverse?

Councillor Harding: We do indeed and I think that is something we spend a lot of time and effort doing, both in person and through our council publications and through as many means as we can, because it horrifies me when I meet elderly residents who tell me, “I lock my door at 4 o’clock and I never go out”. That is not quality of life; that is self-imprisonment, and that is in a very safe part of our county.

Q786 Lord Peston: My last supplementary is this. You used again the expression “safe in your home”. As we have taken evidence, certainly one of my worries is that I do not feel safe in my home but what is threatening me is not thugs but perfectly reputable bodies using the latest technology who look as if they can pry into my home and find out what I am doing. The more I hear the evidence, no-one is protecting me at all. We have referred to those cameras but we have heard of these parabolic microphones you can now use so you can hear everything one is saying in one’s home. Do you have any concerns about what is happening with the technology?

Councillor Harding: I think the technology is there if people want it. It is certainly not used by councils to do that. Quite honestly, if someone were directing that at my home, I think they would be bored in a very short space of time. They would not find anything of interest or use to them.

Q787 Lord Rowlands: We have been on this inquiry for some time now and we have had witnesses. One major witness said that every CCTV system should be approved by the Information Commissioner rather than it just being a local decision. I would be interested in how you would view that, presumably adversely. Secondly, we have received really quite a lot of information from both the police and from all these reports saying that people may

want cameras to be safe but in fact they are of very marginal value in safety. How would you answer those two issues?

Councillor Harding: I think I would probably agree with that last point. Certainly my experience is that there was a proliferation of cameras and demands for cameras. I think the demand is still there but I think that if you were to talk to local authorities and their partners in the crime and disorder partnerships, they would feel that they have addressed what they felt were the most necessary areas, the hotspots in fact, and are resisting calls from residents for any further cameras. With the exception of one or two town centres, I think the police and local authorities would say that they do not necessarily want more systems.

Q788 Lord Rowlands: What about the role of the Information Commissioner in determining whether new systems should be established?

Councillor Harding: I am always going to say it should be local determination; it should be the people who know the patch, who know the issues, who make those sorts of decisions.

Q789 Lord Morris of Aberavon: I want to ask you about the abuse of the Regulation of Investigatory Powers Act. I read in this morning's *Times* that Lord Stevens, a former Commissioner of Police for the metropolitan area, says that the security case for extended detention had been undermined by the outrageous abuse of surveillance powers to spy on litter louts, benefit cheats and petty offenders. For local councils to be using such powers brings the whole security issue into disrepute. What do you say about that?

Mr Holland: I have brought my own press cuttings and they are in a similar vein. This one is about phone spies. These are both in the *Mail*. The headline is: "Town halls using anti-terror powers to bug residents' calls"; "Fact File: what the law allows. RIPA gives all councils the right to use overt techniques to spy. The powers are enjoyed by 43 police forces" et cetera; "Council bugs phone call". They are lovely headlines but totally incorrect. There has been

a large amount of inaccurate press coverage and we are very grateful for the opportunity perhaps to clarify to this committee what a council can do. Let me be clear, first of all, that a council cannot intercept text messages; it cannot listen to phone calls; it cannot pop round tomorrow and bug your telephone. The Council cannot do that. The Council can undertake what we call directed surveillance, but our powers are quite limited in what we can do. Police forces and security agencies have a full range of RIPA powers; local authorities do not. I think we have said that our role as a council is to protect and serve the local community. I will be frank with you; I will use every power I have available to do that because there are some real rogues out there that prey on the vulnerable and elderly. In working with the police on things like distraction burglaries and the like, the typical victims are single females around 79 or 80 years of age. What we have seen in Cardiff and in many other cities is that these people have lost thousands of pounds to rogue traders, to conmen. That is totally unacceptable in my book. I will use whatever powers I have available to bring those people to book, but I will work within the law. I will work within RIPA and I will make sure that if my officers choose to undertake or apply for directed surveillance that that application is an absolutely necessary use of that power and that it is a proportionate response. I think I can say that for all my colleagues across councils. The press coverage talks about councils using these covert surveillance techniques to watch youngsters buying alcohol. You only have to go out on your streets in your communities to see some of the havoc these young people are causing in communities because of alcohol and wider social problems. Councillors like Councillor Harding and members of neighbourhood watch groups demand that the council do something about it. We use directed surveillance techniques sometimes to do that.

Q790 Lord Morris of Aberavon: I am sure from your evidence that that is an accurate picture regarding the City of Cardiff, but it seems that there is allegation after allegation and Lord Stevens is a particularly impressive complainant whom we cannot ignore. Some of the

allegations are that RIPA powers intended to tackle terrorism and other serious crime – and that was the intention – are used for such things as finding out whether families are in a particular school catchment area. Have you any idea of that and can you comment on it?

Mr Holland: Dare I suggest that the Regulation of Investigatory Powers Act was created to regulate the use of surveillance by public authorities; it was not entirely created for anti-terror powers. The human rights legislation came in with the 1998 Act and RIPA was put on the statute book to make local authorities accountable for what they do when they choose to take actions that would breach Article 8 rights. So it was not just about anti-terror. I think it is incorrect to say that; it regulated the actions of a wider range of public authorities in the way they undertake their regulatory duties. I think you are alluding to the Poole council case where their education services undertook directed surveillance, which has been in the press again. I have spoken to the officer who made that authorisation for the directed surveillance to be conducted. He did so. He went through the RIPA regime; he went through the necessity tests; he went through the proportionality tests and determined that it was an appropriate use of those powers. I hear lots of people say that that should be judged by magistrates or the judiciary, but every day we see decisions in the magistrates' courts that are amended in the upper courts. The gentleman in question went through a regime. It is all documented and he is accountable for what he did and the decisions he made. Previous to RIPA coming on the statute books, that did not exist. I think that there is an effective safeguard in these issues but we can look at why those processes took place. I need to point out to you that in the Poole incident, while the press have homed in on the fact that a family was spied upon, they were entitled to send their child to the school. There were two other directed surveillance authorisations undertaken which showed that those two children did not live in the catchment area and the places were refused. In the three cases in which Poole undertook surveillance, two of them were justified and two places were refused for a school

which people are clamouring to get into. I listened to an interview on the radio with local people ringing in and they said, “Damn right, the council should make sure that only people who are eligible for the school are able to do so”. It attracted a lot of public support.

Q791 Lord Morris of Aberavon: You would favour the use of the Act for all these issues without turning a hair?

Mr Holland: No, I do not think I said that. I am an authorising officer in Cardiff. My role is to protect people’s human rights; it is not to rubber-stamp my officers’ wishes to go out and watch somebody. I am quite clear about that. It is my job to protect the rights of my community against those unlawful intrusions. I go back to whether it is necessary for us to do it. Do we have to do it? Why do we want to do it and what are we going to do with the product of those things? I am absolutely clear on that. I can tell you that this year in Cardiff I have authorised six applications, and that is all, for directed surveillance; four of those are for what we call loan sharks, illegal money lenders, who really are causing significant difficulties in the south Wales valleys. That may give you some indication of how seriously I treat these points.

Q792 Lord Lyell of Markyate: Mr Holland, I think you recognise that really your justification is that wicked things happen. After 40 years at the Bar, rogue builders, people preying on elderly people, yes, these are wicked things. You are therefore saying that you think it right that we should live in a society in which local authorities have the power covertly, secretly, to survey us all whenever they think it right, so long as they can show that they are trying to stop something that is wicked. One can understand that argument.

Mr Holland: I am sorry if I gave you that impression. That is not what I said.

Q793 Lord Lyell of Markyate: You did, very strongly. There is an argument for it but it has to be balanced over whether we want to live in a society in which public officials decide that they will snoop on anybody who they think may be doing something wrong so long as they have some reasonable case for thinking they may do it wrong. Is there not a balance? Ought not Parliament to say that some of these covert activities should be reserved for very serious offences indeed and terrorism, whereas other things which are wrong – cheating over school catchment areas if that is happening and so on or dog fouling – are certainly not sufficiently serious for covert activity. Certainly with dog fouling it should be overt; you should know that there are cameras in the park. It is a worry to this committee, it is certainly a worry to me, that you have justified to yourself over-strong powers.

Mr Holland: Let me see if I can redress that. Most of a local authority's duties are placed upon it by regulation and most of what we do in administering that legislation is done overtly. I think I said to you that I authorised six in 2008. I should have told you that on illegal money lending I have a remit to operate a unit that covers the whole of Wales. It is not just six in Cardiff; that is six across the whole of Wales. If we can do something overtly, then clearly we will. I do not think we need immediately to make recourse to RIPA and say, "Here is the chance to go snooping again. Terrific! What shall we do today?" That just does not happen.

Q794 Lord Lyell of Markyate: That is not the point I put to you. The point is: are there not degrees of seriousness which have to be considered when you decide what surveillance powers should and should not be allowed?

Ms Sidwell: Perhaps I could add to Mr Holland's debate. There are certainly different degrees of seriousness. You are quite right in what you were saying. There will be those occasions where it is more appropriate for covert surveillance to be used, for a covert human intelligence source to be authorised or for subscriber or billing information to be obtained. We would argue that the checks and balances already in place are fairly good at enabling

a local authority to assess on necessity and proportionality grounds. There are some occasions when you may challenge the decisions that have been taken and you might say that if you were looking at it from the judicial perspective a different decision might have been taken. I think there are areas where additional guidance can assist and working with the Home Office, the Office of Surveillance Commissions and the Office of the Interception Commissioner can help us in that. We participate in an ACPO peer review group in all of those areas where the legislation can be clarified. Mr Holland quoted the case of C v the Police and Secretary of State for the Home Department [14.11.06] IPT/03/32/H before the Interception Tribunal in which Lord Justice Mummery states: “The experience of the tribunal over the last five years has been that RIPA is a complex and difficult piece of legislation.” I think that is very true. There is a further debate to be had, and the exercise you are undertaking at the moment will be very valuable in this in helping the non-enforcement community of local authorities to get more clarity on some of the issues on when authorisations should be given. I see that the work we are doing with the LGA, COSLA, NILGA and WLGA can help in that process. We want the local authority communities and residents to be confident and to believe that they are not being snooped on. We strongly do not believe that is the case.

Mr Holland: If you look back at Hansard you will see that local authorities pushed hard to be included in the RIPA regime because we want to be accountable for what we do. If you take us outside the RIPA regime, that does not automatically preclude us from carrying out our regulatory duties.

Q795 Lord Lyell of Markyate: But it may limit the way you do it and that is really what we are talking about.

Councillor Harding: I am a lay person in terms of RIPA but I am very much aware that some of the people that we are dealing with in trying to enforce the law are becoming cleverer at the

way in which they break the law and avoid detection. They use all sorts of technology in order to avoid being detected. I think that I am reassured by the fact that RIPA is not being used in a wrong way; it is being adhered to by local authorities. Equally, we are not talking about somebody dumping an odd bag of rubbish when we talk about fly tipping; we are talking about massive dumping of tyres and of builders' waste time and time and time again. If we need to look at somebody's telephone records in order to ensure that we catch a perpetrator, then I think it is something we need to do, but it is not undertaken lightly or in any way to catch the person leaving the odd bag of rubbish, though that is equally reprehensible. It is about the large-scale, frequent offenders in many of these cases.

Q796 Baroness Quin: In terms of the retention of the data that you get, in the six cases that you mentioned how long would the data be kept for and who would have the responsibility for deleting or removing that data?

Mr Holland: Any product of a surveillance exercise, any papers relating to the application, would be held in accordance with the codes of practice that have been issued. They would be held in accordance with our data protection protocols. They would be made available to the Surveillance Commissioners, should they request to see them, or in a court of law, should there be a request to see those in any subsequent proceedings. They are kept under lock and key and the people with access to that have a full and clear understanding that they are personally responsible for the security of that data.

Q797 Baroness Quin: Is there a time limit on that?

Mr Holland: The codes talk about referring back to the Criminal Procedure and Investigations Act. If there is no likelihood of that material being used in another case, then it will be destroyed and deleted.

Ms Sidwell: Generally the maximum they would be kept is six years.

Q798 Lord Peston: Going back to Lord Lyell's point, his point, if I may interpret him, is about proportionality. It seemed to me you demonstrated beyond a shadow of doubt that he was right and in some sense you are wrong because when you are talking about money lenders or large-scale dumping and those kinds of examples, I think none of us would doubt that that is the kind of area where we want you to see these drastic powers used. But in the end this is a school catchment area. It is rather like deciding that the local church school is the best and suddenly you announce, never having been near a church for 25 years, that now you are devoted to the deity and all that. In the end, most rational people shrug. If there are a few people around lying, you do not want it to happen, but you would not use your major powers compared with the fact that it is partly a matter of allocating resources. I am with you all the way: every time you catch a money lender or a major persistent dumper, I say more power to your elbow, but as for catching the odd person fiddling the school catchment area, my response is "so what?" It seems to me Lord Lyell has elicited from you the need for a balanced response, and that is really all we are trying to get to in our approach to this subject.

Councillor Harding: May I say that I would agree entirely but I think if we are talking about proportionality, you would find that the Poole case was a very rare occurrence. Certainly my local authority has never used it for school catchment areas and I cannot foresee a time when we would. It would be wrong, I think, to prevent local authorities using it in the way in which the vast majority of local authorities do for those extremely serious cases on the back of one authority deciding to use it for school catchment areas.

Ms Sidwell: You mentioned that surely local authorities would agree about not allowing dog fouling in this vicinity. Generally, that is what is done. It is rare for surveillance to be used in this way. Other areas where I know there have been debates with the Surveillance Commissioner are where you get instances of noise nuisance; mostly local authorities will

actually write to the resident and say, “We have had complaints about the noise emanating from your residence. Please can you desist? If you fail to do so within this timescale, we will undertake some surveillance”. It is overt; it is not covert. If it is anything you could hear if you were walking down the street, in our view that is not something that would be a covert matter because it is something any member of the public could hear.

Q799 Lord Rowlands: For clarification, Mr Holland you kept on using the words “direct surveillance”. Is there any difference between direct surveillance and covert surveillance?

Mr Holland: Covert surveillance can perhaps be split into what is directed surveillance, watching the movements of people and intrusive surveillance is something restricted to the police and the security agencies, which involves bugging people inside their homes, et cetera, something that would happen on a private vehicle or in private premises.

Q800 Lord Rowlands: Directed surveillance is a part of covert surveillance?

Mr Holland: Yes.

Q801 Lord Woolf: In what you have been saying you have identified that there are various different categories of surveillance. I think what has been causing concern to the committee is your general approach seemed to be: we have the powers; the public would like us to use the powers; they can be beneficial in detecting things, and so we use the powers. That may not be a fair picture. What I would like to find out is: to what extent, in coming to your decisions, do you have in mind all the time how much importance you attach to the fact that if you were to ask the public if they want unnecessary surveillance, they would seek equally to say they would not want unnecessary surveillance and surveillance in itself can be a bad thing just because it happens.

Mr Holland: I would agree with you. I am sorry if I have not said it enough times. My considerations and those of my colleagues are: is this covert surveillance necessary? That is the first test. If it is not necessary, if we can achieve what we want to achieve – the protection of the community – by other means, then we do not need to undertake covert surveillance at all. The first test is on necessity. If there is a necessity to do it, if we cannot protect the community by normal routine means, then we consider is it a proportionate response? I think we go back to the Poole case. The authorising officer in that case was provided information. His education officers had said that they had tried their normal means to determine whether these children are eligible or not; they still had a doubt. He applied the test of necessity, proportionality, and determined in his mind that surveillance was appropriate. That is what authorising officers are challenged to do. Is it necessary? If it is not, we stop. We do not undertake unnecessary surveillance. Even if it is necessary, is it a proportionate response? If it is not, we do not do it. I am sorry if I have given you the impression that I charge off and snoop on everybody at every chance I get because that is not the case.

Q802 Lord Morris of Aberavon: Where do you draw the line?

Mr Holland: It is almost a quasi judicial role, is it not? I am presented with a body of evidence by my officers and I have to apply not only the Act, the codes of practice, but the guidance from the Office of the Surveillance Commissioner, and at times I have rung the local OSC inspector and asked his observations: What do you think? We have guidance through LACORS. We are trying to find our way through a complex, difficult piece of legislation. If you read the OSC report, you will see that even the law enforcement agencies, the police, are having their own difficulties in finding their way through RIPA because there is a dearth of certainty on the law. There is very little in the courts that has given us guidance. If you want to ask me about the Trade Descriptions Act, I have 40 years' worth of guidance there but perhaps some of you have sat in judgment on section 1 of the Trade Descriptions Act and

have discerned what it actually meant, what Parliament's intention was. There is very little on RIPA. I try my best. I look at guidance. I seek guidance from the inspectorate and from colleagues, but the decision on whether it is necessary and proportionate sits with me as an authorising officer as it would with a superintendent in the police force.

Q803 Lord Rodgers of Quarry Bank: I think it follows from these sensitive and difficult issues that I want to turn to the views of the Chief Surveillance Commissioner. I am referring to the annual report for 2006-2007, chapter 10, which is Inspections of Local Authorities. I have to say I find this very disturbing. May I quote one or two cases? In paragraph 10.2 the Commissioner says: "I have been disappointed with the local authorities that have failed to act on the recommendations of previous inspections." Then in paragraph 10.3 he says: "There has been improvement but it seems that some authorities did not expect the more in-depth inspections conducted this year." It goes on, "well meaning but inadequately informed." I think this is extremely depressing but I hope you will give a justification. You may have an explanation for why these things should go wrong and what can be done to do it better.

Mr Holland: I too have the report in front of me. In 10.2 he also says that "the general standard of compliance with the statutory provisions continues to improve. He also says that the number of faults reported last year has reduced." We are moving forward but we are not getting it right every time. If you go back into section 8 of his report, which is the inspection of the law enforcement agencies, he makes similar comments. In fact, he had to order some re-inspections of two law enforcement agencies in 2007. He makes similar comments about government departments. I think the challenge for local authorities is that there are 474 councils and that is a significant challenge, given the different localities that they are required to govern at district, unitary and county level. It is a big challenge for the Local Government Association to move us forward, but I think we are getting there. Do you mind if

I go to the Interception of Communications Commissioner's report for 2006 for communications data?

Q804 Lord Rodgers of Quarry Bank: I know it is getting better. I accept that entirely, but how far are you going to get it to 99 or 100 per cent? Could I ask the question, if I may, to Councillor Hazel Harding to find out what her views are on the matter as an elected member of the authority?

Councillor Harding: I am always disappointed when there are reports that say "could do better" for local authorities. I am not surprised because you are only ever as good as the individual authority or the individual within that authority. I am very proud of my council; it is a four star council, but I keep saying to people who work for us, "excellent does not mean perfect", and it does not. It would be very strange if we did get to a point where we were claiming perfection. I think getting better but not fast enough would be my reading of the report. I would hope that from the LGA we can support councils that are seen not to have made those improvements in getting better.

Mr Holland: I think it is easy to criticise local authorities and our efforts to be RIPA compliant. As I have shown you earlier, you can make a good story out of a totally inaccurate statement. We are moving forward. Last year the local authorities pulled together a number of road shows with ACPO, NPIA and the Home Office – and that was at our instigation – to go across the country to pull together practitioners to talk about these challenges posed by RIPA. We keep going back to this statement by Lord Justice Mummery that this is a complex, difficult piece of legislation. We are seeking to move forward. Ms Sidwell sits on a committee with the Association of Chief Police Officers (ACPO). In my own authority we work with the South Wales Police to make sure our procedures reflect theirs. In Gwent five local authorities work with the Gwent Police Force to do exactly the same thing. We are trying to move forward to get this right, but it is a difficult task.

Ms Sidwell: We know that the Home Office has undertaken a RIPA review over the last 12 months or so. There is a huge amount of work that can be done to assist local authorities and the other enforcement bodies. The codes of practice on surveillance are almost a mirror image of what we have in the legislation. Having more explanatory notes there to assist on issues like privacy and some of the more detailed collateral intrusion issues can really help those that are looking at it from an enforcement perspective, and having consistent training, making sure that the authorising officers are well versed in the human rights principles, as we already believe they are, but having additional training that is of a sufficient standard that you as members of the Lords and local communities are assured of the work that is being done.

Q805 Baroness Quin: I want to raise the issue of data sharing between agencies, sometimes that seems to be a good thing and for example the lack of data sharing was very much criticised in the Bichard Report following the Soham murders. Certainly, if it is aimed at protecting the vulnerable, one can see very strong arguments for it. At the same time, some evidence seems to be there that expresses concern about data sharing because the information then becomes circulated more widely and there is the danger of people being stigmatised because of something that may have happened which, because of the availability of the data, is rather difficult to live down subsequently. Therefore, I wondered if you felt that the emphasis on sharing personal data does pose threats to individual privacy and the citizen's relations with the state.

Ms Sidwell: If I may start by answering the question, there is an incredibly fine line to walk between respecting the individual's rights to privacy, the protection for the individual, their home and property, and the greater good for the local community. I think that is fundamental in the data protection principles. Every local authority will have policies in place to ensure that they maintain and meet the data protection principles. We have guidance from the Information Commissioner's Office in this area. Data will only ever be retained in

accordance with those principles and shared with other agencies through legal gateways that exist. There are many agencies – I can name HMRC – that are incredibly cautious about the sharing of data, and quite rightly so. We respect that and we would treat personal data in the same way. It should only ever be used if there is a clear legal gateway. An example would be section 35 of the Data Protection Act, which enables the lawful disclosure of information in relation to legal proceedings. So it is a very clear gateway that is clearly defined and requests can be made of other agencies, but they still have to make sure that they maintain and hold the data in accordance with the legislation. That is perhaps partly the discussion. I think from a local authority perspective my colleagues would be able to give practical examples. Perhaps Mr Holland would like to touch on some of the areas where there is data sharing.

Mr Holland: Perhaps I could point you to Sir David Varney's report on Service Transformation: Better Service for Citizens and Businesses. He makes an observation that in the case of a bereavement – and these are his figures – some 44 different public sector agencies have to be informed. One of the recommendations in his report is the development of a service that required the reporting of these facts just once and from there the information is shared across government in a secure manner. That was something that Sir David Varney advocated on data sharing. On issues like registration and bereavement issues – births, deaths and marriages – I think there is a positive sharing of information. His research said that the public is willing to give out that detail if there is a clear benefit to be gained. I think there are some very positive, good examples happening on data sharing inside local authorities. Perhaps that is the best example I can provide at the moment.

Q806 Baroness Quin: Is there adequate training of people in this area in recognising the fine line that Ms Sidwell referred to?

Ms Sidwell: Most local authorities will have training on data protection issues. I know certainly at my own organisation I did a training session earlier this week for those who were

dealing with other people's data on their own databases, on their websites, respecting the individual's personal rights. I would say that as a general policy local authorities will use the guidance we the Information Commissioner provides. Councillor Harding might be able to speak from her authority's perspective.

Councillor Harding: I have some excellent examples of how data sharing can help people and assist them in their daily lives. We tend to do it with people's consent. We have a number of examples where we have had family doctors write to people over the age of 75 with whom they deal on a regular basis saying, "We know you have your health check, but what about a wealth check? Are you getting all the benefits?" We brought £1 million into one district in Lancashire in added benefits to people over the age of 75 who were not claiming things to which they were entitled; it was £2 million in another district. It is of course hugely beneficial to the local economies because those people spend the money locally and the doctors felt the benefit because these people started going to the doctor's less often because they had a little bit more money to spend and felt better. That was a good example, not of sharing the data but asking the doctor to use his data to benefit the people. We do it generally with older people. We will say to them when we have a fire safety check, "Are you sure your home is secure? You have had your fire safety check but would you like your locks checked by somebody reputable that the fire service will recommend to you?" Then if people are also seen to be struggling with other things, we ask "Would you like us to come and assess your needs for social care?" There is an awful lot you can do face to face with somebody where you are asking their permission to share their needs. I think that is very useful and it is a true example of how data can be used to benefit people.

Q807 Lord Lyell of Markyate: I am sure the whole committee respects local authorities for the very great deal of good work that they do and the effort they put into this. Certainly when you talk about the Data Protection Act, there are a lot of legal fine lines, and I have had to

consider them in declaring an interest running a very small business and as a barrister and so on. It is fairly impenetrable. I think what concerns this committee, as Lord Peston was emphasising, is really this whole area of proportionality. Councillor Harding has given very good examples of how beneficial aspects can work. If you are looking, for example, and this is more broad than the Data Protection Act, at fly tipping or illegal money lending, if that is happening in a serious way, then there may be a very good case for directed, covert, whatever you like, surveillance, carefully documented, as it must be, and so on. What is frightening people is this: there was a stupid man in Cumbria who did not quite shut his dustbin, and you will remember that one. This is just a newspaper report: there was some woman, who I thought was a poor woman, who put her dustbins out a day early. They both received quite whopping fines for people like that; it was pretty much their net take-home pay for a week. That is a lot of money for people. People feel that public authority servants sit with a steady wage and a secure job and they are dishing out these large fines. Do you recognise that it is very important to try to educate people and not cane them, if I can use that allusion?

Councillor Harding: From an elected member's point of view, I am appalled when I see some of those examples in the press as well. I hope the elected members in those authorities are equally as appalled because it does seem to me that it a case, in some instances, of using a sledge hammer to crack a nut. I also think sometimes the reporting is not always as clear about how many times people have been spoken to, have been asked and advised and that authorities at the end of the road will use the legislation to make their point. I do not think it is always appropriate but in some cases there is a long history of education and support for people before it actually gets to that stage.

Q808 Baroness O'Cathain: This question refers to the increase in the use or advance in technologies of smart cards, biometric identifiers (and that of course applies to anti-terrorism) and other technologies for controlling personal access to local services, including public

transport, libraries, education, leisure and recreation. How do you see that developing and do you think there are going to be many more dangers facing you and the public as a result of this?

Councillor Harding: I always think that Tesco and Asda probably know more about me than my local council does because every time I shop there they have a record of what I have bought; they also have other details which allow them to market things to me. From a local authority point of view, we have schools that are using fingerprint technology for school meals. That is not at our instigation; it is their choice. Children pay their money in and then can access a meal and it comes off their bill. It also means that children who have free school meals can access food and nobody knows that they are in receipt of free school meals. It is a very fair system from that point of view. It was criticised by some parents but the majority of parents thought it was a reasonable idea because they had had a lot of experience of children's dinner money being used in the sweet shop or other places and not to buy a proper meal. This way, they knew their children were getting a decent meal. The techniques are there and are being used. I must say, from my point of view, our library service has opened up its service: you no longer have to take two forms of identification and your birth certificate in order to join the library; you can just join by going in and declaring who you are and saying, "I'd like to join." It seems to me, for a public service, it is a very good way of ensuring that more people use our services than demanding forms of identification. In that way, we are finding out less about people.

Q809 Baroness O'Cathain: You are emphasising, quite rightly, the positive benefits and all those are admirable. What about the dangers? Do you see any negatives?

Councillor Harding: I think there are. A number of people have referred to being "spied upon" and "being watched" and I do not think any of us like to think that as we go about our daily business we are being spied upon. Knowing how much information is held about us all

is a little bit worrying. Certainly you see the bank frauds. I have had my credit card used by other people when it has never been out of my possession. Those are frightening aspects of technology. But the technology is not going to go away, and we have to manage it and we have to ensure that it becomes safer for people to use it.

Chairman: Councillor Harding, Ms Sidwell and Mr Holland, I would like to thank you very much indeed on behalf of the Committee for being with us and for being so generous with your time and for the evidence you have given. Thank you very much indeed.

Memoranda submitted by Action on Rights for Children (ARCH) and Dr Eileen Munro

Witnesses: **Ms Terri Dowty**, Director, Action on Rights for Children (ARCH), **Dr Eileen Munro**, Reader in Social Policy, London School of Economics and Political Science, examined.

Q810 Chairman: Perhaps I could begin. Action on Rights for Children is generally critical, as I understand it, of the collection of children's personal data and its use in sharing or in other ways to reduce both the risks to children and the threats that certain children may pose to the wider community. How should we strike the balance between the need to protect people and the need to respect children's privacy?

Ms Dowty: First of all, we need to be clear about what we mean when we talk about risk. We need to make clear distinctions between child welfare and child protection. The Government has expanded the definition of "at risk" from its generally accepted meaning, taken from section 1 of the Children Act 1989 of "at risk of significant harm from neglect or abuse" to cover all kinds of other situations: at risk of teenage pregnancy; at risk of abusing substances; at risk of becoming a criminal. This blurring of the definitions, this rather loose use of the phrase "at risk", has led many people to believe that the Government's *Every Child Matters Agenda* is about child protection, that it is about children at risk of harm, when in fact it is about the estimated 50 per cent of children by the Government's estimation who will at some point need access to services in order to help them achieve the five outcomes that the Government has established in the *Every Child Matters*: be healthy; stay safe; enjoy and achieve; achieve economic independence; and make a positive contribution. There is a world of a difference, though, between a child in need of services who has capable, concerned parents, and the child who is in danger from their parents or whose parents are not able to meet their vital needs. We get into dangerous territory when we start confusing these two

categories of children. In the first case, there is no reason to suppose the parents and the family themselves are not capable of deciding what services they need and asking for them for themselves, in which case it is the Government's function to see that those services are available and that they are properly resourced and properly staffed. In the second case, the Government has a legitimate duty to intervene where parents are failing to be good parents to their children. This loose language is also a problem when we talk about youth justice and whether children are a risk to other people or not. It depends how you define the threat. Are we talking about children who are annoying? A group of teenagers hanging around being very noisy on the estate may be thoroughly annoying, but are they a threat to anybody? Some people may feel threatened. Should they feel threatened, or is it they who are being unrealistic about it? I think it would be easier to strike the right balance if we had grounded the *Every Child Matters* agenda solidly in the UN Convention on the Rights of the Child. There is a real problem here: the Government believes that its five outcomes manage to capture the UN Convention on the Rights of the Child, which I find a worrying claim. I am not quite sure how you encapsulate all those articles in five short statements. Also, it excludes all children's civil rights: the right to freedom of association; the right to privacy – which is fundamental to a child's development, in my view – and it also excludes mention of a child's right to be guided by their parents, and of the role of government in promoting respect within society for the role of parents. The Convention taken as a whole provides a series of checks and balances against over-enthusiastic state intervention and those are simply not there in the five outcomes. It also gives us the "best interest" principle: that anything done must be in the best interests of a child, but unless you locate best interest securely with the framework of the Convention, there is a risk that the best interests of the child become a rather more vague "what is good for children generally" and not about the

individual child, and it is also a licence for practitioner bias as to what is right for a child rather than what that child's rights are.

Q811 Baroness O’Cathain: Do you think that government has reached too quickly for databases and information technology solutions to problems such as child abuse and neglect, overlooking other approaches involving the exercise of traditional professional judgment?

Ms Dowty: Perhaps I could ask Eileen to answer that one.

Dr Munro: My particular expertise is in child protection, so I am very aware of the problems there in terms of information sharing. If you think about the process of sharing information, you first of all have to recognise that you have a piece of information that could be a signal that there is abuse in the family; second, you need to know who to send it to and how to send it to them; and third, that other person has to receive and understand it. When you look at the errors that happen in child abuse, it is around people not recognising that a signal of abuse is abuse, or sending it and the other person not receiving it. In Victoria Climbié’s case, for instance, the hospital sent a medical report and it was not read, and when they had supervision they did not take the social work record into the room with them. The problems do not arise in the technical sending of data but in the understanding of data. We have excellent working together procedures that have been in place since the 1970s and are very well known and very clear.

Q812 Lord Peston: I understand your points, Dr Munro, on abuse and all that, but I would like to take us back to the first question about correct behaviour, the converse of abuse, forgetting the old joke that we are all too young when we are bringing our children up and it is only when many years go by that you realise how you ought to have brought them up. God knows when the UN got itself involved in all this, because certainly when we were bringing our children up – I am sure completely hopelessly – it would never have occurred to us that it

was other than our responsibility. One of my questions to both of you is: When did all this change, this notion of, if you like, the philosophical concepts of rights and all that? The particular one I totally agree with you about is the right to privacy. It seems to me that children have their own lives. I did not know that when I was bringing my children up. I should have known, because I remember not telling my own parents about my private life, but it never occurred to me that my children had any secrets from me! Some of the secrets really mattered to them. The fact that we made our children wear Marks & Spencer's clothes they thought was absolutely appalling behaviour, and they might have gone to you, Dr Munro, saying, "This is real child abuse."

Dr Munro: I would have agreed with them, yes.

Q813 Lord Peston: "We want to be clothed from the charity shop like all our friends." Can you give us a perspective on this more than we have had?

Dr Munro: There is a strong British tradition of the family having privacy for centuries. It was at the very end of the 19th century that you got the first piece of legislation against child cruelty and it was specifically against the severe end, of severe physical chastisement or extreme neglect – starvation levels – but then it was really in the 1970s that you got an escalation. Before the 1970s we basically had a child welfare service, with a bit of abuse every now and again, but families were generally seen as problem families or families with problems but the language of child protection came in in the 1980s and then the language of safeguarding children to ensure that they have an ideal childhood came in under the 2004 Act. The idea of going from family privacy to at least caring about dangerous and malicious parents and then to wanting to monitor and ensure all children are reaching some standard of experience is very recent.

Q814 Lord Peston: We never struck our children at all. It would never have occurred to us that that would be other than a failure on our part. But there are plenty of perfectly decent parents who feel the reverse. I am never quite clear: is that a matter of rights, children versus parents or what?

Dr Munro: It is pragmatic as well, but it is not a very effective way of disciplining.

Q815 Lord Peston: I agree with you entirely.

Dr Munro: So there is that argument. As somebody interested in child protection, I do not get very bothered by a slap. It is much more serious injuries that worry me. But it basically is that it is an ineffective way of discipline and it is offensive to children and they are deeply distressed by it. The right to their being treated reasonably well does protect them from it, I think.

Q816 Lord Lyell Markyate: Dr Munro, first of all, thank you for a very, very interesting paper. Can you explain why the Government have added a concern for broader goals of child welfare and protecting society to their traditional concern of protecting children from harm? What do you see as the implications for children as citizens of in-depth profiling tools for predicting criminality, social exclusion, or educational failure on the basis of statistical probability, which you mentioned in your written evidence and in the FIPR report for the Information Commissioner? I know I am asking you, in a sense, to rehearse what is in your paper, but it would be very helpful for us if you could talk about the key points.

Dr Munro: I have no objections to the Government expressing concern that children have a decent childhood. The aim of the policy is not one I want to criticise; it is the means of doing so which is, to my mind, taking away too much responsibility from parents for deciding what their children need and what their goals and priorities in life should be. I do not want in any way to object to welfare services being available, to parenting classes being around if

parents want to go to them, but the Government are seeking, I think mainly on economic grounds, to target the families that most need the help via profiling. Economically this would make sense if you could do accurate profiling with no detrimental effect on families, but when you look at the probability theory and the kind of knowledge we have, if you are looking at a very specific risk, a risk of being abused or a risk of being a criminal or a risk of doing badly at school, any specific risk instrument will have a very high inaccuracy rate. When you do the Government's process of putting the whole lot together in a job lot, then the risk assessment is incredibly bizarre and the level of false positives and false negatives is extremely high, and the impact upon a child and family of having a false positive ascribed to them is very destructive – and it is unjust.

Q817 Lord Lyell of Markyate: I remember once doing a child protection case – and we are going right back into the 1970s – and I still squirm at myself, at the amount of hearsay evidence of a pretty dubious and inaccurate basis which I put forward to the court. I am glad to say it was overturned when it got to the Crown Court – and that shows how long ago it was. There is another member of this House, Lord Temple-Morris, who won the case against me. What you have said is not new but it is terribly important: that it is very easy to build up a false and dangerous case.

Ms Dowty: That danger is exacerbated by the kinds of criteria that are being used to assess whether a child is at risk of becoming criminal. When you look at the criteria on things like the RYOGENS system or that are used in onset, the criteria are things like being on a low income, living in poor housing, having a lack of facilities. They are problems of poverty, and it is rather insulting immediately to assume that because somebody is poor they are going to turn out to be a criminal. We know from the evidence from people like Professor Farrington at Cambridge University, for example, that there is a lot to be said for targeting resources at deprived areas and it does have an effect in improving education standards and reducing

delinquency, but to go from that to saying that you can find an individual who is likely to become a criminal is described by Professor Farrington as “fanciful” – and I know a lot of people have been less polite than that about the idea.

Q818 Baroness Quin: I totally share the concerns about inaccurate information and, also, indeed, out-of-date information which might unfairly stigmatise someone subsequently. Dr Munro, I have read your paper and I wonder what the alternative is in terms of trying to ensure as much support and helpful intervention for a large number of areas of dysfunctional families where children are extremely vulnerable.

Dr Munro: I think we should start with the assumption that parents are responsible until they have proven to have reason for us to doubt it. The fact that they are poor should not in itself mean that they are vulnerable to scrutiny by welfare services as feckless and dodgy parents. I would be delighted to see more services available, particularly mental health services for children and for adults, but it is about how they are provided. It is about whether you make them available, tell parents about them, tell them what they can do and what they cannot do, and make it attractive for parents to want to use them. Most parents do care very deeply about the well-being of their children and they almost certainly care about it more than any teacher or police officer does. It is a question of providing the services but not saying that the state will decide who is a defective parent and we will decide what help you need to rectify it, except at the extremes of: “That is definitely bad parenting and we must intervene whether you like it or not.” There is no right way of bringing up children. There are some very definitely bad ways. In terms of prescribing any set right way, there is not scientific evidence for it and the reality is that most of us muddle through quite well while doing different things.

Q819 Lord Peston: The distinction you make on the statistical analysis is a standard problem for social scientists. We are very good at saying “on average” or “this cause will

have that effect” but that does not identify any individuals. But in the end our concern is that we somehow have to get to the individuals. What troubles me, again thinking back to bringing up my own children or, even worse, my own grandchild, is that they have every advantage. I do not mean that we are tremendously rich but they have two parents there all the time rather than one, they are being bombarded all the time with “Have you read this, have you done that” and so on and so forth. In a competitive world, I constantly say to myself, “What chance do quite a lot of other children have?” I am not clear how you go from one to the other. I take your point about directing resources, but it is more than that. My daughter as a personal social work theme would find those girls at the local comprehensive who could not read and teach them to read, but it was always two steps forward and one step back because at home there was not the pressure that she had at home of “What have you learned today?” but totally different pressures. I am not very clear what our duty is in terms of response here. Can you elucidate that? In the end, each of us surely agrees that what matters to you is the individual child.

Ms Dowty: Yes, it is the individual child, and it is also about the family that is bringing them up. That is where I think there is a real danger that we impose our ideas of what a good childhood is and what a good outcome is, of what people should be achieving through their education. It is for families to bring their children up and for the state to make sure services are available, properly funded, and that we have good schools that are not failing and where children can achieve if they want to. Something that has been ignored in the debate around this change towards information sharing and profiling is that services are not available. The Commission for Social Care Inspection reported last year that the threshold for receiving the most blatantly obviously necessary services, like disability aids and so on, are climbing and climbing, so it is very hard for families to access basic care. We have a huge shortage of midwives, a huge shortage of health visitors. We have had an ongoing chronic shortage of

child and family social workers now for several years. I do not know how long it has been going on but we are around 2,000 to 3,000 short on child and family social workers. If you do not put the services in place, then you are not going to get anywhere, but let us try having the services in place and then seeing how parents get on with bringing up their children.

Q820 Lord Rowlands: I am slightly bristling at some of the things you are saying. It is not that we are imposing our views of childhood on others. Over 30 years of constituency case experience taught me repeatedly that the problems with childhood were mostly the problems of parents – and although I use the word in plural, in many cases there were not parents, there was a parent, at best, and probably more likely a grandma rather than even a mother or a father. It did not seem to me very difficult to identify those children as vulnerable and needing all the support they can get. They are a minority of cases. If we have a wonderful, romantic view of family in certain circumstances, we will get it wrong and we will end up with those children in fact being more vulnerable and failing, and possibly drifting into crime of one kind or another. I do not think we can be as starry-eyed as perhaps your evidence has suggested.

Ms Dowty: I do not think I am starry-eyed at all. Yes, you are right, there are children who are struggling and they do need some kind of intervention, and, as you have said, they are a small minority of children. With the Common Assessment Framework and the profiling that is going on, the Government are talking about 50 per cent of children needing to have the profiling carried out. That is the problem: at some point we stray across and intervene with parenting.

Dr Munro: You said that they were easy to identify, so we do not need a national database and a national electronic CAF and all of this surveillance if they are already identified.

Q821 Lord Rowlands: But what you do need, if I might say so – and I felt it often as a Member of Parliament – is more information about that young person. I worked with a charity training young people who in many cases have failed school or are dysfunctional and one could do much more if you did know more about what had happened to them. That means you do need some kind of data and you do need some kind of data sharing.

Dr Munro: It needs a professional with the time to go and read the information and with the wisdom to make sense of it. The problems lie at that point in the system rather than having some kind of technical data around, because if nobody is able to pull all the pieces together into a decent assessment ----

Q822 Lord Rowlands: That requires data sharing to do that.

Dr Munro: The kinds of families you are talking about really fall into the child protection system, because you are talking about a serious level of neglect, that the child is not getting adequate parenting.

Q823 Lord Rowlands: They are not being abused in the physical sense.

Dr Munro: No, but this is neglect in the sense of not having their needs met.

Q824 Lord Rowlands: Yes.

Dr Munro: We already have that system in place, and the fact that they are not getting picked up by it is more because of that system being overloaded – but it does exist. It is a different category of problem from the parent who is looking after a child with disabilities, who is struggling and asking for more help.

Q825 Lord Woolf: There are undoubtedly a very large number of databases. There are other methods of sharing information which has been collected. What is your view concerning the legality and consents needed for those activities?

Ms Dowty: There is a huge problem at the moment around consent to data sharing. There are, I should say, article 8 problems, I believe – article 8 of the European Convention on Human Rights – with at least some of the databases to which the Joint Committee on Human Rights drew attention when the Bill was going through Parliament, pointing out that it did not seem to be a proportionate response to share information on all the children in order to identify those who might need welfare services. But key to the whole issue of confidentiality and privacy is that of consent. I have seen, just in the last year or so, three different sets of advice on consent in three different sets of government guidance, so we have the Youth Justice Board operating what is called the ID50 scheme, where a local authority has to identify the 50 children considered most likely to become offenders within the local authority area. In the ID50 guidance the Youth Justice Board says that gaining consent is a matter of good practice rather than a matter of law in order to share information about these children. The Government's guidance to the Common Assessment Framework says that a child of around 12 and perhaps even younger is competent to consent to data sharing, but the legal basis for that is unclear. The information sharing guidance that the Government issued, on the other hand, says that parents should always be involved in any decision. Unsurprisingly, practitioners are very confused, and it really is not clear what is happening. We have been funded by the Nuffield Foundation for the rest of this year to conduct a study of the law relating to children's informed consent. I am having quite an interesting time at the moment talking to senior legal academics and practising lawyers to try to tease out exactly what the black-letter law is about children and consent and I hope that I will be able to bring more clarity to the current debate by the end of this year when we publish the report.

Q826 Lord Woolf: Is this an area where you feel the Information Commissioner should be providing guidance? In so far as that is being done now, do you think it is sufficient?

Ms Dowty: No, I do not think it is. On the issue of consent, I have been talking to the Information Commissioner recently and they also are using the age of 12 as a suitable age to gain subject access to records, because of the *Gillick* case. But if we are going to use the *Gillick* case, we have to use the whole judgment, not cherry-pick -----

Q827 Lord Woolf: “Judgments” in the plural.

Ms Dowty: Judgments, yes, rather than leave out important elements that Lord Fraser outlined in the process of getting the child’s consent. It is just such a confusing area that I do not think the Information Commissioner has been any help, to be honest.

Q828 Lord Woolf: Guidance is definitely needed, in your view. Do you hope you are going to be able to provide that?

Ms Dowty: I hope I might be able to persuade people either to apply the law correctly or that it is time that Parliament looked again at the issue of children’s consent. The last time Parliament looked at it was in 1969 in the Family Law Reform Act. Since then, all kinds of things have happened: we have had the Data Protection Act; we have ratified the Convention on the Rights of the Child; we have had the Human Rights Act. All sorts of things have changed. We have had various judgments. Perhaps it is time that Parliament looked at the age of legal capacity.

Q829 Lord Woolf: How well, in regard to what you say, does what I believe is the technical term “ContactPoint” fit into this?

Ms Dowty: ContactPoint is a central identity index of children. It is an identity management database, combined with a directory that will bring together all of the agency systems around the edge. It provides a central hub to put practitioners in touch with each other, so that they

can share information directly, because all systems are now built to a mandatory interoperability specification.

Q830 Baroness Quin: I am just wondering if you have had contact with the Children's Commissioner over your concerns, and what the reaction has been both in England and in other parts of the UK.

Ms Dowty: Yes, we have had contact with all the Commissioners. As an organisation we have regular contact with Commissioners anyway and when we were doing the FIPR report we certainly interviewed them and kept them in close touch. Amongst all of them there was genuine worry about the move towards data sharing without proper consent and the fact that there was this lack of clarity that should have been dealt with before the agenda was fully formulated. There was concern about the interference with children's rights to have the guidance of their parents when they are making decisions about the exercise of their rights and this sidelining.

Q831 Lord Rowlands: I read with great interest in the written evidence the criticism you made of lack of parliamentary scrutiny of legislation which extends these databases and data sharing. You are also quite critical of excessive secondary legislation which has promoted databases and sharing. Do you have any thoughts about how we might address the issue? Do you think we need a new kind of parliamentary procedure to address it?

Ms Dowty: Yes. If the trend is going to continue for using primary legislation to create coat-hooks for secondary legislation, then we are shifting ----

Q832 Lord Rowlands: Which is what that decision does anyway.

Ms Dowty: Yes, but we are shifting our legislation to the Executive, effectively, in relying so heavily on secondary legislation, and I think there needs to be greater scrutiny.

Q833 Lord Rowlands: Could you give me an illustration of the secondary legislation which has done this, which has promoted or extended databases, which one would not have spotted in the primary legislation.

Ms Dowty: The classic example was the National Pupil Database. Originally contained in the Education Act 1997 there was the provision to collect information from schools on an aggregate basis in order to plan for services. Into the School Standards and Framework Act, in something like the 29th or 30th schedule, there was inserted an amendment, halfway through committee stage, that turned that into a power to share individual information about pupils and to specify that information in regulations. Since then, we have seen a classic example of function creep, because the school census is now termly and they have gone from collecting very basic information about children to quite detailed information, including how a child gets to school in the mornings, recording behaviour and attendance data, whether they have special needs and whether they have free school meals. This is all going on to the National Pupil Database, which is, as far as we know at the moment, a permanent database without the intention to delete the content of it. That is a perfect example of a power that got through with little scrutiny because at the time there was not the same awareness of the power of databases and of information sharing.

Q834 Lord Rowlands: I notice you quoted the 2000 Learning and Skills Act. An Education Bill that had its second reading here yesterday also has considerable provision about data sharing, does it not?

Ms Dowty: Yes, it does.

Q835 Lord Rowlands: Have you scrutinised that? Have you thought about that?

Ms Dowty: We have thought about it a great deal. We are so over-committed with work at the moment that we have not been able to focus on it, but the Children's Rights Alliance and

an alliance of various other charities I know are dealing with it, and we have been giving them advice on that.

Q836 Lord Rowlands: One idea that has been floated – and we floated it ourselves in the previous hearing – is that we should have some sort of mandatory privacy impact assessment on legislation, so that, before a department brings a bill forward – just like it has to do on human rights – where there is any element of data sharing involved there has to be a privacy impact assessment in which the department has assessed the consequences of that data sharing in terms of privacy. Would you welcome that kind of approach?

Ms Dowty: Yes, we certainly would. It is a way of making legislators think about what they are doing.

Q837 Lord Rowlands: It is being aware.

Ms Dowty: It is being aware of the privacy issues that can arise. I also wonder if it would not be helpful to introduce a committee stage for regulations that are subject to affirmative resolution, so that we extend the process.

Q838 Lord Rowlands: That is the secondary legislation you referred to.

Ms Dowty: Yes. I am thinking about the regulations that are bringing ContactPoint into being, for instance. You cannot amend the regulations and it is unlikely that they are going to be rejected, but if we are going to give the Executive such far reaching powers to create legislation then perhaps there needs to be a process whereby things deemed sufficiently serious to warrant affirmative resolution actually receive proper scrutiny by committee and perhaps introduce the opportunity to amend regulations at that stage.

Q839 Lord Lyell of Markyate: Lady Quin was asking, quite rightly, what should we do. Looking at your warning of 22 November 2006, the FIPR warning, what you are really saying

is that we simply must not extend all this ill-digested information because it is likely to do significantly more harm than good. Is that what you are saying? Is that still true now, 18 months, nearly two years later?

Dr Munro: Yes. I think you also need to remember that people who provide services with good intentions do not necessarily produce good outcomes for the children. There is growing evidence that the early intervention services are not only failing to be as effective as the Government hoped but there is some evidence of them doing harm. In the Sure Start schemes, the most disadvantaged families did worse in the Sure Start areas than in the control areas. The efforts to identify and treat children who might become delinquent has not been successful but has increased the number of those children going into the juvenile justice system. It is not just the data sharing. Good intentioned people can do bad things.

Q840 Lord Morris of Aberavon: I want to ask you about the Data Protection Act. Does it provide sufficient safeguards for the privacy issues arising from the use of these databases?

Ms Dowty: No, it does not. It is a very short answer really. So long as the Government legislates by creating statutory gateways that override the need for consent in the Data Protection Act, and so long as that is allowed to happen repeatedly, then the Data Protection Act offers no protection at all. At the moment information can be shared without consent if there is a statutory duty upon a body to share information. We have seen cases where the Data Protection Act would not allow the sharing of information and so the Government have simply created legislation that places a statutory duty, and suddenly the Data Protection Act is worthless, if that makes sense. There is also the issue of the use of broad discretionary powers to allow the sharing of the information. The Data Protection Act does not appear to limit those powers, so we have, for instance, information shared on the basis of a general duty on a local authority to prevent crime in their area or to reduce youth offending. That is then used to justify specific instances of information sharing about an individual. Suddenly the

line becomes very blurred. How far do we go to stop crime occurring in an area? Does this broad power allow the police to enter your house and search for stolen goods? Presumably not. Why does it allow information to be shared, but it seems the Data Protection Act does not stop that?

Chairman: Ms Dowty and Dr Munro, may I thank you on behalf of the Committee very much indeed for being with us and for the evidence you have given us. Thank you very much indeed.